



The ***NORTH CAROLINA REGISTER***

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INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

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

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

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

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

ADOPTION, AMENDMENT, AND REPEAL OF RULES

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

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

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

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

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

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

TEMPORARY RULES

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

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% 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 (\$.15) per each additional page.
- (2) The full publication consists of 53 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication are available.

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

CITATION TO THE NORTH CAROLINA REGISTER

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

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

NORTH CAROLINA REGISTER



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NORTH CAROLINA REGISTER

Publication Schedule

(April 1994 - January 1995)

Volume and Issue Number	Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing <i>15 days from notice</i>	* End of Required Comment Period <i>30 days from notice</i>	Last Day to Submit to RRC	** Earliest Effective Date
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.*

**EXECUTIVE ORDER NO. 50
NORTH CAROLINA SPORTS
DEVELOPMENT COMMISSION**

WHEREAS, the Department of Commerce is charged with the duty of promoting and assisting in the total economic development of North Carolina; and

WHEREAS, sporting events represent an expanding market with positive economic effects; and

WHEREAS, it is the duty of the Sports Development office to develop and promote efforts to recruit sporting events, sporting franchises, and training centers to North Carolina; and

WHEREAS, an advisory commission to advise, assist, and support the Sports Development Office and the Department of Commerce in matters involving sports development initiatives is necessary.

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

Section 1. Establishment.

There is hereby established the North Carolina Sports Development Commission.

Section 2. Membership.

The Governor shall appoint the members of the Commission. The Commission shall consist of 20 members. Members shall be representatives of sports agencies and organizations, government entities, the business community, or individuals who have an interest in sports development.

Section 3. Terms.

All members shall serve four year terms at the pleasure of the Governor.

Section 4. Officers.

The Governor shall designate a Chair from the membership to serve at his pleasure. The Commission shall elect any other officers it deems necessary. Vacancies in any office shall be filled for the unexpired term by the original appointing authority.

Section 5. Meetings.

The Commission shall meet at least quarterly. A quorum shall consist of a majority of the current Commission membership.

Section 6. Administrative Support and Expenses.

(a) The staff of the Sports Development Office shall provide administrative support to the Commission. A Sports Development Office staff member shall serve as Administrator to the Commission. Permanent records of all Commission business shall be maintained in the Sports Development Office and shall be the responsibility of the Administrator.

(b) Members of the Commission shall receive travel and subsistence expenses, when available, from Department of Commerce funds, pursuant to N.C.G.S. 138-5.

Section 7. Duties and Powers.

The Commission shall perform such duties as assigned by the Governor. It shall have the following specific duties, powers, and functions:

- (1) assist the Sports Development Office in planning and implementation of sports development initiatives;
- (2) act as spokesperson for the State of North Carolina in its efforts to attract sports activities;
- (3) assist in the creation and updating of directories containing the following information:
 - A. current sporting events being held in our State;
 - B. facilities available for sporting events in our State; and
 - C. available sporting events and bid deadlines;
- (4) assist the Sports Development Office in forming a partnership with the governing associations of sporting activities, the North Carolina business community, individuals who conduct major and minor sporting events, and key facility managers in our state;
- (5) assist in project promotion; and
- (6) advise and assist in the development of future goals and objectives for the Sports Development Office.

The Commission's role shall be advisory in nature. All decisions regarding the adoption of policies shall be the responsibility of the Secretary of the Department of Commerce and the Sports Development Office.

Section 8. Annual Report.

The Commission shall report annually to the Governor regarding the progress of sports development in North Carolina.

Section 2. Effect on Other Executive Orders.

Executive Order Number 109, as amended by Executive Order Number 161, of the Martin Administration is hereby rescinded.

This Executive Order shall be effective immediately.

Done in the Capital City of Raleigh, North Carolina, this the 1st day of June, 1994.

**EXECUTIVE ORDER NO. 51
NORTH CAROLINA FILM COUNCIL**

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

Section 1. Establishment.

The North Carolina Film Council is hereby established.

Section 2. Duties.

The Council shall have the following duties and functions:

- (a) Advise the Governor on matters that would enhance the likelihood of the film industry choosing North Carolina for filmmaking.
- (b) Advise the Secretary of Commerce and the Film Division in the Department of Commerce on film-making activities within North Carolina.
- (c) Serve as a forum for film-making concerns and recommendations relating to the film industry in North Carolina that would include, but not be all inclusive of, the following:
 - (1) Compile a database registry of locations within North Carolina that would be potential sites for filmmaking;
 - (2) Develop the financial capability of North Carolina to support projects with local financing of the film industry;
 - (3) Develop a support network for production activities relating to the film industry;
 - (4) Develop a manual for the use of local governments and municipalities detailing supportive activities that would facilitate filmmaking in their communities;
 - (5) Assist in the support and coordination of the activities of local film commissions in North Carolina;

- (6) Provide advice on projects directly assigned by the Governor to the Council;
- (7) Assist with recruitment of the film industry to select North Carolina sites for filmmaking; and
- (8) Develop an annual report on the economic impact of the film-making industry in North Carolina, along with recommendations to increase the film-making activities within North Carolina.

Section 3. Membership.

The Council shall consist of 25 voting members who shall be appointed by the Governor as follows:

- (a) Five representatives of the film industry within the state representing acting, production, directing, producing, and film studio management.
- (b) Five representatives of business and industry.
- (c) Three representatives of state or local government.
- (d) Twelve at-large members.

Section 4. Terms of Membership.

The terms of membership of the Council shall be staggered so that the terms of approximately one-third of the members shall expire in a single calendar year. Eight members shall be designated to serve initial terms of one year, eight to serve initial terms of two years and nine members to serve initial terms of three years. After the first three years, all members shall be appointed for a term of three years.

Section 5. Vacancies.

A vacancy occurring during a term of appointment is filled in the same manner as the original appointment and for the balance of the unexpired term.

Section 6. Travel Expenses.

Members of the Council shall receive necessary travel and subsistence expenses, when available, from Department of Commerce funds, pursuant to N.C.G.S. 138-5.

Section 7. Officers.

The Chair and Vice Chair of the Council shall be appointed by the Governor. The term of office of the Chair and Vice Chair shall be two calendar years. The Council may elect other such officers as it deems necessary.

Section 8. Meetings.

The Council shall meet at least three times yearly and at other times at the call of the Chair or upon written request of at least ten of its members.

Section 9. Staff Assistance.

The Department of Commerce shall provide clerical support and other services required by the Council.

This Executive Order shall be effective immediately.

Done in the Capital City of Raleigh, North Carolina, this the 10th day of June, 1994.

**EXECUTIVE ORDER NO. 52
AMENDING EXECUTIVE ORDER
NUMBER 9 CONCERNING THE
COMMISSION FOR A COMPETITIVE
NORTH CAROLINA**

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

Section 2 of Executive Order Number 9 is hereby amended to read:

Section 2. Membership.

The Commission shall consist of up to 55 members appointed by the Governor. The membership may include representatives of the private sector, the nonprofit sector, local government, and the North Carolina General Assembly.

Section 3. Effect on Other Executive Orders.

Executive Order Number 40, dated March 21, 1994 is hereby rescinded.

This Executive Order shall be effective immediately.

Done in Raleigh, North Carolina, this the 10th day of June, 1994.

STATE OF NORTH CAROLINA

BEFORE THE TAX REVIEW BOARD

COUNTY OF WAKE

In the matter of:)
 The Proposed Assessment of installment paper dealer)
 tax against **Ford Motor Credit Company** for the)
 period 1 October 1986 through 30 June 1989.)

**ADMINISTRATIVE
 DECISION NUMBER: 282**

THIS MATTER was heard before the undersigned duly appointed and acting members of the Tax Review Board at its regular meeting in the City of Raleigh on 24 March 1994, upon the petition of **Ford Motor Credit Company** for review of a Final Decision of the Deputy Secretary of Revenue entered 27 August 1992 sustaining a proposed assessment of installment paper dealer tax for the period 1 October 1986 through 30 June 1989;

AND IT APPEARING TO THE BOARD that the findings of fact made by the Deputy Secretary of Revenue were fully supported by competent evidence of record, that the conclusions of law made by the Deputy Secretary were fully supported by the findings of fact, and that the decision by the Deputy Secretary was fully supported by the conclusions of law;

IT IS THEREFORE ORDERED that the Final Decision of the Deputy Secretary of Revenue is confirmed in every respect.

Entered this the 14th day of June, 1994.

TAX REVIEW BOARD

 Harlan E. Boyles, Chairman
 State Treasurer

 Jeff D. Batts

Note: Dr. John E. Thomas, Chairman of the Utilities Commission on the date of the hearing in this matter, participated in the hearing but did not participate in the Board's subsequent decision because, as of the date of the meeting at which this matter was decided, he no longer held the office of Chairman of the Utilities Commission and therefore was no longer an ex officio member of the Tax Review Board.

STATE OF NORTH CAROLINA

BEFORE THE TAX REVIEW BOARD

COUNTY OF WAKE

In the matter of:)
 The Proposed Assessment of additional sales and)
 use tax for the period 1 February 1987 through 31)
 January 1990 by the Secretary of Revenue of North)
 Carolina against Advanced Micrographic Support,)
 Inc.)
)

ADMINISTRATIVE
 DECISION NUMBER: 283

THIS MATTER was heard before the undersigned duly appointed and acting members of the Tax Review Board (and before Dr. John E. Thomas, at that time Chairman of the Utilities Commission and ex officio member of the Board) at its regular meeting in the City of Raleigh on 21 December 1993, upon the petition of **Advanced Micrographic Support, Inc.** [hereinafter "Petitioner"] for review of a Final Decision of the Deputy Secretary of Revenue issued 4 March 1992 waiving the negligence penalty and sustaining a proposed assessment of additional sales and use tax for the period 1 February 1987 through 31 January 1990.

Findings of Fact

THE TAX REVIEW BOARD, having reviewed the Petition, briefs, and record filed in this matter, adopts the Findings of Fact contained in the Final Decision of the Deputy Secretary in this matter and makes the following additional Findings of Fact:

1. The Petitioner is engaged in the business of providing services to its customers in the form of consulting, developing software programs, formatting and imaging, and data processing. The Petitioner's primary service consists of processing raw data from its customers in order to put this data into a more useful format.
2. Most of the services provided by the Petitioner are in the nature of data processing. The Petitioner delivers the results of its services to its customers through storage media; however, the delivery of storage media is merely a means by which the results of the Petitioner's services are delivered.
3. The Petitioner's charges to its customers are charges for services, not sales of tangible personal property.

Conclusions of Law

THE TAX REVIEW BOARD, having reviewed the Petition, briefs, and record filed in this matter, based on the Findings of Fact made by the Deputy Secretary and on its own Findings of Fact set out above, makes the following Conclusions of Law:

1. At all material times the Petitioner was engaged in the business of providing data processing services to its customers. The Petitioner delivered the results of its services to its customers by means of storage media.
2. The total charges to Petitioner's customers at issue herein were charges for services such as organizing, preparing, programming, filming, and processing customer data. No portion of the charges at issue represent sales of tangible personal property subject to North Carolina sales and use tax.

Decision

IT APPEARING TO THE BOARD, as set forth above, that the Petitioner is engaged in the business of providing data processing services to its customers; and it further appearing that no part of the charges at issue were charges for sales of tangible personal property;

IT IS THEREFORE ORDERED that the proposed assessment of additional sales and use tax against the Petitioner is **Reversed**.

Entered this the 14th day of June, 1994.

TAX REVIEW BOARD

Harlan E. Boyles, Chairman
State Treasurer

Jeff D. Batts

Note: Dr. John E. Thomas, Chairman of the Utilities Commission on the date of the hearing in this matter, participated in the hearing but did not participate in the Board's subsequent decision because, as of the date of the meeting at which this matter was decided, he no longer held the office of Chairman of the Utilities Commission and therefore was no longer an ex officio member of the Tax Review Board.

STATE OF NORTH CAROLINA

BEFORE THE TAX REVIEW BOARD

COUNTY OF WAKE

In the matter of:)
 The Proposed Assessment of additional sales and)
 use tax for the period 1 February 1988 through 31)
 March 1991 by the Secretary of Revenue of North)
 Carolina against Performance Bicycle Shop, Inc.)
)

ADMINISTRATIVE
 DECISION NUMBER: 284

THIS MATTER was heard before the undersigned duly appointed and acting members of the Tax Review Board (and before Dr. John E. Thomas, at that time Chairman of the Utilities Commission and ex officio member of the Board) at its regular meeting in the City of Raleigh on 24 March 1994, upon the petition of **Performance Bicycle Shop, Inc.** [hereinafter "Petitioner"] for review of a Final Decision of the Deputy Secretary of Revenue issued 4 January 1993 waiving the negligence penalty and sustaining a proposed assessment of additional sales and use tax for the period 1 February 1988 through 31 March 1991.

Findings of Fact

THE TAX REVIEW BOARD, having reviewed the Petition, briefs, and record filed in this matter, adopts the Findings of Fact contained in the Final Decision of the Deputy Secretary in this matter and makes the following additional Findings of Fact:

1. The Petitioner is engaged in the sale of bicycles and bicycle accessories.
2. The Petitioner operates a retail store in Carrboro, North Carolina. The Petitioner also operates, from its Carrboro, North Carolina location, an extensive catalog retail sales business. The customers of the catalog business are located in virtually every part of the United States, and perhaps in foreign countries. Some catalog customers are located in the State of North Carolina.
3. The vast majority of the Petitioner's catalogs are shipped directly from the Petitioner's printer in Spartanburg, South Carolina, to recipients, and are therefore not at issue.
4. The matter before the Board concerns the application of North Carolina sales and use tax to catalogs which are shipped from the Spartanburg printer to the Petitioner's Carrboro business facilities. These catalogs are used by the Petitioner for three purposes: (1) package inserts - when the Petitioner mails a product to a customer, the Petitioner places a catalog in the box with the product in an effort to stimulate additional sales; (2) response to telephone requests for catalogs - when a potential customer calls the Petitioner to request a catalog, the Petitioner mails the catalog from its Carrboro facility; and (3) available to be given to customers who visit the Petitioner's retail facility in Carrboro.
5. The Petitioner concedes (and the Board concurs) that all catalogs used for the third purpose in the preceding paragraph are properly subject to North Carolina sales and use tax. As to the first two purposes, the Petitioner agrees (and, again, the Board concurs) that all catalogs actually delivered to North Carolina residents are subject to North Carolina sales and use tax. However, North Carolina residents receive only a very small percentage of catalogs mailed out for these purposes. The critical question is the tax treatment of catalogs mailed to out-of-State customers and potential customers.

6. After carefully considering the nature of the Petitioner's business, the Board finds that the Petitioner consistently mails the vast majority of the catalogs falling into the first two categories above to customers or potential customers located in states other than North Carolina. When the Petitioner has catalogs delivered to its North Carolina location, the Petitioner has the original and continuing intent to deliver approximately 95% of these catalogs to customers and potential customers located out-of-state.
7. The Petitioner sends catalogs falling into the first two categories above to out-of-state customers and potential customers free of charge, for the purpose of generating sales of bicycles and bicycle accessories.
8. The percentage of catalogs shipped out-of-state from the Petitioner's North Carolina facility changed little during the years under consideration. The Petitioner typically stores catalogs for no more than two or three months, because the Petitioner prints five catalogs per year. It is reasonable for the Petitioner to anticipate, based on past experience, that the vast majority of catalogs stored in its North Carolina facility will be shipped out-of-state.

Conclusions of Law

THE TAX REVIEW BOARD, having reviewed the Petition, briefs, and record filed in this matter, based on the Findings of Fact made by the Deputy Secretary and on its own Findings of Fact set out above, makes the following Conclusions of Law:

1. All catalogs stored by the Petitioner in North Carolina and used for the purpose of direct distribution to customers of the Petitioner's retail store in Carrboro, North Carolina are subject to North Carolina sales and use tax.
2. As to those catalogs stored by the Petitioner in North Carolina and used by the Petitioner either as package inserts or as mail-outs in response to telephone requests, all catalogs shipped to North Carolina recipients are subject to North Carolina sales and use tax.
3. As to those catalogs stored by the Petitioner in North Carolina and used by the Petitioner either as package inserts or as mail-outs in response to telephone requests, catalogs actually shipped to out-of-state recipients fall within the "storage and use" exclusion (see G.S. 105-164.3(19)) and are not subject to North Carolina sales and use tax. The Board takes particular notice that the percentage of catalogs shipped out-of-state from the Petitioner's North Carolina facility changed little during the years under consideration. The Board therefore concludes as a matter of law that the Petitioner purchases catalogs for delivery to its North Carolina location with the original purpose of continuing its past business practice of sending most of these catalogs out-of-state. The burden is on the Petitioner, of course, to show how the catalogs received in its Carrboro location are actually used.
4. Addressing one additional point raised by the Department, the Board concludes that catalogs shipped out-of-state by the Petitioner as package inserts or in response to telephone requests are used by the Petitioner in the states where the catalogs are received. The catalogs are promotional and advertising materials of the Petitioner, delivered by the Petitioner to past customers and potential future customers for the purpose of generating sales. Such delivery constitutes use of the catalogs by the Petitioner in other states.

Decision

IT APPEARING TO THE BOARD, as set forth above, that catalogs stored by the Petitioner at its North Carolina facility for shipment and use out-of-state and actually used out-of-state meet the "storage and use" exclusion;

IT IS THEREFORE ORDERED that the proposed assessment of additional sales and use tax against the Petitioner be revised to reflect the Findings and Conclusions of the Board set forth herein, and that the Final Decision of the Deputy Secretary in this matter is **Modified** accordingly.

Entered this the 14th day of June, 1994.

TAX REVIEW BOARD

Harlan E. Boyles, Chairman
State Treasurer

Jeff D. Batts

Note: Dr. John E. Thomas, Chairman of the Utilities Commission on the date of the hearing in this matter, participated in the hearing and in the Board's unanimous decision, but did not sign this order because, as of the date of entry of this written decision, he no longer held the office of Chairman of the Utilities Commission and therefore was no longer an ex officio member of the Tax Review Board.

STATE OF NORTH CAROLINA

BEFORE THE TAX REVIEW BOARD

COUNTY OF WAKE

In the matter of:)	
The Denial of Refunds for the tax years 1979,)	
1980, 1981, 1982, and 1983 by the Secretary of)	ADMINISTRATIVE
Revenue against Charles R. Brown.)	DECISION NUMBER: <u>285</u>
)	

THIS MATTER was heard before the undersigned duly appointed and acting members of the Tax Review Board at its regular meeting in the City of Raleigh on 24 March 1994, upon the petition of **Charles R. Brown** for review of a Final Decision of the Deputy Secretary of Revenue entered 24 August 1992 denying requests for refunds of taxes, penalties, and interest for the tax years 1979, 1980, 1981, 1982, and 1983.

Addressing first the Taxpayer's motion that this matter be remanded to the Secretary of Revenue, the Board finds that the Taxpayer has had ample opportunity, in two hearings before the Deputy Secretary of Revenue, to present any relevant and material evidence. The Taxpayer has not asserted the existence of relevant and material evidence which could not, with due diligence, have been presented at the hearing before the Deputy Secretary from which the Taxpayer has petitioned for review. The Taxpayer's motion for remand is therefore **DENIED**;

AND IT APPEARING TO THE BOARD that the findings of fact made by the Deputy Secretary of Revenue were fully supported by competent evidence of record, that the conclusions of law made by the Deputy Secretary were fully supported by the findings of fact, and that the decision by the Deputy Secretary was fully supported by the conclusions of law;

IT IS THEREFORE ORDERED that the Final Decision of the Deputy Secretary of Revenue is confirmed in every respect.

Entered this the 14th day of June, 1994.

TAX REVIEW BOARD

Harlan E. Boyles, Chairman
State Treasurer

Jeff D. Batts

Note: Dr. John E. Thomas, Chairman of the Utilities Commission on the date of the hearing in this matter, participated in the hearing and in the Board's unanimous decision, but did not sign this order because, as of the date of entry of this written decision, he no longer held the office of Chairman of the Utilities Commission and therefore was no longer an ex officio member of the Tax Review Board.

STATE OF NORTH CAROLINA

BEFORE THE TAX REVIEW BOARD

COUNTY OF WAKE

In the matter of:)
 The Proposed Assessments of income tax withheld)
 or required to be withheld for the months of May)
 and June, 1989, by Secretary of Revenue of North)
 Carolina against Morton B. Morganstern,)
 Taxpayer.)
)

ADMINISTRATIVE
 DECISION NUMBER: 286

THIS MATTER was heard before the undersigned duly appointed and acting members of the Tax Review Board at its regular meeting in the City of Raleigh on 24 March 1994, upon the petition of Morton B. Morganstern for review of a Final Decision of the Deputy Secretary of Revenue entered 26 June 1992 sustaining proposed assessments of tax withheld or required to have been withheld for the months of May and June, 1989 and declaring said assessments to be immediately due and payable;

AND IT APPEARING TO THE BOARD that the findings of fact made by the Deputy Secretary of Revenue were fully supported by competent evidence of record, that the conclusions of law made by the Deputy Secretary were fully supported by the findings of fact, and that the decision by the Deputy Secretary was fully supported by the conclusions of law;

IT IS THEREFORE ORDERED that the Final Decision of the Deputy Secretary of Revenue is confirmed in every respect.

Entered this the 14th day of June, 1994.

TAX REVIEW BOARD

 Harlan E. Boyles, Chairman
 State Treasurer

 Jeff D. Batts

Note: Dr. John E. Thomas, Chairman of the Utilities Commission on the date of the hearing in this matter, participated in the hearing and in the Board's unanimous decision, but did not sign this Order because, as of the date of entry of this written decision, he no longer held the office of Chairman of the Utilities Commission and was therefore no longer an ex officio member of the Tax Review Board.

**TITLE 4 - DEPARTMENT OF
COMMERCE**

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Alcoholic Beverage Control Commission intends to adopt rule cited as 4 NCAC 2T .0103.

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

The public hearing will be conducted at 10:00 a.m. on August 12, 1994 at the ABC Commission, Hearing Room 101, 3322 Garner Road, Raleigh, NC 27610.

Reason for Proposed Action: Petition for adoption of rule received from N.C. Beer Wholesalers' Association. Purpose of Rule is to define term "brand" as used by malt beverage wholesale distribution industry, and to codify Commission's traditional interpretation of the term for the purpose of administering the Beer Franchise Law.

Comment Procedures: Written comments should be received by the Commission no later than August 5, 1994. Persons may also present oral comments at the hearing on August 12, 1994. Persons wishing to speak at the hearing are requested to contact Ann S. Fulton, General Counsel, prior to the hearing, at (919) 779-0700. No written or verbal comment will be received or considered after the hearing on August 12, 1994.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Facility Services intends to amend rules cited as 10 NCAC 3R .3020, .3030.

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

The public hearing will be conducted at 10:00 a.m. on August 4, 1994 at the Council Building, Room 201, 701 Barbour Drive, Raleigh, North Carolina 27603.

Reason for Proposed Action: To adopt as permanent rules the temporary rule adopted June 7, 1994, which amends the Certificate of Need review schedule and the facility and service need determinations set forth in the 1994 State Medical Facilities Plan.

**CHAPTER 2 - ALCOHOLIC
BEVERAGE CONTROL COMMISSION**

**SUBCHAPTER 2T - INDUSTRY MEMBERS:
RETAIL/INDUSTRY: MEMBER
RELATIONSHIPS: SHIP CHANDLERS:
AIR CARRIERS: FUEL ALCOHOL**

**SECTION .0100 - DEFINITIONS:
APPLICATION PROCEDURES**

**.0103 BEER FRANCHISE LAW;
"BRAND" DEFINED**

For purposes of Article 13 of Chapter 18B, the Beer Franchise Law, a distribution agreement between a supplier and wholesaler applies to all products distributed by the supplier under the same brand name. Different categories of products manufactured and marketed under a common identifying trade name, such as the name of the brewery, are considered to be the same brand; e.g., the "Old Faithful" brand would include "Old Faithful", "Old Faithful Light", "Old Faithful Draft", "Old Faithful Dry" and other products identified principally by and relying upon the "Old Faithful" name. Differences in packaging, such as different style, type or size of container, do not establish different brands.

Statutory Authority G.S. 18B-207; 18B-1303(a).

Comment Procedures: All written comments must be submitted to Jackie Sheppard, APA Coordinator, Division of Facility Services, P.O. Box 29530, Raleigh, NC 27626-0530 no later than August 4, 1994. Oral comments may be made at the hearing.

Editor's Note: These Rules were filed as temporary amendments effective June 7, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

CHAPTER 3 - FACILITY SERVICES

SUBCHAPTER 3R - CERTIFICATE OF NEED REGULATIONS

SECTION .3000 - STATE MEDICAL FACILITIES PLAN

.3020 CERTIFICATE OF NEED REVIEW SCHEDULE

The agency has established the following schedule for review of categories and subcategories of facilities and services in 1994:

- (1) Category B. Subcategory Long-Term Nursing Facilities.

County	HSA	CON Beginning Review Date
Brunswick	V	April 1, 1994
Pender	V	April 1, 1994
Greene	VI	April 1, 1994
<u>Lincoln</u>	<u>III</u>	<u>September 1, 1994</u>

- (2) Category C. Subcategory Intermediate Care Facilities for Mentally Retarded.

Counties	HSA	CON Beginning Review Date
Buncombe, Madison, Mitchell, Yancey	I	June 1, 1994
Gaston, Lincoln	III	November 1, 1994
Rowan, Iredell, Davie	III	May 1, 1994
Orange, Person, Chatham	IV	May 1, 1994
Halifax	VI	December 1, 1994
Pitt	VI	December 1, 1994
Beaufort, Washington, Tyrrell, Hyde, Martin	VI	June 1, 1994
Pasquotank, Chowan, Perquimans, Camden, Dare, Currituck	VI	June 1, 1994

- (3) Category D. Subcategory End Stage Renal Disease Dialysis Stations. Dialysis station review shall be conducted under the provisions of 10 NCAC 3R .3032.
- (4) Category H. Subcategory Home Health Agencies or Offices.

County	HSA	CON Beginning Review Date
Iredell	III	July 1, 1994
Mecklenburg	III	February 1, 1994
Durham	IV	February 1, 1994
Cumberland	V	February 1, 1994

- (5) If a need has been identified for any health service or facility in 10 NCAC 3R .3030, applications for certificates of need for those services will be reviewed pursuant to the following review schedule, unless another schedule has been specified in Items (1) - (4) of this Rule.

CON BEGINNING REVIEW DATE	HSA I	HSA II	HSA III	HSA IV	HSA V	HSA VI
January 1	--	--	--	--	--	--
February 1	B, G, I	B, G, I	A, G, E, H, I, J, K	A, G, E, H, I, J, K	A, G, E, H, I, J, K	A, G, E, H, I, J, K
March 1	--	--	B, G	B, G	--	--
April 1	A, G, E, H, J, K	A, G, E, H, J, K	--	--	B, G	B, G
May 1	--	--	C, G, F	C, G, F	--	--
June 1	A, C, G, F, D, J, K	A, C, G, F, D, J, K	D	D	A, C, G, F, D, J, K	A, C, G, F, D, J, K
July 1	--	--	A, G, H, J, K	A, G, H, J, K	--	--
August 1	B, G, L	B, G, L	--	--	G, E, H	G, E, H
September 1	--	--	B, G, E, L	B, G, E, L	--	--
October 1	G, E, H	G, E, H	--	--	B, G, L	B, G, L
November 1	--	A, C, G, F, J, K	A, C, G, F, J, K	A, C, G, F, J, K	--	--
December 1	A, C, D, G, F, J, K	D	D	D	A, C, D, G, F, J, K	A, C, D, G, F, J, K

Statutory Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

.3030 FACILITY AND SERVICE NEED DETERMINATIONS

Facility and service need determinations are shown in Items (1) - (16) of this Rule. The need determinations shall be revised continuously throughout 1994 pursuant to 10 NCAC 3R .3040.

- (1) Category A. Acute Health Service Facilities. It is determined that there is no need for additional acute care beds and no reviews are scheduled.
- (2) Category B. Long-Term Nursing Facility Beds.

County	HSA	Number of Nursing Beds Needed
Brunswick	V	40
Pender	V	20
Greene	VI	10

County	HSA	Number of Nursing Beds Needed
<u>Lincoln</u>	<u>III</u>	<u>30</u>

- (3) Category C.
- (a) Psychiatric Facility Beds. It is determined that there is no need for additional psychiatric beds and no reviews are scheduled.
- (b) Intermediate Care Facilities for Mentally Retarded Beds.

Counties	HSA	Need Determination	
		<u>Child</u>	<u>Adult</u>
Buncombe, Madison, Mitchell, Yancey	I	0	6
Gaston, Lincoln	III	0	6
Rowan, Iredell, Davie	III	12	0
Orange, Person, Chatham	IV	6	0
Halifax	VI	12	0
Pitt	VI	12	0
Beaufort, Washington, Tyrrell, Hyde, Martin	VI	6	6
Pasquotank, Chowan, Perquimans, Camden, Dare, Currituck	VI	0	18

- (c) Chemical Dependency Treatment Beds. It is determined that there is no need for additional chemical dependency treatment beds and no reviews are scheduled.
- (4) Category D. End-Stage Renal Disease Treatment Facilities. Need for end-stage renal dialysis facilities or stations is determined as is provided in 10 NCAC 3R .3032.
- (5) Category E. Inpatient Rehabilitation Facility Beds. It is determined that there is no need for additional rehabilitation beds and no reviews are scheduled.
- (6) Category F. Ambulatory Surgery Operating Rooms. It is determined that there is no need for additional ambulatory surgery operating rooms and no reviews are scheduled, except that a Rural Primary Care Hospital designated by the N.C. Office of Rural Health Services pursuant to Section 1820(f) of the Social Security Act may apply for a certificate of need to convert existing operating rooms for use as a freestanding ambulatory surgical facility.
- (7) Category H. New Home Health Agencies or Offices.

County	HSA	Number of Agencies or Offices Needed
Iredell	III	1
Mecklenburg	III	2
Durham	IV	1
Cumberland	V	1

- (8) Category J. Open heart surgery services. It is determined that there is no need for additional open

heart surgery services and no reviews are scheduled; except that a health service facility that currently provides these services may apply for a certificate of need to expand its existing services to meet specific needs if utilization of the health service facility's existing open heart surgery services exceeds 80% of capacity.

- (9) Category J. Heart-Lung Bypass Machines. It is determined that there is no need for additional heart-lung bypass machines and no reviews are scheduled; except that a health service facility that currently provides open heart surgery services may apply for a certificate of need to acquire additional heart-lung bypass machinery if the existing heart-lung machinery used by the health service facility is utilized at or above 80% of capacity.
- (10) Category J. Cardiac Angioplasty Equipment. It is determined that there is no need for additional cardiac angioplasty equipment and no reviews are scheduled; except that a health service facility that currently provides cardiac angioplasty services may apply for a certificate of need to acquire additional cardiac angioplasty equipment if utilization of cardiac angioplasty equipment used by the health service facility exceeds 80% of capacity.
- (11) Category J. Cardiac Catheterization Equipment. It is determined that there is no need for additional fixed or mobile cardiac catheterization equipment and no reviews are scheduled; except that a health service facility that currently provides cardiac catheterization services may apply for a certificate of need to acquire additional cardiac catheterization equipment if utilization of cardiac catheterization equipment used by the health service facility exceeds 80% of capacity.
- (12) Category J. Solid organ transplant services shall be developed and offered only by academic medical center teaching hospitals as designated in 10 NCAC 3R .3050(a)(3). It is determined that there is no need for new solid organ transplant services and no reviews are scheduled.
- (13) Category J. Bone Marrow Transplantation Services. It is determined that allogeneic bone marrow transplantation services shall be developed and offered only by academic medical center teaching hospitals as designated in 10 NCAC 3R .3050(a)(3). It is determined that there is no need for additional allogeneic or autologous bone marrow transplantation services and no reviews are scheduled.
- (14) Category J. Gamma Knife Equipment. It is determined that there is no need for gamma knife equipment and no reviews are scheduled.
- (15) Category J. Positron Emission Tomography Scanner. It is determined that there is no need for additional positron emission tomography scanners for purposes other than research and no reviews are scheduled.
- (16) Category L.
 - (a) New Hospice Home Care Programs.

County	HSA	Number of New Hospice Home Care Programs Needed
Graham	I	1
McDowell	I	1
Swain	I	1
Cumberland	V	1
Robeson	V	1
Edgecombe	VI	1
Hyde	VI	1
Onslow	VI	1
Wayne	VI	1

- (b) New Hospice Inpatient Beds (Single Counties). It is determined that the following single counties

have a need for six or more new Hospice Inpatient Beds:

County	HSA	Number of New Hospice Inpatient Beds Needed
Forsyth	II	8
Guilford	H	7
Wake	IV	7

- (c) New Hospice Inpatient Beds (Contiguous Counties). It has been determined that any combination of two or more contiguous counties taken from the following list shall have a need for new hospice inpatient beds if the combined bed deficit for the grouping of contiguous counties totals six or more beds. Each county in a grouping of contiguous counties must have a deficit of at least one and no more than five beds. The need for the grouping of contiguous counties shall be the sum of the deficits in the individual counties. For purposes of this rule, "contiguous counties" shall mean a grouping of North Carolina counties which includes the county in which the new hospice inpatient facility is proposed to be located and any one or more of the immediately surrounding North Carolina counties which have a common border with that county, even if the borders only touch at one point. No county may be included in a grouping of contiguous counties unless it is listed in the following table:

County	HSA	Hospice Inpatient Bed Deficit
Alexander	I	1
Ashe	I	1
Avery	I	1
Buncombe	I	1
Burke	I	1
Cleveland	I	3
Henderson	I	4
Madison	I	1
Polk	I	1
Rutherford	I	2
Transylvania	I	1
Watauga	I	1
Wilkes	I	1
Yancey	I	1
Alamance	II	5
Caswell	II	1
Davidson	II	2
Guilford	II	1

County	HSA	Hospice Inpatient Bed Deficit
Randolph	H	4
Rockingham	II	3
Stokes	II	1
Surry	II	2
Cabarrus	III	2
Gaston	III	4
Iredell	III	3
Mecklenburg	III	4
Rowan	III	3
Stanly	III	1
Union	III	2
Chatham	IV	2
Durham	IV	3
Johnston	IV	1
Lee	IV	1
Orange	IV	4
Bladen	V	1
Brunswick	V	2
Columbus	V	2
Harnett	V	1
Moore	V	2
New Hanover	V	3
Pender	V	1
Richmond	V	1
Scotland	V	1
Bertie	VI	2
Duplin	VI	1
Greene	VI	2
Hertford	VI	2
Nash	VI	1
Northampton	VI	1
Onslow	VI	1
Pitt	VI	1

County	HSA	Hospice Inpatient Bed Deficit
Wayne	VI	4
Wilson	VI	1

Statutory Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).

**MENTAL HEALTH: MENTAL
RETARDATION AND OTHER
DEVELOPMENTAL DISABILITIES:
AND SUBSTANCE ABUSE FACILITIES**

**SECTION .0300 - FACILITY AND
PROGRAM MANAGEMENT**

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Mental Health, Developmental Disabilities & Substance Abuse Services intends to amend rules cited as 10 NCAC 14K .0314 - .0315.

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

The public hearing will be conducted at 1:30 p.m. on August 9, 1994 at the Sheraton Inn Raleigh at Crabtree Valley, 4501 Creedmoor Road, U.S. 70 West, Raleigh, N.C. 27612.

Reason for Proposed Action: Amend to comply with federal early intervention regulations (34 CFR Part 303). During the review of North Carolina's annual grant for early intervention funds under P.L. 99-457, the U.S. Department of Education determined that specific requirements must be included in these Rules in order to receive federal funds.

Comment Procedures: Any interested person may present comments by oral presentations or submitting a written statement. Persons wishing to make oral presentation should contact Charlotte Tucker, Division of MH/DD/SAS, 325 N. Salisbury St., Raleigh, N.C. 27603, 919-733-4774. Comments submitted as a written statement must be sent to the above address no later than August 8, 1994, and must state the Rule to which the comments are addressed. Time limits for oral remarks may be imposed. Fiscal information regarding these Rules is available from the Division, upon request.

**CHAPTER 14 - MENTAL
HEALTH: GENERAL**

**SUBCHAPTER 14K - CORE
LICENSURE RULES FOR**

.0314 ASSESSMENT

(a) The governing body shall develop and implement written policies regarding admission assessments for clients in each facility.

(b) Each facility shall complete an initial admission assessment for each client prior to the delivery of treatment/habilitation services. The initial assessment shall include:

- (1) the presenting problem or reason for admission;
- (2) the client's needs and strengths, and when appropriate, the needs and strengths of family members who may contribute to the services provided to the client;
- (3) a provisional or admitting diagnosis with an established diagnosis determined within 30 days of admission, except for clients admitted to a detoxification or other 24-hour medical program for any length of time, who shall have an established diagnosis upon admission;
- (4) a description of current status including the following, when applicable:
 - (A) mental status, including suicide potential;
 - (B) developmental condition or impairment;
 - (C) substance use or abuse;
 - (D) legal status or circumstances;
 - (E) medical condition; and
 - (F) family and other support systems;
- (5) a description of the client's condition from family or significant others, when available; and
- (6) the disposition, including referrals and recommendations.

(c) Data gathered during a screening or from other sources within 30 days prior to admission may be used to complete the assessment.

(d) For a client expected to receive services for more than 30 days, the admission assessment shall include the following within 30 days of admission:

- (1) a social and family history;
- (2) a medical history; and
- (3) when applicable, histories and assessments as follows:
 - (A) psychiatric, including previous treatment;
 - (B) substance abuse, including previous treatment;
 - (C) developmental, including previous services received;
 - (D) educational;
 - (E) auditory and visual;
 - (F) nutritional; and
 - (G) vocational.

(e) For all facilities serving infants and toddlers with or at risk for developmental disabilities, delays or atypical development, except for respite, there shall be:

- (1) an assessment of levels of physical, (including vision and hearing), communication, cognitive, social and emotional and adaptive skills development which is based on professionally accepted objective criteria;
- (2) a determination of the child's unique strengths and needs in terms of these areas of development and identification of services appropriate to meet those needs;
- (3) if requested by the family, a determination of the resources, priorities and concerns of the family, and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their infant or toddler with or at risk for a disability. The family-focused and directed assessment is conducted by personnel trained to use the appropriate methods and procedures and shall be based on information provided through a personal interview and incorporate the family's description of these resources, priorities, and concerns in this area;
- (4) procedures developed and implemented to ensure participation by the client's family or the legally responsible person;
- (5) tests and other evaluation materials and

procedures administered in the native language of the parents or other mode of communication unless it is clearly not feasible to do so;

- (6) assessment procedures and materials which are selected and administered so as not to be racially or culturally discriminatory;
- (7) no single procedure used as the sole criterion for determining a child's eligibility;
- (8) an integrated assessment process which involves at least two persons, each representing a different discipline or profession, with the specific number and types of disciplines based on the particular needs of the child:
 - (A) The assessment shall include current medical information provided by a physician, physician's assistant, or nurse practitioner; however, a physician, physician's assistant, or nurse practitioner is not required as one of the disciplines involved in the assessment; and
 - (B) Further information regarding the assessment may be found in the document "Eligibility Determination for the Infants-Toddler Program", published by the Department of Environment, Health, and Natural Resources;
- (9) an evaluation process based on informed clinical opinion;
- (10) an assessment process completed within 45 calendar days from the date of referral. The referral is initiated by a ~~written~~ request for these services made to any one of the public agencies participating in the PL 99-457 Interagency Agreement. The request becomes a referral when the area program determines that all of the following is available:
 - ~~(A) the family's written consent to receive this service;~~
 - (A) ~~(B)~~ sufficient background information to enable the agency receiving the referral to establish communication through a telephone call or home visit;
 - (B) ~~(C)~~ reason for referral, date of referral and agency or individual making referral;
 - (C) ~~(D)~~ child and family identifying information such as names, child's birth-

date and primary physician; and

(D) ~~(E)~~ summary of any pre-existing child and family screening or assessment information;

- (11) a 45 calendar day completion requirement which may be extended in exceptional circumstances, such as, the child's health assessment is being completed out-of-state, or family desires make it impossible to complete the assessment within the time period. The specific nature and duration of these circumstances which prevent completion within 45 days and the attempts made by the provider to complete the assessment shall be documented and an interim IFSP shall be developed and implemented; and
- (12) the child's family or legally responsible person shall be fully informed of the results of the assessment process.

Statutory Authority G.S. 122C-26; 130A-144; 130A-152; 143B-147.

.0315 TREATMENT/HABILITATION PLANNING AND DOCUMENTATION

(a) The governing body shall develop and implement written policies regarding individual treatment/habilitation plans and the qualifications of staff, based on education and experience, who will be responsible for implementation of such plans.

(b) A treatment/habilitation plan shall be based upon an assessment of the client's condition, assets and needs, and the resources to meet these needs, and shall be developed in partnership with the client.

(c) The parent or the legally responsible person of a minor shall have the opportunity to participate in the development and implementation of the minor client's individual treatment/ habilitation plan.

(d) The parent, with client consent, or the legally responsible person of an adult shall have the opportunity to participate in the development and implementation of the adult client's individual treatment/habilitation plan.

(e) Clinical responsibility for the development and implementation of the treatment/habilitation plan shall be designated.

(f) Initial treatment/habilitation objectives shall be documented, if services are to be provided, prior to the establishment and implementation of

the comprehensive treatment/habilitation plan.

(g) Except as provided in Paragraphs (h) through (j) of this Rule, a comprehensive plan shall be developed and initiated within 30 days of admission for clients who are expected to receive services from the facility beyond 30 days. The plan shall include, as appropriate to the client's needs:

- (1) documentation of the established diagnosis;
- (2) time-specific, measurable goals for treatment/habilitation;
- (3) general strategies or procedures to be undertaken in order to meet goals and the direct care staff responsible for implementation;
- (4) time-specific, measurable education or treatment goals for family or significant others, if applicable; and
- (5) a schedule for time-specific planned reviews, which may be set, in addition to those required in Paragraph (k) of this Rule.

(h) For all facilities serving infants and toddlers with or at risk for developmental disabilities, delays or atypical development, except for respite:

- (1) there shall be a habilitation plan which is referred to as the Individualized Family Service Plan (IFSP) which shall include:
 - (A) a description of the child's present health status and levels of physical (including vision and hearing), communication, cognitive, social and emotional, and adaptive development;
 - (B) with the concurrence of the family, a description of the resources, priorities and concerns of the family and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their infant and toddler with or at risk for a disability;
 - (C) goals for the child, and, if requested, goals for the child's family;
 - (D) criteria and time frames to be used to determine progress towards goals;
 - (E) planned habilitation procedures related to the goals;
 - (F) a statement of the specific early intervention services to be provided to meet the identified child and family needs, the initiation dates, frequency and method, duration, intensity and location (including the most natural

- environment) of service delivery, and the persons or agencies responsible;
- (G) the name of the service coordinator from the profession most immediately relevant to the needs of the child or family; and who is otherwise qualified to carry out all applicable responsibilities for coordinating with other agencies and individuals the implementation of the IFSP;
 - (H) the plans for transition into services which are the responsibility of the N.C. Department of Public Instruction, or other available services, when applicable;
 - (I) the payment arrangements for the specific services delineated in Subparagraph (h)(1)(F) of this Rule;
 - (J) a description of medical and other services needed by the child, but which are not required under P.L. 99-457, and the strategies to be pursued to secure those services through public or private resources. The requirement regarding medical services does not apply to routine medical services, such as immunization and well-baby care, unless the child needs these services and they are not otherwise available.
- (2) The IFSP shall be:
 - (A) reviewed on at least a semi-annual basis or more frequently upon the family's request; and
 - (B) revised as appropriate, but at least annually.
 - (3) The initial development and annual revision process for the IFSP for infants and toddlers shall include participation by:
 - (A) the parent or parents of the child;
 - (B) other family members, as requested by the parent;
 - (C) an advocate or person outside of the family if the parent requests that the person participate;
 - (D) the provider of the early intervention services;
 - (E) the service coordinator designated for the family, if different from the provider of the early intervention services; and
 - (F) the provider of the assessment service, if different from the provider of the early intervention services.
 - (4) The initial IFSP meeting and annual review reviews shall be arranged and written notice provided to families early enough to promote maximum opportunities for attendance. The semi-annual review process shall include participation by persons identified in Subparagraphs (h)(3)(A) through (E) of this Rule. If any of these individuals assessment and intervention providers are unable to attend one of the development or review meetings, arrangements shall be made for the person's involvement through other means such as participation in a telephone conference call, having a knowledgeable authorized representative attend the meeting or making pertinent records available at the meeting. Other approaches rather than meetings may be used if acceptable to the parents and other participants.
 - (5) The IFSP for infants and toddlers is based upon the results of the assessment referenced in 10 NCAC 14K .0314(e) and upon information from any ongoing assessment of the child and family. However, early intervention services may commence before completion of this assessment if:
 - (A) parental consent is obtained; and
 - (B) the assessment is completed within the 45-day time period referenced in 10 NCAC 14K .0314(e).
 - (6) In the event that exceptional circumstances, such as child illness, residence change of family, or any other similar emergency, make it impossible to complete the assessment within the 45-day time period referenced in 10 NCAC 14K .0314(e), the circumstances shall be documented and an interim IFSP developed with parent permission. The interim IFSP shall include:
 - (A) the name of the service coordinator who will be responsible for the implementation of the IFSP and coordination with other agencies and individuals;
 - (B) goals for the child and family when recommended;
 - (C) those early intervention services that are needed immediately; and
 - (D) suggested activities that may be

carried out by the family members.

- (7) Each facility or individual who has a direct role in the provision of early intervention services specified in the IFSP is responsible for making a good faith effort to assist each eligible child in achieving the goals set forth in the IFS.
- (8) The IFSP shall be developed within 45 days of referral for those children determined to be eligible. The referral shall be as defined in 10 NCAC 14K .0314(e)(10).
- (9) The contents of the IFSP must be fully explained to the parents, and informed written consent from the parents must be obtained prior to the provision of early intervention services described in the plan. If the parents do not provide consent with respect to a particular early intervention service, or withdraw consent after first providing it, that service may not be provided. The early intervention services for which parental consent is obtained must be provided.
- (10) IFSP meetings shall be conducted in settings convenient to and in the natural language of the family.
 - (i) The goals for a client who receives services from facilities providing day activity or alternative family living, half-way house, therapeutic camp or group home services in which the supervision and therapeutic intervention are limited to sleeping time, home living skills and leisure time activities, may be limited to life-skill, social or recreational goals.
 - (j) The goals for a client who receives services from a community respite facility may be limited to the special needs of the client, including medications to be administered, dietary considerations and expectations regarding other services.
 - (k) A full review of each client's treatment/habilitation plan shall be conducted at least annually by the responsible professional in accordance with the facility's quality assurance plan, as determined by 10 NCAC 14K .0319. The review shall include:
 - (1) the client's continuing need for service; and
 - (2) a continuation or update of the client's treatment/habilitation plan as defined in Paragraph (g) of this Rule.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Human Resources - Division of Vocational Rehabilitation Services intends to amend rules cited as 10 NCAC 20A .0102; 20B .0203, .0206, .0224; 20C .0203, .0205, .0316; and adopt rules cited as 10 NCAC 20C .0501 - .0502, .0601 - .0607.

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

The public hearing will be conducted at 7:00 p.m. on July 18, 1994 at the Haywood Gymnasium, Division of Vocational Rehabilitation Services, 805 Ruggles Drive, Dorothea Dix Campus, Raleigh, North Carolina.

Reason for Proposed Action:

10 NCAC 20A .0102 - To specify the State's definition of "individual with the most severe disability" and supplementary definitions as required by Section 101(a)(5)(A) of the 1992 Amendments to the Rehabilitation Act of 1973.

10 NCAC 20B .0203, .0206, .0224 - To bring the Division's administrative review/appeals rules into compliance with the provisions of Section 102(d) of P.L. 102-569.

10 NCAC 20C .0203 - To indicate that the Division will establish order of selection priority categories at the time eligibility is determined and to specify notification and documentation requirements.

10 NCAC 20C .0205 - To set a limit on the amount that can be paid for tuition to private proprietary trade and vocational schools.

10 NCAC 20C .0316 - To specify the limits that are set for vehicle, residence and work site modifications and to clarify that the Division will not purchase vehicles for clients.

10 NCAC 20C .0501 - .0502 - To meet the requirements of Federal regulations (34 C.F.R. Part 363) that all individuals eligible for supported employment services meet the State definition of "individuals with the most severe disabilities."

10 NCAC 20C .0601 - .0607 - To establish the Division's order of selection for services policy that is required under P.L. 102-569 when states are not able to provide services to all eligible individuals who apply.

Statutory Authority G.S. 122C-26; 143B-147.

Comment Procedures: Comments may be presented orally or in writing at the hearing. Oral statements may be limited at the discretion of the hearing officer. Written comments may also be submitted until August 1, 1994 to Jackie Stalnaker, Division of Vocational Rehabilitation Services, P.O. Box 26053, Raleigh, NC 27611. To obtain additional information or indicate need for alternative communication format contact Ms. Stalnaker in writing or by phone (919) 733-3364 or TDD (919) 733-5924.

CHAPTER 20 - DIVISION OF VOCATIONAL REHABILITATION SERVICES

SUBCHAPTER 20A - GENERAL INFORMATION

SECTION .0100 - INFORMATION REGARDING RULES

.0102 DEFINITIONS

As used in this Chapter, the following terms have the meaning specified:

- (1) "Division" means the Division of Vocational Rehabilitation Services of the Department of Human Resources.
- (2) "Division Director" or "Director" means the Director of the Division of Vocational Rehabilitation Services.
- (3) "Functional Capacity" means the ability to perform in the following areas:
 - (a) communication;
 - (b) interpersonal skills;
 - (c) mobility;
 - (d) self-care;
 - (e) self-direction;
 - (f) work skills; and
 - (g) work tolerance.
- (4) "Individual with a severe disability" has the meaning specified in 34 C.F.R. 361.5.
- (5) "Individual with the most severe disability" means an individual with a severe disability whose impairment seriously limits three or more functional capacities in terms of an employment outcome.
- (6) "Permanent disability" means any physical or mental condition which is expected to be lasting regardless of medical or psychological intervention, and which is highly unlikely to go into

full or permanent remission.

- (7) "Post-employment services" has the meaning specified in 34 C.F.R. 361.48.

The Code of Federal Regulations adopted by reference in this Rule shall automatically include any later amendments thereto as allowed by G.S. 150B-21.6. Copies of the federal regulations so adopted may be obtained at no cost from the Division.

Authority G.S. 143-545; 143-546; 150B-21.6; 34 C.F.R. 361.5, 361.36, 361.48, and Part 363.

SUBCHAPTER 20B - PROCEDURE

SECTION .0200 - CONTESTED CASES: ADMINISTRATIVE REVIEWS: APPEALS HEARINGS

.0203 REQUEST FOR ADMINISTRATIVE REVIEW AND APPEALS HEARING

(a) When any applicant for or client receiving vocational rehabilitation services wishes to request an administrative review and/or an appeals hearing, the individual shall submit a written request to the appropriate regional director of the Division.

(b) The request shall indicate if the individual is requesting:

- (1) an administrative review and an appeals hearing to be scheduled concurrently; or
- (2) only an appeals hearing.

(c) The request shall contain the following information:

- (1) the name, address and telephone number of the applicant or client; and
- (2) a concise statement of the determination(s) made by the rehabilitation staff for which an administrative review and/or appeal are being requested and the manner in which the person's rights, duties or privileges have been affected by the determination(s).

~~(d) If a client is requesting an administrative review and the issue to be reviewed concerns the denial of services already underway under the client's individualized written rehabilitation program (IWRP) and the client wishes the disputed services to continue during the administrative review, the client shall indicate the desire to have the services continued in the request for an administrative review and submit the request prior to the effective date of the change in the IWRP.~~

~~The Division shall provide for the continuation of the disputed service set forth in the client's IWRP during the administrative review for a period not to exceed 30 calendar days from the proposed effective date of the change in the IWRP unless the disputed service is contraindicated on the basis of medical/psychological information contained in the individual's case record, in which case the service shall not be continued.~~

(d) The Division shall not suspend, reduce, or terminate services being provided to a client under an individualized written rehabilitation program (IWRP) pending final resolution of the issue through either an appeals hearing or an administrative review unless the individual or the individual's representative so requests, or the Division has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual.

Authority G.S. 143-546; 150B-1; P.L. 102-569.

.0206 APPOINTMENT OF HEARING OFFICER

Upon receipt of the applicant's or client's request for an appeals hearing from the regional director, the deputy director shall appoint arrange for the appointment of an impartial hearing officer who ~~meets the criteria of~~ is in the pool of persons qualified as defined in 34 C.F.R. 361.4(e)(2) 361.5(b) to conduct a hearing and who is mutually agreed upon by the Director and the individual or the individual's representative.

Authority G.S. 143-546; 150B-1; P.L. 102-569; 34 C.F.R. 361.5(b).

.0224 DIVISION DIRECTOR'S REVIEW AND FINAL DECISION

(a) The Division Director may review the hearing officer's decision and render the final decision.

(b) The Division Director's decision to review the hearing officer's decision shall be based on the following standards of review:

- (1) Is the hearing officer's decision arbitrary, capricious, an abuse of discretion, or otherwise unreasonable?
- (2) Is the hearing officer's decision supported by substantial evidence, i.e., consistent with facts and applicable federal and state policy?
- (3) In reaching the decision, has the hearing officer given appropriate and

adequate interpretation to such factors as:

- (A) the federal statute and regulations as they apply to specific issue(s) in question;
- (B) the state plan as it applies to the specific issue(s) in question;
- (C) division procedures as they apply to the specific issue(s) in question;
- (D) key portions of conflicting testimony;
- (E) division options in the delivery of services where such options are permissible under the federal statute;
- (F) restrictions in the federal statute with regard to such supportive services as maintenance and transportation; and
- (G) approved federal or division policy as it relates to the issue(s) in question.

(c) If the Division Director decides to review the hearing officer's decision, the Director shall send the written notification and allow the submission of additional evidence as required by 34 C.F.R. ~~361.48(e)(2)(iv) and (vii)~~ 361.57. The written notification shall be given to the applicant or client personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt.

(d) Upon a determination to review the hearing officer's decision, the Division Director shall make the final decision and provide the written report thereof as required by 34 C.F.R. ~~361.48(e)(2)(viii) and (ix)~~ 361.57. The division director shall not overturn or modify a decision, or part of a decision, of an impartial hearing officer that supports the position of the individual except as allowed under 34 C.F.R. 361.57(b)(9). The final decision shall be given to the applicant or client personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt.

(e) The hearing officer's decision shall be the final decision under the conditions specified in 34 C.F.R. ~~361.48(e)(2)(v)~~ 361.57(b)(6).

(f) The Division Director shall forward a copy of the final decision, whether issued under (d) or (e) of this Rule, to the deputy director, the CAP director, the regional director, and the applicant's or client's representative, as appropriate. A copy shall also be included in the individual's official case record.

Authority G.S. 143-546; 150B-1; P.L. 102-569, Section 102(d); 34 C.F.R. 361.57.

SUBCHAPTER 20C - PROGRAM RULES

SECTION .0200 - ELIGIBILITY

.0203 DETERMINATION OF ORDER OF SELECTION PRIORITY CATEGORY

~~The Division shall follow the order of selection for services specified in the Three Year State Plan for Vocational Rehabilitation Services Under Title I of the Rehabilitation Act of 1973, as amended, covering Fiscal Years 1989, 1990 and 1991. This adoption by reference is made under G.S. 150B-14(e).~~

(a) The Division shall provide written notification to all applicants for services at the time of application of either:

- (1) the existing order of selection, or
- (2) that an order of selection will be implemented if or when it is determined the Division has insufficient resources to serve all applicants who are determined eligible.

(b) The Division shall determine each client's priority category at the time the individual is determined eligible for services. The client shall be placed in the highest category (beginning with Category One) for which he/she qualifies.

(c) In establishing functional limitations as part of the priority category determination, Division staff shall review all functional capacities that may pose problems in the rehabilitation program and employment outcomes with the eligible individual in order to identify functional limitations related to the person's disability(ies).

(d) The Division shall notify each eligible individual of his/her priority classification in writing at the same time the notification of eligibility is provided.

(e) The record of services shall contain documentation of the rationale for the client's priority category assignment.

(f) The Division shall change a client's priority classification immediately if there are changes in the client's circumstances that warrant a change. The Division shall notify the client in writing of any change in priority classification.

Authority G.S. 143-545; 143-546; 34 C.F.R. 361.35.

.0205 SERVICES COVERED BY OR EXEMPT FROM FINANCIAL NEEDS TEST

(a) The financial need of a client, as determined by the financial needs test specified in Rule .0206

of this Section, shall apply as a condition for furnishing the following vocational rehabilitation services to clients eligible for services or to clients eligible for extended evaluation:

- (1) physical and mental restoration;
- (2) maintenance;
- (3) transportation;
- (4) occupational license;
- (5) tools, equipment, and initial stock (including livestock), supplies and necessary shelters in connection with these items;
- (6) books, training supplies, and materials required for courses in post-secondary educational facilities;
- (7) services to members of a handicapped individual's family necessary to the adjustment or rehabilitation of the handicapped individual;
- (8) telecommunications, sensory, and other technological aids and devices;
- (9) recruiting and training to provide new employment opportunities in rehabilitation, health, welfare, public safety, law enforcement, and other public service employment;
- (10) post-employment services necessary to assist handicapped individuals in maintaining suitable employment (other than those services in Paragraph (b) of this Rule which are provided without regard to financial need); and
- (11) other goods and services expected to benefit a handicapped individual in obtaining employment.

(b) The financial needs test shall not apply as a condition for furnishing the following:

- (1) services exempt from the financial needs test under 34 C.F.R. 361.47;
- (2) interpreter services for the deaf;
- (3) tuition for:
 - (A) on-the-job training;
 - (B) ~~sheltered and vocational workshop~~ community rehabilitation program training;
 - (C) community college/college parallel programs up to the catalog rate;
 - (D) ~~(C) vocational training; and at:~~
 - (i) community college vocational programs up to the catalog rate; and
 - (ii) proprietary for profit vocational and trade schools up to a limit of four thousand dollars (\$4,000) per training program; and

(E) ~~(D)~~ post-secondary education up to the maximum rate charged for the public university system.

(4) fees required in post-secondary educational facilities up to the maximum rate charged for the public university system; and

(5) training supplies and materials required for training in division-operated facilities and the training programs listed in Paragraphs (b)(3)(A) and (B) of this Rule.

(c) The Division may grant an exception to the rate for tuition and required fees for post-secondary education specified in Paragraphs (b)(3)~~(D)~~ (E) and (b)(4) of this Rule when necessary to accommodate the special training needs of certain severely handicapped individuals who must be enrolled in high-cost, special programs designed for severely physically handicapped students.

Authority G.S. 143-545; 143-546; 34 C.F.R. 361.40, 361.41, and 361.47.

SECTION .0300 - SCOPE AND NATURE OF SERVICES

.0316 OTHER GOODS AND SERVICES

(a) Modifications of clients' residences are limited as follows:

(1) A limit of ten thousand dollars (\$10,000) per client shall be placed on modification projects when the residence is owned by the client or the client's immediate family.

(2) Modifications to mobile homes shall be limited to mobile homes owned by the client or the client's family which are located on land owned by the client or client's family except for those situations where exterior modifications are not permanently affixed to a parcel of rented or leased land and are moveable with the mobile home. Mobile home modifications shall not exceed eight thousand five hundred dollars (\$8,500) per client.

(3) Modifications to rented or leased residences shall not exceed five thousand five hundred dollars (\$5,500) per client.

(b) Job site modifications shall not exceed seven thousand dollars (\$7,000) per client unless special circumstances warrant a higher amount which must

be approved by the Director.

(c) The Division shall not purchase vehicles for clients.

(d) The Independent Living Program of the Division may assist with the modification of a client - or family-owned/leased vehicle in order to enhance the client's ability to function independently in the family or to actively participate in the community. The Vocational Rehabilitation Program of the Division may assist with the modification of a client-owned or leased vehicle for vocational purposes or to assist a client enrolled in a college training program when there are no or limited on-campus living facilities. Other options such as public transportation or family assistance shall be used when available. The following conditions and limitations apply:

(1) Modifications shall not be considered for clients in secondary school programs unless the individual is a client of the Independent Living Rehabilitation Program.

(2) Modifications for postsecondary training may be considered only:

(A) when the client is a full-time student with satisfactory grades and personal transportation is required as part of the training curriculum; or

(B) when the client must live off campus because the college has no, or only limited, on-campus housing.

(3) The Division may require an evaluation of any used vehicle by a qualified mechanic to verify that the vehicle is in good repair. The rehabilitation engineer shall certify that the vehicle will accommodate the needed modifications.

(4) The Division shall not modify vehicles with more than 80,000 miles unless the individual is a client of the Independent Living Rehabilitation Program.

(5) Modifications costing more than nine thousand dollars (\$9,000) shall not be provided unless the individual is a client of the general program and the vehicle has less than 50,000 miles.

(6) Division ownership of the modifications shall be secured through a signed Security Agreement.

(e) Other goods and services not specifically mentioned in the rules in this Section may be provided to clients who are eligible for services if necessary to enable them to become employable or, in the case of the Independent Living Program,

to live independently. The other services shall not include the purchase of land or the purchase or construction of a building.

Authority G.S. 143-546; 34 C.F.R. 361.42.

SECTION .0500 - SUPPORTED EMPLOYMENT SERVICES

.0501 COMPLIANCE WITH FEDERAL REQUIREMENTS

(a) The Division shall administer its Supported Employment Program in compliance with the provisions of federal regulations 34 C.F.R. Part 363.

(b) The Code of Federal Regulations adopted by reference in this Rule shall automatically include any later amendments thereto as allowed by G.S. 150B-21.6. Copies of 34 C.F.R. Part 363 may be obtained at no cost from the Division.

Authority G.S. 143-545; 143-546; 150B-21.6; 34 C.F.R. Part 363.

.0502 ELIGIBILITY AND MOST SEVERE DISABILITY

The Supported Employment Program shall serve only those individuals with the most severe disabilities as defined in 10 NCAC 20A .0102.

Authority G.S. 143-545; 143-546; 34 C.F.R. 363.3.

SECTION .0600 - ORDER OF SELECTION FOR SERVICES

.0601 APPLICABILITY OF POLICY

(a) The rules in this Section specify the order of selection for service that shall be followed by the Division in its general program when it does not have the financial or staff resources to serve all eligible individuals who apply for services. The rules do not apply to the Independent Living Program.

(b) The order of selection for service is required by Section 101(a)(5)(A) of the 1992 Amendments to the Rehabilitation Act of 1973 and 34 C.F.R. 361.36.

Authority G.S. 143-545; 143-546; 34 C.F.R. 361.36.

.0602 IMPLEMENTATION OF ORDER OF SELECTION

(a) The Division Director shall make a

determination of the necessity for implementing the order of selection specified in these Rules as required by 34 CFR 361.36.

(b) When the Division Director determines that the order of selection shall be implemented, it shall be implemented on a statewide basis and the Director shall also determine how many priority categories can be served within available resources and notify Division staff of this decision.

(c) The Division shall provide written notification to all cooperative programs with which it has written agreements and all vendors of services as appropriate of its decision to implement an order of selection.

Authority G.S. 143-545; 143-546; 34 C.F.R. 361.36.

.0603 PRIORITY CATEGORIES

(a) The priority categories for the order of selection for services for eligible individuals are as follows:

- (1) Category One. Individuals who have the most severe disabilities;
- (2) Category Two. Individuals with severe disabilities;
- (3) Category Three. Individuals with a non-severe permanent disability(ies) who would be served by a program designed to help the individual transition from school to work;
- (4) Category Four. Individuals with a non-severe disability(ies) who will need multiple vocational rehabilitation services to attain a suitable employment outcome; and
- (5) Category Five. Any eligible individual who does not qualify for placement in a higher priority category.

(b) The Division shall follow the provisions of 34 C.F.R. 361.30(b) regarding public safety officers when applicable in its order of selection. This adoption by reference shall automatically include any later amendments to the cited federal regulation as allowed by G.S. 150B-21.6. A copy of the federal regulation may be obtained at no cost from the Division.

(c) An individual's priority category is determined when eligibility is determined as outlined in Rule .0203 of this Subchapter.

Authority G.S. 143-545; 143-546; 34 C.F.R. 361.30 and 361.36.

.0604 PROCEDURES

(a) Eligible individuals who are already receiving services under an Individualized Written Rehabilitation Program (IWRP) at the time the order of selection is implemented shall not be subject to the order of selection process. Their rehabilitation programs will continue until their records of service are closed.

(b) The Division shall serve individuals in Priority Category One first and individuals in the other priority categories in descending order from Priority Category Two down through Priority Category Five according to the availability of resources.

(c) Eligible individuals for whom rehabilitation services have not been planned under an Individualized Written Rehabilitation Program prior to the implementation of the order of selection and whose classification is below the categories approved for service shall be placed in a "waiting" status. They shall remain in the "waiting" status until their priority category is opened for services.

(d) When the order of selection is implemented, all individuals whose classification will mean they will be placed in a "waiting" status shall be notified in writing of their status. When services are made available to any category in which individuals have been in a "waiting" status, the Division shall notify all persons in that priority category that their rehabilitation program can be developed.

(e) Individuals determined eligible after the order of selection for service is implemented shall receive services if they are classified in the categories being served or shall be placed in a "waiting" status if their classification places them in a category not currently being served.

Authority G.S. 143-545; 143-546; 34 C.F.R. 361.36.

0605 POST EMPLOYMENT SERVICES

When a former client requires post-employment services and is otherwise eligible for such services, the services shall be provided without regard for the order of selection.

Authority G.S. 143-545; 143-546; 34 C.F.R. 361.36.

0606 CASE FINDING AND REFERRAL

Case finding efforts shall not be modified because of an order of selection. The Division has continuing responsibility to make the public and referral sources aware of the services it has to

offer eligible individuals with disabilities, especially those with severe disabilities. Referral sources shall be informed of an existing order of selection or of the potential of an order of selection being implemented, but they shall be reassured that this should not discourage referrals or applications.

Authority G.S. 143-545; 143-546; 34 C.F.R. 361.36.

.0607 THIRD-PARTY FUNDING ARRANGEMENTS

The Division shall ensure that its funding arrangements for providing services, including third-party arrangements and establishment grants, are consistent with the order of selection.

Authority G.S. 143-545; 143-546; 34 C.F.R. 361.36.

Notice is hereby given in accordance with G.S. 150B-21.2 that DHR/Division of Medical Assistance intends to adopt rules cited as 10 NCAC 26I .0401 - .0405; and amend rule cited as 10 NCAC 26K .0006.

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

The public hearing will be conducted at 1:30 p.m. on August 1, 1994 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 132, Raleigh, NC 27603.

Reason for Proposed Action:

10 NCAC 26I .0401 - .0405 - To provide pre-admission screening and annual resident review appeal procedures for nursing facility residents.

10 NCAC 26K .0006 - To clarify provider billings to recipients and protect recipient from being billed for services which the recipient anticipates will be paid for by Medicaid.

Comment Procedures: Written comments concerning these Rules must be submitted by August 1, 1994, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603, ATTN: Clarence Ervin, APA Coordinator. Oral comments may be presented at the hearing. In addition, a

fiscal impact statement is available upon written request from the same address.

CHAPTER 26 - MEDICAL ASSISTANCE

SUBCHAPTER 26I - PROCEDURAL RULES

SECTION .0400 - PASARR HEARINGS

.0401 DEFINITIONS

(a) "Division" means the North Carolina Division of Medical Assistance of the Department of Human Resources.

(b) "Hearing Officer" means the person designated to preside over hearings regarding Pre-admission Screening and Annual Resident Review (PASARR) determinations.

(c) "Hearing Unit" means the Chief Hearing Officer and his staff in the Division of Medical Assistance, Department of Human Resources.

(d) "Preadmission Screening and Annual Resident Review (PASARR) Notice of Determination" means the form developed by the Division.

(e) "Request for Hearing" means a clear expression, in writing, by the evaluated individual or family member or legal representative of the evaluated individual, that the evaluated individual wants to appeal the PASARR determination.

(f) The "Request for Hearing" form means the form developed by the Division.

(g) The "North Carolina PASARR Psychiatric/Mental Retardation/Dual Psychiatric and MR/RC Evaluation" forms means the forms developed by the Division.

Authority G.S. 108A-25(b); 42 U.S.C.S. 1395i-3(e)(3), (f)(3); 1396r(e)(3), (e)(7)(F), (f)(3); 42 C.F.R. 483.5; 42 C.F.R. 483.12; 42 C.F.R. 483.200; 42 C.F.R. 483.204; 42 C.F.R. 483.206.

.0402 PASARR REQUIREMENTS

(a) The evaluated individual and family member or legal representative shall be notified in writing of the Division of MH/DD/SAS' PASARR determination under the provisions of 42 CFR 483.130(k) which is incorporated by reference with subsequent changes or amendments. A copy of 42 CFR 483.130(k) can be obtained from the Division of Medical Assistance at a cost of twenty cents (\$0.20) per copy.

(b) The PASARR Notice of Determination form shall be used by Division of MH/DD/SAS when giving notice of a PASARR determination under provisions of 42 CFR 483.130(l)(1-4) which is incorporated by reference with subsequent changes

or amendments. A copy of 42 CFR 483.130(l)(1-4) can be obtained from the Division of Medical Assistance at a cost of twenty cents (\$0.20) per copy.

(c) The Division of MH/DD/SAS shall provide a Request for Hearing form, pertinent Evaluation form, and PASARR Notice of Determination to the evaluated individual and legal representative under provisions of 42 CFR 483.128(1) which is incorporated by reference with subsequent changes or amendments. A copy of 42 CFR 483.128(1) can be obtained from the Division of Medical Assistance at a cost of twenty cents (\$0.20) per copy.

Authority G.S. 108A-25(b); 42 U.S.C.S. 1395i-3(e)(3), (f)(3); 1396r(e)(3), (e)(7)(F), (f)(3); 42 C.F.R. 483.5; 42 C.F.R. 483.12; 42 C.F.R. 483.128; 42 C.F.R. 483.130; 42 C.F.R. 483.200; 42 C.F.R. 483.204; 42 C.F.R. 483.206.

.0403 INITIATING A HEARING

(a) In order to initiate an appeal of a PASARR determination, the evaluated individual or family member or legal representative shall submit a written request for a hearing to the Hearing Unit. The request for hearing must be received by the Hearing Unit within 11 calendar days from the date of the PASARR Notice of Determination. If the 11th day falls on a Saturday, Sunday, or legal holiday, then the period during which an appeal may be requested shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(b) The request for hearing shall be submitted to the Hearing Unit by mail, facsimile, or hand delivery.

Authority G.S. 108A-25(b); 42 U.S.C.S. 1395i-3(e)(3) and - (f)(3); 1396r(e)(3), (e)(7)(F), and (f)(3); 42 C.F.R. 431.200; 42 C.F.R. 483.5; 42 C.F.R. 483.12; 42 C.F.R. 483.200; 42 C.F.R. 483.204; 42 C.F.R. 483.206.

.0404 HEARING PROCEDURES

(a) Upon timely receipt of a request for a hearing, the Hearing Unit shall notify the Division of MH/DD/SAS of the request.

(b) The parties shall be notified by certified mail of the date, time and place of the hearing. If the hearing is to be conducted in person, it shall be held in Raleigh, North Carolina.

(c) The Division of MH/DD/SAS shall mail all documents and records to be used at the hearing to the person requesting the hearing by certified mail

and forward identical information to the Hearing Unit, to be received at least five working days prior to the hearing.

(d) The hearing officer may grant continuances.

(e) The hearing officer may dismiss a request for a hearing if the evaluated individual or legal representative fails to appear at a scheduled hearing.

(f) The hearing officer may proceed to conduct a scheduled hearing if the Division of MH/DD/SAS fails to appear at a scheduled hearing.

(g) The Rules of Civil Procedure as contained in G.S. 1A-1 and the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes shall not apply in any hearings held by the Division Hearing Officer unless another specific statute or other rule provides otherwise. Division hearings are not hearings within the meaning of G.S. 150B and shall not be governed by the provisions of that chapter unless otherwise stated in these Rules. The hearing officer shall use the North Carolina Rules of Evidence for guidance in conducting hearings. Parties may be represented by counsel or other representative at the hearing.

Authority G.S. 108A-25(b); 42 U.S.C.S. 1395i-3(e)(3), (e)(7)(F), (f)(3); 42 U.S.C.S. 1396r(e)(3), (f)(3); 42 C.F.R. 431.200; 42 C.F.R. 483.200; 42 C.F.R. 483.204; 42 C.F.R. 483.206.

0405 HEARING OFFICER'S FINAL DECISION

The Hearing Officer's final decision shall uphold or reverse the Division of MH/DD/SAS' decision. Copies of the final decision shall be mailed via certified mail to the parties.

Authority G.S. 108A-25(b); 42 U.S.C.S. 1395i-3(e)(3), (e)(7)(F), (f)(3); 42 U.S.C.S. 1396r(e)(3), (f)(3); 42 C.F.R. 431.200; 42 C.F.R. 483.200; 42 C.F.R. 483.204; 42 C.F.R. 483.206.

SUBCHAPTER 26K - TITLE XIX APPEALS PROCEDURES

0006 PROVIDER BILLINGS TO RECIPIENT

(a) Except as provided for in Paragraph (d) of this Rule, providers shall ~~Providers may~~ not bill Medicaid recipients for any Medicaid covered services provided to recipients unless the provider has specifically informed the recipient and the

recipient has specifically understood he will be charged for the services. ~~This provision is meant to protect the recipient from being billed for services which the recipient anticipates will be paid for by Medicaid.~~

(b) A provider may not bill a Medicaid recipient for Medicaid services for which it receives no reimbursement from the state agency because the provider failed to follow program regulations.

(c) A provider who accepts a patient as a Medicaid patient agrees to accept Medicaid payment plus any authorized co-payment and third party payment as payment in full, except that a provider may not deny services to any Medicaid patient on account of the individual's inability to pay the co-pay amount.

(d) Providers may bill the recipient when they are 65 years of age or older and qualify for Medicare benefits, but fail to supply their Medicare number as proof of coverage.

Authority G.S. 108A-25(b); 108A-54; 150B-11; 42 C.F.R. 447.15.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Environment, Health, and Natural Resources, Mining Commission intends to adopt rule cited as 15A NCAC 5B .0013.

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

The public hearing will be conducted at 7:00 p.m. on August 4, 1994 at the Archdale Building, Ground Floor Hearing Room, 512 North Salisbury Street, Raleigh, North Carolina.

Reason for Proposed Action: To establish a period of time for applicants to respond to the Department's requests for additional information relating to mining permit applications.

Comment Procedures: Any person requiring information may contact Mr. Tracy E. Davis at Land Quality Section, P.O. Box 27687, Raleigh, North Carolina 27611-7687, telephone (919) 733-4574. Written comments must be submitted to

the above address no later than August 15, 1994. Notice of an oral presentation should be given to the above address and telephone number. Persons who call in advance of the hearing will be given priority on the speaker's list.

CHAPTER 5 - MINING: MINERAL RESOURCES

SUBCHAPTER 5B - PERMITTING AND REPORTING

.0013 RESPONSE DEADLINE TO DEPARTMENT'S REQUEST(S)

An applicant or permittee shall submit to the Department supplemental information regarding an application for a new permit, modified permit, or permit renewal within 180 days after the date of receipt of the Department's written request(s) for such information. Upon written request of the applicant or permittee to the Director, an additional reasonable specified period of time not to exceed one year shall be granted upon determination of good cause by the Director. Additional time may be granted by the Mining Commission, provided written request is made by the applicant or permittee before the expiration of the one-year period.

Statutory Authority G.S. 74-51; 74-52; 74-63; 143B-290.

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNHR - Coastal Management intends to adopt rules cited as 15A NCAC 7H .2201 - .2205.

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

The public hearing will be conducted at 4:00 p.m. on July 28, 1994 at the Sheraton Grand, New Bern, NC.

Reason for Proposed Action: The adoption of these Rules will establish a procedure for authorizing the installation of private moorings in response to an increasing demand for such facilities over the past 24 months. This is a new permit requirement for a type of development that has not previously

required permits.

Comment Procedures: All persons interested in this matter are invited to attend the public hearing. The Coastal Resources Commission will receive mailed written comments postmarked no later than August 1, 1994. Any person desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. Additional information concerning the hearing or the proposals may be obtained by contacting Dedra Blackwell, Division of Coastal Management, PO Box 27687, Raleigh, NC 27611-7687, (919) 733-2293.

CHAPTER 7 - COASTAL MANAGEMENT

SUBCHAPTER 7H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .2200 - GENERAL PERMIT FOR CONSTRUCTION OF FREE STANDING MOORINGS IN ESTUARINE WATERS AND PUBLIC TRUST AREAS

.2201 PURPOSE

This permit will allow the construction of free standing moorings in the estuarine waters and public trust areas AECs according to the authority provided in Subchapter 7J .1100 of this Chapter and according to the following guidelines. This permit will not apply to waters adjacent to the Ocean Hazard AEC.

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

.2202 APPROVAL PROCEDURES

(a) The applicant must contact the Division of Coastal Management and complete an application form requesting approval for development.

(b) The applicant must provide:

- (1) information on site location, dimensions of the project area, and his/her name and address; and
- (2) a dated plat(s) showing existing and proposed development; and
- (3) confirmation that:
 - (A) a written statement has been obtained and signed by the adjacent riparian property owners indicating that they have no objections to the proposed

work; or

- (B) the adjacent riparian property owners have been notified by certified mail of the proposed work. Such notice shall instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management within ten days of receipt of the notice, and, indicate that no response will be interpreted as no objection. DCM staff will review all comments. If DCM determines that:

- (i) the comments are relevant to the potential impacts of the proposed project; and
- (ii) the permitting issues raised by the comments are worthy of more detailed review, the applicant will be notified that he/she must submit an application for a major development permit.

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

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

.2203 PERMIT FEE

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

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

.2204 GENERAL CONDITIONS

(a) A "free standing mooring" is any means to attach a ship, boat, vessel, floating structure or other water craft to a stationary underwater device, mooring buoy, buoyed anchor, or piling (as long as the piling is not associated with an existing or proposed pier, dock, or boathouse).

(b) Free standing moorings authorized by this permit shall be for the exclusive use of the riparian landowner(s) in whose name the permit is issued, and shall not provide either leased or rented moorings or any other commercial services.

(c) There shall be no unreasonable interference with navigation or use of the waters by the public

by the existence of free standing moorings authorized by this permit.

(d) This general permit may not be applicable to proposed construction when the Department determines that the proposal might significantly affect the quality of the human environment or unnecessarily endanger adjoining properties. In those cases, individual permit applications and review of the proposed project will be required according to 15A NCAC 7J.

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

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

(g) Free standing mooring(s) shall not be transferable or assignable. Upon transfer of riparian property ownership, the mooring(s) must be removed by the original permittee unless a new permit is issued to the new riparian owner.

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

.2205 SPECIFIC CONDITIONS

(a) Free standing moorings may be located up to a maximum of 400 feet from the mean high water line, or the normal water line, whichever is applicable.

(b) Free standing moorings along federally maintained channels must meet Corps of Engineers guidelines.

(c) Free standing moorings in no case shall extend more than 1/3 the width of a natural water body or man-made canal or basin.

(d) Free standing mooring buoys and piles are to be evaluated based upon the arc of the swing including the vessel to be moored. Moorings and the attached vessel shall not interfere with the access to any riparian property, and shall have a minimum setback of 15 feet from the adjacent property lines extended into the water at the points that they intersect the shoreline. The minimum setbacks provided in the rule may be waived by the written agreement of the adjacent riparian owner(s), or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it

to the Division of Coastal Management prior to initiating any development of free standing moorings. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the property, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge.

(e) The total number of docking/mooring facilities to be authorized via a CAMA General permit, a Certificate of Exemption or any combination of the two may not exceed four per property.

(f) Free standing moorings shall not significantly interfere with shellfish franchises or leases. Applicants for authorization to construct free standing moorings shall provide notice of the permit application to the owner of any part of a shellfish franchise or lease over which the proposed installation would extend.

(g) Free standing moorings may not be established in submerged cable/pipe crossing areas or in a manner which interferes with the operation of an access through any bridge.

(h) Free standing moorings shall be marked or colored in compliance with U.S. Coast Guard and N.C. Wildlife Resource Commission requirements and the required marking maintained for the life of the mooring(s).

(i) Free standing moorings must bear owner's name, vessel State registration numbers or U. S. Customs Documentation numbers. Required identification must be legible for the life of the mooring(s).

(j) The type of material used to anchor a proposed mooring buoy(s) must be acceptable to the Division of Coastal Management.

(k) If use of any free standing mooring authorized by this General permit is discontinued for a period of 12 months or more, it must be removed by the permittee.

(l) Mooring buoys authorized by this General permit must be a minimum 12" in diameter and shall not exceed 36" inches in diameter.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that EHNR - Commission for Health Services intends to amend rules cited as 15A NCAC 19A .0101 - .0102, .0202 - .0205, .0401; and adopt rules cited as 15A NCAC 19A .0208 -

.0209.

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

The public hearing will be conducted at 1:30 p.m. on July 21, 1994 at the Archdale Building, Ground Floor Hearing Room, 512 North Salisbury Street, Raleigh, N.C.

Reason for Proposed Action:

15A NCAC 19A .0101 - *E. coli* 0157:H7 is a bacteria that has been recognized as an important public health threat in recent years. It causes diarrhea, bloody diarrhea, and hemolytic-uremic syndrome and can lead to chronic renal failure and death. In 1993, the Council of State and Territorial Epidemiologists recommended that states make this a reportable disease and that laboratories should routinely culture all stool specimens from persons with bloody diarrhea for *E. coli* 0157:H7. It is transmitted by the fecal-oral route and has been associated with foodborne and day care outbreaks. This amendment adds *E. coli* 0157:H7 infection and hemorrhagic fevers to the list of reportable diseases and conditions. This Rule requires that susceptibility testing be performed on all cultures tested for *Mycobacterium tuberculosis*. Adequate treatment of every case of TB is necessary to prevent infection in others. Requiring that susceptibilities be performed on all cultures tested for *Mycobacterium tuberculosis* allows the physician to order the most effective treatment for each case of TB as quickly as possible, thus reducing further unnecessary spread of infection.

Proposed changes: (b) adds PCR as another confirmatory test for HIV infection.

15A NCAC 19A .0102 - This proposed rule would make *E. coli* 0157:H7 reportable by both physicians and laboratories, require laboratories to culture all stool specimens submitted from persons with bloody diarrhea for *E. coli* 0157:H7, and specify control measures to prevent spread.

(a)(4) This change adds HIV (24) to the list of reportable diseases which require specified information to be reported on a surveillance form provided by the Division of Epidemiology.

(d)(2) Redefines how, when and to whom specified STD laboratory reports will be reported. This is necessary to improve the HIV/STD Control Branch's ability to track and initiate appropriate and timely disease intervention activities. Changes

wording for clarity. Adds high STS titers as a priority for immediate reporting by phone. This will improve the HIV/STD Control Branch's ability to rapidly respond to suspected infectious syphilis cases and to prevent the further spread of this disease. To help increase response time the change also modifies the rule to allow laboratories to report directly to the HIV/STD Control Branch Regional Office where their laboratory is located as well as the HIV/STD Control Branch in Raleigh.

This rule requires that reports of susceptibility testing be reported within 7 days. Prompt reporting of susceptibility is vital. Current technology may require up to eight weeks to confirm TB and susceptibilities. Delays in reporting result in delays in ordering adequate treatment, increasing the risk of spread of resistant TB.

15A NCAC 19A .0202 - (1)(b) This change broadens the control measures to include drug related paraphernalia, which could be contaminated with HIV and then transmitted to uninfected individuals through the sharing of IDU "works."

(4) The change adds clarity to the rule. The rule now clearly focuses on the risk of transmission "if the source were infected with HIV."

(10) The change allows for pretest counseling to be done in a group setting when it is deemed appropriate by the provider. However, it also clearly states that clients must be allowed to ask questions in private, and that post test counseling must be privately given to each infected person.

15A NCAC 19A .0203 - (b)(3) This change provides clarity that focuses on the risk of transmission "if the source were infected with the hepatitis B virus."

15A NCAC 19A .0204 - (e) This change expands this rule to include chlamydia which can lead to severe complications or death for the baby (during pregnancy or after its birth). If detected, chlamydia can be treated.

15A NCAC 19A .0205 - This rule requires that persons with tuberculosis infection over 50 years of age who have risk factors for HIV be tested for HIV and that persons under 50 years of age with tuberculosis infection be tested for HIV. Persons co-infected with TB and HIV must be treated for about twice as long as persons who do not have the HIV (CDC/ATS treatment guidelines). Therefore, it is vital that physicians know the HIV status of persons at highest risk of HIV infection. Persons under 50 years of age with TB infection and to also have risk factors for HIV infection.

Secondarily, HIV infection tends to reduce the capacity of the immune system to react to TB antigen. Use of at least two other antigens in persons who have other indications of compromised immunity provides additional information the clinician can use in evaluating whether the immune system is capable of providing a true response to the TB antigen.

15A NCAC 19A .0208 - For the last several years there have been a large number of cases of shigellosis due primarily to transmission in day care centers. Current control measures are vague and have been difficult for local health departments and day care centers to interpret. These proposed rule changes clarify the control measures for shigellosis.

15A NCAC 19A .0209 - There have been a number of occasions in the last several years when two or more cases of meningococcal disease have been reported in the same geographic area within a short time. When this occurs it is necessary to determine whether the organisms are of the same serogroup in order to assess the potential for an outbreak. Frequently, no serotyping has been done on the earliest specimens which may be unavailable or non-viable by the time subsequent cases occur. Because of this the CDC has recommended that all isolates of meningococcus be serogrouped. These proposed rule changes should require laboratories to serogroup meningococcal isolates or send them to the State Public Health Laboratory for serogrouping.

15A NCAC 19A .0401 - The proposed rule changes serve to clarify questions regarding the number of doses of measles vaccine, mumps vaccine, and rubella vaccine that are required for an individual prior to school entry (i.e., two doses of measles vaccine, one dose each of rubella and mumps vaccine). In addition, these rule changes also clarify the existing language regarding diphtheria, tetanus, and whooping cough vaccination, oral poliomyelitis vaccination, and mumps vaccination prior to school entry. Finally, these rule changes accelerate the dates by which infants are required to be immunized (i.e., three doses of DTP vaccine by age 7 months instead of 1 year). These changes will bring our rules in line with the recommended schedule established by the Advisory Committee on Immunization Practices (ACIP). In addition, these changes will help to ensure that infants receive their first series of immunizations closer to the recommended schedule.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to Grady L. Balentine, Department of Justice, P.O. Box 629, Raleigh, NC 27602-0629. All written comments must be received by August 1, 1994. Persons who wish to speak at the hearing should contact Mr. Balentine at (919) 733-4618. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or proposed changes from staff pursuant to comments made during the public hearing process.

IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.2(f).

CHAPTER 19 - HEALTH: EPIDEMIOLOGY

SUBCHAPTER 19A - COMMUNICABLE DISEASE CONTROL

SECTION .0100 - REPORTING OF COMMUNICABLE DISEASES

.0101 REPORTABLE DISEASES AND CONDITIONS

(a) The following named diseases and conditions are declared to be dangerous to the public health and are hereby made reportable within the time period specified after the disease or condition is reasonably suspected to exist:

- (1) acquired immune deficiency syndrome (AIDS) - 7 days;
- (2) amebiasis - 7 days;
- (3) anthrax - 24 hours;

- (4) blastomycosis - 7 days;
- (5) botulism - 24 hours;
- (6) brucellosis - 7 days;
- (7) campylobacter infection - 24 hours;
- (8) chancroid - 24 hours;
- (9) chlamydial infection (laboratory confirmed) - 7 days;
- (10) cholera - 24 hours;
- (11) dengue - 7 days;
- (12) diphtheria ~~diphtheria~~ - 24 hours;
- (13) E. coli 0157:H7 infection - 24 hours;
- (14) encephalitis - 7 days;
- (15) foodborne disease, including but not limited to Clostridium perfringens, staphylococcal, and Bacillus cereus - 24 hours;
- (16) gonorrhea - 24 hours;
- (17) granuloma inguinale - 24 hours;
- (18) Hemophilus ~~Haemophilus~~ influenzae, invasive disease - 24 hours;
- (19) hemorrhagic fevers - 24 hours;
- (20) hepatitis A - 24 hours;
- (21) hepatitis B - 24 hours;
- (22) hepatitis B carriage - 7 days;
- (23) hepatitis non-A, non-B - 7 days;
- (24) human immunodeficiency virus infection (HIV) confirmed - 7 days;
- (25) legionellosis - 7 days;
- (26) leprosy - 7 days;
- (27) leptospirosis - 7 days;
- (28) Lyme disease - 7 days;
- (29) lymphogranuloma venereum - 7 days;
- (30) malaria - 7 days;
- (31) measles (rubeola) - 24 hours;
- (32) meningitis, pneumococcal - 7 days;
- (33) meningitis, viral (aseptic) - 7 days;
- (34) meningococcal disease - 24 hours;
- (35) mucocutaneous lymph node syndrome (Kawasaki syndrome) - 7 days;
- (36) mumps - 7 days;
- (37) nongonococcal urethritis - 7 days;
- (38) plague - 24 hours;
- (39) paralytic poliomyelitis - 24 hours;
- (40) psittacosis - 7 days;
- (41) Q fever - 7 days;
- (42) rabies, human - 24 hours;
- (43) Reye's syndrome - 7 days;
- (44) Rocky Mountain spotted fever - 7 days;
- (45) rubella - 24 hours;
- (46) rubella congenital syndrome - 7

days;

- (45) (47) salmonellosis - 24 hours;
- (46) (48) shigellosis - 24 hours;
- (47) (49) syphilis - 24 hours;
- (48) (50) tetanus - 7 days;
- (49) (51) toxic shock syndrome - 7 days;
- (50) (52) trichinosis - 7 days;
- (51) (53) tuberculosis - 24 hours;
- (52) (54) tularemia - 24 hours;
- (53) (55) typhoid - 24 hours;
- (54) (56) typhoid carriage (*Salmonella typhi*) - 7 days;
- (55) (57) typhus, epidemic (louse-borne) - 7 days;
- (56) (58) whooping cough - 24 hours;
- (57) (59) yellow fever - 7 days.

(b) For purposes of reporting, confirmed human immunodeficiency virus infection (HIV) is defined as a positive virus culture; repeatedly reactive EIA antibody test confirmed by western blot or indirect immunofluorescent antibody test; PCR; or other confirmed testing method approved by the Director of the State Public Health Laboratory conducted on or after February 1, 1990.

(c) In addition to the laboratory reports specified in G.S. 130A-139, laboratories shall report the following laboratory test results:

- (1) Direct susceptibilities, as the percent of colonies resistant to isoniazid, rifampin, streptomycin, ethambutol, and any other antimycobacterials tested for all cultures of *Mycobacterium tuberculosis*; and
- (2) Isolates of *E. coli* 0157:H7.

Statutory Authority G.S. 130A-134; 130A-135; 130A-141.

.0102 METHOD OF REPORTING

(a) When a report of a disease or condition is required to be made pursuant to G.S. 130A-135 through 139 and 15A NCAC 19A .0101, the report shall be made to the local health director as follows:

- (1) For diseases and conditions required to be reported within 24 hours, the initial report shall be made by telephone, and the report required by Subparagraph (2) of this Rule shall be made within seven days.
- (2) In addition to the requirements of Subparagraph (1) of this Rule, the report shall be made on the communicable disease report card provided by the Division of

Epidemiology and shall include the name and address of the patient, the name and address of any minor's parent or guardian, and all other pertinent epidemiologic information requested on the form.

- (3) Until September 1, 1994, reports of cases of confirmed HIV infection identified by anonymous tests that are conducted at HIV testing sites designated by the State Health Director pursuant to 15A NCAC 19A .0202(10) shall be made on forms provided by the Department for that purpose. No communicable disease report card shall be required. Effective September 1, 1994, anonymous testing shall be discontinued and all cases of confirmed HIV infection shall be reported in accordance with 15A NCAC 19A .0102(a)(1) and (2).

- (4) In addition to the requirements of Subparagraphs (1) and (2) of this Rule, the epidemiologic information requested on a surveillance form provided by the Division of Epidemiology shall be completed and submitted for the reportable diseases and conditions identified in 15A NCAC 19A .0101(1), (6), ~~(17)~~, (18), (20), (21), (22), (23), (24), (25), (26), (27), (28), ~~(29)~~, (30), (31), (32), ~~(33)~~, (34), (35), (36), ~~(37)~~, ~~(38)~~, (39), (40), ~~(41)~~, ~~(42)~~, (43), (44), (45), (46), ~~(48)~~, ~~(49)~~, (50), (51), (52), (53), (54), (55), (56), and (58).

- (5) Communicable disease report cards and surveillance forms are available from the Surveillance Unit, N.C. Division of Epidemiology, P.O. Box 27687, Raleigh, N.C. 27611, and from local health departments.

(b) Notwithstanding the time frames established in 15A NCAC 19A .0101 a restaurant or other food or drink establishment is required to report all outbreaks or suspected outbreaks of foodborne illness in its customers or employees and all suspected cases of foodborne disease or foodborne condition in food-handlers at the establishment by telephone to the local health department within 24 hours in accordance with Subparagraph (a)(1) of this Rule. However, the establishment is not required to submit a report card or surveillance form pursuant to Subparagraphs (a)(2) and (a)(3) of this Rule.

(c) For the purposes of reporting by restaurants

and other food or drink establishments pursuant to G.S. 130A-138, the diseases and conditions to be reported shall be those listed in 15A NCAC 19A .0101 (5), (7), (10), (13), (14), (15), (18), (20), (45), (47), (46), (48), (50), (52), (53), (55), and (54) (56).

(d) Laboratories required to report test results pursuant to G.S. 130A-139 and 15A NCAC 19A .0101(c) shall report as follows:

- (1) The results of the specified tests for syphilis and gonorrhea shall be reported to the local health department by the first and fifteenth of each month. Reports of the results of the specified tests for gonorrhea and syphilis shall include the specimen collection date, the patient's age, race, and sex, and the submitting physician's name, address, and telephone numbers.
- (2) Positive darkfield examinations for syphilis and STS titers of 1:16 and above shall be reported within 24 hours by telephone to the HIV/STD Control Branch by telephone at (919) 733-7301, or the HIV/STD Control Branch Regional Office where the laboratory is located.
- (3) Positive tuberculosis test results shall be reported to the Tuberculosis Control Branch on a form provided by the Department within seven days. Laboratory reports required by 15A NCAC 19A .0101(c)(1) and by G.S. 130A-139(1) shall be reported within seven days of completion of the laboratory test to the Tuberculosis Control Branch on a form provided by the Branch or in another format acceptable to the Branch that includes the information on the form.
- (4) Positive cultures for E. coli 0157:H7 shall be reported within 24 hours of isolation to the Communicable Disease Control Section.

Statutory Authority G.S. 130A-134; 130A-135; 130A-141.

SECTION .0200 - CONTROL MEASURES FOR COMMUNICABLE DISEASES

.0202 CONTROL MEASURES - HIV

The following are the control measures for the Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV)

infection:

- (1) Infected persons shall:
 - (a) refrain from sexual intercourse unless condoms are used; exercise caution when using condoms due to possible condom failure;
 - (b) not share needles or syringes; or any other drug-related equipment, paraphernalia, or works that may be contaminated with blood through previous use;
 - (c) not donate or sell blood, plasma, platelets, other blood products, semen, ova, tissues, organs, or breast milk;
 - (d) have a skin test for tuberculosis;
 - (e) notify future sexual intercourse partners of the infection; if the time of initial infection is known, notify persons who have been sexual intercourse and needle partners since the date of infection; and, if the date of initial infection is unknown, notify persons who have been sexual intercourse and needle partners for the previous year.
- (2) The attending physician shall:
 - (a) give the control measures in Item (1) of this Rule to infected patients, in accordance with 15A NCAC 19A .0210;
 - (b) If the attending physician knows the identity of the spouse of an HIV-infected patient and has not, with the consent of the infected patient, notified and counseled the spouse appropriately, the physician shall list the spouse on a form provided by the Division of Epidemiology and shall mail the form to the Division; the Division will undertake to counsel the spouse; the attending physician's responsibility to notify exposed and potentially exposed persons is satisfied by fulfilling the requirements of Sub-Items (2)(a) and (b) of this Rule;
 - (c) advise infected persons concerning proper clean-up of blood and other body fluids;
 - (d) advise infected persons concerning the risk of perinatal transmission and transmission by breastfeeding.
- (3) The attending physician of a child who is infected with HIV and who may pose a significant risk of transmission in the school or day care setting because of open, oozing wounds or because of

behavioral abnormalities such as biting shall notify the local health director. The local health director shall consult with the attending physician and investigate the circumstances.

- (a) If the child is in school or scheduled for admission and the local health director determines that there may be a significant risk of transmission, the local health director shall consult with an interdisciplinary committee, which shall include appropriate school personnel, a medical expert, and the child's parent or guardian to assist in the investigation and determination of risk. The local health director shall notify the superintendent or private school director of the need to appoint such an interdisciplinary committee.
 - (i) If the superintendent or private school director establishes such a committee within three days of notification, the local health director shall consult with this committee.
 - (ii) If the superintendent or private school director does not establish such a committee within three days of notification, the local health director shall establish such a committee.
- (b) If the child is in school or scheduled for admission and the local health director determines, after consultation with the committee, that a significant risk of transmission exists, the local health director shall:
 - (i) notify the parents;
 - (ii) notify the committee;
 - (iii) assist the committee in determining whether an adjustment can be made to the student's school program to eliminate significant risks of transmission;
 - (iv) determine if an alternative educational setting is necessary to protect the public health;
 - (v) instruct the superintendent or private school director concerning appropriate protective measures to be implemented in the alternative educational setting developed by appropriate school personnel; and
 - (vi) consult with the superintendent or private school director to determine which school personnel directly involved with the child need to be

notified of the HIV infection in order to prevent transmission and ensure that these persons are instructed regarding the necessity for protecting confidentiality.

- (c) If the child is in day care and the local health director determines that there is a significant risk of transmission, the local health director shall notify the parents that the child must be placed in an alternate child care setting that eliminates the significant risk of transmission.
- (4) When health care workers or other persons have a needlestick or nonsexual non-intact skin or mucous membrane exposure to blood or body fluids that, if the source were infected with HIV, would pose a significant risk of HIV transmission, the following shall apply:
 - (a) When the source person is known:
 - (i) The attending physician or occupational health care provider responsible for the exposed person, if other than the attending physician of the person whose blood or body fluids is the source of the exposure, shall notify the attending physician of the source that an exposure has occurred. The attending physician of the source person shall discuss the exposure with the source and shall test the source for HIV infection unless the source is already known to be infected. The attending physician of the exposed person shall be notified of the infection status of the source.
 - (ii) The attending physician of the exposed person shall inform the exposed person about the infection status of the source, offer testing for HIV infection as soon as possible after exposure and at reasonable intervals up to one year to determine whether transmission occurred, and, if the source person was HIV infected, give the exposed person the control measures listed in Sub-Items (1)(a) through (c) of this Rule. The attending physician of the exposed person shall instruct the exposed person regarding the necessity for protecting confidentiality.
 - (b) When the source person is unknown,

- the attending physician of the exposed person shall inform the exposed person of the risk of transmission and offer testing for HIV infection as soon as possible after exposure and at reasonable intervals up to one year to determine whether transmission occurred.
- (c) A health care facility may release the name of the attending physician of a source person upon request of the attending physician of an exposed person.
 - (5) The attending physician shall notify the local health director when the physician, in good faith, has reasonable cause to suspect a patient infected with HIV is not following or cannot follow control measures and is thereby causing a significant risk of transmission. Any other person may notify the local health director when the person, in good faith, has reasonable cause to suspect a person infected with HIV is not following control measures and is thereby causing a significant risk of transmission.
 - (6) When the local health director is notified pursuant to Item (5) of this Rule, of a person who is mentally ill or mentally retarded, the local health director shall confer with the attending mental health physician or appropriate mental health authority and the physician, if any, who notified the local health director to develop an appropriate plan to prevent transmission.
 - (7) The Director of Health Services of the North Carolina Department of Correction and the prison facility administrator shall be notified when any person confined in a state prison is determined to be infected with HIV. If the prison facility administrator, in consultation with the Director of Health Services, determines that a confined HIV infected person is not following or cannot follow prescribed control measures, thereby presenting a significant risk of HIV transmission, the administrator and the Director shall develop and implement jointly a plan to prevent transmission, including making appropriate recommendations to the unit housing classification committee.
 - (8) The local health director shall ensure that the health plan for local jails include education of jail staff and prisoners about HIV, how it is transmitted, and how to avoid acquiring or transmitting this infection.
 - (9) Local health departments shall provide testing for HIV infection with individual pre- and post-test counseling at no charge to the patient. Third party payors may only be billed for HIV counseling and testing when such services are provided as a part of family planning and maternal and child health services. By August 1, 1991, the State Health Director shall designate a minimum of 16 local health departments to provide anonymous testing. Beginning September 1, 1991, only cases of confirmed HIV infection identified by anonymous tests conducted at local health departments designated as anonymous testing sites pursuant to this Sub-Item shall be reported in accordance with 15A NCAC 19A .0102(a)(3). All other cases of confirmed HIV infection shall be reported in accordance with 15A NCAC 19A .0102(a)(1) and (2). Effective September 1, 1994, anonymous testing shall be discontinued and all cases of confirmed HIV infection shall be reported in accordance with 15A NCAC 19A .0102(a)(1) and (2).
 - (10) Appropriate counseling for HIV testing shall include ~~individualized pre and post test counseling which provides~~ risk assessment, risk reduction guidelines, appropriate referrals for medical and psychosocial services, and, when the person tested is ~~determined~~ found to be infected with HIV, control measures. Pre-test counseling may be done in a group or individually, as long as each individual has the opportunity to ask questions in private. Post-test counseling must be individualized.
 - (11) A local health department or the Department may release information regarding an infected person pursuant to G.S. 130A-143(3) only when the local health department or the Department has provided direct medical care to the infected person and refers the person to or consults with the health care provider to whom the information is released.
 - (12) Notwithstanding Rule .0201(d) of this Section, a local or state health director may require, as a part of an isolation

order issued in accordance with G.S. 130A-145, compliance with a plan to assist the individual to comply with control measures. The plan shall be designed to meet the specific needs of the individual and may include one or more of the following available and appropriate services:

- (a) substance abuse counseling and treatment;
 - (b) mental health counseling and treatment; and
 - (c) education and counseling sessions about HIV, HIV transmission, and behavior change required to prevent transmission.
- (13) The Division of Epidemiology shall conduct a partner notification program to assist in the notification and counseling of partners of HIV infected persons. All partner identifying information obtained as a part of the partner notification program shall be destroyed within two years.

Statutory Authority G.S. 130A-133; 130A-135; 130A-144; 130A-145; 130A-148(h).

0203 CONTROL MEASURES - HEPATITIS B

(a) The following are the control measures for hepatitis B infection. The infected persons shall:

- (1) refrain from sexual intercourse unless condoms are used except when the partner is known to be infected with or immune to hepatitis B;
- (2) not share needles or syringes;
- (3) not donate or sell blood, plasma, platelets, other blood products, semen, ova, tissues, organs, or breast milk;
- (4) if the time of initial infection is known, identify to the local health director all sexual intercourse and needle partners since the date of infection; and, if the date of initial infection is unknown, identify persons who have been sexual intercourse or needle partners during the previous six months;
- (5) for the duration of the infection, notify future sexual intercourse partners of the infection and refer them to their attending physician or the local health director for control measures;
- (6) be tested six months after diagnosis to determine if they are chronic carriers,

annually for two years thereafter if they remain infected, and when necessary to determine appropriate control measures for persons exposed pursuant to Paragraph (2) (b) of this Rule.

(b) The following are the control measures for persons reasonably suspected of being exposed:

- (1) when a person has had sexual intercourse exposure to hepatitis B infection, the person shall be given hepatitis B immune globulin or immune globulin, 0.06 ml/kg, IM as soon as possible but no later than two weeks after the last exposure;
- (2) when a person is a household contact, sexual intercourse or needle sharing contact of a person who has remained infected with hepatitis B for six months or longer, the partner or household contact, if susceptible and at risk of continued exposure, shall be vaccinated against hepatitis B;
- (3) when a health care worker or other person has a needlestick, non-intact skin, or mucous membrane exposure to blood or body fluids that, if the source were infected with the hepatitis B virus, would pose a significant risk of hepatitis B transmission, the following shall apply:

- (A) when the source is known, the source person shall be tested for hepatitis B infection, unless already known to be infected;
- (B) when the source is infected with hepatitis B and the exposed person is:
 - (i) vaccinated, the exposed person shall be tested for anti-HBs. If anti-HBs is less than ten SRU by RIA or negative by EIA, the exposed person shall be given hepatitis B immune globulin, 0.06 ml/kg, IM immediately and a single dose of hepatitis B vaccine within seven days;
 - (ii) not vaccinated, the exposed person shall be given hepatitis B immune globulin, 0.06 ml/kg, IM immediately and, if at high risk for future exposure, begin vaccination with hepatitis B vaccine within seven days;
- (C) when the source is unknown and the exposed person is:
 - (i) vaccinated, no intervention is

- necessary;
- (ii) not vaccinated, begin vaccination with hepatitis B vaccine within seven days if at high risk for future exposure.

- (4) infants born to infected mothers shall be given hepatitis B immune globulin, 0.5 ml, IM as soon as maternal infection is known and infant is stabilized; vaccinated against hepatitis B beginning as soon as possible; and tested for HBsAg at 12-15 months of age.

(c) The attending physician shall advise all patients known to be at high risk, including injection drug users, men who have sex with men, hemodialysis patients, and patients who receive frequent transfusions of blood products, that they should be vaccinated against hepatitis B if susceptible.

(d) The following persons shall be tested for hepatitis B infection:

- (1) pregnant women unless known to be infected; and
- (2) donors of blood, plasma, platelets, other blood products, semen, ova, tissues, or organs.

Statutory Authority G.S. 130A-135; 130A-144.

.0204 CONTROL MEASURES - SEXUALLY TRANSMITTED DISEASES

(a) Local health departments shall provide diagnosis, testing, treatment, follow-up, and preventive services for syphilis, gonorrhea, chlamydia, nongonococcal urethritis, mucopurulent cervicitis, chancroid, lymphogranuloma venereum, and granuloma inguinale. These services shall be provided upon request and at no charge to the patient.

(b) Persons infected with, exposed to, or reasonably suspected of being infected with gonorrhea, chlamydia, non-gonococcal urethritis, and mucopurulent cervicitis shall:

- (1) Refrain from sexual intercourse until examined and diagnosed and treatment is completed, and all lesions are healed;
- (2) Be tested, treated, and re-evaluated in accordance with the STD Treatment Guidelines published by the U.S. Public Health Service. The recommendations contained in the STD Treatment Guidelines shall be the required control measures for testing, treatment, and follow-up for gonorrhea, chlamydia, nongonococcal urethritis, and

mucopurulent cervicitis, and are incorporated by reference including subsequent amendments and editions. A copy of this publication is on file for public viewing with the HIV/STD Control Branch located at 225 N. McDowell Street, Cooper Building, Raleigh, N.C. 27611-7687 or a copy may be obtained free of charge by writing the HIV/STD Control Branch, P.O. Box 27687, Raleigh, N.C. 27611-7687, and requesting a copy. However, urethral Gram stains may be used for diagnosis of males rather than gonorrhea cultures unless treatment has failed;

- (3) Notify all sexual partners from 30 days before the onset of symptoms to completion of therapy that they must be evaluated by a physician or local health department.

(c) Persons infected with, exposed to, or reasonably suspected of being infected with syphilis, lymphogranuloma venereum, granuloma inguinale, and chancroid shall:

- (1) Refrain from sexual intercourse until examined and diagnosed and treatment is completed, and all lesions are healed;
- (2) Be tested, treated, and re-evaluated in accordance with the STD Treatment Guidelines published by the U.S. Public Health Service. The recommendations contained in the STD Treatment Guidelines shall be the required control measures for testing, treatment, and follow-up for syphilis, lymphogranuloma venereum, granuloma inguinale, and chancroid, except that chancroid cultures shall not be required;
- (3) Give names to a disease intervention specialist employed by the local health department or by the HIV/STD Control Branch for contact tracing of all sexual partners and others as listed in this Rule:

(A) for syphilis:

- (i) congenital - all immediate family members;
- (ii) primary - all partners from three months before the onset of symptoms to completion of therapy and healing of lesions;
- (iii) secondary - all partners from six months before the onset of

symptoms to completion of therapy and healing of lesions; and

- (iv) latent - all partners from 12 months before the onset of symptoms to completion of therapy and healing of lesions and, in addition, for women with late latent, spouses and children;

(B) for lymphogranuloma venereum:

- (i) if there is a primary lesion and no buboes, all partners from 30 days before the onset of symptoms to completion of therapy and healing of lesions; and
- (ii) if there are buboes all partners from six months before the onset of symptoms to completion of therapy and healing of lesions;

(C) for granuloma inguinale - all partners from three months before the onset of symptoms to completion of therapy and healing of lesions; and

(D) for chancroid - all partners from ten days before the onset of symptoms to completion of therapy and healing of lesions.

(d) All persons evaluated or reasonably suspected of being infected with any sexually transmitted disease shall be tested for syphilis, encouraged to be tested confidentially for HIV, and counseled about how to reduce the risk of acquiring sexually transmitted disease, including the use of condoms.

(e) All pregnant women shall be tested for syphilis, chlamydia, and gonorrhea early in pregnancy and in the third trimester. Pregnant women at high risk for exposure to syphilis, chlamydia, and gonorrhea shall also be tested for syphilis, chlamydia, and gonorrhea at the time of delivery.

(f) All newborn infants shall be treated prophylactically against gonococcal ophthalmia neonatorum in accordance with the STD Treatment Guidelines published by the U. S. Public Health Service. The recommendations contained in the STD Treatment Guidelines shall be the required prophylactic treatment against gonococcal ophthalmia neonatorum.

Statutory Authority G.S. 130A-135; 130A-144.

205 CONTROL MEASURES - TUBERCULOSIS

(a) The local health director shall promptly

investigate all cases of tuberculosis disease and their contacts in accordance with the provisions of Control of Communicable Diseases in Man. Control of Communicable Diseases in Man is hereby incorporated by reference including subsequent amendments and editions. Copies of this publication are available from the American Public Health Association, Department JE, 1015 15th Street, N.W., Washington, DC 20005 for a cost of fifteen dollars (\$15.00) each plus three dollars (\$3.00) shipping and handling. A copy is available for inspection in the Communicable Disease Control Section, Cooper Memorial Health Building, 225 N. McDowell Street, Raleigh, North Carolina 27611-7687.

(b) The following persons shall be skin tested for tuberculosis and given appropriate clinical, microbiologic and x-ray examination in accordance with the "Diagnostic Standards and Classification of Tuberculosis," published by the American Thoracic Society, which is incorporated by reference including subsequent amendments and editions:

- (1) Household and other close contacts of active cases of tuberculosis;
- (2) Persons reasonably suspected of having tuberculosis disease;
- (3) Inmates in the custody of, and staff with direct inmate contact in, the Department of Corrections upon incarceration or employment, and annually thereafter;
- (4) Patients and staff in long term care facilities upon admission or employment and annually thereafter;
- (5) Clients and staff in residential facilities operated by the Department of Human Resources upon admission or employment and annually thereafter.

A copy of "Diagnostic Standards and Classification of Tuberculosis" is available by contacting the Department of Environment, Health, and Natural Resources, Tuberculosis Control Branch, Post Office Box 27687, Raleigh, North Carolina 27611-7687 at no charge.

(c) Treatment and follow-up for tuberculosis infection or disease shall be in accordance with "Treatment of Tuberculosis and Tuberculosis Infection in Adults and Children," published by the American Thoracic Society, which is incorporated by reference including subsequent amendments and editions. Copies of this publication are available by contacting the Department of Environment, Health, and Natural Resources, Tuberculosis Control Branch, Post Office Box 27687, Raleigh,

North Carolina 27611-7687 at no charge. However, liver function testing shall not be required for persons under 35 years of age with no symptoms of liver disease.

(d) The attending physician shall instruct all patients treated for tuberculosis regarding the potential side effects of the medications prescribed and to promptly notify the physician if side effects occur.

(e) Persons with pulmonary or laryngeal tuberculosis who are known or reasonably suspected to be infected with *Mycobacterium tuberculosis* resistant to the usual medications used for treatment shall be restricted to their homes, an appropriate health care facility, or in some other appropriate manner to prevent transmission until:

- (1) they are free of cough; or
- (2) three consecutive smears or cultures are negative; or
- (3) they have been compliant for at least three weeks on medications to which the organism is known to be susceptible and have responded clinically.

(f) Persons with pulmonary or laryngeal tuberculosis who are hospitalized, in prison, or a longterm care facility, shall be placed in respiratory isolation until:

- (1) they are free of cough; or
- (2) three consecutive smears or cultures are negative; or
- (3) been compliant for at least three weeks on medications to which the organism is reasonably thought to be susceptible and have responded clinically.

(g) Persons with known or suspected pulmonary tuberculosis who work in a health care or institutional setting or who work in or attend child daycare or with known or suspected laryngeal tuberculosis shall be restricted to their homes, an appropriate health care facility, or in some other appropriate manner to prevent transmission until:

- (1) they are free of cough; or
- (2) three consecutive smears or cultures are negative; or
- (3) they have been compliant for at least three weeks on medications to which the organism is reasonably thought to be susceptible and have responded clinically.

(h) Persons known to be infected with tuberculosis who are over 50 years of age and have risk factors for HIV infection and those 50 years of age and younger shall be tested for HIV infection.

(i) At least two of the following skin test

antigens shall be used as controls for anergy when a TB skin test is administered to a person known to be infected with HIV and who has a CD4+ level less than 500 cells/mm3 or 19%:

- (1) Mumps;
- (2) Candida; or
- (3) Tetanus toxoid.

(j) Laboratories that culture sputum or other body fluids or tissues for *Mycobacteria* shall measure direct susceptibilities as the percent of colonies resistant to at least isoniazid, rifampin, streptomycin, and ethambutol on all initial specimens submitted for culture that are positive for AFB on smear.

Statutory Authority G.S. 130A-135; 130A-144.

.0208 CONTROL MEASURES - SHIGELLOSIS AND E. coli 0157:H7

The following are the control measures for shigellosis and E. coli 0157:H7:

(1) When a case occurs in a person who attends or works in a day care center:

(a) All persons who attend the center and who have or have had diarrhea in the previous month, all classroom contacts of the case, and all staff in the center shall be immediately cultured;

(b) An investigation shall be conducted to identify other possible cases throughout the center;

(c) All persons with disease or suspected disease shall be cohorted;

(d) Staff shall be assigned to care for children in the cohorted group and may not care for children outside the cohorted group until they are reassigned, without symptoms and have had two negative cultures at least 24 hours apart and 48 hours off antibiotics;

(e) Cases and suspected cases may be released from cohorting when two negative cultures have been obtained at least 24 hours apart and 48 hours off antibiotics;

(f) All persons with shigellosis shall be treated with an antibiotic listed for shigellosis in *Control of Communicable Diseases in Man*;

(g) All persons with known or suspected shigellosis or E. coli 0157:H7 shall be excluded from foodhandling until two negative cultures have been obtained at least 24 hours apart and 48 hours off antibiotics;

- (h) Persons who are infected or suspected of being infected with shigella or E. coli 0157:H7 and who are well enough to attend shall not be excluded from day care.
- (2) When a case or suspected case occurs in a foodhandler or health care worker:
 - (a) The person shall be excluded from foodhandling or direct patient care until symptoms resolve and two negative cultures have been obtained at least 24 hours apart and 48 hours off antibiotics;
 - (b) However, health care workers may return to direct patient care if they are asymptomatic, practice good hygiene and do not care for high risk patients (e.g. neonates, immunocompromised patients).
- (3) When a case of shigella or E. coli 0157:H7 occurs, all household and other close contacts who attend or work in day care or who are foodhandlers or health care workers shall be interviewed for symptoms in the previous month and, if symptomatic, cultured.

Statutory Authority G.S. 130A-135; 130A-144.

.0209 LABORATORY TESTING

All laboratories are required to do the following:

- (1) When Neisseria meningitis is isolated, test the organism for specific serogroup or send the isolate to the State Public Health Laboratory for serogrouping; and
- (2) When a stool culture is requested on a specimen with occult blood or from a person with bloody diarrhea, culture the stool for E. coli 0157:H7 or send the specimen to the State Public Health Laboratory.

Statutory Authority G.S. 130A-139.

SECTION .0400 - IMMUNIZATION

.0401 DOSAGE AND AGE REQUIREMENTS FOR IMMUNIZATION

(a) Every individual in North Carolina required to be immunized pursuant to G.S. 130A-152 through 130A-157 shall be immunized against the following diseases by receiving the specified minimum doses of vaccines by the specified ages:

- (1) diphtheria, tetanus, and whooping cough vaccine -- five doses: three doses by age ~~one year~~ seven months and two

booster doses, one ~~in the second year of life by age 19 months~~ and the second on or after the fourth birthday and before enrolling in school (K-1) for the first time;

- (2) ~~oral poliomyelitis vaccine--three doses of trivalent type by age two years four doses: two doses of trivalent type by age five months; a third dose trivalent type by age 19 months~~ and a booster dose of trivalent type on or after the fourth birthday and before enrolling in school (K-1) for the first time; two doses of enhanced-potency inactivated poliomyelitis vaccine may be substituted for two doses of oral poliomyelitis vaccine;
- (3) ~~measles (rubeola), mumps and rubella vaccine -- two doses of live, attenuated vaccine: administered at least 30 days apart: one dose by age two years on or after age 12 months and before age 16 months~~ and a second dose before enrolling in school (K-1) for the first time;
- (4) ~~rubella vaccine -- one dose of live, attenuated vaccine on or after age 12 months and before age 16 months;~~
- (5) ~~mumps vaccine -- one dose of live, attenuated vaccine administered on or after age 12 months and before age 16 months;~~
- (6) ~~Hemophilus Haemophilus~~ influenzae, b, conjugate vaccine -- three doses of HbOC or two doses of PRP-OMP by age ~~one year~~ seven months and a booster dose of any type by ~~the second birthday~~ age 16 months; and
- (5) (7) hepatitis B vaccine -- three doses by age one year.
- (b) Notwithstanding the requirements of Paragraph (a) of this Rule:
 - (1) An individual who has attained his or her seventh birthday without having been immunized against whooping cough shall not be required to be immunized with a vaccine preparation containing whooping cough antigen.
 - (2) An individual who has been documented by serologic testing to have a protective antibody titer against rubella shall not be required to receive rubella vaccine.
 - (3) An individual who has been diagnosed

prior to January 1, 1994, by a physician licensed to practice medicine as having measles (rubeola) disease shall not be required to receive measles vaccine.

- (4) An individual attending school who has attained his or her 18th birthday shall not be required to receive oral polio vaccine.
- (5) An individual born prior to 1957 shall not be required to receive measles vaccine. An individual who has attained his or her fiftieth birthday shall not be required to receive rubella vaccine. An individual who entered a college or university after his or her thirtieth birthday and before February 1, 1989 shall not be required to meet the requirement for rubella vaccine.
- (6) ~~Except as provided in Subparagraph (b)(8) of this Rule, the~~ The requirements for mumps vaccine, and for booster doses of diphtheria, tetanus, and whooping cough vaccine and oral poliomyelitis vaccine, shall not apply to individuals who enrolled for the first time in the first grade before July 1, 1987 or in college or university before July 1, 1994.
- (7) Individuals who receive the first booster dose of diphtheria, tetanus, and whooping cough vaccine on or after the fourth birthday shall not be required to have a second booster dose. Individuals who receive the third dose of oral poliomyelitis vaccine on or after the fourth birthday shall not be required to receive a fourth dose.
- (8) ~~Individuals attending a college or university shall be required to have three doses of diphtheria/tetanus toxoid of which one must have been within the last ten years. The requirements for~~ booster doses of diphtheria, tetanus, and whooping cough vaccine and oral poliomyelitis vaccine shall not apply to individuals who enrolled for the first time in the first grade before July 1, 1987. However, individuals attending a college or university shall be required to have three doses of diphtheria/tetanus toxoid of which one must have been within the last 10 years.
- (9) Individuals born before October 1, 1988 shall not be required to be

vaccinated against ~~Hemophilus~~ Haemophilus influenzae, b. Individuals who receive the first dose of ~~Hemophilus~~ Haemophilus influenzae, b, vaccine on or after 12 months of age and before 15 months of age shall be required to have only two doses of HbOC or PRP-OMP. Individuals who receive the first dose of ~~Hemophilus~~ Haemophilus influenzae, b, vaccine on or after 15 months of age shall be required to have only one dose of any of the ~~Hemophilus~~ Haemophilus influenzae conjugate vaccines, including PRP-D. However, no individual who has passed their fifth birthday shall be required to be vaccinated against ~~Hemophilus~~ Haemophilus influenzae, b.

- (10) Individuals born on or before July 1, 1994 shall not be required to be vaccinated against hepatitis B.
- (11) ~~Except as provided in Subparagraph (b)(12) of this Rule, the~~ The requirement for a second dose of measles, ~~mumps and rubella~~ vaccine shall not apply to individuals who enroll in school (K-1) or in college or university for the first time ~~on or before July 1, 1994.~~
- ~~(12) Individuals who enroll in a college or university for the first time after July 1, 1994 shall be required to have a second dose of measles, mumps and rubella vaccine.~~

Statutory Authority G.S. 130A-152(c); 130A-155.1.

Notice is hereby given in accordance with G.S. 150B-21.2 that EHNR - Commission for Health Services intends to amend rules cited as 15A NCAC 19C .0601 - .0607, and adopt rule cited as 15A NCAC 19C .0608.

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

The public hearing will be conducted at 1:30 p.m. on July 21, 1994 at the Archdale Building, Ground Floor Hearing Room, 512 North Salisbury Street, Raleigh, N. C.

Reason for Proposed Action:

15A NCAC 19C .0601 - These consist of definitions for clarification purposes.

15A NCAC 19C .0602 - Most of these revisions are for clarification purposes. Have also detailed and clarified air monitor accreditation requirements. Revised application form information requirements because the program is incorporating an Accreditation Photo ID Card system. Clarified supervising air monitor notification requirements for accredited air monitors that are not CIHs.

15A NCAC 19C .0603 - Enables the Branch to evaluate course curriculum and examination for courses that have EPA or EPA-state approval. Requires successful completion of an examination for refresher courses in order to improve the quality of refresher training. Requires training providers to meet requirements to promote reciprocity within EPA Region IV and to conform to EPA guidelines for training requirements. Revised notification requirements because notification is necessary to review applications for possible accreditation fraudulence and to promote reciprocity within EPA Region IV.

15A NCAC 19C .0604 - Clarifies management plan requirements. Adds a submittal time frame for reinspection plans needed to ensure that reinspections are performed in-line with EPA AHERA requirements.

15A NCAC 19C .0605 - Clarifies existing notification requirements for different types of removals and existing revision notification requirements. Requires an accredited supervisor to supervise removal activities, which is already a requirement; however, it is not currently written in the rules as they exist.

15A NCAC 19C .0606 - Reduces the fees for removal of floor tiles and ceiling tiles from \$.15 per square foot or 1% of contract price, whichever is greater to \$.10 per square foot or 1% of contract price, whichever is greater. Have also eliminated the permit fee requirement for residing homeowners. Clarifies demolition for permit fee purposes.

15A NCAC 19C .0607 - Adds air sampling frequency and need basis requirements. Adds additional analysis requirements and specifies laboratory proficiency requirements for sample analysis. Addresses possible conflict of interest between air monitor and contractor for the benefit of the building owner. Addresses the need for preparation of an abatement project monitoring plan for the benefit of the building owner. Addresses air monitor accountability for all visits and sampling

conducted on any project. These revisions are needed to ensure that all areas are properly monitored for exposure levels during the removal as well as ensure that all areas are properly cleared after completion of the removal in order to prevent unnecessary asbestos exposure for the workers as well as the public.

15A NCAC 19C .0608 - This proposed new rule addresses instructor qualifications. The rules do not currently address this need. Federal regulations require that instructors be qualified; therefore, this rule is needed in order to ensure that courses are conducted by qualified instructors as required by EPA. Also, to promote reciprocity within EPA Region IV states.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to Grady L. Balentine, Department of Justice, P.O. Box 629, Raleigh, NC 27602-0629. All written comments must be received by August 1, 1994. Persons who wish to speak at the hearing should contact Mr. Balentine at (919) 733-4618. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or proposed changes from staff pursuant to comments made during the public hearing process.

IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.2(f).

CHAPTER 19 - HEALTH: EPIDEMIOLOGY

SUBCHAPTER 19C - OCCUPATIONAL

HEALTH

SECTION .0600 - ASBESTOS HAZARD
MANAGEMENT PROGRAM

.0601 GENERAL

(a) The definitions contained in G.S. 130A-444 and the following definitions shall apply throughout this Section:

- (1) "Abatement Designer" means a person who is directly responsible for planning all phases of an asbestos abatement design from abatement site preparation through complete disassembly of all abatement area barriers. In addition to meeting the accreditation requirements of Rule .0602(c)(5) of this Section, the abatement designer may be subject to the licensure requirements for a Registered Architect as defined in G.S. 83A or a Professional Engineer as defined in G.S. 89C.
- (2) "Abatement Project Monitoring Plan" means a written project-specific plan for conducting visual inspections and ambient and clearance air sampling.
- (3) ~~(2) "Air Monitor" means a person who performs visual inspections, takes air samples for abatement clearance activities or takes ambient air samples in buildings implements the abatement project monitoring plan, collects ambient and clearance air samples, performs visual inspections, or monitors and evaluates asbestos abatement projects.~~
- (4) "Asbestos Abatement Design" means a written or graphic plan prepared by an accredited abatement designer specifying how an asbestos abatement project will be performed, and includes, but is not limited to, scope of work and technical specifications. The asbestos abatement designer's signature and accreditation number shall be on all such abatement designs.
- (5) "Completion Date" means the date on which all activities on a permitted asbestos removal requiring the use of accredited workers and supervisors are complete, including the complete disassembly of all removal area barriers.
- (6) "Emergency Renovation Operation" as defined in 40 CFR Part 61.141.

- (7) "Inspector" means a person who examines buildings for the presence of asbestos containing materials, collects bulk samples or conducts physical assessments of the asbestos containing materials.
- (8) "Installation" means any building or structure or group of buildings or structures under the control of the same owner or operator.
- (9) ~~(4) "Management Consultant" means a persons who performs only administration or oversight services before, during or after asbestos abatement activities.~~
- (10) "Management Planner" means a person who interprets inspection reports, conducts hazard assessments of asbestos containing materials or prepares written management plans.
- (11) "Nonscheduled Asbestos Removal" means an asbestos removal required by the routine failure of equipment, which is expected to occur within a given period based on past operating experience, but for which an exact date cannot be predicted.
- ~~(5) "Person" means as defined in G.S. 130A-2(7).~~
- (12) ~~(3) "Program" means the Asbestos Hazard Management Branch within the NC Department of Environment, Health, and Natural Resources.~~
- (13) ~~(4) "Public Area" means as defined in G.S. 130A-444(7). Any area to which access by the general public is usually prohibited, or is usually limited to access by escort only, shall not constitute a "public area."~~
- (14) "Regulated Asbestos Containing Material" as defined in 40 CFR Part 61.141.
- (15) "Start Date" means the date on which activities on a permitted asbestos removal project requiring the use of accredited workers and supervisors begin, including removal area isolation and preparation or any other activity which may disturb asbestos containing materials.
- (16) "Supervising Air Monitor" means a person who prepares a written abatement project monitoring plan and implements the plan or ensures that the plan is implemented by an air monitor

working under his supervision. The supervising air monitor directs, coordinates and approves all activities of air monitors working under his supervision.

- (17) "Supervisor" means a person who is a 'competent person' as defined in 29 CFR 1926.58(b) and adopted by 13 NCAC 7C .0101, and who is an 'on-site representative' as defined in 40 CFR Part 61.145(c)(8), and who performs the duties specified therein.
- (18) "Under the direct supervision" means working under the immediate guidance of an accredited individual who is responsible for all activities performed.
- (19) "Worker" means a person who performs asbestos abatement under the direct supervision of an accredited supervisor.
- (20) (6) "Working day" means Monday through Friday. Holidays falling on any of these days are included in the definition.

(b) ~~The Asbestos Hazard Emergency Response Act, P.L. 99-519 and the Environmental Protection Agency rules 40 CFR Part 763 and accompanying appendices, are adopted by reference in accordance with G.S. 150B-14(e). Asbestos management activities conducted pursuant to this Section shall comply with "AHERA" as defined in G.S. 130A-444(1) and 40 CFR Part 763, Subpart E and Appendices, as applicable. 40 CFR Part 763, Subpart E is hereby incorporated by reference, including any subsequent amendments and editions. This document is available for inspection at the Department of Environment, Health, and Natural Resources, Asbestos Hazard Management Branch, 441 North Harrington Street, Raleigh, North Carolina 27603. Copies may be obtained from the Government Printing Office by writing to the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954, at a cost of twenty-six dollars (\$26.00).~~

Statutory Authority G.S. 130A-5(3); P.L. 99-519.

.0602 ACCREDITATION

(a) No person shall perform asbestos management activities until that person has been accredited by the Program in the appropriate accreditation category, except as provided for in G.S. 130A-447, (b) and (c).

(b) An applicant for accreditation shall meet the

provisions of the "EPA Model Contractor Accreditation Plan" contained in 40 CFR Part 763 (Subpart E, ~~appendix~~ Appendix C) and has successfully completed applicable training courses approved by the Program pursuant to Rule .0603 of this Section.

(c) In addition to the requirements in Paragraph (b) of this Rule, an applicant, other than for the worker category, shall meet the following:

- (1) an applicant for initial accreditation shall have successfully completed an approved initial training course for the specific discipline within the 12 months immediately preceding application, ~~or, if~~ If initial training was completed more than 12 months prior to application, the applicant shall have successfully completed an approved refresher training course for the specific discipline at least every ~~14~~ 24 months from the date of completion of initial training to the date of application;
- (2) an inspector shall have:
 - (A) a high school diploma or equivalent; and
 - (B) at least three months of asbestos related experience as, or under the direct supervision of, an accredited inspector, or at least one month of employment as an accredited supervisor, or at least six months employment as an accredited worker, or equivalent experience;
- (3) a management planner shall have a high school diploma or equivalent and shall be an accredited inspector;
- (4) a supervisor shall have:
 - (A) a high school diploma or equivalent; except that this requirement shall not apply to supervisors that were accredited on November 1, 1989; and
 - (B) at least three months of asbestos related experience as, or under the direct supervision of, an accredited supervisor ~~or at least three months employment as an asbestos work, or equivalent experience;~~
- (5) an abatement designer shall have:
 - (A) a high school diploma or equivalent; and
 - (B) at least three months of asbestos related experience as, or under the direct supervision of, an accredited abatement designer ~~or at least three months employment as an accredited~~

- supervisor, or equivalent experience;
- (6) a management consultant shall:
- (A) ~~be a professional engineer, registered architect or a certified industrial hygienist or have four years experience as an abatement designer or supervisor~~ have a high school diploma or equivalent;
- (B) ~~have one year experience in asbestos related work within the past four years and be accredited as a management planner and designer;~~ and
- (C) meet all initial and refresher training requirements of this Section for inspector and management planner, as well as either supervisor or abatement designer;
- (7) an air monitor shall meet the following requirements:
- (A) Education and Work Experience:
- (i) a high school diploma or equivalent;
- (ii) three months of asbestos air monitoring experience as, or under the direct supervision of, an accredited air monitor or equivalent within 12 months prior to applying for accreditation;
- (B) Training Requirements:
- (i) complete a Program approved NIOSH 582 or Program approved NIOSH 582 equivalent and meet the initial and refresher training requirements of this Rule for supervisors. A Program approved project monitor refresher course may be substituted for the supervisor refresher course; or
- (ii) meet the initial and refresher training requirements of this Rule for a Program approved five-day project monitor course and a Program approved annual refresher course;
- (iii) air monitors with a valid accreditation on October 1, 1994 shall have until October 1, 1995 to meet the training requirements for air monitors set forth in this Paragraph;
- (C) Professional Status:
- (i) An air monitor accredited on or after February 1, 1991, or an air monitor accredited prior to that

date who has not continuously maintained accreditation, shall be a Certified Industrial Hygienist or work only under a Certified Industrial Hygienist who is an accredited air monitor, who serves as the supervising air monitor; or

- (ii) An air monitor accredited prior to February 1, 1991, who has continuously maintained accreditation shall be a Certified Industrial Hygienist, Professional Engineer, or Registered Architect, or work only under a Certified Industrial Hygienist, Professional Engineer, or Registered Architect who is accredited as an air monitor, and who serves as a supervising air monitor.

- (A) ~~until February 1, 1991, be a certified industrial hygienist, professional engineer, or registered architect, or work only under the supervision of a certified industrial hygienist, professional engineer, or registered architect that is accredited as an air monitor. On or after February 1, 1991, an air monitor shall be a certified industrial hygienist or work only under the supervision of a certified industrial hygienist that is an accredited air monitor. The supervising air monitor shall coordinate and sign off on all phases of the air monitoring project. The supervising air monitor may be a contract consultant. This requirement shall not apply to accredited supervising air monitors meeting the provisions of Subparagraphs (e)(7)(B)-(D) of this Rule as of February 1, 1991;~~
- (B) ~~have completed a Program approved National Institute of Occupational Safety and Health 582 training course or Program approved equivalent;~~
- (C) ~~have three months asbestos air monitoring related experience or equivalent within 12 months prior to applying for accreditation; and~~
- (D) ~~have a high school diploma or equivalent.~~

- (d) To obtain accreditation, the applicant shall submit, or cause to be submitted, to the Program

~~the following information to the Program on application forms provided by the Program:~~

- (1) a completed application on a form provided by the Program with the following information:
 - (A) ~~(1)~~ full name and social security number of applicant;
 - (2) ~~name, address and telephone number of employer;~~
 - (3) ~~discipline(s) applied for;~~
 - (4) ~~date(s) of training course(s) for each discipline;~~
 - (5) ~~name of course attended;~~
 - (6) ~~training agency name and address;~~
 - (B) address, including city, state, zip code, and telephone number;
 - (C) date of birth, sex, height, and weight;
 - (D) discipline applied for;
 - (E) name, address, and telephone number of employer;
 - (F) training agency attended;
 - (G) name of training course completed;
 - (H) dates of course attended;
- (2) two current 1 1/4 inch x 1 1/4 inch color photographs of the applicant with applicant's name and social security number printed on the back;
- (3) ~~(7)~~ confirmation of completion of an approved initial or refresher training course from the training agency; the confirmation shall be in the form of an original certificate of completion of the approved training course bearing the training agency's official seal, or an original letter from the training agency confirming completion of the course on training agency letterhead, or an original letter from the training agency listing names of persons who have successfully completed the training course, with the applicant's name included, on the training agency letterhead;
- (4) ~~(8)~~ when education is a requirement, a copy of the diploma or other written documentation; ~~and~~
- (5) ~~(9)~~ when experience is a requirement, work history documenting asbestos related experience, including employer name, address and phone number; positions held; and dates when the positions were held- ; ~~and~~
- (6) when applicants for initial air monitor accreditation are working under a supervising air monitor pursuant to Part

(c)(7)(B) of this Rule, the supervising air monitor shall submit an original, signed letter acknowledging responsibility for the applicant's air monitoring activities. The applicant shall ensure that a new letter is submitted to the Program any time the information in the letter currently on file is no longer accurate.

(e) All accreditations, ~~including accreditations issued prior to October 10, 1988,~~ shall expire at the end of the 12th month following completion of required initial or refresher training. Work performed after the 12th month prior to reaccreditation shall constitute a violation of this Rule. To be reaccredited, an applicant shall have successfully completed the required refresher training course within ~~14~~ 24 months after the initial or refresher training course. An applicant for reaccreditation shall also submit information specified in Subparagraphs (d)(1)-(d)(7)(6) of this Rule. If a person fails to obtain ~~reaccreditation~~ the required training within ~~two~~ 12 calendar months after the expiration date of original accreditation, that person may be accredited only by meeting the requirements of Paragraphs (b), (c), and (d) of this Rule.

(f) All accredited persons shall be assigned an accreditation number and issued a photo-identification card by the ~~program~~ Program.

~~(g) Upon request, a person accredited by another state shall be accredited by the program if that state's accreditation program is at least as stringent and as comprehensive as the accreditation program established by these rules.~~

~~(h) (g)~~ In accordance with G.S. 130A-23, the Program may revoke accreditation or reaccreditation for any violation of G.S. 130A, Article 19 or ~~any of the these rules~~ Rules of this ~~Section,~~ or upon finding that its issuance was based upon incorrect or inadequate information that materially affected the decision to issue accreditation or reaccreditation. The Program may also revoke accreditation or reaccreditation upon a finding that the accredited person has violated any ~~standard requirement~~ referenced in Rule .0605(e) of this Section. A person whose accreditation is revoked ~~because of fraudulent misrepresentations or because of violations that create a significant public health hazard~~ shall not be authorized to reapply for accreditation ~~before six months for two years~~ after the revocation and ~~must~~ shall repeat the initial training course and other requirements as ~~shown set out~~ in Paragraphs (b), (c), and (d) of this Rule.

Statutory Authority G.S. 130A-5(3); 130A-447; P.L. 99-519.

.0603 APPROVAL OF TRAINING COURSES

(a) Pursuant to Rule .0602 of this Section, applicants for accreditation and reaccreditation are required to successfully complete training courses approved by the Program. Training courses: In order to be approved by the Program, training programs shall meet the following requirements:

- (1) Training courses meeting Meeting the requirements of 40 CFR Part 763, Subpart E, Appendix C and approved for a specific training provider by the Environmental Protection Agency or by a state with an Environmental Protection Agency-approved accreditation program, or by a state that has a written reciprocating agreement with the Program and meeting the requirements under Paragraph (g) of this Rule shall be deemed approved by the Program unless approval is suspended or revoked in accordance with Paragraph (g) (i) of this Rule; or
- (2) Training courses covered Required under 40 CFR Part 763, Subpart E, Appendix C and having no prior Program approval as specified in Subparagraph (a)(1) of this Rule shall meet the requirements of 40 CFR Part 763, Subpart E, Appendix C, I and III, Paragraphs (b) and (e) and Paragraphs (b)-(f) of this Rule; or
- (3) Training courses not covered Recommended under 40 CFR Part 763, Subpart E, Appendix C shall meet the requirements of Paragraph (e) Paragraphs (b)-(f) of this Rule; or
- (4) Other than those covered in Subparagraphs (1)-(3) of this Paragraph required for North Carolina accreditation purposes shall meet the requirements of Paragraphs (c)-(f) of this Rule.

A list of approved training courses shall be available from the Program.

(b) Refresher training courses shall review and discuss changes in the Federal and State regulations, developments in the state-of-the-art procedures, and key aspects of the initial courses outlined under 40 CFR Part 763, Subpart E, Appendix C. include a review of the following key aspects of the initial training course:

- (1) ~~the refresher training courses for all~~

~~disciplines shall include a review of health effects of asbestos, respiratory protection, and personal protective equipment;~~

- (2) ~~the refresher training course for inspector shall include a review of record keeping, writing the inspection report, inspecting for friable and non friable asbestos containing material, and assessing the condition of asbestos containing building materials;~~
- (3) ~~the refresher training course for management planner shall include a review of record keeping, management plan content, hazard assessment, determining an operations and maintenance plan, and selection of control options;~~
- (4) ~~the refresher training course for abatement project designer shall include a review of designing abatement solutions, budgeting and cost estimation, considerations for work in occupied buildings and writing abatement specifications;~~
- (5) ~~the refresher training course for supervisor shall include a review of state of the art work practices, air monitoring and supervisory techniques; and~~
- (6) ~~the refresher training course for abatement worker shall include a review of state of the art work practices, personal hygiene, and additional safety hazards.~~

(c) At the completion of the refresher training courses in all disciplines, the training provider shall administer a written closed book examination, approved by the Program. The requirements for the examination shall consist of a minimum of 50 multiple choice questions. For successful completion of the course the applicant shall pass the exam with a minimum score of 70 percent.

~~(e) (d) Training courses shall be evaluated for approval by the Program for course length, curriculum, training methods, instructors' qualifications, instructors' teaching effectiveness, technical accuracy of written materials and instruction, examination, and training certificate. Training course providers applying for course approval shall submit the information and documentation specified on an application form provided by the Program. The evaluation will be conducted using 40 CFR Part 763, Subpart E, Appendix C or NIOSH 582 curriculum, as~~

applicable, which are hereby incorporated by reference, including any subsequent amendments and editions. These documents are available for inspection at the Department of Environment, Health, and Natural Resources, Asbestos Hazard Management Branch, 441 North Harrington Street, Raleigh, North Carolina 27603. Copies of 40 CFR Part 763, Subpart E, Appendix C may be obtained by writing to the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954, at a cost of twenty-six dollars (\$26.00). Copies of the NIOSH 582 curriculum may be obtained by writing the Department of Environment, Health, and Natural Resources, Asbestos Hazard Management Branch, P.O. Box 27687, Raleigh, NC 27611, at a cost of thirty-five dollars (\$35.00).

(e) Training course providers shall submit the following for evaluation and approval by the Program:

- (1) a completed application on a form provided by the Program, along with supporting documentation. The form and supporting documentation shall include the following:
 - (A) name, address, and telephone number of the training provider, and name and signature of the contact person;
 - (B) course title, location and the language in which the course is to be taught;
 - (C) a student manual and an instructor manual for each course and a content checklist that identifies and locates sections of the manual where required topics are covered;
 - (D) course agenda;
 - (E) a copy or description of all audio/visual materials used;
 - (F) a description of each hands-on training activity;
 - (G) a copy of a sample exam;
 - (H) a sample certificate with the following information; and
 - (i) Name and social security number of student;
 - (ii) Training course title specifying initial or refresher;
 - (iii) Inclusive dates of course and applicable examination;
 - (iv) Statement that the student completed the course and passed any examination required;
 - (v) Unique certificate number as required;
 - (vi) For courses covered under 40

CFR Part 763, Subpart E, Appendix C, certificate expiration date that is one year after the date the course was completed and the applicable examination passed;

- (vii) Printed name and signature of the training course administrator and printed name of the principal instructor;
- (viii) Name, address, and phone number of the training provider;
- (ix) Training course location; and
- (x) A statement that the person receiving the certificate has completed the requisite training for asbestos accreditation under Title II of the Toxic Substances Control Act;

(I) a list of training currently being provided.

- (2) A list of instructors and their qualifications in accordance with Rule .0608 of this Section.

(f) Contingent approval shall be granted by the Program if the application and supporting documentation meet the criteria of Rule .0603(d) and (e) of this Section, except for technical accuracy of instruction and instructor effectiveness. Full approval shall be granted by the Program to a course with contingent approval after successful completion of an on-site audit of the course. The on-site audit shall include, but not be limited to, an evaluation of the following:

- (1) instructor effectiveness;
- (2) technical accuracy;
- (3) course administration; and
- (4) course content.

(g) Training course providers shall perform the following in order to maintain approval:

- (1) Issue a certificate of training meeting the requirements of Part (e)(1)(H) of this Rule to any student who completes the required training and passes the applicable examination. The certificate, to be submitted to the Program for approval, shall include:

- (A) Name of student;
- (B) Training course title;
- (C) Inclusive dates of course and applicable examination;
- (D) Statement that the student completed the course and passed any examination required;
- (E) Certificate number as required;
- (F) For courses covered under 40 CFR

- ~~763, Subpart E, Appendix C, certificate expiration date that is one year after the date course completed and applicable examination passed;~~
- (G) ~~Printed name and signature of training course administrator or printed name of principle instructor; and~~
- (H) ~~Name, address, and phone number of the training provider.~~
- (2) Submit to the Program written notice of intention to conduct a training course for North Carolina asbestos accreditation purposes if the course is to be taught in North Carolina or if requested by the Program. Notices for all training courses, except asbestos worker, shall be postmarked ~~ten~~ 10 working days before the training course begins. Notices for asbestos worker training ~~course~~ courses shall be postmarked five working days before the training course begins. If the training course is cancelled, notify the Program at least 24 hours before the scheduled start date. Notification shall be made using a form provided by the Program and shall include the following:
- (A) Training provider name, address, phone number and contact person;
 - (B) Training course title;
 - (C) Inclusive dates of course and applicable exam;
 - (D) Start and completion times;
 - (E) Identify whether the course is public offering, contract training, or for the training provider's employees; ~~and~~
 - (F) Location and directions to course facility; and
 - (G) Language in which the course is taught.
- (3) Notify the Program, in writing, at least 10 working days prior to the scheduled course start date, of any changes to course length, curriculum, training methods, training manual or materials, instructors, examination, training certificate, training course administrator or contact person. The changes must be approved by the Program in order for the course to be acceptable for accreditation purposes.
- (4) Submit to the Program information and documentation for any course approved under Subparagraph (a)(1)-(3) of this Rule if requested by the Program.
- (5) Ensure that all instructors meet the requirements of Rule .0608 of this Section.
 - (6) Ensure that all training courses covered under this Rule meet the following requirements:
 - (A) Initial training courses shall have a minimum of four students, and all training courses a maximum of 40 students enrolled and participating;
 - (B) A day of training shall include at least six and one-half hours of direct instruction, including classroom, hands-on training or field trips;
 - (C) Regular employment and instruction time shall not exceed 12 hours in a 24 hour period;
 - (D) A training course shall be completed within a two-week period;
 - (E) All instructors and students shall be fluent in the language in which the course is being taught;
 - (F) An interpreter shall not be used;
 - (G) Upgrading worker accreditation to that of supervisor by completing only one day of initial training is not permitted. Separate initial training as a supervisor is required;
 - (H) A single instructor is allowed only for a worker course. Other initial disciplines shall have a minimum of two instructors;
 - (I) Instructor ratio for hands-on shall be no more than 10 students per instructor;
 - (J) All course materials shall be in the language in which the course is being taught;
 - (K) Each training course shall be discipline specific; and
 - (L) Students shall be allowed to take an examination no more than twice for each course. After two failures, the student shall retake the full course before being allowed to retest.
 - (7) Verify, by photo identification, the identity of any student requesting training.
- (h) (e) Training course providers shall permit Program representatives to attend, evaluate and monitor any training course, take the course examination and have access to records of training courses without charge or hindrance to the Program for the purpose of evaluating compliance

with 40 CFR Part 763, Subpart E, Appendix C and these Rules. The Program shall perform periodic and unannounced on-site audits of training courses.

(i) (f) In accordance with G.S. 130A-23, the Program may suspend or revoke approval for a training course for violation of this Rule and shall suspend or revoke approval upon suspension or revocation of approval by the Environmental Protection Agency or by any state with an Environmental Protection Agency-approved accreditation program.

Statutory Authority G.S. 130A-5(3); 130A-447; P.L. 99-519.

0604 ASBESTOS MANAGEMENT PLANS

(a) All Local Education Agencies as defined in 40 CFR Part 763, Subpart E shall submit Asbestos Management Plans for school buildings to the Program on forms provided by the Program. Asbestos Management Plans shall meet the requirements contained in 40 CFR Part 763, Subpart E.

(b) In addition to the requirements in Paragraph (a) of this Rule, the management plan shall identify, locate, classify, quantify, and assess asbestos containing building materials, comply with the following:

- (1) ~~All Asbestos Containing Building Materials shall be identified, located, classified and assessed; and~~
- (2) ~~The Local Education Agency shall notify the Program of asbestos removal projects within ten working days after the removal area has been cleared for occupancy.~~

(c) All Local Education Agencies shall submit to the Program, within 120 days of the actual on-site reinspection, the Asbestos Hazard Emergency Response Act reinspection reports as required under 40 CFR Part 763, Subpart E. These reports shall be submitted on forms provided by the Program.

(d) All inspectors and management planners developing management plans and reinspection reports under the Asbestos Hazard Emergency Response Act shall comply with all requirements of 40 CFR Part 763, Subpart E and these Rules.

Statutory Authority G.S. 130A-5(3); 130A-445; P.L. 99-519.

0605 ASBESTOS CONTAINING MATERIALS REMOVAL PERMITS

(a) No person shall remove more than 35 cubic feet (1 cubic meter), 160 square feet (15 square meters) or 260 linear feet (80 linear meters) of regulated asbestos containing material friable asbestos containing material, or nonfriable asbestos containing material that may become friable during handling, without a permit issued by the Program.

This permitting requirement is applicable to:

- (1) individual removals that exceed the threshold amounts addressed in this Paragraph;
- (2) nonscheduled asbestos removals conducted at an installation that exceed the threshold amounts addressed in this Paragraph in a calendar year of January 1 through December 31.

Other asbestos abatement activities are exempt from the permit requirements of G.S. 130A-449.

(b) All applications shall be made on a form provided or approved by the Program. The application submittal shall include at least all of the information specified under the notification requirements of 40 CFR Part 61.145(b), Subpart M. Applications for asbestos containing material removal permits shall adhere to the following schedule. ~~be submitted to and received by the Program at least ten working days prior to the scheduled removal date. However, for asbestos removal determined by the Program to require immediate action, the ten day notice shall not be required.~~

- (1) Applications for individual asbestos removals shall be postmarked or received by the Program at least 10 working days prior to the scheduled removal start date. For emergency renovation operations involving asbestos removal, the 10 working days notice shall be waived. An application for a permit for the emergency renovation operation shall be postmarked or received by the Program as early as possible before, but not later than, the following working day. Permit applications for emergency renovation operations shall be accompanied by a letter from the owner or his representative explaining the cause of the emergency;
- (2) Applications for nonscheduled asbestos removals shall be postmarked or received by the Program at least 10 working days before the start of the calendar year and shall expire on or before the last day of the same calendar

year. Reports of the amount of regulated asbestos containing material removed will be made at least quarterly to the Program.

The application shall be made on a form provided by the Program.

(c) Application for revision to an issued asbestos removal permit shall be made by the applicant in writing on a form provided by the Program and shall be received by the Program in accordance with the following:

- (1) Revision to a start date for a project that will begin after the start date stated in the approved permit shall be received on or before the previously stated start date or previously revised start date;
- (2) Revision to a start date for a project that will begin before the start date stated in the approved permit shall be received at least 10 working days before the new start date;
- (3) Revision to a completion date that will be extended beyond the completion date stated in the approved permit shall be received by the original or previously revised completion date;
- (4) Revision to a completion date that will be earlier than the completion date stated in the approved permit shall be received by the new completion date; and
- (5) Revisions to permits other than start or completion dates shall be received on or before the third working day after the completion date of the removal.

(e) Revisions for issued asbestos removal permits shall be as follows:

- (1) Revisions for renovations
 - (A) that will begin after the start date contained in the approved permit, shall be submitted to the Program by the original start date;
 - (B) that will begin on a date earlier than the start date contained in the approved permit, shall be submitted to the Program by written notice at least ten working days prior to the beginning of asbestos work.
- (2) Revisions to original completion date shall be submitted to the Program at least one working day prior to the revised completion date by written notice
- (3) Revisions other than start and completion dates shall be submitted to

the Program within three working days by written notice. In no event, shall removal covered by these Rules start on a date other than the date contained in the revised permit.

(d) Copies of the following shall be maintained on site during removal activities and be immediately available for review by the Program:

- (1) copy of the removal permit issued by the Program and all revisions;
- (2) applicable asbestos abatement design specifications and contract documents and
- (3) photo identification and accreditation information cards issued by the Program for all personnel performing removal activities.

(e) All permitted removal activities shall be conducted in accordance with the Toxic Substances Control Act, 15 USC 2601; 29 CFR Part 1910 and 1926; 40 CFR Parts 61 and 763, Subpart E, when applicable. Notwithstanding permit suspension or revocation for violation of these Rules or applicable federal regulations, a removal permit shall also be subject to suspension or revocation if the removal activities are in violation of Department of Labor Rules, 13 NCAC 7C .010 et seq., Department of Transportation Rules, 19A NCAC 1 .0101 et seq., or Solid Waste Management Rules, 15A NCAC 13 .0001 et seq. as determined by the agencies administering those Rules, respectively. Environmental Protection Agency's Guidance for controlling Asbestos-Containing Materials in Buildings 560/5-85-024 except paragraphs 6.4.1 Visual Inspection and 6.4.2 Air Testing; Environmental Protection Agency's A Guide to Respirator Protection for the Asbestos Abatement Industry 560 OPTS 86-001 except Part II C. Respirator Selection; Environmental Protection Agency's Measuring Airborne Asbestos Following An Abatement Action, 600/4-85-049; American National Standards Institute's Respirator Protection, Respirator Use, Physical Qualification for Personnel, Z88.6-1984; American National Standards Institute's Practices for Respirator Protection, Z88.2-1980; American National Standards Institute's Fundamentals Governing the Design and Operation of Local Exhaust Systems Z9.2-1979; 49 CFR Part 173; G.S. Chapters 9 and 130A, which are hereby adopted by reference in accordance with G.S. 150B-14 (e);

(f) All permitted removals shall be conducted under the direct supervision of an accredited supervisor. The supervisor shall be on-site at all

times when removal activities are being performed.

(g) An asbestos abatement design shall be prepared by an accredited abatement designer for each individually permitted removal conducted in public areas.

(f) (h) In accordance with G.S. 130A-23, the Program may suspend or revoke the permit for any violation of G.S. 130A, Article 19 or any of the rules of this Section. The Program may also revoke the permit upon a finding that its issuance was based upon incorrect or inadequate information that materially affected the decision to issue the permit.

Statutory Authority G.S. 130A-5(3); 130A-449; P.L. 99-519.

.0606 FEES

(a) The fee required by G.S. 130A-450 shall be submitted with an application for the asbestos containing material removal permit. ~~The amount of the fee is one percent of the contract price or twenty cents (\$0.20) per square or linear foot, whichever is greater. Fees for the removal of surfacing materials, ceiling tiles and floor tiles, when permitting, shall be one percent of the contract price or fifteen cents (\$0.15) per square foot, whichever is greater. Fees for asbestos removal for demolition purposes shall be a maximum of three hundred dollars (\$300.00). The fees shall be as follows:~~

- (1) Fees for the removal of floor tiles, when permitted, shall be one percent of the contract price or ten cents (\$0.10) per square foot, whichever is greater;
- (2) Fees for the removal of ceiling tiles shall be one percent of the contract price or ten cents (\$0.10) per square foot; whichever is greater;
- (3) Fees for the removal of surfacing material, thermal system insulation, cementitious asbestos containing materials and other asbestos containing materials shall be one percent of the contract price or twenty cents (\$0.20) per square or linear foot; whichever is greater;
- (4) Fees for demolition shall be a maximum of three hundred dollars (\$300.00). Demolition, for the purposes of this Rule only, means the act of razing a building or structure, or portion thereof, to the ground. Removal of regulated asbestos containing material from any

undemolished portion of a building or structure shall be permitted as an individual asbestos removal; and

- (5) An owner of any single family dwelling in which the owner resides or will reside after the asbestos removal is complete is exempt from permit fees.

A permit shall not be issued until the required fee is paid. ~~However, when the program has determined that immediate action is necessary, the fee shall not be required to be submitted with the application, but shall be submitted to and received by the Program within five working days of issuance of the permit.~~

(b) The fee required by G.S. 130A-448 shall be submitted with an application for accreditation or reaccreditation. The amount of the fee shall be one hundred dollars (\$100.00) for each category, except that the fee for persons applying for accreditation or reaccreditation as workers shall be twenty-five dollars (\$25.00). However, if a person applies for accreditation or reaccreditation in more than one category per calendar year, the amount of the fee shall be one hundred dollars (\$100.00) for accreditation or reaccreditation in the first category and seventy-five (\$75.00) for accreditation or reaccreditation in each remaining category, except for workers. A person shall not be accredited or reaccredited until the required fee is paid.

Statutory Authority G.S. 130A-5(3); 130A-448; 130A-450; P.L. 99-519.

.0607 ASBESTOS EXPOSURE STANDARD FOR PUBLIC AREAS

(a) The maximum allowable ambient asbestos level in the air for public areas shall be:

- (1) 0.01 fibers per cubic centimeter as analyzed by phase contrast microscopy, or
- (2) arithmetic mean of less than or equal to 70 structures per millimeter square as analyzed by transmission electron microscopy, or
- (3) a Z-Test result that is less than or equal to 1.65 as analyzed by transmission electron microscopy.

(b) ~~Ambient air sampling shall be conducted in public areas outside the work area where permitted asbestos removal activities are being performed. For permitted individual asbestos removals, ambient air sampling shall be conducted in public areas adjacent or connected to the asbestos removal area. The frequency and location of the~~

sampling shall monitor potential public asbestos exposure and must be specified in the abatement project monitoring plan. Initial sampling shall be conducted on the day that regulated asbestos containing material removal begins. The sampling shall continue on a daily basis unless, or until, the monitoring plan specifies differently.

(c) Clearance air sampling shall be conducted in accordance with Paragraphs (d) and (e) of this Rule for all permitted asbestos removal projects conducted in public areas. ~~Clearance levels for all public areas shall meet the requirements of Paragraph (a) of this Rule.~~ air samples shall be analyzed by:

- (1) transmission electron microscopy and comply with the levels specified under Subparagraph (a)(2) or (a)(3) of this Rule for individually permitted removals that are more than 35 cubic feet, 160 square feet or 260 linear feet of regulated asbestos containing material; or
- (2) transmission electron microscopy or phase contrast microscopy and comply with the levels specified in Paragraph (a) for all other nonscheduled asbestos removals.

(d) Phase contrast microscopy and ~~or~~ transmission electron microscopy sampling and analysis methods shall be conducted in accordance with 40 CFR Part 763, Subpart E.

(e) Sample analysis for phase contrast microscopy or transmission electron microscopy samples shall be performed by a laboratory meeting the requirements of P.L. 99-519 and 40 CFR 763 and accompanying appendices. Laboratories performing phase contrast microscopy analysis pursuant to this Rule shall have a rating of proficient by the American Industrial Hygiene Association's Proficiency Analytical Testing Program. Persons performing phase contrast microscopy analysis shall have successfully completed a NIOSH 582 or a NIOSH 582 equivalent training course. Persons performing phase contrast microscopy analysis at the asbestos removal location shall be proficient in the American Industrial Hygiene Association's Asbestos Analysts Registry Program.

(f) A final visual inspection shall be conducted by an accredited air monitor for all permitted asbestos removal projects conducted in public areas. This visual inspection shall be conducted prior to clearance air sampling. The final visual inspection shall assure that all asbestos containing residue, dust, and debris and asbestos

contaminated equipment has been removed.

(g) Any person performing ambient or clearance air sampling or visual inspection during an asbestos removal as specified under Paragraphs (b), (c), and (f) of this Rule shall be retained by the building owner. The accredited air monitor shall not be employed by the contractor hired to conduct the asbestos removal except that:

- (1) this restriction in no way applies to personal samples taken to evaluate worker exposure as required by Occupational Safety and Health Administration; and
- (2) this restriction shall not apply when the contractor and air monitor have disclosed their association to the building owner and the building owner approves this association in writing.

(h) For air sampling and visual inspections conducted under Paragraphs (b), (c), and (f) of this Rule, the supervising air monitor shall:

- (1) Prepare, prior to the removal start date, an abatement project monitoring plan which takes into consideration at least the abatement project scope of work, building use, occupant locations and their potential for exposure to airborne asbestos fibers, type of asbestos containing material, and the asbestos abatement design, including work practices and engineering controls. The plan shall include air sampling procedures, air sample locations and air sampling frequency. This sampling plan may be amended by the supervising air monitor as needed;
- (2) Ensure that ambient air sampling results shall be available on-site within 48 hours of completion of sample collection;
- (3) Personally inspect any individually permitted asbestos removal project:
 - (A) that exceeds 10 working days in length, but does not exceed 30 working days, at least once; or
 - (B) that exceeds 30 working days in length, at least once in the first 30 working days and at least once every 30 working days thereafter;
- (4) Prepare a written, signed and dated report documenting all site visits made to the removal, final visual inspection, and all ambient and clearance air sampling conducted. This report shall be supplied by the supervising air

monitor to the building owner. The building owner shall supply a copy of the report to the Program upon request.

Statutory Authority G.S. 130A-5(3); 130A-446; P.L. 99-519.

.0608 TRAINING COURSE INSTRUCTOR QUALIFICATIONS

(a) Any person seeking approval as an instructor for courses covered under 40 CFR Part 763, Subpart E, Appendix C and Rule .0603(a)(3) of this Section shall meet the applicable requirements listed in this Rule.

(b) All training course providers shall submit, or cause to be submitted, to the Program the following:

- (1) a completed application on a form provided by the Program with the following information:
 - (A) name, address, and telephone number of the applicant;
 - (B) name, address and telephone number of the training provider that is employing the applicant;
- (2) when training course completion is a requirement, confirmation of completion of an approved training course; the confirmation shall be in the form of a copy of a certificate of completion of the approved training course or the following information: the course title, dates of instruction, names of instructors, name, address and telephone number of the training provider;
- (3) when education is a requirement, a copy of the diploma or other written documentation;
- (4) when work experience is a requirement, documentation of relevant work history, including employer name, address and telephone number, positions held, dates when positions were held, and copies of any licenses, registrations, certifications or accreditations that are relevant to the subject matter to be taught; and
- (5) when experience as an instructor is a requirement, documentation of relevant instructional experience including name of training courses taught, topics taught for each course, inclusive dates of each training course, and name, address and telephone number of each training organization for which experience is

claimed.

(c) Work practice topics for each shall include:

- (1) for the worker course: state-of-the-art work practices;
 - (2) for the supervisor course: state-of-the-art work practices, and techniques for asbestos abatement activities;
 - (3) for the inspector course: pre-inspection planning and review of previous inspection records, inspecting for friable and nonfriable asbestos containing materials and assessing the condition of friable asbestos containing materials, bulk sampling/documentation of asbestos in schools, recordkeeping and writing inspection reports;
 - (4) for the management planner course: evaluation/interpretation of survey results, hazard assessment, developing an operations and maintenance plan, recordkeeping for the management planner, and assembling and submitting the management plan;
 - (5) for the abatement designer course: safety system design specifications, designing abatement solutions, budgeting/cost estimation, writing abatement specifications, preparing abatement drawings and occupied buildings; and
 - (6) for the project monitor course: asbestos abatement contracts, specifications and drawings, response actions and abatement practices, air monitoring strategies, conducting visual inspections, and recordkeeping and report writing.
- (d) Instructors for work practice topics, hands-on exercises, workshops, or field trips where required for courses covered under 40 CFR Part 763, Subpart E, Appendix C shall meet the following requirements as applicable:
- (1) For the worker initial and refresher and the supervisor initial and refresher courses:
 - (A) the applicant shall have successfully completed the initial and subsequent refresher training course requirements for supervisor; and
 - (B) the applicant shall meet at least one of the following education and asbestos work experience combinations:
 - (i) If the applicant does not possess either a high school diploma or

- equivalent, the applicant shall:
- (I) have at least 1440 hours experience in a worker or supervisory capacity in a contained work area; and
 - (II) have at least 360 hours as an instructor in an Environmental Protection Agency-approved or Environmental Protection Agency state approved worker course.
- (ii) If the applicant possesses either a high school diploma or equivalent, the applicant shall:
- (I) have at least 960 hours experience in a worker, supervisory, or consulting capacity in a contained work area; or
 - (II) have at least 240 hours as an instructor in an Environmental Protection Agency-approved or Environmental Protection Agency state approved asbestos worker or supervisor course or other occupational safety and health or environmental courses required to meet federal and state regulations.
- (iii) If the applicant possesses at least an associate degree from a regionally accredited college or university, the applicant shall:
- (I) have at least 480 hours experience in a worker, supervisory, or consulting capacity in a contained area; or
 - (II) have at least 120 hours as an instructor in an Environmental Protection Agency-approved or Environmental Protection Agency state approved asbestos worker or supervisor course or other occupational safety and health or environmental courses required to meet federal and state regulations.
- (2) For the inspector initial and refresher courses:
- (A) the applicant shall have successfully completed the initial and subsequent refresher training course requirements
- for inspector; and
- (B) the applicant shall meet at least one of the following education and asbestos work experience combinations:
- (i) If the applicant possesses either a high school diploma or equivalent, the applicant shall:
 - (I) have documented experience, including asbestos inspections in at least 1,000,000 square feet of building space in the past three years; or
 - (II) have at least 60 hours as an instructor in an Environmental Protection Agency-approved or Environmental Protection Agency state approved inspector course or other occupational safety and health or environmental courses required to meet federal and state regulations.
 - (ii) If the applicant possesses at least an associate degree from a regionally accredited college or university, the applicant shall:
 - (I) have documented experience, including asbestos inspections in at least 500,000 square feet of building space in the past three years; or
 - (II) have at least 40 hours as an instructor in an Environmental Protection Agency-approved or Environmental Protection Agency state approved inspector course or other occupational safety and health and environmental courses required to meet federal and state regulations.
- (3) For the management planner initial and refresher courses:
- (A) the applicant shall have successfully completed the initial and subsequent refresher training course requirements for management planner; and
 - (B) the applicant shall meet at least one of the following education and asbestos work experience combinations:
 - (i) If the applicant possesses either a high school diploma or equivalent, the applicant shall:
 - (I) have documented management planning experience showing at

- least 25 management plans or reinspection reports written in the past three years, or documented experience as the management consultant for at least 25 asbestos projects in the past three years, or a combination of management plans and projects managed; or
- (II) have at least 48 hours as an instructor in an Environmental Protection Agency-approved or Environmental Protection Agency state approved management planner course or other occupational safety and health or environmental courses required to meet federal and state regulations.
- (ii) If the applicant possesses at least an associate degree from a regionally accredited college or university, the applicant shall:
- (I) have documented management planning experience showing at least 12 management plans or reinspection reports written in the past three years, or documented experience as the management consultant for at least 12 asbestos projects in the past three years, or a combination of management plans and projects managed; or
- (II) have at least 32 hours as an instructor in an Environmental Protection Agency-approved or Environmental Protection Agency state approved management planner course or other occupational safety and health or environmental courses required to meet federal and state regulations.
- (4) For the project designer initial and refresher courses:
- (A) the applicant shall have successfully completed the initial and subsequent refresher training course requirements for abatement project designer; and
- (B) the applicant shall meet at least one of the following education and asbestos work experience combinations:
- (i) If the applicant possesses either a high school diploma or equivalent, the applicant shall:
- (I) have documented asbestos abatement project design experience including the design of at least 12 asbestos projects in the past three years; or
- (II) have at least 30 hours as an instructor in an Environmental Protection Agency-approved or Environmental Protection Agency state approved abatement project designer course or other occupational safety and health and environmental courses required to meet federal and state regulations.
- (ii) If the applicant possesses at least an associate degree from a regionally accredited college or university, the applicant shall:
- (I) have documented asbestos abatement project design experience, including the design of at least six asbestos projects in the past three years; or
- (II) have at least 20 hours as an instructor in an Environmental Protection Agency-approved or Environmental Protection Agency state approved abatement project designer course or other occupational safety and health and environmental courses required to meet federal and state regulations.
- (5) For the project monitor initial and refresher courses:
- (A) the applicant shall meet the qualifications for project designer instructor under Subparagraph (d)(4) of this Rule or the qualifications for supervisor instructor under Subparagraph (d)(1) of this Rule to teach the work practice topics of asbestos abatement contracts, specifications and drawings or response action and abatement practices;
- (B) the applicant for work practice topics of air monitoring strategies, conducting visual inspections, and record-keeping and report writing shall:
- (i) possess either a high school diploma or equivalent;

(ii) successfully complete a NIOSH 582 course or Program approved equivalent, or a Program approved project monitor course; and

(iii) have documented asbestos air monitoring experience on at least six asbestos removals.

(6) All instructors approved under Paragraph (d) of this Rule shall take a refresher training in at least one discipline from a training provider other than their employer every other year.

(e) Instructors who will teach segments of training courses covered under 40 CFR Part 763, Subpart E, Appendix C other than work practice topics, hands-on exercises, workshops, or field trips shall meet the following requirements:

(1) be actively working in the field of expertise in which training is conducted; and

(2) have a minimum of a high school diploma or equivalent.

(f) Instructors for a Program approved NIOSH 582 or Program approved equivalent shall meet the following requirements:

(1) have a high school diploma or equivalent;

(2) attend the National Institute for Occupational Safety and Health's NIOSH 582 training course; and

(3) for teaching the NIOSH 7400 Method, have at least three months work experience as a microscopist performing analysis using the NIOSH 7400 Method.

Statutory Authority G.S. 130A-447; P.L. 99-519.

Notice is hereby given in accordance with G.S. 150B-21.2 that EHNHR - Commission for Health Services intends to amend rules cited as 15A NCAC 20D .0234, .0243.

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

The public hearing will be conducted at 1:30 p.m. on July 21, 1994 at the Archdale Building, Ground Floor Hearing Room, 512 N. Salisbury Street, Raleigh, N.C.

Reason for Proposed Action: To improve the certification criteria for laboratories analyzing public water supplies for compliance with the Safe Drinking Water Act.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to Grady L. Balentine, Department of Justice, PO Box 629, Raleigh, NC 27602-0629. All written comments must be received by August 1, 1994. Persons who wish to speak at the hearing should contact Mr. Balentine at (919) 733-4618. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or proposed changes from staff pursuant to comments made during the public hearing process.

IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.2(f).

CHAPTER 20 - LABORATORY SERVICES

SUBCHAPTER 20D - CERTIFICATION AND IMPROVEMENT

SECTION .0200 - LABORATORY CERTIFICATION

.0234 CRITERIA AND PROCEDURES: DECERTIFICATION/DENIAL/ DOWNGRADING

(a) The Department of Environment, Health, and Natural Resources or its delegate may

downgrade or deny laboratory certification if the laboratory:

- (1) Failed to train or supervise employees in laboratory methodologies required by 15A NCAC 18C .1500;
- (2) Failed to report analytical results of performance evaluation samples or compliance samples or maintain records as required by this Section and the Rules Governing Public Water Supplies in 15A NCAC 18C .1500;
- (3) Failed to maintain facilities and equipment in accordance with the minimum requirements of this Section;
- (4) Failed to notify the certification evaluator of major changes such as personnel, equipment, or laboratory location; ~~or~~
- (5) Violated or aided and abetted in the violation of any provisions of the rules of this Section; ~~;~~ or
- (6) Failed to correctly analyze on-site evaluation performance samples during the initial on-site evaluation.

(b) A downgraded laboratory with provisional certification may continue to perform analyses. The provisional status shall continue for at least six months. At the end of six months the laboratory certification shall be reinstated if the laboratory has made corrections and is in compliance with the minimum requirements for certification. If no corrections have been made the laboratory certification may be revoked.

(c) The Department of Environment, Health, and Natural Resources or its delegate may decertify or deny laboratory certification when a laboratory or its employees have done any of the following:

- (1) Knowingly made false statements on any documents associated with certification;
- (2) Falsified results of analyses;
- (3) Submitted performance evaluation samples used for certification determination to another laboratory for analysis;
- (4) Failed to employ approved laboratory methodology in the performance of the analyses required by 15A NCAC 18C .1500;
- (5) Failed to correctly analyze performance evaluation samples including United States EPA water study, double blind, blind, and on-site samples or report the results within the specified time in

accordance with the requirements of 15A NCAC 20D .0243 and .0251;

- (6) Failed to report analytical results of performance evaluation samples or compliance samples or maintain records as required by this Section and the Rules Governing Public Water Supplies in 15A NCAC 18C;
- (7) Failed to satisfy the certification evaluator that the laboratory has corrected deviations identified during the on-site visit within 30 days; or
- (8) Violated or aided and abetted in the violation of any provisions of the rules of this Section.

(d) The Department of Environment, Health, and Natural Resources or its delegate shall notify a laboratory of its intent to decertify, downgrade to provisional status or deny certification. The notice shall be in writing and include reasons for the decision and shall be delivered by certified mail.

(e) This Rule shall not preclude informal conferences concerning a decision to decertify, downgrade to provisional status or deny certification.

(f) If a laboratory is denied initial certification for failure to satisfy this Rule, another evaluation shall be scheduled no less than 60 days after the initial on-site evaluation. If the laboratory is denied certification during the second on-site evaluation, the laboratory shall satisfy the initial certification criteria as stated in Rule .0232 of this Section before another evaluation is scheduled.

(g) The Department of Environment, Health, and Natural Resources or its delegate may decertify or deny laboratory certification if the laboratory has been decertified by another certifying agency for committing any of the items contained in Subparagraphs (c)(1)-(3) of this Rule.

Statutory Authority G.S. 130A-315.

.0243 CHEMISTRY QUALITY ASSURANCE

(a) The following general requirements for chemistry quality assurance (QA) shall be met:

- (1) All quality control information shall be available for inspection by the certification officer;
- (2) A manual of analytical methods and the laboratory's QA plan shall be available to the analysts;
- (3) Class S weights or higher quality weights shall be available to make periodic checks on the accuracy of the

balances. Checks shall be within range of the manufacturer's guidelines. A record of these checks shall be available for inspection. The specific checks and their frequency are to be as prescribed in the laboratory's QA plan or the laboratory's operations manual. These checks shall be performed at least once a month;

- (4) Color standards or their equivalent, such as built-in internal standards, shall be available to verify wavelength settings on spectrophotometers. These checks shall be within the manufacturer's tolerance limits. A record of the checks shall be available for inspection. The specific checks and their frequency shall be as prescribed in the laboratory's QA plan or the laboratory's operations manual. These checks shall be performed at least every six months.

(b) The laboratory shall analyze performance samples as follows:

- (1) United States Environmental Protection Agency performance evaluation samples shall be analyzed semi-annually. Results shall be within control limits established by EPA for each analyte for which the laboratory is or wishes to be certified.
- (2) Double blind and blind samples shall be analyzed when submitted to a certified laboratory and results shall be within established control limits; these data shall be of equal weight to the EPA performance evaluation sample data and on site quality control sample data in determining the laboratory's certification status.
- (3) On-site quality control samples shall be analyzed when presented to the laboratory by the certification evaluator and results shall be within established control limits. These data shall be of equal weight to the EPA performance evaluation sample data and the double blind sample data in determining the laboratory's certification status.
- (4) ~~A performance level of 75 percent shall be maintained for each analyte for which a laboratory is or wishes to be certified. This 75 percent average shall be calculated from the ten most recent performance sample data points from~~

~~the EPA water studies, double blind, blind, and on-site samples. In the event the laboratory does not have ten data points, the 75 percent average will be calculated on the existing data points, with a minimum of four data points needed before a determination is made.~~

A laboratory shall have correctly analyzed two out of the last three performance samples for each analyte for which it is certified. In the event that a laboratory is decertified for failing to correctly analyze two out of the last three performance samples, the laboratory shall correctly analyze two consecutive performance samples to have their certification reinstated. The performance samples shall be analyzed no less than 30 days apart. A laboratory with less than three performance samples shall have successfully analyzed a minimum of two performance samples before their certification status may be determined.

- (5) Unacceptable performance on any of the samples in Paragraph (b) of this Rule shall be corrected and explained in writing within 30 days and submitted to the certification evaluator.

(c) The minimum daily quality control (QC) for chemistry shall be as follows:

- (1) Inorganic Contaminants:
 - (A) At the beginning of each day that samples are to be analyzed, a standard curve composed of at least a reagent blank and three standards covering the sample concentration range shall be prepared.
 - (B) The laboratory shall analyze a QC sample (EPA QC sample or equivalent) at the beginning of the sample run, at the end of the sample run, and every 20 samples, with recoveries not to exceed ± 10 percent of the true concentration. The source of this QC sample shall be different from the source used for the calibration standards in Part (c)(1)(A) of this Rule.
 - (C) The laboratory shall run an additional standard or QC check at the laboratory's lowest detectable limit for the particular analyte. The laboratory shall not report a value lower than the lowest standard or QC

- check analyzed.
- (D) The laboratory shall add a known spike to a minimum of 10 percent of the routine samples (except when the method specifies a different percentage, i.e. furnace methods) to determine if the entire analytical system is in control. The spike concentration shall not be substantially less than the background concentration of the sample selected for spiking. The spike recoveries shall not exceed ± 10 percent of the true value.
 - (E) All compliance samples analyzed by graphite furnace shall be spiked to determine absence of matrix interferences with recoveries ± 10 percent of the true value of the spike concentration.
 - (F) The laboratory shall run a duplicate sample every 10 samples with duplicate values within ± 10 percent of each other.
 - (G) Precision and accuracy data may be computed from the analyses of check samples of known value used routinely in each analytical procedure. This data shall be available for inspection by the laboratory evaluator.
- (2) Organic Contaminants:
- (A) Quality control specified in the approved methods referenced in Rule .0241 of this Section shall be followed.
 - (B) Analysis for regulated volatile organic chemicals under 15A NCAC 18C .1515 shall only be conducted by laboratories that have received conditional approval by EPA or the Department according to 40 C.F.R. 141.24(g)(10) and (11) which is hereby incorporated by reference including any subsequent amendments and editions. A copy is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Laboratory Services, 306 North Wilmington Street, Raleigh, North Carolina. Copies of 40 CFR 141-143 may be obtained by contacting the EPA Drinking Water Hotline at 800-426-4791 at no charge.
 - (C) Analysis for unregulated volatile

organic chemicals under 15A NCAC 18C .1516 shall only be conducted by laboratories approved under Part (c)(2)(B) of this Rule. In addition to the requirements of Part (c)(2)(B) of this Rule, each laboratory analyzing for EDB and DBCP shall achieve a method detection limit for EDB and DBCP of 0.00002 mg/l, according to the procedures in Appendix B of 40 C.F.R. Part 136 which is hereby incorporated by reference including any subsequent amendments and editions. A copy may be obtained at no charge by contacting the Department of Environment, Health, and Natural Resources, Division of Laboratory Services, 306 North Wilmington Street, Raleigh, North Carolina.

Statutory Authority G.S. 130A-315.

TITLE 18 - SECRETARY OF STATE

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of the Secretary of State, Securities Division intends to adopt rule cited as 18 NCAC 6 .1510.

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

The public hearing will be conducted at 10:00 a.m. on July 18, 1994 at the Securities Division Conference Room, Suite 100, 300 N. Salisbury St., Raleigh, N.C. 27603.

Reason for Proposed Action: To clarify status of interests in limited liability companies as "securities" within the meaning of the N.C. Securities Act.

Comment Procedures: Interested persons may present statements either orally or in writing at the public hearing, or in writing prior to the hearing by mail addressed to Mr. Gene Cella, Administrator, Securities Division, N.C. Dept. of the Secretary of State, 300 N. Salisbury St., Raleigh, N.C. 27603. For copies of any information related to the hearing, call (919) 733-3924 or write to the aforementioned address. The comment period will end on August 1, 1994.

Editor's Note: This Rule was filed as a temporary rule effective May 31, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

CHAPTER 6 - SECURITIES DIVISION

SECTION .1500 - MISCELLANEOUS PROVISIONS

.1510 LIMITED LIABILITY COMPANY MEMBERSHIP INTERESTS AS SECURITIES

(a) Membership interests, as defined in G.S. 57C-1-03(15), in a limited liability company shall be presumed to be securities within the meaning of G.S. 78A-2(11) in either of the following circumstances:

- (1) where the articles of organization of the limited liability company provide that all members of the limited liability company are not necessarily managers by virtue of their status as members; or
- (2) where all members by virtue of their status as members are managers of the limited liability company and the number of members is greater than 15.

(b) Among the factors that will be considered by the Securities Division as evidence offered to rebut or support the presumption in Paragraph (a) of this Rule are:

- (1) whether investors retain, under the limited liability company's operating agreement, the right to exercise practical and actual control over the managerial decisions of the enterprise;
- (2) whether the number of members of the limited liability company is so great as to render the managerial powers afforded them by the operating agreement insignificant and meaningless;
- (3) whether the promoter has some particular or special skill which is necessary for the successful operation and management of the limited liability company and, without which, the enterprise will likely be unsuccessful; and
- (4) whether special circumstances render meaningless the managerial powers given by the operating agreement to the members.

Statutory Authority G.S. 78A-2(11); 78A-49(a).

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to amend rule cited as 25 NCAC 1D .2513.

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

The public hearing will be conducted at 9:00 a.m. on August 11, 1994 at the State Personnel Commission Meeting, Auditorium, Institute of Government, Hwy. 54, 333 Knapp Building, Chapel Hill, NC.

Reason for Proposed Action: To prevent employee disqualification from eligibility for performance-based pay increases due to supervisor failure to assign a summary performance rating.

Comment Procedures: Interested persons may present statements either orally or in writing at the Public Hearing or in writing prior to the hearing by mail addressed to: Patsy Smith Morgan, Office of State Personnel, 116 West Jones Street, Raleigh, N.C. 27603.

Editor's Note: This Rule was filed as a temporary rule effective July 1, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

CHAPTER 1 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 1D - COMPENSATION

SECTION .2500 - COMPREHENSIVE COMPENSATION SYSTEM

.2513 BASES FOR AWARDED INCREASES

(a) Each agency shall have an operative Performance Management System which has been approved by the Office of State Personnel using the North Carolina Performance Rating Scale. The complete requirements for an operative performance management system are defined in 25 NCAC 10 - Performance Management System.

(b) Eligibility for increases will be based on the most recent work cycle completed and overall

summary rating received during the previous 12-month period.

(c) The performance management system of each agency shall ensure that salary increases are distributed fairly, consistent with internal equity and with the Performance Management System. The State Personnel Director shall rescind any career growth recognition award or performance bonus that does not meet the intent of the provisions of the performance management rules and require the originating agency to reconsider or justify the increase. An increase or bonus does not meet the intent of the provisions of the performance management rules in the event that increases or bonuses are distributed:

- (1) in an arbitrary or capricious manner;
- (2) in a manner that violates laws prohibiting discrimination; or
- (3) to managers or supervisors whose failure to comply with the performance management rules resulted in the loss of an increase or a bonus by employees under their supervision.

(d) No agency shall set limits so as to preclude an eligible employee from receiving a career growth recognition award, cost-of-living adjustment, or performance bonus; or to initiate written disciplinary procedures for the purpose of precluding an eligible employee from receiving a cost-of-living adjustment.

(e) In any rating cycle in which an employee subject to G.S. 126-7 who was employed on or before September 1, 1993 does not receive an overall summary rating in accordance with the performance management system (25 NCAC 10 .0300), the State Personnel Director shall assign such employee a rating at level three of the North Carolina Performance Rating Scale to establish the employee's eligibility for performance-based pay increases. If the employee disagrees with the level three rating, he/she may seek review of the performance rating through the agency's Internal Performance Pay Dispute Resolution Procedure.

Statutory Authority G.S. 126-4; 126-7.

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

AGRICULTURE

Markets

2 NCAC 43L .0113 - Gate Fees	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
2 NCAC 43L .0304 - Horse Facility	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
2 NCAC 43L .0320 - Dress of Lessees	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
2 NCAC 43L .0322 - Display or Sale of Weapons	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
2 NCAC 43L .0331 - Premiums and Awards	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
2 NCAC 48A .1702 - Noxious Weeds	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94

COMMERCE

Community Assistance

4 NCAC 19L .0502 - Eligibility Requirements	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
4 NCAC 19L .0901 - Grant Agreement	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
4 NCAC 19L .1302 - Eligibility Requirements	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94

Energy

4 NCAC 12C .0007- Institutional Conservation Program	RRC Objection	06/16/94
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ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Coastal Management

15A NCAC 7H .1104 - General Conditions	RRC Objection	05/19/94
Agency Revised Rule	RRC Objection	05/19/94
Agency Filed Rule for Codification Over RRC Objection	Eff.	07/01/94
15A NCAC 7H .1204 - General Conditions	RRC Objection	05/19/94
Agency Revised Rule	RRC Objection	05/19/94
Agency Filed Rule for Codification Over RRC Objection	Eff.	07/01/94
15A NCAC 7H .1304 - General Conditions	RRC Objection	05/19/94
Agency Revised Rule	RRC Objection	05/19/94
Agency Filed Rule for Codification Over RRC Objection	Eff.	07/01/94
15A NCAC 7H .1404 - General Conditions	RRC Objection	05/19/94
Agency Revised Rule	RRC Objection	05/19/94
Agency Filed Rule for Codification Over RRC Objection	Eff.	07/01/94
15A NCAC 7H .1504 - General Conditions	RRC Objection	05/19/94

RRC OBJECTIONS

Agency Revised Rule	RRC Objection	05/19/94
Agency Filed Rule for Codification Over RRC Objection	Eff.	07/01/94
15A NCAC 7H .1604 - General Conditions	RRC Objection	05/19/94
Agency Revised Rule	RRC Objection	05/19/94
Agency Filed Rule for Codification Over RRC Objection	Eff.	07/01/94
15A NCAC 7H .1704 - General Conditions	RRC Objection	05/19/94
Agency Revised Rule	RRC Objection	05/19/94
Agency Filed Rule for Codification Over RRC Objection	Eff.	07/01/94
15A NCAC 7H .1804 - General Conditions	RRC Objection	05/19/94
Agency Revised Rule	RRC Objection	05/19/94
Agency Filed Rule for Codification Over RRC Objection	Eff.	07/01/94
15A NCAC 7H .1904 - General Conditions	RRC Objection	05/19/94
Agency Revised Rule	RRC Objection	05/19/94
Agency Filed Rule for Codification Over RRC Objection	Eff.	07/01/94
15A NCAC 7H .2104 - General Conditions	RRC Objection	05/19/94
Agency Revised Rule	RRC Objection	05/19/94
Agency Filed Rule for Codification Over RRC Objection	Eff.	07/01/94

Departmental Rules

15A NCAC 1J .0701 - Public Necessity: Health: Safety and Welfare	RRC Objection	06/16/94
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HUMAN RESOURCES

Children's Services

10 NCAC 41F .0704 - Physical Facility	RRC Objection	04/21/94
Agency Revised Rule	Obj. Removed	04/21/94

Facility Services

10 NCAC 3L .0906 - Compliance with Laws		
Rule Withdrawn by Agency		04/21/94

INSURANCE

Agent Services Division

11 NCAC 6A .0802 - Licensee Requirements		
Rule Withdrawn by Agency		05/19/94

JUSTICE

Departmental Rules

12 NCAC 1 .0212 - Grievance Procedure	RRC Objection	05/19/94
Agency Repealed Rule	Obj. Removed	05/19/94

LABOR

OSHA

13 NCAC 7A .0707 - Variances and Other Relief Under Section 95-132(a)	RRC Objection	04/21/94
Agency Revised Rule	Obj. Removed	04/21/94
13 NCAC 7A .0708 - Variances and Other Relief Under Section 95-132(b)	RRC Objection	04/21/94

<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/21/94</i>
<i>13 NCAC 7A .0709 - Modification: Revocation: and Renewal of Rules or Orders</i>	<i>RRC Objection</i>	<i>04/21/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/21/94</i>
<i>13 NCAC 7A .0710 - Action on Applications</i>	<i>RRC Objection</i>	<i>04/21/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/21/94</i>
<i>13 NCAC 7A .0711 - Request for Hearings on Applications</i>	<i>RRC Objection</i>	<i>04/21/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/21/94</i>

LICENSING BOARDS AND COMMISSIONS

Chiropractic Examiners

<i>21 NCAC 10 .0303 - Solicitation of Auto Accident Victims</i>		
<i>Agency Withdrew Rule</i>		<i>05/19/94</i>

Cosmetic Art Examiners

<i>21 NCAC 14H .0008 - Floor Coverings</i>	<i>RRC Objection</i>	<i>05/19/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>05/19/94</i>
<i>21 NCAC 14H .0011 - Cleanliness of Operators</i>	<i>RRC Objection</i>	<i>05/19/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>05/19/94</i>
<i>21 NCAC 14H .0018 - Systems of Grading Beauty Establishments</i>	<i>RRC Objection</i>	<i>05/19/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>05/19/94</i>

Dental Examiners

<i>21 NCAC 16I .0003 - License Void Upon Failure to Renew</i>	<i>RRC Objection</i>	<i>04/21/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/21/94</i>
<i>21 NCAC 16R .0002 - Approved Courses and Sponsors</i>	<i>RRC Objection</i>	<i>04/21/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/21/94</i>

General Contractors

<i>21 NCAC 12 .0205 - Filing Deadline/APP Seeking Qual/Emp/Another</i>	<i>RRC Objection</i>	<i>05/19/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>05/19/94</i>

Medical Examiners

<i>21 NCAC 32P .0001 - Name of Limited Liability Company</i>	<i>RRC Objection</i>	<i>05/19/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>05/19/94</i>
<i>21 NCAC 32O .0001 - Definitions</i>	<i>RRC Objection</i>	<i>05/19/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>05/19/94</i>
<i>21 NCAC 32O .0002 - Qualifications for License</i>	<i>RRC Objection</i>	<i>05/19/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>05/19/94</i>
<i>21 NCAC 32O .0003 - Temporary License</i>	<i>RRC Objection</i>	<i>05/19/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>05/19/94</i>
<i>21 NCAC 32O .0005 - Annual Registration</i>	<i>RRC Objection</i>	<i>05/19/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>05/19/94</i>
<i>21 NCAC 32O .0007 - Exemption from License</i>	<i>RRC Objection</i>	<i>05/19/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>05/19/94</i>
<i>21 NCAC 32O .0015 - Assumption of Professional Liability</i>	<i>RRC Objection</i>	<i>05/19/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>05/19/94</i>
<i>21 NCAC 32O .0017 - Disciplinary Authority</i>	<i>RRC Objection</i>	<i>05/19/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>05/19/94</i>
<i>21 NCAC 32O .0021 - Fees</i>	<i>RRC Objection</i>	<i>05/19/94</i>

RRC OBJECTIONS

Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 32Q .0101 - Definitions	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 32Q .0208 - Confidentiality		
Rule Withdrawn by Agency		05/19/94

Real Estate Commission

21 NCAC 58A .1711 - Continuing Education Required of Nonresident Licensees	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 58C .0104 - Scope: Duration and Renewal of Approval	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 58C .0105 - Withdrawal or Denial of Approval	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 58C .0218 - Licensing Exam Confidentiality: School Perform./Lic	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 58C .0309 - Certification of Course Completion	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 58E .0102 - Update Course Component	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 58E .0104 - Criteria for Approval of Update Course Sponsor	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 58E .0203 - Application and Criteria for Original Approval	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 58E .0206 - Request for Videotape	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 58E .0304 - Criteria for Elective Course Approval	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 58E .0306 - Elective Course Instructors	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 58E .0308 - Request for Videotape	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 58E .0402 - Sponsor Eligibility	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 58E .0406 - Course Rosters, Completion Certificated and Evaluations	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
21 NCAC 58E .0510 - Monitoring Attendance	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94

PUBLIC EDUCATION

Elementary and Secondary Education

6 NCAC 6C .0307 - Certificate Renewal	RRC Objection	04/21/94
Agency Revised Rule	RRC Objection	04/21/94
Agency Revised Rule	Obj. Removed	05/19/94
6 NCAC 6E .0202 - Interscholastic Athletics	RRC Objection	04/21/94
Agency Revised Rule	Obj. Removed	05/19/94

REVENUE

Sales and Use Tax

7 NCAC 7B .2608 - Plumbing: Heating: Air Cond/Elec Contractors: Purchases	RRC Objection	05/19/94
7 NCAC 7B .2609 - Plumbing: Heating: Air Cond/Elec Contractors: Sales	RRC Objection	05/19/94

17 NCAC 7B .5462 - White Goods Disposal Tax Report Form: E-500W
 17 NCAC 7B .5464 - Ice Certificate Form: E-599Y

RRC Objection 05/19/94
 RRC Objection 05/19/94

STATE PERSONNEL

Office of State Personnel

25 NCAC 1D .2401 - Career Growth Recognition Award		
Rule Withdrawn by Agency		05/19/94
25 NCAC 1D .2403 - Employees Eligible/Career Growth Recognition Award	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
25 NCAC 1D .2408 - Effective Date of Cost-of-Living Adjustment	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94
25 NCAC 1D .2411 - Employees Eligible For Performance Bonus	RRC Objection	05/19/94
Agency Revised Rule	Obj. Removed	05/19/94

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.

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ADMINISTRATION				
<i>North Carolina Council for Women</i>				
Family Violence Prevention Services v. N.C. Council for Women	94 DOA 0242	West	04/13/94	
ALCOHOLIC BEVERAGE CONTROL COMMISSION				
Alcoholic Beverage Control Comm. v. Entertainment Group, Inc.	93 ABC 0719	Gray	03/02/94	
Rayvon Stewart v. Alcoholic Beverage Control Commission	93 ABC 0793	Nesnow	04/11/94	
Alcoholic Beverage Control Comm. v. Branchland, Inc.	93 ABC 0892	Morgan	06/03/94	
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	
Alcoholic Beverage Control Comm. v. Branchland, Inc.	93 ABC 0993	Morgan	06/03/94	
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	
Christine George Williams v. Alcoholic Beverage Control Comm.	93 ABC 1057	Becton	04/21/94	
Alcoholic Beverage Control Comm. v. Raleigh Limits, Inc.	93 ABC 1485	Mann	03/11/94	
Alcoholic Beverage Control Comm. v. COLAP Enterprises, Inc.	94 ABC 0060	Nesnow	06/07/94	
Alcoholic Beverage Control Comm. v. Ms. Lucy Jarrell Powell	94 ABC 0070	Morgan	06/06/94	
Mr. & Mrs. Josh Bullock Jr. v. Alcoholic Beverage Control Comm.	94 ABC 0124	Morgan	06/06/94	
Jerome Crawford v. Alcoholic Beverage Control Commission	94 ABC 0125	Morgan	06/06/94	
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<i>Savings Institutions Division</i>				
James E. Byers, et al v. Savings Institutions	93 COM 1622	Chess	03/01/94	
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<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 T. Bond v. Victims Compensation Commission	93 CPS 1104	West	04/21/94	
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Virginia Roof v. Department of Crime Control & Public Safety	93 CPS 1347	Nesnow	03/24/94	
James C. Tilghman v. Crime Victims Compensation Commission	93 CPS 1608	Reilly	05/17/94	9:6 NCR 407
Rosemary Taylor v. Crime Victims Compensation Commission	93 CPS 1626	Nesnow	05/25/94	
Robert E. Kline v. Crime Victims Compensation Commission	93 CPS 1670	Morgan	06/13/94	
James Benton v. Crime Victims Compensation Commission	94 CPS 0034	Chess	06/14/94	
Debra Clark v. Crime Victims Compensation Commission	94 CPS 0127	Reilly	04/19/94	
Richard Spencer v. Crime Victims Compensation Commission	94 CPS 0157	Chess	06/14/94	
Barbara Henderson v. Crime Victims Compensation Commission	94 CPS 0259	Morrison	04/07/94	
Shirley Handsome v. Crime Victims Compensation Commission	94 CPS 0286	Gray	04/28/94	
Georgeann Young v. Crime Victims Compensation Commission	94 CPS 0292	Reilly	04/18/94	
Lawrence L. Tyson v. Crime Victims Compensation Commission	94 CPS 0368	Gray	04/26/94	
William L. Chapman v. Crime Victims Compensation Commission	94 CPS 0415	Chess	06/02/94	
Douglas and Virginia Wilson v. Crime Victims Compensation Comm.	94 CPS 0417	Reilly	06/07/94	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Michelle L. Wilcox v. Crime Victims Compensation Commission	94 CPS 0467	Reilly	06/07/94	
Michael G. Low v. Crime Victims Compensation Commission	94 CPS 0524	Morrison	06/13/94	
Mary E. Haskins v. Crime Victims Compensation Commission	94 CPS 1406	Gray	03/17/94	
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Ron D. Graham, Suzanne C. Graham v. Robert Cobb, Mecklenburg Cty	93 EHR 1017	Becton	05/31/94	
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Brook Hollow Estates v. Environment, Health, & Natural Resources	94 EHR 0093	West	06/03/94	
Sam's Club #8219 v. Mecklenburg County Health Department	94 EHR 0329	Nesnow	06/15/94	9:7 NCR 496
Eugene Crawford & Nancy P. Crawford v. Macon County Health Dept.	94 EHR 0500	Gray	06/10/94	
<i>Coastal Management</i>				
Roger Fuller v. EHNR, Divs. of Coastal Mgmt & Environmental Mgmt	89 EHR 1378 ²	Gray	04/07/94	
Roger Fuller v. EHNR, Divs. of Coastal Mgmt & Environmental Mgmt	90 EHR 0017 ²	Gray	04/07/94	
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Pasquotank-Perquimans-Camden-Chowan				
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<i>Solid Waste Management</i>				
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Bertie Citizens Action Coalition, Inc.; Willard J. Oliver, Reginald Early,	93 EHR 1045	Morrison	04/06/94	9:3 NCR 214
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Alice Cherry, and Kathy Burden v. EHNR, Solid Waste Management				
Division, and East Carolina Environmental, Inc., Addington Environmental,				
Inc., et al.				
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Betty Rhodes v. Department of Human Resources	94 DHR 0501	Morrison	06/02/94	
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Gloria C. Haith v. Department of Human Resources	93 DHR 1707	Nesnow	03/22/94	
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* Consolidated Cases.

CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
93 DST 1054**

**JAMES E. WALKER, INDIVIDUALLY AND
AS ADMINISTRATOR FOR THE ESTATE
OF SARAH S. WALKER,**
Petitioner,

v.

**THE BOARD OF TRUSTEES OF THE NORTH
CAROLINA LOCAL GOVERNMENT
EMPLOYEES' RETIREMENT SYSTEM,**
Respondent.

RECOMMENDED DECISION

This matter was heard before Brenda B. Becton, Administrative Law Judge, Office of Administrative Hearings, on February 2, 1994 in Charlotte, North Carolina.

APPEARANCES

For Petitioner: FERGUSON, STEIN, WALLAS, ADKINS, GRESHAM & SUMTER, P.A., Attorneys at Law, Charlotte, North Carolina; John W. Gresham appearing.

For Respondent: Alexander McC. Peters, Assistant Attorney General, N.C. Department of Justice, Raleigh, North Carolina.

ISSUE

Whether Sarah Walker's beneficiary is entitled to an award of the Death Benefit as provided in N.C.G.S. 128-27(1).

FINDINGS OF FACT

A. PROCEDURAL HISTORY

1. On July 12, 1993, James Walker, Petitioner (hereinafter "Petitioner") sought final agency review of the Retirement System's (hereinafter "Respondent") decision to deny to Petitioner the death benefit provided under N.C.G.S. 128-27(1).
2. On August 7, 1993, Petitioner, through counsel received notice of the agency's final decision, pursuant to Rule .0401 subchapter 2A, Title 20 of the North Carolina Administrative Code that again denied the Petitioner's appeal of the agency's earlier decision.
3. On October 4, 1993, Petitioner, through counsel filed a Petition for a Contested Case Hearing in the Office of Administrative Hearings, pursuant to N.C.G.S. 150B-23.
4. Upon Respondent's motion, the caption in the case was amended to replace the "Department of State Treasurer, Retirement Systems Division" with the "Board of Trustees of the North Carolina Local Government Employees' Retirement Systems."

5. A contested case hearing was held on February 2, 1994 before Judge Brenda Becton in accordance with N.C.G.S. 150B-23(b) and the Rules of Contested Case Hearings.

6. The parties requested copies of the hearing tapes and were ordered to file their proposed recommended decisions within 30 days of the mailing of the tapes.

B. BACKGROUND - SARAH WALKER'S EMPLOYMENT HISTORY

7. In December of 1977 Sarah Walker (hereinafter "Walker") was hired by Mecklenburg County (hereinafter "County") as a social worker. Thirteen years later, in May of 1990, she was diagnosed with terminal cancer. Shortly thereafter, on June 1, 1990, Walker was placed on Medical Leave with pay from the County. Within a year she was placed on Medical Leave Without Pay, effective March 12, 1991. (Plaintiff's Exhibit 1).

8. On May 17, 1991 Walker's husband, Petitioner James Walker (hereinafter "Petitioner"), received a letter from Stephen Barr, Benefits Administrator for Mecklenburg County Personnel Department (hereinafter "Barr"), summarizing benefits for Walker as a County Employee on Medical Leave and summarizing the benefits which would be available to her if she retired.

9. Barr's letter specifically indicated that Walker's Medical Leave status could continue for one year, after which, if she were unable to work, she would at that point be terminated from employment. (Plaintiff's Exhibit 2).

10. In addition, Barr indicated that life insurance benefits payable to Walker's beneficiary should she die within the one year Medical Leave period would include a \$20,000 Death Benefit through Retirement Systems if her death were to occur within 180 days from the last day salary was paid, where salary "would include pay for use of accrued benefit days." (Plaintiff's Exhibit 2 at 1).

11. Barr went on to indicate that retirement status would not adversely affect payment of the Death Benefit so long as Walker's death occurred within 180 days from the last day salary was paid: "[e]ven if Mrs. Walker retires, should she die within 180 days of the last day for which 'salary' was paid, the \$20,000 Death Benefit from the Retirement System would [still] be applicable." (Plaintiff's Exhibit 2 at 2). This information was consistent with the handbook, Your Retirement Benefits, published by the Department of State Treasurer, Retirement Systems Division.

12. Walker applied for disability retirement on June 17, 1991. Her application, Employer Certified by Barr, included the following information: the effective date of retirement - August 1, 1991; the "Last day of employment" - July 31, 1991; and the last date for which compensation would be paid - July 31, 1991. (Plaintiff's Exhibit 3).

13. Walker's Application for Disability Retirement was approved by the Medical Board on July 24, 1991, and on August 1, 1991, Walker officially retired from the County. (Plaintiff's Exhibit 4).**

14. Up until her retirement, Walker continued to receive compensation from the County for accrued benefits. Walker received statements of earnings for periods ending March 22, 1991 and May 31, 1991, both of which reflect an accrued benefit of .23 sick days. Retirement payments were also deducted from Walker's earnings during this period. In addition, on August 9 Walker received a check from the County reflecting a Longevity Payment totalling \$214.55 and an Accrued Benefit Payment of \$6.87 representing payment for .23 sick days accumulated through July 31, 1991. This was the last payment she received from the county. (Plaintiff's Exhibit 5).

** Sarah Walker's Application for Retirement, Respondent's Exhibit 1, contains handwritten changes to the "last date of employment" and the "last date compensation will be paid" sections. The Respondent acknowledged that these changes were made by clerical staff in the Respondent's office, but offered no evidence regarding a basis for the changes.

15. Petitioner was appointed Legal Guardian for his wife on October 8, 1991, and on October 18, 1991 she died. (Plaintiff's Exhibit 6).

C. PETITIONER'S REQUEST FOR AND RESPONDENT'S DENIAL OF DEATH BENEFIT

Petitioner's Request for Payment

16. On October 29, 1991 Robert Gourley, attorney for Petitioner (hereinafter "Gourley"), sent a letter to Mecklenburg county requesting payment of the \$20,000 Death Benefit for Walker's beneficiary, her husband James Walker (Petitioner).

17. On November 5, 1991, in response to Gourley's request for payment, Stephen Barr on behalf of the county stated that he had been advised that the \$20,000 Death Benefit is payable only if the employee died "within 180 days of the last day of work". (Plaintiff's Exhibit 7, second emphasis in original). Barr went on to define the last day of work as the last day the person was "actually on the job" which in Mrs. Walker's case was June 1, 1990. Based upon this revised interpretation, Barr concluded that Walker's death occurred outside of the 180 day period and thus the Death Benefit would not be payable. (Id.)

18. Barr's November 5, 1991 correspondence acknowledged that Walker had accrued .23 sick days as of the date she was placed on Medical Leave without Pay. (Id.)

19. Barr's November 5, 1991 letter directly contradicts his May 17, 1991 correspondence indicating that the 180 day period began from the last day for which salary (including accrued benefits) was paid, not the last day of work.

Respondent's Initial Asserted Grounds for Denial of Payment

20. Following a request on November 11, 1991 from Gourley for all relevant documents controlling the payment of the death benefit, Timothy Bryan, Chief of the Member Services Section of Retirement Systems Division (hereinafter "Bryan"), sent Gourley what he stated were the sections of North Carolina General Statutes addressing eligibility for the Death Benefit payment. (Plaintiff's Ex. 9). The specific provision enclosed was N.C.G.S.128-27(1) which states that the 180 day period begins from the last day of the employee's "actual service."

21. Pursuant to N.C.G.S. 128-27(1), subsections (2)(a) and (2)(b), the last day of actual service is determined in one of two ways, depending on whether the employment has been terminated. If terminated, the last day of actual service is the last day the member actually worked. (subsection (2)(a)). When employment has not been terminated, last day of actual service is considered to be "the date on which an absent member's sick and annual leave expires." (subsection (2)(b)).

22. Bryan's November 21, 1991 correspondence to Gourley did not make clear which of the provisions, subsection (2)(a) or (2)(b), was applied by the Respondent Retirement System to Sarah Walker's case and resulted in Respondent's denial of the Death Benefit. (Plaintiff's Exhibit 9).

23. In a subsequent letter, Bryan reiterated that the applicable provision of the North Carolina General Statutes is section 128-27(1). In what appears to be an attempt to clarify the 180 day calculation, Bryan stated that the effective date of Walker's Medical Leave Without Pay -- March 31, 1991 -- was the date from which the 180-day period began: "[e]ven if Mrs. Walker had remained on Leave Without Pay, her 180 days would have expired on September 27, 1991. Due to the fact that her death occurred October 18, 1991, the 180 days had lapsed." (Plaintiff's Exhibit 10).

24. This correspondence does not indicate why March 31, 1991 is the dispositive date and it makes reference neither to any termination date of Sarah Walker's employment nor to any different provision for determining the status of members who have taken a leave of absence.

25. In addition, Bryan stated that since employees of Mecklenburg County Personnel Department "are not under our administrative authority and are not agents of this department" the Retirement Systems Division is not responsible for the actions of employees of Mecklenburg County. (Plaintiff's Exhibit 10).

Respondent's Additional Asserted Grounds for Denial

26. Bryan's February 8, 1993 letter to John Gresham, Attorney for Petitioner, reiterated his position that Section 128-27(1) provides for a determination of the "last day of actual service." In his correspondence with Petitioner, Bryan raised a new argument for denying the benefit based upon a statutory provision dealing with leaves of absence. However, the Respondent did not advance this argument at the hearing. Bryan then determined that, since at the time of her death her employment had been terminated (he did not indicate the date of termination), "her last day would have been the last day she actually worked, which appears to be no later than March 12, 1991."

27. The March 12 date was not, in fact, Sarah Walker's actual last day of work, since she had been on Medical Leave since June 1, 1990. Rather, March 12, 1991 is the date her status changed from Medical Leave to Medical Leave Without Pay.

28. Bryan acknowledged that Ms. Walker had received payment for her accrued benefit but concluded that the payment for .23 sick days and the longevity payment "do not reflect any additional service, nor do they represent any service which would cause her last day of service to be within 180 days of her death."

29. The statute does not require additional service, it requires that: "Where employment has not been terminated, the date on which an absent member's sick and annual leave expire." N.C.G.S. 128-27(1)(2)(b).

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

CONCLUSIONS OF LAW

1. Based upon the evidence and arguments of counsel, the issue to be decided in this matter is whether an employee who is granted a disability retirement has been "terminated" under the provisions defining "last day of actual service" in N.C.G.S. 128-27. This issue must be determined in light of the applicable principles governing statutory construction set out herein.

2. A statute such as N.C.G.S. 128-27 is considered a remedial statute in that it confers benefits on a class of individuals. Burgess v. Joseph Schlitz Brewing Co., 298 N.C. 520, 259 S.E. 2d 248, 251 (1979); Hicks v. Brown Shoe Co., 306 S.E.2d 543, 545 (N.C. App. 1983) (interpretation of worker's compensation statute in action for award of death benefit); Derebey v. Pitt County Fire Marshall, 318 N.C. 192, 347 S.E.2d 814, 818 (1986). A remedial statute should be construed liberally, "in a manner which assures the beneficial goals for which it is enacted and which brings within it all cases fairly falling within its intended scope." Burgess, 259 S.E.2d at 251. See also Carolina Builders Corp. v. Howard-Weasey, 72 N.C.App. 224, 324 S.E.2d 626, review denied 313 N.C. 597, 330 S.E.2d 606 (1985) (definition of "owner" in materialman's lien act, considered a remedial statute, should be broadly construed in order to advance the legislative intent in enacting it); Newsome v. N.C. State Bd. of Elections, 105 N.C.App. 499, 415 S.E.2d 201 (1992). The Burgess court further stated:

A construction which operates to defeat or impair the object of the statute must be avoided if that can reasonably be done without violence to the legislative language. To this end, the words and phrases of a statute must be interpreted contextually, in a manner which harmonizes with the other provisions of the statute and which gives effect to the reason and purpose of the statute.

Burgess, 259 S.E.2d at 251.

In Burgess the court stated "[a]pplication of the above principles leads us to conclude that the restrictive definition of 'visually handicapped' in N.C.G.S. 111-11 should not be applied in a manner which limits the meaning of 'visual disability' in N.C.G.S. 168-1." Id. Application of the above principles in the Walker case indicate that the word terminate should not be construed to limit the definition of retire, especially where such an interpretation will defeat the object of the statute itself which is to provide a benefit to those members of the retirement system who die, as Sarah Walker did, before they have obtained the full benefit of their years of contribution to the system.

3. In interpreting a statute, the prior interpretations, whether formal or informal, given to the statute by an agency that executes and administers it, are not dispositive but are to be given great weight. Sides V. Cabarrus Memorial Hospital, 287 N.C.14, 213 S.E.2d 297 (1975) (court considered letters from various state and federal agencies holding that hospital was an agency of the county and not a separate municipal agency of the state). While the Retirement Systems Division asserts in this case that a disability retirement should be considered to have "terminated" employment so that the last day actually worked constitutes the beginning of the six-month statutory period for determining eligibility for the death benefit, the same agency has specifically distinguished a termination of employment from retirement in its own publications. The Division's own handbook, Your Retirement Benefits, notes that coverage of a member for the Disability income plan will cease upon:

- (1) the termination of your employment as a State teacher or State employee,
- (2) your retirement under the provisions of ... the retirement system,
- (3) your becoming a beneficiary under the plan, or
- (4) your death.

Your Retirement Benefits, p. 37 (1993)(emphasis added).

4. The agency's recognition that a "retirement" does not constitute a "termination" and is therefore a distinct classification is consistent with the interpretation given by our state courts and courts throughout the country.

The North Carolina Court of Appeals recently recognized that an employee may leave his employment through "termination, early retirement, or other job change." Wilkens v. Wilkens, 111 N.C.App. 41, 432 S.E.2d 891, 892 (1993) (emphasis added). Likewise the insurance policies at issue in a death benefit matter distinguished between "termination of employment" and "retirement". First National Bank v. Nationwide Insurance Co., 303 N.C.329, 278 S.E.2d 507, 515 (1981). These cases are consistent with the conclusion, long recognized by the courts, that unlike termination, retirement is not tantamount to a final abandonment of the employment relationship. Le Grange v. Datsis, 142 Me. 48, 53, 46 A.2d 408, 410 (1946), and retirement is not synonymous with a dismissal or termination. Brown v. Little, Brown, & Co., 69 Mass. 102, 168 N.E. 521 (1929)(stockbroker who was required to give up stock if he "retired" not required to surrender stock where he was terminated by company).

5. Moreover, as the Respondent's witnesses acknowledged, their interpretation of the statute, which equated retirement with termination, would have a draconian impact on a system member who has a long term illness and then takes a disability retirement. For instance, an employee who (a) used sick leave from July 1 until December 31, (b) took retirement on December 31, and (c) dies on January 1 of the next year would receive no death benefit even though the retirement system had received full contributions from the employee through December 31. There is no indication that this result was intended by the legislature when the provisions of N.C.G.S. 128-27(1) were enacted. State Ex. Rel. Com'r of Ins. v. N.C. Auto. Rate Admin. Office, 294 N.C. 60, 241 S.E.2d 324, 329 (1978) (legislature not to be construed to obtain untoward results).

6. Having concluded (a) that this statute granting benefits to retirement system members is to be liberally construed, and (b) that both applicable case law and the agency's own interpretation recognizes that retirement is distinct from termination, the Administrative Law Judge further concludes that for purposes of determining Petitioner's eligibility for the death benefit, Sarah Walker was not "terminated" from her employment. Therefore, under the provisions of subsection (2)(b) of N.C.G.S. 128-27(1), her last day of actual service will be the date on which her sick and annual leave expired which was July 31, 1991.

7. Since Sarah Walker's death occurred well within 180 days of July 31, 1991, Petitioner is entitled to the death benefit as permitted in N.C.G.S. 128-27(1).

RECOMMENDED DECISION

The Board of Trustees of the North Carolina Local Government Employees' Retirement System will make the Final Decision in this contested case. It is recommended that the Commission adopt the Findings of Fact and Conclusions of Law set forth above and award the Petitioner the Death Benefit to which he is entitled because Sarah Walker's death occurred within the requisite 180 day period.

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 Board of Trustees of the North Carolina Local Government Employees' Retirement System.

This the 31st day of May, 1994.

Brenda B. Becton
Administrative Law Judge

CONTESTED CASE DECISIONS

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
94 EHR 0329**

Petitioner,

V.

RECOMMENDED DECISION

Respondent.

STATEMENT OF THE CASE

Petitioner then received an Order for Prehearing Statements and an extension on that Order. Petitioner did not respond to either of those Orders. Petitioner received due and timely notice of hearing on May 9, 1994. Petitioner did not appear at the hearing.

The Respondent made a Motion to impose sanctions for failure to comply with Prehearing Orders. The undersigned, in an effort to hear the case on the merits, denied the Motion and requested that the Petitioner be informed to get to the hearing immediately. Petitioner, Darrin Boatwright, Operations Manager, appeared at the hearing approximately 30 minutes after the phone call.

APPEARANCES

For Respondent: Grady L. Balentine, Jr.
Associate Attorney General
N. C. Department of Justice
P. O. Box 629

Raleigh, North Carolina 27602-0629
Attorney for Respondent

ISSUE

Should the Petitioner's pushcart permit be suspended?

FINDINGS OF FACT

1. On June 25, 1993, the Mecklenburg County Health Department (MCHD) received an application for a Pushcart Permit from Sam's #8219.

2. During the subsequent permitting process, Petitioner signed a MCHD form which reproduced the pertinent text of the rules applicable to Pushcart Permits.

3. The Rules which were reproduced on the document noted above are the following:

"Pushcarts and mobile food units shall operate in conjunction with a permitted restaurant and shall report at least daily to the restaurant for supplied, cleaning, and servicing." 15A NCAC 18A .2600 (f), (emphasis added) and

"A servicing operations area must be established at a restaurant for the mobile food unit. Potable water servicing equipment shall be installed, stored, and handled in a way that protects the water and equipment from contamination. The mobile food unit's sewage storage tank shall be thoroughly flushed and drained during servicing operation. All sewage shall be discharged to an approved sewage disposal system."
15A NCAC 18A .2640(g).

4. This form also contained a provision which stated that the document had been read and understood. That document was signed by a Steve Leonard, as the Restaurant Operator and Jerry Stone, the Pushcart Operator.

5. The Pushcart Permit was issued on 6/23/93 and the pushcart was placed just inside the front doors of Sam's and was to sell hot dogs and soft drinks.

6. The pushcart was a large unit measuring approximately 4 feet by 8 feet.

7. The permit was issued on the signed agreement that the pushcart was to be transferred to its conjunction restaurant at WalMart, which restaurant is not in the same shopping center as Sam's.

8. Susan Cole, an Environmental Health Specialist with MCHD, was the inspector assigned to conduct the permitting process.

9. Ms. Cole did not question the distance between the locations nor the size of the pushcart since the application was completed for this arrangement and both parties signed the document stating that they had read, understood, and agreed, to comply with the pushcart regulations.

10. Every pushcart permitted by MCHD have to be returned each day to their sponsoring restaurant for cleaning.

11. All pushcarts must be freestanding units and are permitted only to sell hotdogs and soft drinks.

12. After Ms. Cole completed the permitting process, the matter was assigned to Pamela Grubbs, Environmental Health Specialist with MCHD, whose job it is to inspect permit sites subsequent to their permitting.

13. Bill Hardister, the MCHD Program Chief for Food and Sanitation, supervised both Ms. Cole and Ms. Grubbs. He saw the pushcart while shopping in the store. He noticed the permit which was posted indicated "pushcart" but he also noticed that the unit was hardplumbed and wired. He requested that an inspection be conducted.

14. On August 11, 1993, Ms. Grubbs visited Sam's Club and found a number of violations.

15. During that inspection, Ms. Grubbs found that the pushcart, which by regulation must be freestanding, had been hardplumbed and was also connected to electrical wiring.

16. Ms. Grubbs also found that the pushcart employees were using the employees' breakroom to store food and to wash equipment.

17. Ms. Grubbs completed an Inspections Report noting the violations and left a copy of it with the Petitioner. She subsequently sent Petitioner a copy of the regulations.

18. Ms. Grubbs' second inspection was on December 16, 1993. She found that none of the previous violations had been remedied.

19. After speaking with the Petitioner, who explained that the unit was so large they could not readily transport it to WalMart, she suggested that they take all removable pans to WalMart each day for cleaning as a temporary remedial measure.

20. Ms. Grubbs returned to the MCHD and discussed the problem with her supervisor, Bill Hardister. They considered the possibility of the pushcart being permitted as a "Food Stand" or as a "Restaurant".

21. Additional requirements would have to be met before the pushcart could qualify for either of these permits.

22. On February 14, 1994, Ms. Grubbs made her third inspection. She again found that no violations had been remedied. She then issued an Intent to Suspend the Permit.

23. At the time of this hearing, the pushcart is still operating in the same condition as it was during the last year. The Petitioner has not submitted an application for a Food Stand or Restaurant Permit.

24. Darrin Boatwright, the Operations Manager, testified and it is found as fact, that the pushcart had units added to it which sold frozen yogurt and fountain drinks. Fountain drinks are sodas dispensed from a unit which combines the carbonated water and the syrup just before the soda is released by the use of a pull handle.

25. Mr. Boatwright was not present at the inspections but was present during management meetings at which the pushcart permitting problem was discussed.

26. Mr. Boatwright testified that he was attempting to remedy the problem by complying with the suggestions made by Ms. Grubbs. He testified that he has a three basin sink on site but not installed. He testified that he knows he needs a hot water heater but that he was having problems getting all the materials because the home office wanted him to use materials from their own stores. He also testified that there had been a truckers strike which had slowed down the delivery of the material.

27. Mr. Boatwright testified that he runs a multi-million dollar business and does not have time to worry about a hotdog stand.

28. Mr. Boatwright also testified that he did not respond to the Prehearing Orders because he was very busy and did not always see his mail. He also testified that he did not initially appear at the hearing because he did not see the Notice of Hearing.

29. Mr. Boatwright also testified that he apologizes for any oversights but that he doesn't understand why the State is spending money on a hearing and making such a fuss over a simple hotdog stand. He testified that he does not have time to deal with all this.

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

CONCLUSIONS OF LAW

1. The Petitioner was aware of the regulations concerning Pushcart Permits and signed a document of understanding. The Petitioner's signature as well as the Restaurant operator's signature appeared on that document.

The Petitioner has been in violation of the Pushcart Permit regulations for approximately a year.

Although Petitioner asserts that he does not have time to deal with this permit violation, it is noted that he has gone to a great degree of bother to hardplumb the pushcart and to connect it to electricity.

Additionally, the Petitioner has bothered to adjoin a frozen yogurt unit and a soda fountain unit.

The Respondent attempted to assist the Petitioner to come into compliance but the Petitioner to this date had not corrected any of the violations.

2. It is concluded that Petitioner is in violation of 15A NCAC 18A .2683(f) in that the pushcart has never reported to the restaurant for cleaning, the unit was permanently affixed to the premises so that it could not be moved, and additional food services were added without proper permitting.

Based upon the above Conclusions of Law, the undersigned makes the following:

RECOMMENDATION

1. That the Petitioner's permit to operate a pushcart be suspended until such time as they come into compliance with the permitting laws and regulations.

2. That since Petitioner has shown that leniency and compliance time are not used for the purpose for which they are intended, any future violations of the health and sanitation laws of the State of North Carolina be handled with great dispatch and immediacy.

MEMORANDUM OF LAW

The undersigned believes that the circumstances of this case warrant a revocation of the permit rather than merely a suspension. However, Petitioner received notice only that he was being suspended and the Petitioner cannot be sanctioned with a sanction greater than the one for which he received notice.

The Petitioner paid very little attention to the directions of the inspector and to the laws of the State of North Carolina. Petitioner deliberately and immediately violated the agreement which it had signed by hardplumbing and wiring the unit and by attaching a frozen yogurt machine and a soda fountain machine.

Because of this blatant disregard of the law, the Petitioner's permit should have been revoked and a period of mandatory suspension imposed. The enabling legislation, much to the benefit of the Petitioner, does not provide for such sanctions.

The undersigned further would have imposed civil penalties if the enabling legislation had a provision for such penalties. Again, much to the benefit of Petitioner, the legislation does not provide for such sanctions.

The undersigned considered holding the Petitioner in contempt of court for failure to respond to the Prehearing Orders, failure to appear at the hearing, and repeated commentary during the hearing about the annoyance of the permit requirements and of the hearing, which, it is noted, Petitioner requested.

Petitioner's representative offered an apology for any disrespect to the court or to MCHD. An apology is not a curative recognized in the legal system and that offer has no bearing on the violation. However, since the Petitioner appears to have made some meager attempts to come into compliance and since this representative may not accurately reflect the opinions of the corporation, the Petitioner's representative will not be held in contempt at this time.

ORDER

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

NOTICE

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

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

The agency that will make the final decision in this contested case is the North Carolina Department of Environment, Health and Natural Resources.

This the 15th day of June, 1994.

Dolores O. Nesnow
Administrative Law Judge

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

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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
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10	Human Resources	Dietetics/Nutrition	17
11	Insurance	Electrical Contractors	18
12	Justice	Electrolysis	19
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