

The **NORTH CAROLINA REGISTER**

IN THIS ISSUE

EXECUTIVE ORDERS

IN ADDITION
Voting Rights Act

PROPOSED RULES
Environment, Health, and Natural Resources
Human Resources
Insurance
Justice
Secretary of State

LIST OF RULES CODIFIED

RRC OBJECTIONS

CONTESTED CASE DECISIONS

ISSUE DATE: August 1, 1994

Volume 9 • Issue 9 • Pages 588 - 666



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

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

CITATION TO THE NORTH CAROLINA REGISTER

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

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

NORTH CAROLINA REGISTER



*Office of Administrative Hearings
P. O. Drawer 27447
Raleigh, North Carolina 27611-7447
(919) 733-2678*

Julian Mann III,
Director
James R. Scarcella Sr.,
Deputy Director
Molly Masich,
Director of APA Services

Staff:
Ruby Creech,
Publications Coordinator
Teresa Kilpatrick,
Editorial Assistant
Jean Shirley,
Editorial Assistant

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

ISSUE CONTENTS

| | |
|---|------------|
| I. EXECUTIVE ORDERS | |
| Executive Orders 54-58 | 588 |
| II. IN ADDITION | |
| Voting Rights Act | 594 |
| III. PROPOSED RULES | |
| Environment, Health, and Natural Resources | |
| Environmental Management | 616 |
| Human Resources | |
| Medical Assistance | 597 |
| Social Services | 595 |
| Insurance | |
| Medical Database Commission . . | 605 |
| Justice | |
| N.C. Alarm Systems Licensing Board | 614 |
| Secretary of State | |
| Securities Division | 616 |
| IV. LIST OF RULES CODIFIED . . . | 635 |
| V. RRC OBJECTIONS | 643 |
| VI. CONTESTED CASE DECISIONS | |
| Index to ALJ Decisions | 647 |
| Text of Selected Decisions | |
| 93 OSP 1607 | 655 |
| 94 EHR 0035 | 660 |
| VII. CUMULATIVE INDEX | 664 |

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. 54
TO CREATE THE NORTH CAROLINA
HEALTH CARE INFORMATION AND
COMMUNICATIONS ALLIANCE**

WHEREAS, the provision of high quality health care to all residents is a desirable state objective;

WHEREAS, optimizing the use of health care resources is necessary for all residents to receive high quality health care at reasonable cost;

WHEREAS, state government has need of detailed, current information on the quantity, quality, content, and cost of health care services rendered in the State of North Carolina for purposes of policy development and implementation of health care reform;

WHEREAS, the technology to allow interactive and real time exchange of medical information is necessary to optimize the use of health care resources on a continuous basis;

WHEREAS, the public sector must work with the private sector to develop information, telecommunications and telemedicine technologies applicable to health care in all settings;

WHEREAS, the development of a statewide health care information and telecommunications network is the most logical next step in meeting these goals; and

WHEREAS, upon direction by me the Articles of Incorporation of the North Carolina Health Care Information and Communications Alliance, Inc., a North Carolina non-profit corporation, have been filed with the Secretary of State of North Carolina and the formalities of organization of said corporation have been effected;

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

Section 1. Establishment

The North Carolina Health Care Information and Communications Alliance, Inc. (the "Alliance") is hereby established.

Section 2. Powers and Duties of the Alliance

The Alliance shall be operated in the public interest exclusively for charitable, scientific and educational purposes within the meaning of Section

501(c)(3) of the Internal Revenue Code (or the corresponding provision of any future federal tax law), including, without limiting the generality of the foregoing, to foster the development and implementation of a statewide health care information system for the purpose of improving the delivery, quality, accessibility and efficiency of health care services in North Carolina by utilization of advanced information, telecommunications, and telemedicine technologies.

Solely for the above purposes, but not by way of limitation, the Alliance is empowered:

- A. To research, test, develop and promote the optimum application of information, telecommunications, and telemedicine technologies to health care services in all settings;
- B. To effect the on-going development and implementation of open architecture, interoperable, integrated and interactive information systems in health care in all settings with fully articulated linkages to a statewide health care information network and with attention to national and international health care information systems and standards;
- C. To effect the on-going design, development and implementation of distributed database management capability on a scale necessary to support a wide range of applications on the health care information network including, among others, clinical, emergency response, administrative, research and educational applications;
- D. To foster development and installation of on-line standardized, computerized medical record and information systems in regional medical centers to enable utilization by remote providers of centralized diagnostic, treatment planning, expert consultation services, and medical reference, resource and training materials, with interactive question, answer and messaging capabilities;
- E. To improve health care information systems utilized by participants in community-level health care delivery networks comprised, among others, of hospitals, clinics, physician and dental offices, group practices, emergency medical systems, nursing homes, home care services, pharmacies, company and school medical and wellness programs,

social service agencies, medical, nursing and health administration schools, and telemedicine providers;

- F. To assist small and remote rural hospitals, clinics, provider groups and other health-related organizations in becoming an integral part of the statewide health care information system;
- G. To provide education and training in, and coordination with respect to, the use of information, telecommunications, and telemedicine technologies by health care providers, suppliers, patients, educators and public agencies;
- H. To provide to the State of North Carolina and the United States federal government and other governmental units data and analysis for the purpose of health care policy development and decision-making;
- I. To provide a mechanism for on-going evaluation of hardware and software performance, clinical effectiveness and administrative efficiency of the statewide health care information system and to provide a mechanism for feedback, redesign and upgrade of system capabilities;
- J. To support the adoption and implementation of standards for computerized patient records and computerized patient histories;
- K. To support clinical and health services research by providing confidentiality-protected patient histories and other information databases for use by qualified personnel;
- L. To encourage the development of emerging businesses in the medical information, computer science, telecommunications, and telemedicine fields in North Carolina through research and education; and
- M. To exercise all rights and powers conferred by the laws of North Carolina upon nonprofit corporations.

Section 3. Board of Directors.

Consistent with the Articles of Incorporation of the Alliance, the members of the Board of Directors shall represent each of the following classes of members: (i) major medical centers; (ii) rural health care centers or organizations; (iii) telecommunications and information technology companies; (iv) pharmaceutical, clinical trial companies and health care applications device development and manufacturing companies; (v) other health

care providers, local public health departments and nonprofit organizations; and (vi) persons who represent the interests of the State of North Carolina. The initial directors of the Alliance shall serve until their successors are duly elected and qualified as set forth in the Articles of Incorporation and By-Laws of the Alliance.

Section 4. Chair of the Board.

The Governor shall appoint the Chair of the Board of Directors of the Alliance to serve until the third annual meeting of members of the Alliance.

Section 4. Responsibilities of the Board of Directors in the First Year of Alliance Operations.

The Board of Directors shall complete the following tasks in the first year of operations:

- A. Review and, if necessary, refine the By-laws of the Alliance.
- B. Take such steps as are necessary to apply for and receive certification as an Internal Revenue Code Section 501(c)(3) nonprofit corporation;
- C. Identify initiatives to be undertaken immediately to effect the purposes of the Alliance and make arrangements to implement these initiatives;
- D. Develop and adopt a six-year work plan for the Alliance, to be updated as necessary but no less than every two years;
- E. Develop and adopt a proposal for staffing the Alliance;
- F. Develop and adopt an operating budget for the Alliance;
- G. Open Alliance membership to a range of health provider organizations and health care information technology corporations, each of which, by virtue of its research, experience, services and/or products, will bring to the Alliance assets and commitments necessary to achieve the goals of the Alliance as delineated in this Order and the Alliance's corporate charter; and
- H. Establish the terms for Alliance membership, a fee schedule for membership participation in the Alliance, and other funding sources such that the Alliance will be self-sustaining and not dependent on government financing.

This Order shall be effective immediately and shall remain in effect until rescinded.

Done in the Capital City of Raleigh, this 1st day of July, 1994.

**EXECUTIVE ORDER NO. 55
NORTH CAROLINA -- HEAD START
COLLABORATION PROJECT
ADVISORY COUNCIL**

WHEREAS, the State's impoverished children will be more effectively assisted if local, state, and national service resources and responsibilities are shared; and

WHEREAS, this pooling of resources and responsibilities can be better achieved if the various service providers for impoverished children have a forum for communicating ideas and coordinating collaborative projects;

NOW, THEREFORE, 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 -- Head Start Collaboration Project Advisory Council is hereby established.

Section 2. Membership.

(a) The following individuals or their designees shall serve as members of the Council:

- (1) The Senior Education Advisor in the Office of the Governor;
- (2) The Secretary of Human Resources;
- (3) The Secretary of Environment, Health, and Natural Resources;
- (4) The Secretary of Commerce;
- (5) The Director of the Division of Family Development in the Department of Human Resources;
- (6) The Director of the Division of Child Development in the Department of Human Resources;
- (7) The Director of the Division of Medical Assistance in the Department of Human Resources;
- (8) The Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services in the Department of Human Resources;
- (9) The Director of the Division of Social Services in the Department of Human Resources;
- (10) The Director of the Office of Rural Health and Development Services in the Department of Human Resources;

- (11) The Director of the Division of Vocational rehabilitation Services in the Department of Human Resources; and
 - (12) A Representative from the North Carolina Interagency Coordinating Council.
- (b) The following individuals or their designees shall be invited to serve as members of the Council:

- (1) The President of the System of Community Colleges;
- (2) The Superintendent of Public Instruction;
- (3) The President of the North Carolina Head Start Association;
- (4) The President of the North Carolina Partnership for Children, Inc.; and
- (5) The President of the North Carolina Community Action Association.

(c) In addition, nine other members shall be named by the Governor, of which at least three shall be former Head Start participants or parents. Five of these members shall serve an initial term of four years. Four of these members shall serve an initial term of two years. Thereafter, all terms shall be for four years.

Section 3. Chair.

The Governor shall designate the chair of the Council, who shall serve at his pleasure.

Section 4. Meetings.

The Council shall meet at least quarterly at the call of the chair.

Section 5. Purpose.

The purpose of this Council is to build cooperation between Head Start and other programs for impoverished children to ensure these children the fullest possible access to such programs within North Carolina. It creates a forum for state agencies, Head Start representatives, private businesses, and other appropriate organizations to develop an understanding among themselves of the importance of collaboration among the various existing service programs for impoverished children.

Section 6. Duties.

Together with the Head Start Coordinator within the Department of Human Resources, the Council shall:

- (a) Identify possible projects for collaboration between state and Head Start agencies;
- (b) Sponsor and advise such collaborative ventures; and

- (c) Serve as an information resource concerning the goals and objectives of such inter-agency collaborative projects. The office of the Head Start Coordinator shall serve as the central collection and dissemination point for this information.

Section 7. Administration.

Administrative support for the Council and its subcommittees shall be provided by the Special Assistant for Head Start in the Department of Human Resources ("DHR"). The U.S. Department of Health and Human Services has provided \$100,000 for the Council under grant number 90-CD-0997, "Head Start in North Carolina: Building a Better Partnership." This amount includes reimbursement for necessary subsistence and travel expenses.

Section 8. Effect on Other Executive Orders.

Executive Order Number 186 of the Martin Administration is hereby rescinded.

This Order shall be effective immediately.

Done in Raleigh, North Carolina, this the 7th day of July, 1994.

**EXECUTIVE ORDER NO. 56
GOVERNOR'S TASK FORCE ON HEALTH
OBJECTIVES FOR THE YEAR 2000**

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

Section 1. Establishment and Rescission of Prior Orders.

The Governor's Task Force on Health Objectives for the Year 2000 ("Governor's Task Force") is hereby re-established. The Governor's Task Force established herein is the successor organization to the one established in Executive Orders 148 and 176 of the Martin Administration. Those Orders are hereby rescinded.

Section 2. Membership.

The Governor shall appoint 25 persons including a Chair, to serve four year terms. Thereafter, all vacancies shall be filled by the Governor.

The membership shall include representatives from the following:

- (a) Department of Human Resources;
- (b) Department of Environment, Health, and Natural Resources;

- (c) Association of North Carolina Boards of Health;
- (d) North Carolina Hospital Association;
- (e) North Carolina Medical Society;
- (f) North Carolina Academy of Family Physicians;
- (g) North Carolina Association of Local Health Directors;
- (h) The University of North Carolina School of Public Health;
- (i) North Carolina Citizens for Business and Industry;
- (j) North Carolina Commission on Indian Affairs;
- (k) North Carolina Association of County Commissioners;
- (l) NAACP;
- (m) North Carolina Minority Health Council;
- (n) Governor's Council on Physical Fitness and Health;
- (o) North Carolina Dental Society;
- (p) North Carolina Nurses' Association;
- (q) Old North State Medical Society; and
- (r) Eight at-large members, including a representative of local education.

Section 3. Functions.

A. The Governor's Task Force shall meet regularly at the call of the Chair.

B. The Governor's Task Force shall provide encouragement and guidance to communities establishing their own local groups to accomplish the objectives developed by the Governor's Task Force.

C. The Governor's Task Force shall have the power to designate the Healthy Carolinians 2000 Task Forces, comprised of representatives of public and private organizations which support the goals of the Governor's Task Force. They shall seek to further the objectives of the Governor's Task Force and they shall exist so long as the Governor's Task Force does, unless earlier terminated.

Section 4. Administration.

A. Administrative support for the Governor's Task Force shall be provided by the Department of Environment, Health, and Natural Resources. Additional support shall be provided by the Department of Human Resources.

B. Members of the Governor's Task Force shall be reimbursed for necessary travel and subsistence expenses as authorized under General Statutes 138-5 and 138-6. Funds for the reimbursement of such expenses shall be made available from funds

authorized by the Department of Environment, Health, and Natural Resources.

C. It shall be the responsibility of each Cabinet department to make every reasonable effort to cooperate with the Governor's Task Force in carrying out the provisions of this Order.

This Executive Order shall become effective immediately.

Done in Raleigh, North Carolina, this the 13th day of July, 1994.

**EXECUTIVE ORDER NO. 57
GEORGIA EMERGENCY FLOOD RELIEF**

WHEREAS, on July 7, 1994, the United States Department of Transportation declared a regional emergency justifying an exemption from 49 C.F.R. 390-399 (Federal Motor Carrier Safety Regulations) for a period of thirty days in response to the severe flooding in the Georgia area;

NOW, THEREFORE, pursuant to N.C.G.S. 166A-6(c), the North Carolina Emergency Management Act, by the authority vested in me as Governor by the laws and Constitution of the State of North Carolina, and with the concurrence of the Council of State, **IT IS ORDERED:**

Section 1.

The State of North Carolina, under the supervision and direction of its Department of Transportation, shall waive weight restrictions on the gross weight of vehicles transporting food, supplies, and equipment to the victims of the severe flooding in the State of Georgia, subject to the following conditions:

- (a) vehicle weight shall not exceed the maximum gross vehicle weight criteria established by the manufacturer or 90,000 pounds gross vehicle weight, whichever is less.
- (b) Tandem axle weights shall not exceed 50,000 pounds and single axle weights shall not exceed 25,000 pounds.
- (c) The vehicles shall, upon entering the State of North Carolina, stop at the first available vehicle weigh station and produce identification sufficient to establish that the load contained thereon is part of the relief effort for the severe flooding in the State of Georgia.
- (d) This Order shall not be in effect on bridges posted pursuant to N.C.G.S. 136-

72.

Section 2.

The vehicles described above shall be exempt from the vehicle licensing and tax requirements of N.C.G.S. 105, Subchapter 5, Article 36B (motor fuels tax).

Section 3.

As a result of the 7 July 1994 declaration of regional emergency by the United States Department of Transportation and its corresponding exemption from 49 C.F.R. 390-399, nonparticipants in North Carolina's International Registration Plan shall be permitted to operate in North Carolina without penalty under N.C.G.S. 20-382.

Section 4.

If returning vehicles are loaded with some other backhaul, all normal weight and permit restrictions apply.

Section 5.

The North Carolina Department of Transportation shall enforce the conditions set forth in Sections 1, 2, and 3 in a manner which would best accomplish the purposes of this Order without endangering motorists on North Carolina highways.

This Order is effective immediately and shall remain in effect for thirty days.

Done in the Capital City of Raleigh, North Carolina, this the 14th day of July, 1994.

**EXECUTIVE ORDER NO. 58
PUBLIC GREENWAYS ACROSS
STATE LANDS**

WHEREAS, greenways are linear open spaces that can provide many benefits to the State's environment and growing population; and

WHEREAS, North Carolina has earned a national reputation for greenways because approximately forty local governments have begun greenway programs under their own initiative; and

WHEREAS, the environmental and socioeconomic benefits of greenways are numerous, and have been set out in the North Carolina Greenways Advisory Panel Report to the Governor; and

WHEREAS, existing and potential greenways and their related benefits typically cross the jurisdictional boundaries of governments; and

WHEREAS, state support for locally initiated greenways is unfocused because responsibility for the various functions through which greenway benefits arise are distributed among separate departments; and

WHEREAS, there are opportunities to improve state government responsiveness to local governments in their efforts to develop greenway systems for the environmental, socioeconomic, and overall quality of life benefits of our citizens;

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

Section 1. Policy.

(a) It shall be the policy of the State to make every reasonable effort to anticipate and otherwise accommodate local government requests related to the development of greenway systems.

(b) In recognition of the broad and comprehensive character of greenway benefits and the narrow and specific focus of State government programs, it shall be the responsibility of every State agency to cooperate between and among themselves, to the maximum extent feasible, to address the multiple objectives of local greenway development.

(c) To the extent practicable, institutional solutions shall be implemented to enhance the development of greenway systems, rather than resolving issues on a case-by-case basis.

Section 2. Action.

The following actions shall be taken as initial steps toward realization of the "Public Greenways across State Lands" recommendation presented in the North Carolina Greenway Advisory Panel's Report to the Governor:

- (a) The State Property Office and the Department of Transportation shall work with local governments to integrate local greenways with State lands.
- (b) Every reasonable effort shall be made to integrate greenways with State lands in a manner that is compatible with the function and management of the property.
- (c) Severance of greenway corridors is to be avoided whenever possible, and the

identification of comparable alternative routes is preferred to the exclusion of greenways altogether.

- (d) Appropriate easement conditions may be negotiated with the interested local governments to mitigate for the greenway corridor and assure adequate maintenance and management.

Section 3. Role of the Department of Environment, Health, and Natural Resources.

(a) The Department of Environment, Health, and Natural Resources shall continue the leadership role it began with establishment of the North Carolina Greenways Advisory Panel (NCGAP).

(b) The Department shall encourage, coordinate and monitor progress toward fulfillment of the recommendations presented in the NCGAP Report to the Governor, and the provisions of this Order.

(c) The Department shall emphasize the development of educational information on greenways for use within State programs, and through them to local governments and individual citizens.

This Executive Order shall be effective immediately.

Done in the Capital City of Raleigh, North Carolina, this the 14th day of July, 1994.

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

U.S. Department of Justice

Civil Rights Division

Voting Section

P.O. Box 66128

Washington, D.C. 20035-6128

DLP:DLK:NG:lss:gmh

DJ 166-012-3

94-2134

July 11, 1994

Z. Creighton Brinson, Esq.

Taylor, Brinson & Moore

P. O. Drawer 308

Tarboro, North Carolina 27886-0308

Dear Mr. Brinson:

This refers to the annexations (Ordinance Nos. 92-5, 92-6 and 94-5) and the designation of the annexed areas to election districts of the City of Tarboro in Edgecombe County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on May 10, 1994.

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

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

By:

Steven H. Rosenbaum
Chief, Voting Section

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to amend rules cited as 10 NCAC 35F .0306, 43L .0201, adopt 41F .0706 and .0812.

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

The public hearing will be conducted at 10:00 a.m. on September 7, 1994 at the Albemarle Building, Room 943-2, 325 N. Salisbury Street, Raleigh, NC 27603.

Reason for Proposed Action:

10 NCAC 35F .0306 - This rule is being amended to correct an inadvertent error in the service cost-sharing schedule.

10 NCAC 41F .0706 & 41F .0812 - These rules are being proposed to better protect the health, safety, and well-being of foster children by requiring that criminal record checks be conducted on all foster parent applicants and by disqualifying applicants who have been convicted of certain crimes from becoming foster parents.

10 NCAC 43L .0201 - To clarify that Adult Placement services are reimbursable under the Social Services Block Grant.

Comment Procedures: *Comments may be presented in writing anytime before or at the public hearing or orally at the hearing. Time limits for oral remarks may be imposed by the Commission Chairman. Any person may request copies of these rules by calling or writing to Sharnese Ransome, Division of Social Services, 325 N. Salisbury Street, Raleigh, NC 27603; 919/733-3055.*

CHAPTER 35 - FAMILY SERVICES

SUBCHAPTER 35F - SERVICE COST-SHARING

SECTION .0300 - SERVICE COST SHARING REQUIREMENTS

.0306

SERVICE COST-SHARING SCHEDULE

(a) The amount of cost-sharing to be requested from clients shall be in accordance with the following cost-sharing schedule:

COST-SHARING SCHEDULE

| Size of Income Unit | | | | Minimum Percentage (Percentage of Service Cost) |
|--------------------------|---------------|---------------|---------------|--|
| Monthly Estab. Income | 1 | 2 | 3 | |
| | \$ 852-970 | \$1,149-1,301 | \$1,446-1,648 | 30% |
| | 971-1,090 | 1,302-1,516 | 1,649-1,850 | 40% |
| | 1,091-1,209 | 1,517-1,600 | 1,851-2,053 | 50% |
| | 1,210-1,328 | 1,601-1,761 | 2,054-2,255 | 60% |
| | 1,329-1,447 | 1,762-1,952 | 2,256-2,458 | 75% |
| | 1,448-above | 1,953-above | 2,459-above | 100% |
| Monthly | 4 | 5 | 6 | |
| | \$1,744-1,987 | \$2,041-2,326 | \$2,339-2,665 | 30% |

PROPOSED RULES

| | | | | |
|--------------------------|---------------------|---------------------|---------------------|------|
| Estab. Income | 1,988-2,231 | 2,327-2,612 | 2,666-2,992 | 40% |
| | 2,232-2,475 | 2,613-2,897 | 2,993-3,320 | 50% |
| | 2,476-2,719 | 2,898-3,183 | 3,321-3,647 | 60% |
| | 2,720-2,963 | 3,184-3,469 | 3,648-3,975 | 75% |
| | 2,964-above | 3,470-above | 3,976-above | 100% |
| | | | | |
| Monthly Estab. Income | 7 \$2,636-3,004 | 8 \$2,934-3,343 | 9 \$3,231-3,638 | 30% |
| | 3,005-3,373 | 3,344-3,754 | 3,684-4,135 | 40% |
| | 3,374-3,743 | 3,755-4,165 | 4,136-4,587 | 50% |
| | 3,744-4,112 | 4,166-4,576 | 4,588-5,040 | 60% |
| | 4,113-4,481 | 4,577-4,986 | 5,041-5,492 | 75% |
| | 4,482-above | 4,987-above | 5,493-above | 100% |
| | | | | |
| Monthly Estab. Income | 10 \$3,529-4,022 | 11 \$3,826-4,361 | 12 \$4,124-4,700 | 30% |
| | 4,023-4,516 | 4,362-4,897 | 4,701-5,277 | 40% |
| | 4,517-5,010 | 4,898-5,432 | 5,278-5,856 | 50% |
| | 5,011-5,504 | 5,433-5,968 | 5,857-6,432 | 60% |
| | 5,505-5,998 | 5,969-6,504 | 6,433-7,009 | 75% |
| | 5,999-above | 6,505-above | 7,010-above | 100% |

Established Income (Estab. Income) as used in this Rule is defined in 10 NCAC 35E .0104, which is incorporated by reference, including subsequent amendments and editions; Income Unit as used in this Rule is defined in 10 NCAC 35E .0103, which is incorporated by reference, including subsequent amendments and editions. Copies of these Rules may be obtained from the Office of Administrative Hearings, Post Office Drawer 27447, Raleigh, N.C. 27611-7447, (919) 733-2678, at a cost of two dollars and fifty cents (\$2.50) for up to ten pages and fifteen cents (\$.15) for each additional page at the time of adoption of this Rule.

(b) Agencies must establish a cost-sharing schedule for clients whose gross monthly income is less than the established income as defined in 10 NCAC 35E .0104, which is incorporated by reference, including subsequent amendments and editions. Copies of these Rules may be obtained from the Office of Administrative Hearings, Post Office Drawer 27447, Raleigh, NC 27611-7447, (919) 733-2678, at a cost of two dollars and fifty cents (\$2.50) for up to 10 pages and fifteen cents (\$.15) for each additional page at the time of adoption of this Rule. In developing this schedule, agencies may establish percentages of the cost of the service or an amount that will be requested from clients.

(c) Agencies must distribute a copy of the cost-sharing schedule to all clients receiving services subject to cost-sharing as defined in Rule .0301 of this Section. The cost-sharing schedule must reflect the income ranges and minimum percentages outlined in Paragraph (a) of this Rule.

(d) Agencies may negotiate higher service cost-sharing percentages or lower service cost-sharing percentages than those outlined in Paragraph (a) of this Rule, based on individual client circumstances. The client will determine the amount of service cost-sharing he will pay based upon his individual financial circumstances.

Statutory Authority G.S. 143B-153.

CHAPTER 41 - CHILDREN'S SERVICES

SUBCHAPTER 41F - LICENSING OF FAMILY FOSTER HOMES

SECTION .0700 - STANDARDS FOR LICENSING

.0706 CRIMINAL CONVICTIONS

An applicant shall not be eligible for licensure as

a foster parent if the applicant, or any member of the applicant's household 14 years or older, has been convicted or entered a plea of no contest to a crime, and there is a relationship between the nature of the crime and the ability of the prospective foster parent to assure the health, safety and well being of foster children: provided a license shall be denied if the applicant or any member of the household 14 years or older has been convicted or entered a plea of no contest to a felony involving violent behavior, unlawful sexual conduct, minor children or controlled drugs.

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

SECTION .0800 - LICENSING REGULATIONS AND PROCEDURES

.0812 CRIMINAL BACKGROUND CHECKS

The supervising agency shall conduct a criminal background investigation through access of the Department of Corrections Inmate/Probation Inquiry System for all members of the foster family household 14 years and older at the time of initial application and annually thereafter. The results of the criminal background investigation shall be reported to the Division of Social Services on the application form.

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

CHAPTER 43 - SERVICES PROGRAM PLAN

SUBCHAPTER 43L - SOCIAL SERVICES BLOCK GRANT

SECTION .0200 - SERVICES TO BE PROVIDED

.0201 SOCIAL SERVICES BLOCK GRANT FUNDED SERVICES

Services which may be reimbursed with Social Services Block Grant Funds are:

- (1) adjustment services for the blind or visually impaired;
- (2) adoption services;
- (3) adult developmental activity programs for individuals who are substantially mentally retarded or severely physically disabled;
- (4) adult placement services;
- (5) ~~(4)~~ before/after school and summer developmental day centers for children who are mentally retarded;
- (6) ~~(5)~~ child day care services;
- (7) ~~(6)~~ chore services for the blind;
- (8) ~~(7)~~ community living services;
- (9) ~~(8)~~ day care services for adults;
- (10) ~~(9)~~ day treatment programs for children and adolescents who are emotionally disturbed;
- (11) ~~(10)~~ delinquency prevention services;
- (12) ~~(11)~~ developmental day centers for pre-school children who are mentally retarded;
- (13) ~~(12)~~ early childhood intervention services for children who are mentally retarded or

- ~~(14)~~ at high risk for mental retardation;
- ~~(13)~~ employment and training support services;
- (15) ~~(14)~~ family planning services;
- (16) ~~(15)~~ foster care services for adults;
- (17) ~~(16)~~ foster care services for children;
- (18) ~~(17)~~ health support services;
- (19) ~~(18)~~ housing and home improvement services;
- (20) ~~(19)~~ individual and family adjustment services;
- (21) ~~(20)~~ in-home aide services (levels I through IV);
- (22) ~~(21)~~ nutrition services;
- (23) ~~(22)~~ outpatient services for individuals of all disability groups;
- (24) ~~(23)~~ partial hospitalization services for adults and elderly individuals who are acutely mentally ill or are substance abusers;
- (25) ~~(24)~~ personal and family counseling;
- (26) ~~(25)~~ preparation and delivery of meals;
- (27) ~~(26)~~ problem pregnancy services;
- (28) ~~(27)~~ protective services for adults;
- (29) ~~(28)~~ protective services for children;
- (30) ~~(29)~~ residential treatment for the emotionally disturbed;
- (31) ~~(30)~~ residential treatment programs for children and adolescents who are emotionally disturbed;
- (32) ~~(31)~~ residential treatment/rehabilitation programs for individuals who are alcohol or other drug abusers;
- (33) ~~(32)~~ respite care services;
- (34) ~~(33)~~ social setting and non-hospital medical detoxification services for individuals who are alcoholics;
- (35) ~~(34)~~ transitional residence programs for adult and elderly individuals who are mentally ill;
- (36) ~~(35)~~ transportation services;
- (37) ~~(36)~~ youth services.

Statutory Authority G.S. 108A-71; 143B-10; 143B-153.

Notice is hereby given in accordance with G.S. 150B-21.2 that the DHR/Division of Medical Assistance intends to amend rules cited as 10 NCAC 50B .0311 and .0403.

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

The public hearing will be conducted at 1:30 p.m. on September 1, 1994 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 297, Raleigh, NC 27603.

Reason for Proposed Action: Rules necessary to bring the State into compliance with federal law.

Comment Procedures: Written comments concerning these rules must be submitted by August 31, 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 50 - MEDICAL ASSISTANCE

SUBCHAPTER 50B - ELIGIBILITY DETERMINATION

SECTION .0300 - CONDITIONS FOR ELIGIBILITY

.0311 RESERVE

North Carolina has elected the option under Section 1902(f) of the Social Security Act to limit Medicaid eligibility for the aged, blind or the disabled to individuals who meet eligibility requirements more restrictive than those under Supplemental Security Income. Applicants for and recipients of Medicaid shall use their own resources to meet their needs for living costs and medical care to the extent that such resources can be made available. Certain resources shall be protected to meet specific needs such as burial and transportation and a limited amount of resources shall be protected for emergencies.

- (1) The value of resources currently available to any budget unit member shall be considered in determining financial eligibility. A resource shall be considered available when it is actually available and when the budget unit member has a legal interest in the resource and he, or someone acting in his behalf, can take any necessary action to make it available.

- (a) Resources shall be excluded in deter-

mining financial eligibility when the budget unit member having a legal interest in the resources is incompetent unless:

- (i) A guardian of the estate, a general guardian or an interim guardian has been lawfully appointed and is able to act on behalf of his ward in North Carolina and in any state in which such resources are located; or
- (ii) A durable power of attorney, valid in North Carolina and in any state in which such resource is located, has been granted to a person who is authorized and able to exercise such power.
- (b) When there is a guardian, an interim guardian, or a person holding a valid, durable power of attorney for a budget unit member, but such person is unable, fails, or refuses to act promptly to make the resources actually available to meet the needs of the budget unit member, a referral shall be made to the county department of social services of a determination of whether the guardian or attorney in fact is acting in the best interests of the member and if not, contact the clerk of court for intervention. The resources shall be excluded in determining financial eligibility pending action by the clerk of court.
- (c) When a Medicaid application is filed on behalf of an individual who:
 - (i) is alleged to be mentally incompetent,
 - (ii) has or may have a legal interest in a resource that affects the individual's eligibility, and
 - (iii) does not have a representative with legal authority to use or dispose of the individual's resources, the individual's representative or family member shall be instructed to file within 30 calendar days a judicial proceeding to declare the individual incompetent and appoint a guardian. If the representative or family member either fails to file such a proceeding within 30 calendar days or fails to timely conclude the proceeding, a referral shall be made to the services unit of the county department of social services for guardianship services. If the allegation of incompetence is supported by a physician's certification or

- other competent evidence from sources including but not limited to physicians, nurses, social workers, psychologists, relatives, friends or others with knowledge of the condition of the individual, the resources shall be excluded except as provided in Sub-items (1)(d) or (e) of this Rule.
- (d) The budget unit member's resources shall be counted in determining his eligibility for Medicaid beginning the first day of the month following the month a guardian of the estate, general guardian or interim guardian is appointed, provided that after the appointment, property which cannot be disposed of or used except by order of the court shall continue to be excluded until completion of the applicable procedures for disposition specified in Chapters 1 or 35A of the North Carolina General Statutes.
 - (e) When the court rules that the budget unit member is competent or no ruling is made because of the death or recovery of the member, his resources shall be counted except for periods of time for which it can be established by competent evidence from sources including but not limited to physicians, nurses, social workers, psychologists, relatives, friends or others with knowledge of the condition of the individual that the member was in fact incompetent. Any such showing of incompetence is subject to rebuttal by competent evidence as specified herein and in Sub-item (1)(c) of this Rule.
- (2) The limitation of resources held for reserve for the budget unit shall be as follows:
 - (a) For Family and Children's related categorically needy cases, one thousand dollars (\$1,000) per budget unit;
 - (b) For aged, blind or disabled cases and Family and Children's related medically needy cases, one thousand five hundred dollars (\$1,500) for a budget unit of one person, two thousand two hundred fifty dollars (\$2,250) for a budget unit of two persons and increases of one hundred dollars (\$100.00) for each additional person in the budget unit over two, not to exceed a total of three thousand, fifty dollars (\$3,050).
 - (3) If the value of countable resources of the budget unit exceeds the reserve allowance for the unit, the case shall be ineligible:
 - (a) For Family and Children's related cases and aged, blind or disabled cases protected by grandfathered provisions, and medically needy cases not protected by grandfathered provision, eligibility shall begin on the day countable resources are reduced to allowable limits or excess income is spent down, whichever occurs later;
 - (b) For categorically needy aged, blind or disabled cases not protected by grandfathered provisions, eligibility shall begin no earlier than the month countable resources are reduced to allowable limits as of the first moment of the first day of the month.
 - (4) Resources counted in the determination of financial eligibility for categorically needy and medically needy aid to the aged, blind, or disabled cases protected by grandfathered provisions are:
 - (a) Cash on hand;
 - (b) The current balance of savings accounts, except savings of a student saving his earnings for educational purposes;
 - (c) The current balance of checking accounts;
 - (d) Cash value of life insurance policies when the total face value of all policies that accrue cash value exceeds one thousand five hundred dollars (\$1,500);
 - (e) Equity in motor vehicles, including motor homes, determined to be non-essential according to Rule .0403 of this Subchapter;
 - (f) Equity in excess of one thousand dollars (\$1,000) in motor vehicles, including motor homes, determined to be essential according to Rule .0403 of this Subchapter;
 - (g) Stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;
 - (h) Negotiable and salable promissory notes and loans;
 - (i) Trust funds;
 - (j) The portion of lump sum payments remaining after the month of receipt;
 - (k) Individual Retirement Accounts or other retirement accounts or plans;
 - (l) Equity in real property not used as the

- (m) homesite or not producing an income;
Value of burial spaces other than spaces designated for the eligible individual, the eligible individual's spouse, and the eligible individual's immediate family which includes the eligible individual's minor and adult children, stepchildren, and adopted children, brothers, sisters, parents, adoptive parents, and the spouses of those persons;
 - (n) Salable remainder interest in life-estate property not used as the budget unit's homesite;
 - (o) Patient accounts in long term care facilities.
- (5) Resources counted in the determination of financial eligibility for aid to categorically needy aged, blind or disabled cases not protected by grandfathered provisions are:
- (a) Cash on hand;
 - (b) The balance of savings accounts, except savings of a student saving his earnings for educational purposes;
 - (c) The balance of savings account, except for aged, blind or disabled individuals who have a plan for achieving self-support (PASS) that is approved by the Social Security Administration;
 - (d) The balance of checking accounts less the current monthly income which had been deposited to meet the budget unit's needs when reserve was verified or lump sum income from self-employment deposited to pay annual expenses;
 - (e) Cash value of life insurance policies when the total face value of all policies that accrue cash value exceeds one thousand five hundred dollars (\$1,500);
 - (f) Trust funds; and annuities in accordance with 42 USC 1396p(d) and (e);
 - (g) Stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;
 - (h) Negotiable and salable promissory notes and loans;
 - (i) Revocable burial contracts and burial trusts;
 - (j) The portion of lump sum payments remaining after the month of receipt;
 - (k) Individual Retirement Accounts or other retirement accounts or plans;
 - (l) Patient accounts in long term care facilities;
 - (m) Equity in motor vehicles determined to be non-essential under Rule .0403 of this Subchapter or, if no motor vehicle is excluded as essential, any equity in excess of four thousand five hundred dollars (\$4,500) in a motor vehicle;
 - (n) Equity in real and/or personal property when the combined equities is six thousand dollars (\$6,000) or less and the property does not yield a net annual income of at least six percent of the equities;
 - (o) Equity in real and/or personal property when the combined equities exceed six thousand dollars (\$6,000);
 - (p) Equity in personal property, subject to (5) (m) and (n) of this Rule, is limited to:
 - (i) Mobile homes not used as homesite,
 - (ii) Boats, boat trailers and boat motors,
 - (iii) Campers,
 - (iv) Farm and business equipment;
- (6) Resources counted in the determination of financial eligibility for aid to medically needy aged, blind or disabled cases not protected by grandfathered provisions are:
- (a) Cash on hand;
 - (b) The balance of savings accounts, except savings of a student saving his earnings for educational purposes;
 - (c) The balance of savings accounts, except for aged, blind or disabled individuals who have a plan for achieving self-support (PASS) that is approved by the Social Security Administration;
 - (d) The balance of checking accounts less the current monthly income which had been deposited to meet the budget unit's

- needs when reserve was verified or lump sum income from self-employment deposited to pay annual expenses;
- (e) Cash value of life insurance policies when the total face value of all policies that accrue cash value exceeds one thousand dollars (\$1,000);
 - (f) Trust funds; and annuities in accordance with 42 USC 1396p(d) and (e);
 - (g) Stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;
 - (h) Negotiable and salable promissory notes and loans;
 - (i) Revocable burial contracts and burial trusts;
 - (j) The portion of lump sum payments remaining after the month of receipt;
 - (k) Individual Retirement Accounts or other retirement accounts or plans;
 - (l) Patient accounts in long term care facilities;
 - (m) Equity in motor vehicles determined to be non-essential under Rule .0403 of this Subchapter or, if no motor vehicle is excluded as essential, any equity in excess of four thousand five hundred dollars (\$4,500) in a motor vehicle;
 - (n) Equity in real property and personal property that does not produce a net annual income;
 - (o) Equity in personal property, subject to (6)(m) of this Rule, is limited to:
 - (i) Mobile homes not used as homesite,
 - (ii) Boats, boat trailers and boat motors,
 - (iii) Campers,
 - (iv) Farm and business equipment;
 - (p) Equity in real property, subject to Sub-item (6)(m) of this Rule, is limited to interest in real estate other than that used as the budget unit's homesite and includes:
 - (i) Fee simple interest,
 - (ii) Tenancy by the entireties interest only,
 - (iii) Salable remainder interest,
 - (iv) Value of burial spaces other than spaces designated for the eligible individual, the eligible individual's spouse, and the eligible individual's immediate family which includes the eligible individual's minor and adult children, stepchildren, and adopted children, brothers, sisters, parents, adoptive parents, and the spouses of those persons.
- (7) Resources counted in the determination of financial eligibility for categorically needy Family and Children's related cases are:
 - (a) Cash on hand;
 - (b) The balance of savings accounts, including savings of a student saving his earnings for school expenses;
 - (c) The balance of checking accounts less the current monthly income which had been deposited to meet the budget unit's monthly needs when reserve was verified;
 - (d) The portion of lump sum payments remaining after the month of receipt;
 - (e) Cash value of life insurance policies owned by the budget unit;
 - (f) ~~Revocable trust~~ Trust funds; and annuities in accordance with 42 USC 1396p(d) and (e);
 - (g) Stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;
 - (h) Negotiable and salable promissory notes and loans;
 - (i) Revocable pre-paid burial contracts;
 - (j) Patient accounts in long term care facilities;
 - (k) Individual Retirement Accounts or other retirement accounts or plans;
 - (l) Equity in non-essential personal property limited to:
 - (i) Mobile homes not used as home,
 - (ii) Boats, boat trailers and boat motors,
 - (iii) Campers,
 - (iv) Farm and business equipment;
 - (v) Equity in excess of one thousand five hundred dollars (\$1,500) in one motor vehicle determined to be essential under Rule .0403 of this Subchapter;
 - (vi) Equity in motor vehicles determined to be non-essential under Rule .0403 of this Subchapter;
 - (m) Equity in real property is limited to interest in real estate other than that used as the budget unit's homesite and is limited to:
 - (i) Fee simple interest,
 - (ii) Tenancy by the entireties interest only,
 - (iii) Salable remainder interest,
 - (iv) Value of burial plots.

(8) Resources counted in the determination of financial eligibility for medically needy Family and Children's related cases are:

- (a) Cash on hand;
- (b) The balance of savings accounts, including savings of a student saving his earnings for school expenses;
- (c) The balance of checking accounts less the currently monthly income which had been deposited to meet the budget unit's monthly needs when reserve was verified or lump sum income from self-employment deposited to pay annual expenses;
- (d) Cash value of life insurance policies when the total face value of all policies that accrue cash value exceeds one thousand five hundred dollars (\$1,500);
- (e) Trust funds; and annuities in accordance with 42 USC 1396p(d) and (e);
- (f) Stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;
- (g) Negotiable and salable promissory notes and loans;
- (h) Revocable prepaid burial contracts;
- (i) Patient accounts in long term care facilities;
- (j) Individual Retirement Accounts or other retirement accounts or plans;
- (k) Equity in non-essential, non-income producing personal property limited to:
 - (i) Mobile home not used as home,
 - (ii) Boats, boat trailers and boat motors,
 - (iii) Campers,
 - (iv) Farm and business equipment,
 - (v) Equity in motor vehicles determined to be non-essential under Rule .0403 of this Subchapter;
- (l) Equity in real property is limited to interest in real estate other than that used as the budget unit's homesite and is limited to:
 - (i) Fee simple interest,
 - (ii) Tenancy by the entireties interest only,
 - (iii) Salable remainder interest,
 - (iv) Value of burial plots.

42 C.F.R. 435.840; 42 C.F.R. 435.841; 42 C.F.R. 435-845; 42 C.F.R. 445.850; 42 C.F.R. 435.851; 45 C.F.R. 233.20; 45 C.F.R. 233.51; 42 U.S.C. 1396p(d) and (e).

SECTION .0400 - BUDGETING PRINCIPALS

.0403 RESERVE

(a) The value of resources held by the client or by a financially responsible person shall be considered available to the client in determining countable reserve for the budget unit.

(b) Jointly owned resources shall be counted as follows:

- (1) The value of resources owned jointly with a non-financially responsible person who is a recipient of another public assistance budget unit shall be divided equally between the budget units;
- (2) The value of liquid assets and personal property owned jointly with a non-financially responsible person who is not a client of another public assistance budget unit shall be available to the budget unit member if he can dispose of the resource without the consent and participation of the other owner or the other owner consents to and, if necessary, participates in the disposal of the resource;
- (3) The client's share of the value of real property owned jointly with a non-financially responsible person who is not a member of another public assistance budget unit shall be available to the budget unit member if he can dispose of his share of the resource without the consent and participation of the other owner or the other owner consents to and, if necessary, participates in the disposal of the resource.

(c) The terms of a separation agreement, divorce decree, will, deed or other legally binding agreement or legally binding order shall take precedence over ownership of resources as stated in Paragraphs (a) and (b) of this Rule, except as provided in Paragraph (o) of this Rule.

(d) The reserve limit for the budget unit for aged, blind or disabled cases shall be determined as follows:

- (1) The reserve limit for two persons shall be allowed when spouses live together

Authority G.S. 108A-54; 108A-55; 108A-58; 42 U.S.C. 703, 704 1396; 42 C.F.R. 435.121; 42 C.F.R. 435.210; 42 C.F.R. 435.711; 42 C.F.R. 435.712; 42 C.F.R. 435.734; 42 C.F.R. 435.823;

in a private living situation or when the couple share the same room in long term care;

- (2) Allow the reserve limit for one person for the Community Alternative Program (CAP) client with a spouse at home and only count the resources that are available to the CAP client in determining his countable reserve;
- (3) The reserve limit for one person is allowed for the client who is in long term care and the spouse remains in the home;
- (4) The reserve allowance for one person is allowed for the client who is in long term care and the spouse is in domiciliary care;
- (5) The reserve limit allowed for a blind or disabled minor child who lives with his parent or parents or is temporarily absent includes the child and the parent or parents with whom the child lives;
- (6) The reserve limit allowed for a blind or disabled dependent child under age 19 who is in long term care shall include only the child if his care and treatment are expected to exceed 12 months, as certified by the child's physician.

(e) Countable resources for Family and Children's related cases will be determined as follows:

- (1) The resources of a spouse, who is not a stepparent, shall be counted in the budget unit's reserve allowance if the spouses live together or one spouse is temporarily absent in long term care and the spouse is not a member of another public assistance budget unit;
- (2) The resources of a client and a financially responsible parent or parents shall be counted in the budget unit's reserve limit if the parents live together or one parent is temporarily absent in long term care and the parent is not a member of another public assistance budget unit;
- (3) The resources of the parent or parents shall not be considered if a child under age 21 requires care and treatment in a medical institution and his physician certifies that the care and treatment are expected to exceed 12 months.

(f) The homesite shall be excluded from countable resources as follows:

- (1) For all aged, blind or disabled cases

and family and children's related cases, the homesite is the client's principal place of residence, which includes the house and in the city the lot on which the house sits and all the buildings on the lot, or in a rural area the land on which the house sits, up to one acre, and all buildings on the acre, and, for all aged, blind, or disabled cases and medically needy family and children's related cases, the homesite also includes up to twelve thousand dollars (\$12,000) tax value in real property contiguous to the principal place of residence, regardless of whether the principal place of residence is owned by the client.

- (2) Additional value in real property contiguous to the principal place of residence shall be a countable resource.

- (3) The exclusion of the homesite from countable resources set forth in Subparagraphs (f)(1) and (2) of this Rule shall also be applicable for all aged, blind, or disabled cases when the client is in long term care and his spouse, minor children, or adult disabled children remain in the home or a physician has certified in writing that the client will return home within six months from the date of entry into the hospital or long term care facility.

(g) For categorically needy aged, blind or disabled cases without grandfathered protection, nonhome property and personal property that is income producing shall be excluded from resources when the budget unit's equity in the property does not exceed six thousand dollars (\$6,000) and the property produces a net annual return of at least six percent of the excludable equity value for each income producing activity.

(h) For medically needy Families and Children cases and medically needy aged, blind or disabled cases without grandfathered protection, if the client or any member of the budget unit has ownership in a probated estate, the value of the individual's proportionate share of the countable property shall be a countable resource unless the property can be excluded as the homesite or as income producing property, as stated in Paragraphs (e) and (f) of this Rule.

(i) The equity in non-excluded real property shall be counted toward the reserve level of the budget unit.

- (j) A motor vehicle shall be determined an

essential vehicle as follows:

- (1) For aged, blind or disabled individuals with grandfathered protection, if public transportation cannot be used because it is not available or because of his physical or mental condition and the vehicle is needed to:
 - (A) Obtain regular medical treatment, or
 - (B) Retain employment, or
 - (C) Go shopping if the shopping area is more than one-half mile from the client's home, or
 - (D) Go shopping if the client is responsible for shopping and is physically limited from walking one-half mile, or
 - (E) Transport children to and from school and the school is not within reasonable walking distance;
- (2) For aged, blind or disabled cases without grandfathered protection and medically needy Family and Children's related cases, a vehicle must be specially equipped for use by a handicapped individual, used to obtain regular medical treatment, or used to retain employment.

(k) The value of non-excluded motor vehicles is the Current Market Value, less encumbrances. If the applicant/recipient disagrees with the assigned value, he has the right to rebut the value.

(l) The current market value of a remainder interest in life estate shall be determined by applying the remainder interest percentage from the chart in the Medicaid Eligibility Manual to the tax value of the property. A lower current market value for remainder interest may be established by offering the interest for sale and the highest offer received, if any, is less than the value determined by application of the values chart to the tax value.

(m) For all aged, blind or disabled cases, up to one thousand five hundred dollars (\$1,500) may be excluded from countable resources for the client and his spouse under the burial exclusion. Apply the one thousand five hundred dollar (\$1,500) burial exclusion for each individual separately. Only the following resources may be excluded and they must be excluded in the following order:

- (1) Irrevocable pre-need burial contracts, burial trusts, or other irrevocable arrangements established for burial expenses;
- (2) Face value of life insurance policies that accrue cash value when the total face value of all policies for the budget

unit is one thousand five hundred dollars (\$1,500) or less and the cash value was not counted in reserve;

- (3) Revocable burial contracts or trusts established for burial expenses. Any excess remains a countable resource;
- (4) Cash value of life insurance that has been designated for burial expenses if the cash value was considered in determining countable reserve. Any cash value in excess of one thousand five hundred dollars (\$1,500) remains a countable resource.

~~(n) For all aged, blind or disabled cases and medically needy Family and Children's related cases, the value of trust funds established for the client or for any member of the budget unit is a countable resource unless it is determined by the courts that the funds are not available for the beneficiary of the trust.~~

~~(o)(n)~~ For a married individual:

- (1) Resources available to the individual are available to his or her spouse who is a noninstitutionalized applicant or recipient and who is either living with the individual or temporarily absent from the home, irrespective of the terms of any will, deed, contract, antenuptial agreement, or other agreement, and irrespective of whether or not the individual actually contributed the resources to the applicant or recipient. All resources available to an applicant or recipient under these rules must be considered when determining his or her countable reserve.
- (2) For an institutionalized spouse as defined in 42 U.S.C. 1396r-5(h), available resources shall be determined in accordance with 42 U.S.C. 1396r-5(c), except as specified in Paragraph (p) of this Rule.

~~(p)(o)~~ For an institutionalized individual, the availability of resources are determined in accordance with 42 U.S.C. 1396r-5. Resources of the community spouse are not counted for the institutionalized spouse when:

- (1) Resources of the community spouse cannot be determined or cannot be made available to the institutionalized spouse because the community spouse cannot be located; or
- (2) The couple has been continuously separated for 12 months at the time the institutionalized spouse enters the insti-

tution.

Authority G.S. 108A-54; 108A-55; 143-127.1(d); S.L. 1983, c. 1116; 42 U.S.C. 1396r-5; 42 U.S.C. 1396a(a)(17); 42 U.S.C. 1396a(a)(51); 42 C.F.R. 435.602; 42 C.F.R. 435.711; 42 C.F.R. 435.712; 42 C.F.R. 435.723; 42 C.F.R. 435.734; 42 C.F.R. 435.821; 42 C.F.R. 435.822; 42 C.F.R. 435.823; 42 C.F.R. 435.845; 45 C.F.R. 233.20; 45 C.F.R. 233.51; Deficit Reduction Act of 1984 (P.L. 98-369), Section 2373; Correll v. DSS/DMA/DHR, No. 406PA91 (North Carolina Supreme Court); Schweiker v. Gray Panthers, 453 U.S. 34, 101 S.Ct. 2633, 69 L. Ed.2d 460 (1981).

TITLE 11 - DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Medical Database Commission intends to amend rules cited as 11 NCAC 15 .0001 - .0002, .0004 - .0010, and .0012.

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

The public hearing will be conducted at 2:00 p.m. on August 25, 1994 at the Medical Database Commission, Conference Room, 112 Cox Avenue, Raleigh, NC 27605.

Reason for Proposed Action: To establish monetary penalty guidelines for failure to comply with rules, and to clarify definitions.

Comment Procedures: Written comments may be sent to Jim Hazelrigs at 112 Cox Ave., Raleigh, N.C. 27605. Oral presentations may be made at the public hearing. Anyone having questions should call Jim Hazelrigs at (919) 733-7141.

CHAPTER 15 - MEDICAL DATABASE COMMISSION

.0001 SCOPE AND PURPOSE

11 NCAC 15 sets forth the requirements that health care providers defined in 11 NCAC 15 .0002 must meet in submitting to the Medical Database Commission a uniform data set describing the case mix of its patients and the charges for services provided to these patients. That data will be used for grouping health care providers and

patients, comparing data provider hospital charges and utilization, and disseminating information to researchers and others as indicated in G.S. 131E-210(b). Eventually the information base will include data on different types of health care services, including ambulatory care services and long term care services. The Commission may collect health care data from physicians, nursing homes, ambulatory surgical centers, and other types of health care providers.

Statutory Authority G.S. 131E-212(b).

.0002 DEFINITIONS

As used in this Chapter, unless specifically stated otherwise, the following words have the following meanings:

- (1) Act. The North Carolina Medical Database Commission Act, G.S. 131E-210 through 213.
- (2) Aggregate data. A grouping or categorization of the raw data such that the unit of observation is something other than an individual discharge. Reports of aggregate data with small cell counts will be edited to prevent potential identification of individual patients.
- (3) Ambulatory surgery billing form. Either the HCFA 1450 UB-82 or HCFA 1500 claim form required by the payor of services for ambulatory surgical services billing.
- (4) Ambulatory surgical case. An individual who receives one or more ambulatory surgical procedures in either a dedicated ambulatory surgical operating room or in an operating room that is used for both inpatient and ambulatory surgical procedures during a single operative encounter.
- (5) Ambulatory surgical facility. As defined in G.S. 131E-176(1) means a facility designed for the provision of any ambulatory surgical program. An ambulatory surgical facility serves patients who require local, regional or general anesthesia, and a period of post-operative observation. An ambulatory surgical facility may only admit patients for a period of less than 24 hours and must provide at least one designated operating room and at least one designated recovery room, have available the necessary equipment and trained personnel to handle emergencies, provide

- adequate quality assurance and assessment by an evaluation and review committee, and maintain adequate medical records for each patient. An ambulatory surgical facility may be operated as a part of a physician or dentist's office, provided the facility is licensed under G.S. 131E, Article 6, Part D, but the performance of incidental, limited ambulatory surgical procedures which do not constitute an ambulatory surgical program as defined G.S. 131E-176 subdivision (1a) and which are performed in a physician's or dentist's office does not make that office an ambulatory surgical facility.
- (6) Ambulatory surgical program. As defined in G.S. 131E-176(1a) means a formal program for providing on a same-day basis those surgical procedures which require local, regional or general anesthesia and a period of post-operative observation to patients whose admission for more than 24 hours is determined, prior to surgery, to be medically unnecessary.
- (7) Ambulatory surgical services. Those surgical services provided to patients as part of an ambulatory surgical program within a licensed ambulatory surgical facility or a general acute care hospital licensed under G.S. 131E, Article 5, Part A.
- (8) Case mix data. Case specific discharge data which describe socio-demographic characteristics of the patient; total and component charges; principal and other diagnoses; treatment and services provided to the patient; as well as duration and status of the patient's stay in the hospital. Case mix data refers to the actual data elements abstracted from the HCFA 1450 UB-82 claim form as well as classifications resulting from groupings of specific data elements, e.g., DRG category.
- (9) Cases - episodes of treatment of patients regardless of the physical setting. Includes but is not limited to hospital inpatient discharges, and outpatient encounters. Usually identifiable because of the creation of a claim form (such as HCFA 1450 and HCFA 1500) which identifies the date of treatment, the diagnosis treated and the procedures
- performed.
- (10) ~~(9)~~ Charge data. Charge data shall consist of the HCFA 1450 UB-82 data elements and codes specified in 11 NCAC 15 .0005.
- (a) Hospital inpatient reporting will consist of HCFA 1450 UB-82 data elements and codes; and
- (b) Hospital ambulatory surgical programs and ambulatory surgical facilities reporting cases of ambulatory/outpatient surgery will consist of either or both the HCFA 1450 UB-82 or HCFA 1500 data elements and codes.
- (11) ~~(10)~~ Commission. The Medical Database Commission established under G.S. 131E-211.
- (12) ~~(11)~~ Compilations. The arrangement of data collected by and furnished to the Commission by any corporation, association, or entity acting under agreement with the Commission for release and dissemination to the public.
- (13) ~~(12)~~ Data Provider. The legal entity responsible for submitting data to the Commission as specified in this Chapter and for which the administrative rules currently apply. These Rules currently apply to the following: Hospitals and Ambulatory surgical facilities.
- (14) ~~(13)~~ Dataset. The full collection of the data submitted by each data provider for a particular reporting period in the possession of the Commission or the contractor designated by the Commission to collect and process the data.
- (15) ~~(14)~~ Executive Director. The chief operating officer of the Commission.
- (16) ~~(15)~~ HCFA. The Health Care Financing Administration of the U.S. Department of Health and Human Services, or any successor agency.
- (17) ~~(16)~~ Health Care Provider. Any person, organization, or entity that renders health care services, e.g., hospital, as defined in 11 NCAC 15 .0002.
- (18) ~~(17)~~ Hospital. Any facility licensed by the North Carolina Division of Facility Services under G.S. 131E-77 (Hospital Licensure Act) or under G.S. 122C-23 (Licensure of Facilities for the Mentally Ill, the Mentally Retarded and Substance Abusers), but does not include:
- (a) a facility with all of its beds designated for medical type "LTC" (long term

- care);
- (b) a facility with the majority of its beds designated for medical type "PSY-3" (mental retardation); or
- (c) a facility operated by the North Carolina Department of Corrections.
- (19) ~~(18)~~ Billing Forms.
 - (a) Uniform billing hospital billing form. Form ~~UB-82~~ HCFA-1450 (and its variations UB 82 and UB 92), the hospital billing form developed by the National Uniform Billing Committee or its successor.
 - (b) Ambulatory surgery billing form. Either the HCFA 1450 UB-82 or HCFA 1500 form required by the payor of services for ambulatory surgical services billing.
- (20) ~~(19)~~ Raw data. Patient specific records including those which have been stripped of all patient identifying information.
- (21) ~~(20)~~ Reporting facility. Any of the hospitals, ambulatory surgical facilities, nursing homes, physicians, or other health care providers from which collection of information is authorized in 11 NCAC 15 .0001 and for which administrative rules are published and currently apply.

Statutory Authority G.S. 131E-212(b).

.0004 UNIFORM BILLING FORM

- (a) All hospitals shall complete the uniform hospital billing form for every inpatient discharged after June 30, 1987, from any bed other than one designated medical type "LTC" regardless of the source of payment. For patients discharged after June 30, 1987 who were admitted prior to July 1, 1987, hospitals shall submit to the Commission either an admit-through-discharge claim or the complete set of interim claims necessary to reflect the total length of stay and charges.
- (b) The information submitted to the Commission shall be reported only for the primary payer, including Medicare, Medicaid, other government programs, private insurance, health maintenance organizations, self-insured, private pay patients, and others. Claims for secondary payers will be considered duplicate information and should not be submitted to the Commission.
- (c) Unless otherwise indicated in this Chapter, completion of the uniform hospital billing form for inpatient cases shall be in accordance with the instructions and definitions in the manual devel-

oped by the National Uniform Billing Committee as adopted and finalized by the North Carolina Uniform Billing Committee. A copy of the manual is available for reference by contacting the Executive Director at 112 Cox Avenue, Suite 208, Raleigh, North Carolina 27605.

(d) All hospital ambulatory surgical programs and all ambulatory surgical facilities shall complete either the HCFA 1450 UB-82 or the HCFA 1500 form for every ambulatory surgical patient "released" from care after September 30, 1993. The choice of form will be dictated by the requirements of the payor for whom the bill is prepared for the case involved, however, the HCFA ~~1500~~ 1450 form will be prepared in cases where the payor has not stipulated which billing form to use.

(e) The HCFA 1450 UB-82 and the HCFA 1500 forms will be completed in accordance with the instructions and definitions issued by the Commission. A copy of these instructions is available for reference by contacting the Executive Director at 112 Cox Avenue, Suite 208, Raleigh, North Carolina, 27605.

Statutory Authority G.S. 131E-212(b).

.0005 DESCRIPTION OF DATA TO BE SUBMITTED

(a) In accordance with all pertinent state and federal regulations on patient confidentiality, the following HCFA 1450 UB-82 data elements must be submitted to the Commission for every inpatient discharged regardless of payer:

| DATA ELEMENT | DESCRIPTION |
|---|-------------|
| (1) Patient Control Number Form locator 3 - As stated in the North Carolina <u>HCFA 1450 UB-82</u> Manual. | |
| (2) Bill Type Form locator 4 - As stated in the North Carolina <u>HCFA 1450 UB-82</u> Manual. | |
| (3) <u>Provider Identification:</u> | |
| (A) <u>Medicaid Base Provider Number Form locator 8</u> - The number assigned to the provider by Medicaid or as assigned by the Commission <u>(for batching only)</u> . | |
| (B) <u>Federal Tax Number Form Locator 5</u> - <u>As stated in the North Carolina HCFA 1450 Manual.</u> | |
| (4) Zip Code of Patient Address Form locator 44 <u>13</u> - Only the zip code portion of this field is required. Code as stated in the North Carolina <u>HCFA 1450 UB-82</u> Manual. | |
| (5) Patient Birth Date Form locator 42 <u>14</u> | |

- As stated in the North Carolina HCFA 1450 UB-82 Manual.
- (6) Patient Sex Form locator ~~43~~ 15 - As stated in the North Carolina HCFA 1450 UB-82 Manual.
- (7) Admission Date Form locator ~~45~~ 17 - As stated in the North Carolina HCFA 1450 UB-82 Manual.
- (8) Admission Type Form locator ~~47~~ 19 - As stated in the North Carolina HCFA 1450 UB-82 Manual.
- (9) Source of Admission Form locator ~~48~~ 20 - As stated in the North Carolina HCFA 1450 UB-82 Manual.
- (10) Patient Status Form locator ~~24~~ 22 - As stated in the North Carolina HCFA 1450 UB-82 Manual.
- (11) Discharge Date (Covers Period) (Statement Form locator ~~22~~ 6 - As stated in the North Carolina HCFA 1450 UB-82 Manual.
- (12) All Revenue Codes and Associated Charges
Form locators ~~51 and 53~~ 42 and 47 - As stated in the North Carolina HCFA 1450 UB-82 Manual.
- (13) Payer Identification Form locator ~~57A~~ 50a - Classification code and specific carrier identification code for primary payer.
- (14) Certificate/Social Security/Health Insurance Claim/Identification Number Form locator ~~68~~ 60a - As stated in the North Carolina HCFA 1450 UB-82 Manual.
- (15) Insurance Group Number Form locator ~~70~~ 62a - As stated in the North Carolina HCFA 1450 UB-82 Manual.
- (16) Principal Diagnosis Form locator ~~77~~ 67 - As stated in the North Carolina HCFA 1450 UB-82 Manual.
- (17) Other Diagnoses - ~~8 (4 others maximum)~~ Form locators ~~78-84~~ 68-75 - As stated in the North Carolina HCFA 1450 UB-82 Manual.
- (18) External Cause of Injury Code (E-Code Form Locator 77 - As stated in the North Carolina HCFA 1450 Manual/ whenever the principal diagnosis is an injury, poisoning or adverse effect.
- (19) ~~(18)~~ Principal Procedure and Date Form locator ~~84~~ 80 - As stated in the North Carolina HCFA 1450 UB-82 Manual.
- (20) ~~(19)~~ Other Procedures and Dates Form locators ~~85 & 86~~ 81a - e - As stated in

the North Carolina HCFA 1450 UB-82 Manual.

- (21) ~~(20)~~ Attending Physician Identification Form locator ~~92~~ 82 - Only the ~~State license number of this field~~ UPIN is required. Code as stated in the North Carolina HCFA 1450 UB-82 Manual.
- (22) ~~(21)~~ Other Physician Identification Form locator ~~93~~ 83 - Only the ~~State license number of this field~~ UPIN is required. Code as stated in the North Carolina HCFA 1450 UB-82 Manual.

(b) In accordance with all pertinent State and federal laws or regulations on patient confidentiality, the following HCFA 1450 UB-82 data elements must be submitted to the Commission for every ambulatory surgical patient released regardless of payor:

| DATA ELEMENT | DESCRIPTION |
|--------------|-------------|
|--------------|-------------|

- | | |
|--|--|
| <ul style="list-style-type: none"> (1) Patient Control Number Form locator 3 - As stated in the North Carolina <u>HCFA 1450 UB-82</u> Manual. (2) Bill Type Form locator 4 - As stated in the North Carolina <u>HCFA 1450 UB-82</u> Manual. (3) <u>Provider Identification:</u> <ul style="list-style-type: none"> (A) <u>Medicaid Base Provider Number Form locator 8</u> - The number assigned to the provider by Medicaid or as assigned by the Commission (<u>for batching only</u>). (B) <u>Federal Tax Number Form Locator 5 - As stated in the North Carolina HCFA 1450 Manual.</u> (4) Zip Code of Patient Address Form locator 44 <u>13</u> - Only the zip code portion of this field is required. Code as stated in the North Carolina <u>HCFA 1450 UB-82</u> Manual. (5) Patient Birth Date Form locator 42 <u>14</u> - As stated in the North Carolina <u>HCFA 1450 UB-82</u> Manual. (6) Patient Sex Form locator 43 <u>15</u> - As stated in the North Carolina <u>HCFA 1450 UB-82</u> Manual. (7) Admission Date Form locator 45 <u>17</u> - As stated in the North Carolina <u>HCFA 1450 UB-82</u> Manual. (8) Admission Type Form locator 47 <u>19</u> - As stated in the North Carolina <u>HCFA 1450 UB-82</u> Manual. (9) Source of Admission Form locator 48 <u>20</u> - As stated in the North Carolina <u>HCFA 1450 UB-82</u> Manual. (10) Patient Status Form locator 24 <u>22</u> - As | |
|--|--|

- stated in the North Carolina HCFA 1450 UB-82 Manual.
- (11) Discharge Date (System Covers Period) Form locator 22 6 - As stated in the North Carolina HCFA 1450 UB-82 Manual.
 - (12) All Revenue Codes and Associated Charges Form locators 51 and 53 42 and 47 - As stated in the North Carolina HCFA 1450 UB-82 Manual.
 - (13) Payer Identification Form locator 57A 50a - Classification code and specific carrier identification.
 - (14) Certificate/Social Security/Health Insurance Claim/Identification Number Form locator 68 60a - As stated in the North Carolina HCFA 1450 UB-82 Manual.
 - (15) Insurance Group Number Form locator 70 62a - As stated in the North Carolina HCFA 1450 UB-82 Manual.
 - (16) Principal Diagnosis Form locator 77 67 - As stated in the North Carolina HCFA 1450 UB-82 Manual.
 - (17) Other Diagnoses - 8 (4 others maximum) Form locators 78-81 68-75 - As stated in the North Carolina HCFA 1450 UB-82 Manual.
 - (18) External Cause of Injury Code (E-Code) Form Locator 77 - As stated in the North Carolina HCFA 1450 Manual/whenever the principal diagnosis is an injury, poisoning or adverse effect.
 - (19) (18) Principal Procedure and Date Form locator 84 80 - As stated in the North Carolina HCFA 1450 UB-82 Manual.
 - (20) (19) Other Procedures Form locators 85 & 86 81a - e - As stated in the North Carolina HCFA 1450 UB-82 Manual.
 - (21) (20) Attending Physician Form locator 92 82 - Only the State Identification number-license UPIN is required. Code as stated regardless of payer.
 - (22) (21) Other Physician Identification Form locator 93 83 - Only the State number of this field UPIN is required. Code as stated in the North Carolina HCFA 1450 UB-82 Manual.

(c) In accordance with all pertinent State and federal laws or regulations on patient confidentiality, the following HCFA 1500 data elements must be submitted to the Commission for every ambulatory surgical patient released.

| DATA ELEMENT | DESCRIPTION |
|---------------------------------|----------------------|
| (1) <u>Payer Identification</u> | <u>Type-Coverage</u> |

- ~~Form locator 1~~ - as stated in the Commission issued ambulatory surgery data submission manual.
- (2) Insured's ID Number Form locator 1a - as stated in the Commission issued ambulatory surgery data submission manual.
- (3) Patient's Date of Birth Form locator 3 - as stated in the Commission issued ambulatory surgery data submission manual.
- (4) Sex Form locator 3 - as stated in the Commission issued ambulatory surgery data submission manual.
- (5) Zip code of Patient Address Form locator 5 - only the zip code is required as stated in the Commission issued ambulatory surgery data submission manual.
- (6) Diagnosis or Nature of Illness or Injury Form locator 21 - using the ICD-9-CM code and stated in the Commission issued ambulatory surgery data submission manual.
- (7) Dates of Service Form locator 24A - as stated in the Commission issued ambulatory surgery data submission manual.
- (8) Place of Service Form locator 24B - as stated in the Commission issued ambulatory surgery data submission manual.
- (9) Type of Service Form locator 24C - as stated in the Commission issued ambulatory surgery data submission manual.
- (10) Procedures, Services, Supplies Form locator 24D - as stated in the Commission issued ambulatory surgery data submission manual.
- ~~(11) Diagnosis Code Form locator 24E as stated in the Commission issued ambulatory surgery data submission manual.~~
- (11) ~~(12) Charges~~ Form locator 24F - as stated in the Commission issued ambulatory surgery data submission manual.
- (12) ~~(13) Days or Units~~ Form locator 24G - as stated in the Commission issued ambulatory surgery data submission manual.
- (13) ~~(14) Federal Tax ID~~ Form locator 25 - as stated in the Commission issued ambulatory surgery data submission manual.
- (14) ~~(15) Patient's Account No.~~ Form locator 26 - as stated in the Commission issued ambulatory surgery data submission manual.

- (15) ~~(16)~~ Total Charge Form locator 28 - as stated in the Commission issued ambulatory surgery data submission manual.
- (16) ~~(17)~~ Attending Physician's PIN UPIN Number Form locator 33 17A - as stated in the Commission issued ambulatory surgery data submission manual.

(d) Any hospital or ambulatory surgical facility which does not have a Medicaid Base provider number shall contact the Commission for assignment of an identification number. This number shall be used ~~in the Medicaid Provider Number field for all UB-82 records submitted to the Commission~~ for batching purposes only.

Statutory Authority G.S. 131E-212(b).

.0006 DATA SUBMISSION

(a) Data Submission Requirements:

- (1) At a minimum, ~~hospitals and ambulatory surgical facilities~~ data providers shall submit the required data within 45 calendar days following the close of the calendar quarter during which the patient was discharged or died; therefore, data for the calendar quarters ending March 31, June 30, September 30, and December 31 shall be submitted on or before May 15, August 14, November 14, and February 14, respectively. However, ~~hospitals~~ data providers may submit data more frequently during the calendar quarter in which the patient was discharged or died.
- (2) Upon receipt of a written request for an extension from the data provider, the Commission may, for good cause, extend the time for submitting data for a particular reporting period.

(b) Format for Data Submission:

- (1) All ~~hospitals and ambulatory surgical facilities~~ data providers may submit HCFA 1450 UB-82 and HCFA 1500 (ambulatory surgery only), discharge data to the Commission on one of three acceptable types of media: on paper HCFA 1450 UB-82 forms, and HCFA 1500 forms (ambulatory surgery only), on a magnetic tape, or on a personal computer (PC) diskette. Other types of media used to submit the required data, such as on-line transmission, must be approved by the Commission.
- (2) On and after July 1, 1991, each hospital with 1,000 or more annual discharges

or cases, as reported on the most current hospital licensure application, must submit the required HCFA 1450 UB-82 inpatient discharge data on one of the acceptable electronic media specified in this Rule and in the format as required by the Commission. By the end of six months after first reporting to the Commission, any data provider with 1,000 or more annual discharges or reportable cases, as reported on the most current Licensure application, will submit the required data on one of the acceptable electronic media specified in this Rule and in the format as required by the Commission. An exemption will be considered by the Commission if the ~~hospital~~ data provider's can demonstrate that it lacks the technical capability and computer resources to produce the required data electronically. The request for exemption must be made in writing by the ~~hospital's~~ data provider's chief executive officer. Each ~~hospital~~ data provider granted an exemption must submit an annual certification signed by the ~~hospital's~~ data provider's chief executive officer verifying that the ~~hospital~~ data provider continues to meet the exemption criteria. The annual certification form received from the Commission must be returned to the Commission no later than July 1 of each year.

- (3) The physical specifications of the magnetic tape shall be any size reel, recorded in nine track, Extended Binary Coded Decimal Interchange Code (EBCDIC) mode or ASCII, with density equal to 1600 BPI or 6250 BPI, unlabeled or with IBM standard labels. Acceptable specifications for submission of data on a floppy disk shall be 5 1/4 or 3 1/2 inch IBM-PC compatible diskette.
- (4) Data submitted via magnetic tape shall conform to the uniform record layout as required by the Commission. Data submitted via PC diskette shall also conform to a uniform record layout as required by the Commission. Copies of the required format may be obtained by contacting the Executive Director of the Medical Database Commission at 112 Cox Avenue, Suite 208, Raleigh, North

- Carolina, 27605.
- (c) Edit Criteria:
- (1) Data elements that are considered critical fields on the HCFA 1450 UB-82 form for record editing purposes are Patient Control Number, Bill Type, ~~Medicaid Provider Number~~ Federal Tax ID, Zip Code, Date of Birth, Sex, Admission Date, Admission Type, Source of Admission, Patient Status, Statement Covers Period, Revenue Codes and Charges, Primary Payer, Principal Diagnosis, Attending Physician Identification. Records containing invalid HCFA 1450 UB-82 codes or all-blank fields for any of these data elements will be designated as error records.
 - (2) Data elements that are considered critical fields on the HCFA 1500 form for record editing purposes are Payer Identification Insured's I.D. Number, ~~Medicaid Provider number~~ Federal Tax ID, Zip Code, Date of Birth, Sex, Dates of Service, place of service, type of service, procedures defined with CPT/HCPCS codes with modifiers, principle diagnosis codes, principle and secondary surgical procedure, patient's account number, ~~physician's PIN attending physician identification~~. Records containing invalid HCFA 1500 form codes or all blank fields for any of these data elements will be designated as error records.
 - (3) The last revenue code listed must be ~~004~~ 0001, Total Charge, and this charge must equal the sum of charges for all other revenue codes reported. (HCFA 1450)
 - (4) On the HCFA 1450 UB-82 form for inpatient cases, the following data elements must contain valid codes if present: ~~Primary Payer—Specific Carrier Identification~~, Other Diagnoses, Principal Procedure Code and Date, Other Procedure Codes and Dates, External Cause of Injury Code, Other Physician Identification (if a procedure was performed).
 - (5) For ambulatory surgery cases the following data elements must contain valid codes if present:
 - (A) reported on HCFA 1450 UB-82: Other Diagnoses, Other Procedure

Codes and Dates, External Cause of Injury Code, Primary Payer—Specific Carrier Identification, Other Diagnoses, Principal Procedure Code and Date, Other Procedure Codes and Dates, Identification of Surgeon performing the procedure.

- (B) reported on HCFA 1500: Type coverage and insured ID number, specific carrier identification, procedures, services or supplies in CPT4 or HCPC code, dates of service, Physician PIN.
- (6) Upon completion of the data error assessment, the Commission or the designated contractor shall promptly notify each ~~hospital or ambulatory surgical facility~~ data provider whose records do not pass the critical edit checks. This notification shall identify the discharge records and the data items within them which do not pass the edits. Each ~~hospital~~ data provider receiving an error notification report shall respond within 30 calendar days of the notification by making the necessary changes.
- (7) Upon receipt of a written request for an extension from the data provider, the Commission may, for good cause, extend the time for submitting the necessary changes for a particular reporting period.
- (d) Data Submission Arrangements:
 - (1) Each ~~hospital or ambulatory surgical facility~~ data provider or its designated agent shall submit the required UB-82 data directly to the Commission or to the designated contractor.
 - (2) Resubmissions of data as required by the Commission or upon the initiative of a hospital or ambulatory surgical facility will be accepted for the purposes of adding records, amending data elements or otherwise making modifications to a previous data submission. Resubmissions shall conform to the requirements of 11 NCAC 15 .0006(b).
- (e) Reimbursement for Data Submission:

For HCFA 1450 UB-82 and HCFA 1500 discharge records generated solely for submission to the Commission due to the absence of a third party payer, hospitals or ambulatory surgical facilities shall be reimbursed 40 cents (\$0.40) per dis-

charge, regardless of the choice of medium for submission.

Statutory Authority G.S. 131E-212(b).

.0007 PROVIDER VERIFICATION

Data Providers shall be given an opportunity to review and verify information pertaining to them in the database as follows:

- (1) Within ten calendar days after all error corrections have been made and preparation of the individual hospital's data provider's dataset by the Commission is complete, each hospital data provider will be notified in writing of the opportunity to review its dataset. A summary compilation of the dataset, including number of discharges and total charges, will be attached to each data provider's data verification notice. Within 15 calendar days of the date of the notice, each hospital data provider shall return the notice to the Commission indicating that the accuracy of the dataset summary compilation has been verified by the hospital data provider.
- (2) Within 15 calendar days of the date of the verification notice and summary compilation, a hospital data provider that wishes to review its dataset shall submit a written request to the Executive Director. The Commission shall provide the requested data within ten calendar days after receipt of the written request.
- (3) Within 30 calendar days of the Commission's release of the requested dataset, the hospital data provider shall notify the Commission in writing of those portions of the dataset which the hospital data provider believes are inaccurate. The hospital data provider shall include a written statement explaining why the identified portions are believed to be inaccurate and enclose any data which would assist in clarifying the possible inaccuracies.
- (4) If the Commission finds any error in a dataset, the dataset shall be corrected before the release of compilations from that dataset for public use. A notification of corrections made to a hospital's data provider's dataset shall be provided to the appropriate hospital data provider by the Commission in writing prior to public release. If the Commission finds changes

to the dataset are unnecessary or unwarranted, it shall notify the appropriate hospital data provider of this conclusion in writing prior to public release, including a brief but complete explanation of its determination. The compilations from the dataset will be available to the public seven calendar days following commission acceptance of the accurate dataset.

- (5) The Commission may, for good cause, grant an extension of these time limits upon receipt of written request from the hospital data provider.

Statutory Authority G.S. 131E-212(b).

.0008 COMPLIANCE

(a) Compliance with these regulations and the act will be determined on a quarterly basis. The Commission shall consider a hospital data provider out of compliance with these regulations and the act when any of the following conditions apply:

- (1) The hospital data provider knowingly fails to submit data in accordance with the provisions of these regulations.
- (2) More than three percent of the hospital's data provider's discharge records submitted during a quarter, are excluded from the database by the Commission because the records do not pass the critical edit checks as specified in 11 NCAC 15 .0006(c) and the total percentage of discharge records failing critical edits for the preceding three quarters and the submitting quarter exceeds three percent. Upon notification by the Commission, hospital's data providers will be allowed to submit the corrected records in accordance with the requirements of 11 NCAC 15 .0006. Discharge records resubmitted to correct errors will not be counted in the determination of the error rate.
- (3) The hospital data provider has not submitted data for all of its discharges to the Commission in accordance with the required submission deadlines in 11 NCAC 15 .0006(a).

(b) Penalties - penalties will apply for data for discharges or cases with date of service on or after 1 October 1994. The Commission staff determine which data provider meets the criteria for penalties in accordance with Subparagraph (b)(1) and (2) of this Rule and provide the calculations of the

penalties to the Commission board members. The board members will then consider these findings and vote deciding to invoke the entire penalty, a portion thereof, or none at all. The criteria to be used in deciding what level of the eligible penalty to invoke will include but not be limited to: the historic compliance of the data provider, and mitigating circumstances that prevented the data provider from supplying the information.

- (1) Penalty for late submission of data will be calculated in accordance with the following formula: one hundred dollars (\$100.00) per day for each day the information is late (regardless of the number of records) PLUS:
 - (A) for the lateness of a whole quarter of data = one dollar (\$1.00) x 1/4 x total number of last years cases as reported to the North Carolina Division of Facilities Services; or
 - (B) for the lateness of a month of data = one dollar (\$1.00) x 1/12 x total number of last years cases as reported to the North Carolina Division of Facilities Services.
- (2) Penalty for not meeting the 3% critical error rate - effective October 1, 1994 using previous 4 quarters of data to calculate the error rate - Minimum charge of ten dollars (\$10.00), and would be calculated as follows: 30 cents per discharge case with a critical error based upon statistic for critical errors as calculated in the control reports generated by the system database.

Statutory Authority G.S. 131E-212(b).

.0009 DATA ACCESSIBILITY

(a) In accordance with G.S. 131E-213, the data collected from data providers shall not be considered public records.

- (1) The raw data shall be released by the Commission only to data providers which have submitted that particular data to the Commission, and which request to see and review its dataset for purposes of verifying information in the Commission's database pertaining to that data provider. These datasets are not public records.
- (2) State agencies will have access only to public record information as specified in G.S. 131E-212(f).

(b) Only those reports and compilations prepared by the designated contractor in accordance with G.S. 131E-213 and with the provisions in 11 NCAC 15 .0009 and .0010 are public record. These reports shall include, but not be limited to comparative information on average charges, total and ancillary charge components, utilization rates, length of stay on diagnosis specific and procedure specific categories, and number of discharges, compiled in aggregate by health care provider, by diagnosis, and by primary payer category.

- (1) Compilations are not available for release and dissemination and are not public records until the data provider verification process has been completed.
- (2) The Commission shall not release any compilation of data for special studies and analysis for a purpose other than one authorized by the act. Compilations of data shall not contain patient identifying information. Only the data which can be released under requirements of the act shall be released.
- (3) Nothing in the act or these regulations shall prevent a ~~hospital~~ data provider from receiving upon request a copy of that ~~hospital's~~ data provider's final edited dataset as it exists in the possession of the Commission.

(c) Requests for Special Compilations. Any person, organization, governmental agency, or other entity may request the preparation of compilations of data collected by and furnished to the Commission in a specific manner or format not already used by the Commission. This includes requests for subsets of information already available from the Commission in compiled form.

- (1) All requests for compilations of data shall be made in writing to the Executive Director of the Commission. At minimum, the written request shall contain the name, address, and telephone number of the requester, a description of the requested compilation of data, a concise statement of the reason for the request, and the relationship of the requested compilation to a legitimate purpose. A "legitimate purpose" is a purpose consistent with the intent, policies, and purposes of the act.
- (2) The Commission shall review each

request for a compilation of data and determine whether to approve or deny the request. The Commission shall notify the public of requests made for compilations by listing the requester, and providing a short description of the request on its official meeting agenda. Such requests shall be approved by the Commission which shall designate the form in which the information shall be made available. The approval or denial by the Commission of requests for compilations of data shall be within the discretion of the Commission. The Commission may deny a request for a compilation of data for reasons including, but not limited to, unavailability of data, the requested compilation is already available from the Commission or another source, the requested compilation of data would endanger patient confidentiality, the Commission lacks sufficient resources to fulfill the request, or the request is not related to a legitimate purpose.

- (3) The Commission shall notify the requester in writing of its decision. Denial of a request shall include a brief explanation of the reason for the denial.
- (4) The Commission or the designated contractor in consultation with the Commission shall also determine a fee to be charged to the requesting agency or private sector organization to cover the direct and indirect costs for producing special compilations. The fee should include staff time, computer time, copying costs, and supplies. For charging purposes, each compilation will be considered an original.
- (5) No person, organization, governmental agency, or other entity receiving data from the Commission shall redisclose or redistribute that information for a fee in the same form without prior written approval from the Commission.

Statutory Authority G.S. 131E-212(b).

.0010 CONFIDENTIALITY OF DATA

(a) The Commission shall ensure that any contract entered into with other parties for the purposes of processing and analysis of data collected under this regulation shall contain assurances that such other parties shall also comply

with the provisions of pertinent state and federal regulations on patient confidentiality.

(b) The Patient Control Number (HCFA 1450 UB-82 form locator 3) and the Certificate/Social Security/Health Insurance Claim/Identification Number (HCFA 1450 UB-82 form locator 68) and Insured's I.D. Number (HCFA 1500 form locator 4a) and the Patient Account Number (HCFA 1500 form locator 26) shall be used only for the purpose of establishing an audit trail in the event that it is necessary to retrieve the primary source document for validation of the abstracted data. Data collected under these regulations and disclosed to other parties shall be purged of Patient Control Numbers, Certificate/Social Security/Health Insurance Claim/Identification Numbers and Dates of Birth prior to disclosure.

(c) Raw data submitted to the Commission or to the designated contractor by data providers pursuant to the act shall be privileged and confidential, and shall not be disclosed in any manner. The foregoing includes, but shall not be limited to, disclosure, inspection or copying under the State's Public Record Act. However, these prohibitions shall not apply to the reports prepared for release and dissemination by the Commission.

(d) For compilations released, the Commission will develop procedures to prevent small cell counts from potentially identifying an individual patient.

Statutory Authority G.S. 131E-212(b).

.0012 SUCCESSOR FORMS

All references in this Section to claim forms, such as "HCFA 1500" and "HCFA 1450 UB-82", include references to their successor forms, such as "HCFA 1450" and "UB-92", that are developed pursuant to federal law under the auspices of HCFA, the National Uniform Billing Committee, or the North Carolina State Uniform Billing Committee.

Statutory Authority G.S. 131E-212(b).

TITLE 12 - DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Alarm Systems Licensing Board intends to amend rule cited as 12 NCAC 11 .0209.

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

The public hearing will be conducted at 2:00 p.m. on August 30, 1994 at the State Bureau of Investigation, Conference Room, 3320 Old Garner Road, Raleigh, N.C. 27626-0500.

Reason for Proposed Action: Clarify language in the rule to specifically exempt a sole proprietorships that is owned and operated by a licensee.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. The Record of Hearing will be open for receipt of written comments until the hearing. Written comments must be delivered to the Private Protective Services Board, 3320 Old Garner Road, Raleigh, N.C. 27626-0500

CHAPTER 11 - N.C. ALARM SYSTEMS LICENSING BOARD

SECTION .0200 - PROVISIONS FOR LICENSEES

.0209 COMPANY BUSINESS LICENSE

(a) Any firm, association, or corporation required to be licensed pursuant to G.S. 74D-2(a) shall submit an application for a corporate business license on a form provided by the Board. This application for license shall call for such information as the firm, association, or corporation name; the address of its principal office within the State; any past conviction for criminal offenses of any corporate director or officer; information concerning the past revocation, suspension or denial of a business or professional license to any director or officer; a list of all directors and officers of the firm, association, or corporation; a list of all persons, firms, associations, corporations or other entities owning 10 percent or more of the outstanding shares of any class of stock; and the name and address of the qualifying agent.

(b) In addition to the items required in Paragraph (a) of this Rule, a foreign corporation shall further qualify by filing with its application for a license, a copy of its certificate of authority to transact business in this state issued by the North Carolina Secretary of State in accordance with G.S. 55-131 and a consent to service of process and pleadings which shall be authenticated by its

corporate seal and accompanied by a duly certified copy of the resolution of the board of directors authorizing the proper officer or officers to execute said consent.

(c) After filing a completed written application with the Board, the Board shall conduct a background investigation to ascertain if the qualifying agent is in a management position. The Board shall also determine if the directors or officers have the requisite good moral character as defined in G.S. 74D-6(3). It shall be prima facie evidence of good moral character if a director or officer has not been convicted by any local, State, federal, or military court of any crime involving the use, carrying, or possession of a firearm; conviction of any crime involving the use, possession, sale, manufacture, distribution, or transportation of a controlled substance, drug, narcotic, or alcoholic beverage; conviction of a crime involving assault or an act of violence; conviction of a crime involving breaking or entering, burglary, larceny, or any offense involving moral turpitude; or does not have a history of addiction to alcohol or a narcotic drug; provided that, for purposes of this Section, "conviction" means and includes the entry of a plea of guilty or no contest or a verdict rendered in open court by a judge or jury.

(d) Upon satisfactory completion of the background investigation, a corporate business license may be issued. This license shall be conspicuously displayed at the principle place of business within the State of North Carolina.

(e) The corporate business license shall be issued only to the corporation and shall not be construed to extend to the licensing of its directors, officers, or employees.

(f) The issuance of the corporate business license is issued to the firm, association, or corporation in addition to the license issued to the qualifying agent. Therefore, the qualifying agent for the firm, association, or corporation which has been issued the corporate business license shall be responsible for assuring compliance with G.S. 74D.

(g) A sole proprietorship that is owned and operated by an individual holding a current alarm systems business license shall be exempt from this Rule.

Statutory Authority G.S. 74D-2(a); 74D-5.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Environmental Management Commission intends to adopt rule cited as 15A NCAC 2Q .0112, with changes from the proposed text noticed in the Register, Volume 8, Issue 23, page 2319.

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

Reason for Proposed Action: Based on comments received at public hearings held on March 28 and 30, 1994, revisions of the proposed rule on requiring a professional engineer's seal on air permit applications are being considered. The Environmental Management Commission seeks comments on these revisions before making its final decision.

Comment Procedures: All persons interested in this matters are invited to send in written comments. Written comments will be accepted through September 1, 1994. Comments should be sent to and additional information concerning this matter may be obtained by contacting:

Mr. Thomas C. Allen

Division of Environmental Management

P.O. Box 29535

Raleigh, North Carolina 27626-0535

(919) 733-1489

Editor's Note: This proposed different rule does not affect the fiscal note previously submitted in accordance with 150B-21.4(b).

**CHAPTER 2 - ENVIRONMENTAL
MANAGEMENT**

**SUBCHAPTER 2Q - AIR QUALITY
PERMIT PROCEDURES**

**SECTION .0100 - GENERAL
PROVISIONS**

**.0112 APPLICATIONS REQUIRING
PROFESSIONAL ENGINEER SEAL**

(a) A professional engineer registered in North Carolina shall be required to seal technical por-

tions of air permit applications consistent with the practice of engineering as defined by G.S. 89-C and that directly involve engineering tasks, including:

- (1) design, the evaluation or design of air pollution capture and control systems; or*
- (2) determination of applicability and appropriateness, or and interpretation of emissions by calculation, such as thermodynamics, chemical reaction kinetics, heat balances, material balances, or published emission factors where a range of values are given*
- (3) determination and interpretation of performance,*

of air pollution capture and control systems.

(b) The requirements of Paragraph (a) of this Rule do not apply to A professional engineer is not required to seal the following:

- (1) any source with non-optional air pollution control equipment that constitutes an integral part of the process equipment as originally designed and manufactured by the equipment supplier;*
- (2) sources that are permitted under Rule .0310 or .0509 of this Subchapter;*
- (3) paint spray booths without air pollution capture and control systems for volatile organic compound emissions;*
- (4) particulate emission sources with air flow rates of less than 10,000 actual cubic feet per minute; or*
- (5) permit renewal if no modifications are included in the permit renewal application.*

Statutory Authority G.S. 143-215.3(a)(1); 143-215.108.

**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 amend rules cited as 18 NCAC 6 .1205 - .1206, .1208 - .1209, .1302 - .1305, .1310, .1313 - .1314, .1401 - .1402, .1405, .1407, .1409, .1412 - .1413, .1702, .1704, .1713, .1901 - .1903 and adopt .1416.

The proposed effective date of this action is

December 1, 1994.

The public hearing will be conducted at 10:00 a.m. on October 3, 1994 at the Securities Division Conference Room, Suite 100, 300 N. Salisbury Street, Raleigh, NC 27603.

Reason for Proposed Action:

18 NCAC 6 .1205 - .1206, .1208 -.1209, .1302 - .1305, .1310, .1313 - .1314, .1401 - .1402, .1405, .1407, .1409, .1412 - .1413, .1702, .1704, .1713, .1901 - .1903 - To generally update and clarify the administrative rules dealing with the regulation of securities in North Carolina.

18 NCAC 6 .1416 - To define what actions and occurrences a securities dealer must report to the Securities Division of the Secretary of State's office, as well as the time period in which these reports must be submitted

Comment Procedures: *Interested persons may present oral or written statements 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, NC 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 October 3, 1994.*

**CHAPTER 6 - SECURITIES
DIVISION**

SECTION .1200 - EXEMPTIONS

**.1205 LIMITED OFFERINGS
PURSUANT TO G.S. 78A-17(9)**

(a) Any issuer relying upon the exemption provided by G.S. 78A-17(9) in connection with an offering of a security made in reliance upon Rule 505 or Rule 506 of Regulation D promulgated by the Securities and Exchange Commission under the Securities Act of 1933, as amended, 17 C.F.R. 230.505 (1982) and 17 C.F.R. 230.506 (1982) (and as subsequently amended) shall comply with the provisions of Rules .1206, .1207 and .1208 of this Section; provided that such compliance shall not be required if the security is offered and sold only to persons who will be actively engaged, on a regular basis, in the management of the issuer's business; and provided further, that compliance with provisions of Paragraphs (a), (b), and (c) of

Rule .1208 of this Section shall not be required if the security is offered to not more than five individuals who reside in this State.

(b) Any issuer relying upon the exemption provided by G.S. 78A-17(9) in connection with an offering of a ~~direct participation program~~ security made solely in reliance upon an exemption from registration contained in Section 4(2) or Section 3(a)(11) of the Securities Act of 1933, as amended, or made solely in reliance upon Rule 504 of Regulation D promulgated by the Securities and Exchange Commission under the Securities Act of 1933, as amended, 17 C.F.R. 230.504 (1982), (and as subsequently amended), shall comply with the following conditions and limitations:

- (1) No commission, discount, finder's fee or other similar remuneration or compensation shall be paid, directly or indirectly, to any person for soliciting any prospective purchaser of the security sold to a resident of this State unless such person is either registered pursuant to G.S. 78A-36 or exempt from registration thereunder or the issuer reasonably believes that such person is so registered or exempt therefrom.
- (2) In all sales of direct participation program securities, Real Estate Investment Trusts, and Limited Liability Companies, the provisions of Rule .1313 of this Chapter regarding registered offerings of direct participation program securities, Real Estate Investment Trusts, and Limited Liability Companies shall be applicable.
- (3) Any prospectus or disclosure document used in offering the securities in this state shall disclose conspicuously the legend(s) required by the provisions of Rule .1316(a)(2) and .1316(a)(3) of this Chapter.
- (4) Not less than 10 business days prior to any sale offer of the securities to a resident of this State ~~which shall include but not be limited to the receipt by the issuer, or any person acting on the issuer's behalf of a signed subscription agreement of, or the receipt of consideration from, a purchaser,~~ the issuer shall file with the administrator, or cause to be so filed:
 - (A) A statement signed by the issuer and acknowledged before a notary public or other similar officer:
 - (i) identifying the issuer (including

- name, form of organization, address and telephone number);
- (ii) identifying the person(s) who will be offering and selling the securities in this State and their titles (and in the case of such persons other than the issuer and its officers, partners and employees, describing their relationship with the issuer in connection with the transaction and the basis of their compliance with or exemption from the requirements of G.S. 78A-36) and describing any commissions, discounts, fees or other remuneration or compensation to be paid to such persons;
- ~~(iii) containing a summary of the proposed offering including:~~
- ~~(I) a description of the securities to be sold;~~
- ~~(II) the name(s) of all general partners of an issuer which is a partnership and, with respect to a corporate issuer or any corporate general partner(s) of any issuer which is a partnership, the date and place of incorporation and the names of the directors and executive officers of such corporation(s);~~
- ~~(III) the anticipated aggregate dollar amount of the offering;~~
- ~~(IV) the anticipated required minimum investment, if any, by each purchaser of the securities to be offered;~~
- ~~(V) a brief description of the issuer's business and the anticipated use of the proceeds of the offering; and~~
- ~~(VI) a list of the states in which the securities are proposed to be sold;~~
- ~~(v) containing an undertaking to furnish to the administrator, upon written request, a copy of any written document or materials used or proposed to be used in connection with the offer and sale of the securities.~~
- (iii) containing an undertaking that no securities offerings by the issuer have occurred in the last three years or submit information concerning the prior offerings.
- (B) A consent to service of process naming the North Carolina Secretary of State as service agent using the Uniform Consent to Service of Process (Form U-2) signed by the issuer and acknowledged before a notary public or other similar officer; and accompanied by a properly executed Corporate Resolution (Form U-2A), if applicable;
- (C) A non-refundable filing fee in the amount of ~~twenty-five dollars (\$25.00)~~ one-hundred fifty dollars (\$150.00), payable to the North Carolina Secretary of State.
- (D) A Notice of Completion of Offering/Final Sales Report in compliance with Rule .1315 as if Rule .1315 applied to offerings exempted under this Rule .1206.
- (E) A copy of any written document or materials proposed to be used in connection with the offer and sale of the securities to be sold must be filed at least 10 business days prior to the offer in North Carolina.
- (F) A form D (Notice of Sales of Securities Pursuant to Regulation D...and/or Uniform Limited Offering Exemption). All parts of this form, including the Appendix, shall be completed. The Form D is to be signed by a person duly authorized to do so by the issuer, and shall be attached to a statement containing the supplemental information required by Paragraph (c) of Rule .1208.
- (5) Compliance with the provisions of Subparagraph (4) of this Rule shall not be required if the security is offered to not more than five individuals who reside in this State. If the issuer is relying on the exclusion from the filing requirements for less than five offerees in North Carolina, then the issuer must submit an undertaking that the offering meets the suitability, minimum initial cash investment and legend requirements of the Rules. Issuers must also submit a twenty-five dollar (\$25.00) non-refundable filing fee, a U-2, and a U-2A if appropriate.
- (6) No exemption under this Rule .1205 is available for the offer or sale of securi-

ties if the issuer or any other person or entity to which Rule .1205 applies is disqualified pursuant to Rule .1207 of this Section unless the administrator, upon application and a showing of good cause by the issuer, or such other person or entity, modifies or waives the disqualification.

- (7) Limit expenses to 25% as calculated in 1307(b), as if Rule .1307 were applicable to offerings exempted under this Rule .1205.

(c) Neither the issuer nor any person acting on the issuer's behalf shall offer, offer to sell, offer for sale or sell the securities claimed to be exempt under G.S. 78A-17(9) by any means or any form of general solicitation or general advertising.

(d) The administrator may, by order, waive any condition of or limitation upon the availability of the exemption provided by G.S. 78A-17(9).

(e) To continue the offering beyond one year from when the exemption filing was perfected with the Division, the issuer must submit a statement requesting renewal, a current Form D, and a twenty-five dollar (\$25.00) fee.

Statutory Authority G. S. 78A-17(9); 78A-49(a).

.1206 LIMITED OFFERING EXEMPTION PURSUANT TO G.S. 78A-17(17)

(a) Transactions made in reliance upon Rule 505 or Rule 506 of Regulation D promulgated by the Securities and Exchange Commission under the Securities Act of 1933, as amended, 17 C.F.R. 230.505 (1982) and 17 C.F.R. 230.506 (1982) (and as subsequently amended), including any offer or sale made exempt by application of Rule 508(a), as made effective in Release No. 33-6389 and as amended in Release Nos. 33-6437, 33-6663, 33-6758, and 33-6825, shall be exempt from the requirements of G.S. 78A-24, provided there is compliance with the conditions and limitations of this Rule .1206 and Rules .1207 and .1208 of this Section.

- (1) No exemption under this Rule .1206 is available for the offer or sale of securities if the issuer or any other person or entity to which Rule .1206 applies is disqualified pursuant to Rule .1207 of this Section unless the administrator, upon application and a showing of good cause by the issuer, or such other person or entity, modifies or waives the disqualification.
- (2) No commission, discount, finder's fee

or other similar remuneration or compensation shall be paid, directly or indirectly, to any person for soliciting any prospective purchaser of any security sold to a resident of this State in reliance upon the exemption provided by this Rule .1206 unless such person is either registered pursuant to G.S. 78A-36 or exempt from registration thereunder or the issuer reasonably believes that such person is so registered or exempt therefrom.

- (3) In all sales to those accredited investors defined in 17 C.F.R. 230.501(a)(5) who reside in this State (except sales to such accredited investors made by or through a dealer registered under G.S. 78A-36) and in all sales to non-accredited investors who reside in this State the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that one of the following conditions is satisfied:

(A) The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to his/her other security holdings and as to his/her financial situation and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed 10 percent of the investor's net worth, it is suitable.

(B) The purchaser, either alone or with his/her purchaser representative(s), has such knowledge and experience in financial and business matters that he/she is or they are capable of evaluating the merits and risks of the prospective investments.

- (4) In all sales of direct participation programs, Real Estate Investment Trusts and Limited Liability Companies securities pursuant to the exemption provided by this Rule .1206, the provisions of Rule .1313 of this Chapter regarding registered offerings of direct participation programs, Real Estate Investment Trusts and Limited Liability Companies securities shall be applicable in addition to all other requirements of this Rule .1206.
- (5) Any prospectus or disclosure document used in this state in connection with an

- offer and sale of securities made in reliance upon the exemption provided by this Rule .1206 shall disclose conspicuously the legend(s) required by the provisions of Rule .1316(a)(2) and (a)(3) of this Chapter.
- (6) Nothing in the exemption provided by this Rule .1206 is intended to or should be construed as in any way relieving the issuer or any person acting on behalf of the issuer from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of the Act.
- (7) Transactions which are exempt under this Rule may not be combined with offers and sales exempt under any other rule or section of this Act; however, nothing in this limitation shall act as an election. Should for any reason, an offer and sale of securities made in reliance upon the exemption provided by this Rule .1206 fail to comply with all of the conditions hereof, the issuer may claim the availability of any other applicable exemption.
- (8) A failure to comply with a term, condition or requirement of Subparagraphs (a)(2) and (a)(3) of this Rule will not result in loss of the exemption from the requirements of G.S. 78A-24 for any offer or sale to a particular individual or entity if the person relying on the exemption shows:
- (A) the failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity; and
- (B) the failure to comply was insignificant with respect to the offering as a whole; and
- (C) a good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of Subparagraphs (a)(2) and (a)(3).
- Where an exemption is established only through reliance upon this Subparagraph (8) of this Rule, the failure to comply shall nonetheless be actionable by the administrator under G.S. 78A-47.
- (9) In any proceeding involving this Rule .1206, the burden of proving the exemption or an exception from a

definition or condition is upon the person claiming it.

- (10) In view of the objective of this Rule .1206 and the purpose and policies underlying the Act, this exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this Rule .1206, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this Rule .1206 or Rules .1207 and .1208 of this Section.
- (11) The administrator may, by order, waive any condition of or limitation upon the availability of the exemption provided by this Rule .1206.
- (12) The exemption provided by this Rule .1206 shall be known and may be cited as the "North Carolina Limited Offering Exemption."

(b) Pursuant to G.S. 78A-18, the administrator may by order deny or revoke the exemption provided by this Rule .1206 with respect to a specific security or security transaction.

Statutory Authority G.S. 78A-17(17); 78A-49(a).

.1208 TRANSACTIONS EXEMPT UNDER RULE .1206: FILING REQUIREMENTS

(a) Not less than 10 business days prior to any sale offer of a security sold offered in reliance upon the exemption provided by Rule .1206 of this Section, ~~which shall include but not be limited to the receipt by the issuer, or any person acting on the issuer's behalf of a signed subscription agreement of, or the receipt of consideration from, a purchaser,~~ the issuer shall file with the administrator, or cause to be so filed, the following:

- (1) A Form D (Notice of Sales of Securities Pursuant to Regulation D...and/or Uniform Limited Offering Exemption). All parts of this form, including the Appendix, shall be completed. The Form D is to be signed by a person duly authorized to do so by the issuer, and shall be attached to a statement containing the supplemental information required by Paragraph (c) of this Rule .1208.
- (2) A copy of any written document or materials proposed to be used in connection with the offer and sale of

the securities to be sold; ~~provided, however, if any such documents or materials are not available to be filed 10 business days prior to any sale of the securities to a person who resides in this State, they shall be filed when available, but, in any event, no later than 5 business days before any such sale.~~ Supplements or amendments to any such written document or materials shall be filed within 5 business days ~~after~~ prior to delivery to any prospective purchaser of the securities.

- (3) A consent to service of process naming the North Carolina Secretary of State as service agent using the Uniform Consent to Service of Process (Form U-2) signed by the issuer and acknowledged before a notary public or similar officer; and accompanied by a properly executed Corporate Resolution (Form U-2A), if applicable.
- (4) A non-refundable filing fee in the amount of ~~seventy-five dollars (\$75.00)~~ one-hundred fifty dollars (\$150.00), payable to the North Carolina Secretary of State.

(b) The issuer shall promptly file or caused to be filed with the administrator any amended Form D filed with the U.S. Securities and Exchange Commission in connection with the transaction.

(c) ~~To comply with Subparagraph (a)(1) of this Rule .1208, the issuer shall file with the administrator a statement signed by a person duly authorized to execute such statement on its behalf~~ The issuer shall file a statement verified before a notary public and a copy of any power of attorney containing the following representations:

- (1) that the securities will be sold in reliance upon an exemption from the registration requirements of Section 5 of the Securities Act of 1933, as amended;
- (2) that, to the best of the issuer's knowledge, the issuer is not disqualified by the provisions of Rule .1207 of this Section from relying upon the exemption provided by Rule .1206 of this Section;
- (3) that the issuer will furnish to the administrator, upon written request, evidence of compliance with Subparagraphs (2), (3) and (4) of Rule .1206(a) of this Section;
- (4) that all persons who will be selling the

securities in this state are in compliance with or exempt from the requirements of G.S. 78A-36; and

- (5) that the issuer will notify the administrator in writing of the names and titles of all officers, directors, partners, or employees of the issuer who will be engaged in the offer or sale of the securities in this state. Such notice to the administrator shall be made prior to any offer of securities in this state; and
- (6) that no securities offerings have occurred in the last three years or submit information concerning the prior offerings.

(d) Any filing pursuant to this Rule .1208 shall be amended by filing with the administrator such information and changes as may be necessary to correct any material misstatement or omission in the filing.

(e) The provisions of this Rule .1208 shall not apply to offers or sales of a security made pursuant to Rule .1206 of this Section if the security is offered to not more than five individuals who reside in this State. If the issuer is relying on the exclusion from the filing requirements for less than five offerees in North Carolina, then the issuer must submit an undertaking that the offering meets the suitability, minimum initial cash investment and legend requirements of the Rules. Issuers must also submit a twenty-five dollar (\$25.00) non-refundable filing fee, a U-2, and a U-2A if appropriate.

(f) The issuer must submit a statement requesting renewal along with a current Form D and a twenty-five dollar (\$25.00) fee if it wishes to continue the offering beyond one year from when the exemption filing was perfected with this office.

(g) Limit expenses as calculated in Rule .1307 to 25%, as if Rule .1307 was applicable to offerings exempted under this Rule .1208.

(h) The issuer shall promptly file a Notice of Completion of Offering/Final Sales Report in compliance with Rule .1315.

Statutory Authority G. S. 78A-17(17); 78A-49(a).

.1209 NONPROFIT SECURITIES

(a) The exemption provided by G.S. 78A-16(9) from the registration requirements of G.S. 78A-24 for securities offered, or to be offered, and sold by any person operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or

trade or professional association shall not be available where:

- (1) The issuer is disqualified by Rule .1207 of this Section. For the purposes of determining the availability of the exemption provided by G.S. 78A-16(9), the issuer also shall be disqualified under Rule .1207 of this Section where the trustee of a trust indenture under which the securities are to be issued is subject to the disqualifications of Subparagraphs (a)(1) through (6) of Rule .1207 of this Section.
- (2) The issuer, or any affiliate or predecessor has had any material default within five years prior to commencement of the offering in the payment of:
 - (A) principal, interest, dividend or sinking fund installment on any security or indebtedness for borrowed money; or
 - (B) rentals under material leases with terms of three years or more.
- (3) Any part of the net earnings of the nonprofit issuer inures to the benefit of any other person.
- (4) The issuer fails to comply with the requirements of Paragraph (b) of this Rule and, if applicable or appropriate, Paragraphs (c) and (d) of this Rule.

Provided, however, that the administrator may modify or waive, upon the showing of good cause in writing, any disqualification that results from Subparagraphs (a), (1), (2) or (3) of this Rule.

(b) No commission, discount, finder's fee or other similar remuneration or compensation shall be paid, directly or indirectly, to any person for soliciting any prospective purchaser of any security sold to a resident of this State in reliance upon this exemption unless such person is ~~either registered pursuant to G.S. 78A-36 or exempt from registration thereunder or the issuer reasonably believes that such person is so registered or exempt therefrom.~~

(c) The nonprofit issuer should provide each offeree a written document providing full disclosure of all material facts. A prospectus, pamphlet, circular or similar literature providing the following minimum disclosures, if applicable, normally will suffice for this purpose; provided, however that nothing in this Paragraph shall be construed as in any manner relieving any person from the full disclosure requirements of G.S. 78A-8(2):

- (1) The Cover or First Page:
 - (A) The name of the issuer;
 - (B) Title of securities;

- (C) In tabular form, the per unit and aggregate price to the public, underwriting or selling commissions and expenses, and net proceeds to the issuer;
 - (D) Name of dealer or financial adviser;
 - (E) Names of trustee and paying agent;
 - (F) If the offering is being made only to certain persons, a description of such offerees;
 - (G) The appropriate disclaimer and/or legend, pursuant to the provisions of Rule .1316 of this Chapter, shall appear in boldface type and a minimum of 12 point size;
 - (H) If appropriate, the following statement shall appear in boldface and a minimum of 14 point size: THIS OFFERING IS SUBJECT TO CERTAIN RISKS. (See "Risk Factors"); and
 - (I) The date of the disclosure document.
- (2) A Table of Contents.
 - (3) The Issuer:
 - (A) The name, address, organization (state in which organized, date organized, statute under which organized, and form of organization) and purpose of the issuer;
 - (B) The history of the issuer;
 - (C) A description of the general area and location of the issuer;
 - (D) Accreditation and regulation of the issuer;
 - (E) The number of paid employees and a description of any employee benefit plans along with the key person's annual compensation package which should include salary, benefits, allowances, bonuses, etc.;
 - (F) Any affiliation between the issuer and the dealer, or any officers, directors or general partners or any person holding a similar position of either, with any building contractor or supplier who has an interest in or may receive any of the proceeds of the offering or with any trustee of a trust indenture under which the securities are to be issued.
 - (4) Risk Factors: Where appropriate, risk factors in connection with the offering must be disclosed. Reference to risk factors should note the page number of the disclosure document at which they may be found or further disclosure is

made. Risk factors that should be considered include, but are not limited to, the following examples:

- (A) There is no market for the securities, and there is no assurance that a market will develop. Consequently, investors may not be able to resell any securities purchased should they need to or wish to do so for emergency purposes or otherwise.
- (B) The issuer is primarily dependent upon contributions of the membership to meet expenses for operation of the issuer and payments of principal and interest of the securities. The issuer may not receive sufficient funds to meet these obligations.
- (C) During the past . . . fiscal years, the issuer has operated at a loss, and is currently not earning sufficient income to pay the principal and interest on the securities offered hereby. There is no assurance the issuer will be able to meet debt service requirements in the future.
- (D) These securities will mature and become payable on . . . and it is anticipated the issuer will attempt to refinance them at that time. There is no assurance that refinancing funds will be available at that time or that such funds will be available at terms acceptable to the issuer.
- (E) These securities are not secured by land, buildings or equipment of the issuer. In the event of default, the investor has the status of an unsecured creditor.
- (F) The issuer has defaulted on a previous issue of securities. This issue is for the purpose of refinancing.
- (G) The trust indenture permits the issuer further to encumber the property securing these securities through the future issuance of additional securities.
- (5) Use of Proceeds:
 - (A) An itemized statement as to the application of the proceeds of the offering. If additional funds are needed to accomplish the stated purposes, this should be disclosed, together with a statement showing how such funds will be obtained.
 - (B) If there is to be an escrow of funds, a

description of the escrow arrangements.

- (6) Description of Property:
 - (A) In addition to describing physical properties, a valuation of mortgaged property should be included as follows: Total valuation of existing land, buildings, improvements and equipment before the offering: \$_____.; and total valuation of land, buildings, improvements and equipment after the offering and upon completion of construction: \$_____..
 - (B) The person preparing any appraisals shall be identified, and his qualifications for serving as such shall be indicated.
- (7) Management and Control:
 - (A) The name and principal occupation of each officer, trustee, director, general partners or other persons holding similar positions. In the case of religious organizations, a brief summary of the background of the minister(s) and any other important church officials should be included.
 - (B) A description of any material transactions or proposed transactions between the issuer and such persons or any affiliate of such persons.
- (8) Material Litigation and Transactions. Any pending or threatened litigation which may materially affect the issuer's income. Any contracts with the issuer which, if terminated, would materially affect the issuer's income.
- (9) Description of Securities:
 - (A) Description of the indenture under which the securities are to be issued, should include information as to:
 - (i) interest and interest payment dates,
 - (ii) default,
 - (iii) redemption,
 - (iv) subordination,
 - (v) sinking fund,
 - (vi) subsequent issues,
 - (vii) modification of the indenture,
 - (viii) insurance coverage on properties of the issuer, and
 - (ix) any other material facts regarding the rights of holders.
 - (B) A pay-back or maturity schedule.
 - (C) If guarantees of payment are made by any other person, information

describing the ability of that person to guarantee, including financial statements, shall be included. Note:
- A guarantee in and of itself involves the offering of a separate security which may require registration.

- (10) Plan of Distribution:
 - (A) The name and address of the dealer and fund raising adviser.
 - (B) The aggregate underwriting or selling commissions or similar compensation or remuneration.
 - (C) A brief description of any underwriting arrangements or distribution plan, including whether best efforts or firm commitment, and whether exclusive or nonexclusive.
- (11) Financial Statement:
 - (A) Balance sheet, within four months prior to the date of the first offer in reliance upon this exemption, prepared in accordance with generally accepted accounting principles.
 - (B) Income and expense statements for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet or such shorter period as the issuer has been in existence prepared in accordance with generally accepted accounting principles.
 - (C) Any statements or information necessary to explain extraordinary or non-recurring fluctuations in the statements supplied.
 - (D) If applicable, the number of pledging units and the average annual contribution per pledging unit.
- (12) Filing Fees. The filing fee of one hundred dollars (\$100.00) must be submitted payable to the Secretary of State and shall be submitted with the request for exemption and renewal of exemption. The filing fee shall be retained by the administrator in all cases, whether the exemption is granted, denied, or withdrawn.

In lieu of the disclosure document as described in this Paragraph, the issuer may use a disclosure document prepared in accordance with the Church Bond Guidelines prepared by NASAA published at Par. 1001 of CCH NASAA Reports, as may be amended from time to time, where such guidelines

are applicable.

(d) Not less than five 15 business days prior to any sale offer of a security in reliance upon the exemption provided by G.S. 78A-16(9) which shall include but not be limited to the receipt by the issuer, or any person acting on the issuer's behalf of a signed subscription agreement of, or the receipt of consideration from, a purchaser, the issuer shall file with the administrator, or cause to be so filed, the following information unless the content or time of filing is modified or waived by the administrator; provided, however that the filing is not required, unless requested by the administrator, where the offering is to be made exclusively to members of the nonprofit issuer and occupants of such members' households:

- (1) A statement, signed by the issuer and acknowledged before a notary public or other similar officer:
 - (A) Identifying the issuer, including the name, form of organization, date and state of organization, the nonprofit purpose for which the issuer is organized, address, telephone number and the appropriate representative to respond to questions;
 - (B) Identifying who will be selling the securities in this state and whether commissions, remuneration or compensation will be paid and the terms thereof;
 - (C) Describing the securities to be sold, including the type, aggregate offering amount to be offered in this state and the issue of which they are a part;
 - (D) Representing that the issuer is not disqualified by Paragraph (a) of this Rule from reliance upon this exemption;
 - (E) Representing that a disclosure document as may be required by Paragraph (c) of this Rule will be delivered to each purchaser prior to consummation of a sale or execution of a subscription agreement, or a statement as to the reasons the issuer believes that the disclosure document is unnecessary or inappropriate;
 - (F) Representing that in the event of any material change in the security or offering or if the disclosure document becomes incomplete in any material respect or contains any statement which is in the light of the circumstances under which it is made,

false or misleading with respect to any material fact, the sale or offer for sale pursuant to this exemption will immediately cease, and will not be resumed until corrective disclosures are prepared and all prior purchasers are provided rescission offers pursuant to G.S. 78A-56(g).

- (2) An opinion of counsel relating to the "not for private profit" status of the issuer, the formation and good standing of the issuer, legality of the securities to be issued, and the validity of the indenture under which the securities are to be issued, or a letter of determination of tax exempt status issued by the Internal Revenue Service.
- (3) A consent to service of process (Form U-2) signed by the issuer and verified by a notary public or similar officer, naming the Secretary of State as service agent and accompanied by a corporate resolution of the board of directors, (Form U-2A), if applicable, authorizing the consent.

(e) Nothing in this Rule .1209 is intended to or should be construed as in any way relieving the issuer or any person acting on behalf of the issuer from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of the Act.

(f) Should for any reason, an offer and sale of securities made in reliance upon the exemption provided by G.S. 78A-16(9) fail to comply with all of the conditions hereof, the issuer may claim the availability of any other applicable exemption.

(g) Any offer or sale shall be deemed to have been made in compliance with the exemption provided by G.S. 78A-16(9) if the issuer has substantially complied in all material respects with this Rule and G.S. 78A-16(9) would otherwise be available.

(h) In view of the objective of this Rule and the purpose and policies underlying the Act, the exemption provided by G.S. 78A-16(9) is not available to any issuer with respect to any transaction which although in technical compliance with the exemption provided by G.S. 78A-16(9) and this Rule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this Rule.

(i) If the issuer or the registered agent fails to sell the dollar amount of securities exempt from registration, pursuant to G.S. 78A-16(9), within one year from the effective date of the exemption,

the issuer may request renewal of the original exemption for an additional one year. This can be accomplished by filing a request for renewal along with an updated prospectus which shall include current financial statements and any material change regarding the offering. The renewal of the original exemption can be made annually up to four consecutive years following the expiration date of the original exemption. The request for renewal shall be made within 30 days prior to the expiration date of the original or renewal of exemption.

Statutory Authority G.S. 78A-16(9); 78A-49(a).

SECTION .1300 - REGISTRATION OF SECURITIES

.1302 REGISTRATION BY COORDINATION

(a) Application for registration by coordination shall be filed with the administrator using the Uniform Application To Register Securities (Form U-1). Documents necessary to establish eligibility for registration by coordination shall be attached.

(b) An issuer of securities registered by coordination must re-register the securities on the one year anniversary of the date of original registration. The request for re-registration must comply with all the requirements of G.S. 78A-26 and be accompanied by a report of sales to that date in North Carolina expressed in units and dollars.

Statutory Authority G.S. 78A-26; 78A-49(a).

.1303 REGISTRATION BY QUALIFICATION

(a) Application for registration by qualification shall be filed with the administrator using the Uniform Application To Register Securities (Form U-1). Documents necessary to establish eligibility for registration by qualification shall be attached.

(b) As a condition to registration by qualification the applicant shall prepare a prospectus which shall, after approval by the administrator, be sent or given to each person to whom an offer is made before or concurrently with whichever of the following events first occurs:

- (1) the first written offer made to him (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or dealer who is

offering part of an unsold allotment or subscription taken by him as a participant in the distribution;

- (2) the confirmation of any sale made by or for the account of any such person;
- (3) payment pursuant to any such sale; or
- (4) delivery of the security pursuant to any sale.

(c) The prospectus requirement of Paragraph (b) of this Rule may be satisfied by the use of the NASAA Form U-7 (Small Corporate Offerings Registration Form) (as found at CCH NASAA Reports 5057) if the use of that form is allowed by the instructions to Form U-7 for the securities offering being registered.

(d) Within four months of the date of filing for registration, the applicant must submit financial statements for review by the Administrator. For offerings greater than five hundred thousand dollars (\$500,000), these financial statements must be audited.

(e) When the Administrator deems that an impoundment agreement is necessary, the proceeds from the offering must be deposited in an escrow account with an impoundment agent approved by the Administrator. This impoundment of proceeds must comply with the requirements set forth in CCH NASAA REPORTS ¶2151-2156.

(f) Only tombstone ads, as defined in 17 C.F.R. §230.134, are allowed for offerings made utilizing form U-7.

(g) An issuer must re-register the securities prior to the one year anniversary of the offering's effectiveness. The request for re-registration must comply with all the requirements of G.S. 78A-27 and be accompanied by a report of sales to that date in North Carolina expressed in units and dollars.

Statutory Authority G.S. 78A-27(d); 78-27(b); 78A-49(a).

.1304 SECURITIES REGISTRATION AND FILING FEES

(a) All fees (registration and filing) are payable to the Office of the Secretary of State and shall be submitted with the application for original, renewal, or additional registration. The registration fee shall be retained by the administrator, except where the registration is not granted by the administrator or where the registration is withdrawn at the request of the applicant and with the consent of the administrator. The filing fee shall be retained by the administrator in all cases.

(b) The aggregate offering amount of an original or amended registration may be increased prior to or after the effectiveness of the registration by providing the administrator the following:

- (1) An additional registration filing fee of fifty dollars (\$50.00) ~~if such filing occurs after the effective date of the offering;~~
- (2) The appropriate registration fee calculated in the manner specified in G.S. 78A-28(b), provided the maximum registration fee has not been paid; and
- (3) An amendment to the Uniform Application to Register Securities (Form U-1).

Additional registrations shall be effective when the administrator so orders. The registration statement for a mutual fund or open-end management company may specify an indefinite aggregate offering amount if such offering amount is similarly registered with the Securities and Exchange Commission. The registration statement for a unit investment trust must specify a definite aggregate offering amount expressed in dollars and shall not exceed the offering amount registered with the Securities Exchange Commission.

(c) A registration statement relating to securities issued or to be issued by a mutual fund or open-end management company, ~~or unit investment trust,~~ to be offered for a period in excess of one year, must be renewed annually by payment of a renewal fee of one hundred dollars (\$100.00) and by filing the following:

- (1) A copy of the current prospectus and any other offering materials not previously filed;
- (2) One copy of any amendments to the registration statement not previously filed; and
- (3) A statement sales report on form USR-1 of the amount of securities sold in this state to date and the balance of unsold securities effectively registered in this state, expressed in dollars.

The payment of the renewal fee and the filing of the listed documents and reports in this Rule shall be made no earlier than November 15th and, to assure timely renewal, should be made no later than December 15th. Renewal must be perfected prior to December 31 of each year and failure to timely renew will result in the expiration of the registration statement.

(d) A registration statement relating to securities issued or to be issued by a unit investment trust, offered in excess of one year, must be renewed by

payment of renewal fee of one hundred dollars (\$100.00) and by filing a sales report (form USR-1) of the amount of securities sold in this state to date and the balance of unsold securities effectively registered in this state expressed in dollars and units. The payment of the renewal fee and the sales report shall be made no earlier than 30 days prior to the expiration date of the registration. Upon termination of the offering of a unit investment trust, the issuer shall file a final sales report of the aggregate amount of securities sold in this state, subject to the provisions of Rule .1315.

Statutory Authority G.S. 78A-28(b); 78A-28(j); 78A-49(a).

.1305 SPONSORSHIP BY DEALER

(a) Except where the conditions of G.S. 78A-2(2)d.3. or 78A-2(2)d.4. are met, no securities will be considered for registration unless the application therefor is sponsored by a North Carolina registered dealer with a statement of its desire and intent to offer such securities to the investing public in North Carolina. Sponsorship of an issue by a North Carolina registered dealer may be accomplished by the dealer being listed on the application form (U-1) as applicant and signing the application form as applicant, or in lieu thereof, the sponsoring dealer may wire or write the administrator stating with a statement proclaiming its intention to sponsor the issue in this State. The statement of sponsorship will not be accepted from the dealer's attorney unless a power of attorney has been given to the attorney by the dealer and a copy of the power of attorney is submitted together with letter of sponsorship.

(b) No issuer shall be permitted to qualify as a dealer for the purpose of offering its own securities pursuant to a registration in this State.

(c) If an issuer is relying on G.S. 78A-2(2)d.3, then the issuer must submit in writing the names and titles of who is offering and selling the securities in North Carolina.

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

.1310 OFFERING PRICE

(a) A waiver of the two-day advance filing of the final offering price requirement of G.S. 78A-26(c)(iii) will be permitted if the final pricing information is furnished to the administrator contemporaneously with notice of the Securities and Exchange Commission effectiveness.

(b) The final offering price information shall be

filed in the following format:

Re: (Title of Offering)

Date SEC effective:

Total number of units/shares/interests:

Total aggregate dollar amount:

Initial public offering price:

Underwriting commission (percentage):

States in which registration has been withdrawn and the reason for the withdrawal.

Statutory Authority G.S. 78A-26(c); 78A-49(a).

.1313 REGISTRATION OF DPP, REIT, AND LLC SECURITIES

(a) As a condition to the registration of direct participation program, real estate investment trusts, and limited liability company securities, the issuer or dealer(s) effecting sales of such securities pursuant to such registration shall:

- (1) deliver to each offeree of the security in this State prior to any sale of the security to such offeree, a written statement of the investor suitability standards and minimum initial cash investment which each offeree must meet in order to purchase the security. The statement may be contained in any offering circular, prospectus or other written document delivered to the offeree;
- (2) determine, prior to the sale of the security to each person in this State, that the person meets the investor suitability standards applicable to the security. For purposes of this determination, the issuer or dealer(s) shall be entitled to rely conclusively upon a written statement or questionnaire signed by the person and received in good faith and without knowledge that the information stated therein is inaccurate;
- (3) require that the minimum initial cash investment by each purchaser of such securities in this state be five thousand dollars (\$5,000) except that no minimum investment shall be required for tax qualified plans.

(b) The minimum investor suitability standards which shall be imposed for registered offerings of direct participation program securities are as follows:

- (1) The investor shall either have a minimum net worth of two hundred twenty-five thousand dollars (\$225,000) or a minimum net worth of sixty

thousand dollars (\$60,000) and had during the last tax year or estimates that the investor will have during the current tax year, taxable income of at least sixty thousand dollars (\$60,000) without regard to the investment in the security.

- (2) Net worth shall be determined exclusive of principal residence, mortgage thereon, home furnishings and automobiles. In the case of sales to fiduciary accounts, the investor suitability standards shall be met by the fiduciary or the fiduciary account or by the donor who directly or indirectly supplies the funds to purchase the securities.

(c) The administrator will permit the substitution of lower suitability standards and a minimum initial cash investment of not less than two thousand five hundred dollars (\$2,500), if such lower standards are consistent with the standards outlined in the NASAA policy statement for that specific type of program. (See CCH NASAA Reports for such policy statements.)

(d) The administrator may modify or waive, upon the showing of good cause, the requirements of Paragraphs (a), (b) and (c) of this Rule, in whole or in part, with respect to a particular security, offering or transaction or the administrator may require higher investor suitability standards and minimum investment requirements with respect to a particular security offering or transaction where necessary for the protection of investors.

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

.1314 ESCROW AGREEMENTS

Where, as a condition to registration of a security in North Carolina, an escrow agreement is required, such agreement shall provide that all funds shall be returned immediately to the investors in full, without reduction of any fees, commissions or expenses unless a specified dollar amount of offering proceeds are received by the escrow agent within a specified period. The time period specified in any escrow agreement may be extended for a time certain if agreed upon by all persons who have theretofore contracted to purchase the security. The escrow agent shall be a federal bank regulated by the Comptroller of the Currency or a state bank regulated by the appropriate state authority. Other depositories may be approved by the administrator on a case by

case basis. The provisions of the NASAA "Statement of Policy Regarding the Impoundment of Proceeds", as found at CCH NASAA Reports 2151 et seq. (as may be amended from time to time), are incorporated herein by reference. Where an escrow agreement is required as a condition of registration of a security in North Carolina, the NASAA Model Security Escrow Agreement, as found at CCH NASAA Reports 1651, may be used to satisfy such requirement. If it is an interest-bearing account, investors must be entitled to receive the interest accrued or paid on the escrowed funds.

Statutory Authority G.S. 78A-28(g); 78A-49(a).

SECTION .1400 - REGISTRATION OF DEALERS AND SALESMEN

.1401 APPLICATION FOR REGISTRATION OF DEALERS

(a) The application for registration as a dealer shall contain the following:

- (1) an executed Uniform Application for Registration as a Dealer (Form BD) and the appropriate schedules thereto or the appropriate successor form;
- (2) a fee in the amount of two hundred dollars (\$200.00);
- (3) evidence of current registration as a dealer with the Securities and Exchange Commission under the Securities Exchange Act of 1934;
- (4) evidence of net capital as defined by Rule .1410(e) of this Section greater than one hundred thousand dollars (\$100,000) or evidence of compliance with Rule .1410 of this Section;
- (5) a separate document listing the names of any dealers acquired by or affiliated with the applicant dealer, as well as any prior names of the applicant dealer or any of the acquired or affiliated dealers;
- (6) ~~(5)~~ any other information the administrator may from time to time require.

(b) The application for registration as a dealer shall be filed as follows:

- (1) NASD member dealers shall file applications for initial registration in the State of North Carolina with the NASAA/NASD Central Registration Depository, P.O. Box 37441, Washington, D.C. 20013 and shall file a manually executed Form BD directly with the Securities Division.

Applications for renewal of registration shall be filed only with the Central Registration Depository (see Rule .1406 of this Section);

- (2) Non-NASD member dealers shall file all applications for registration in the State of North Carolina directly with the Securities Division.

(c) The dealer shall file with the administrator, as soon as practicable but in no event later than thirty days, notice of any disciplinary action taken against the dealer by any exchange of which the dealer is a member; the Securities and Exchange Commission; the Commodity Futures Trading Commission; any national securities association registered with the Securities and Exchange Commission pursuant to Section 15A of the Securities Exchange Act of 1934 or any state securities commission and of any civil suit filed against the dealer alleging violation of any federal or state securities laws. If the information contained in any document filed with the administrator is or becomes inaccurate or incomplete in any material respect, the dealer shall file a correcting amendment as soon as practicable but in no event later than thirty days.

(d) Registration becomes effective at noon of the 30th day after a completed application is filed or such earlier time upon issuance of a license or written notice of effective registration, unless proceedings are instituted pursuant to G.S. 78A-39. The administrator may by order defer the effective date after the filing of any amendment but no later than noon of the 30th day after the filing of the amendment.

(e) Every dealer shall notify the administrator of any change of address, the opening or closing of any office (including the office of any salesman operating apart from the dealer's premises) or any material change thereto, in writing as soon as practicable or by filing concurrently upon filing with NASD an appropriate amendment or schedule to Form BD or any successor form.

(f) Every dealer shall notify the Administrator of each branch office in the state and shall pay an annual fee of twenty-five dollars (\$25.00) per branch. This fee is payable to the Central Registration Depository. With respect to each branch, the following information shall be filed with the Administrator: address, branch manager, telephone number, and an "eight-hundred" number if the branch has such a number. Each branch office shall maintain at all times a supervisory procedure manual available for inspection. The supervisor of each branch office must have a series

24 NASD license as well as the other licenses required by applicable statutes and rules.

(g) Each dealer prior to initial registration as a dealer must make a statement that such dealer has effected no sales of securities in the state of North Carolina or must provide proof of compliance with the 15 transaction exclusion from dealer status rule as provided by G. S. 78A-2(2)c1.

Statutory Authority G.S. 78A-36(a); 78A-37(a); 78A-37(b); 78A-37(d); 78A-38(c); 78A-49(a).

.1402 APPLICATION FOR REGISTRATION OF SALESMEN

(a) The application for registration as a salesman shall contain the following:

- (1) an executed Uniform Application for Securities and Commodities Industry Representative and/or Agent (Form U-4) or the appropriate successor form;
- (2) a fee in the amount of fifty-five dollars (\$55.00);
- (3) evidence of a passing grade of seventy percent on the Uniform Securities Agent State Law Examination (USASLE - Series 63) as well as the appropriate NASD license as required by Rule .1413 of this Section.

(b) The application for registration as a salesman shall be filed as follows:

- (1) NASD member dealers shall file all salesman applications for registration in the State of North Carolina with the NASAA/NASD Central Registration Depository, P.O. Box 37441, Washington, D.C. 20013;
- (2) Non-NASD member dealers shall file all salesman applications for registration in the State of North Carolina directly with the Securities Division.

(c) The salesman or the dealer for which the salesman is registered shall file with the administrator, as soon as practicable but in no event later than 30 days, notice of any disciplinary action taken against a salesman by any exchange of which the dealer is a member; the Securities and Exchange Commission; the Commodity Futures Trading Commission; any national securities association registered with the Securities and Exchange Commission pursuant to Section 15A of the Securities Exchange Act of 1934 or any state securities commission and of any civil suit, warrant, criminal warrant, or criminal indictment filed against the salesman alleging violation of any federal or state securities laws. If the information

contained in any document filed with the administrator is or becomes inaccurate or incomplete in any material respect, the salesman or the dealer for which the salesman is registered shall file a correcting amendment as soon as practicable but in no event later than thirty days. Such filing is to be made by NASD member dealers and their salesmen to the NASAA/NASD Central Registration Depository and non-NASD member dealers and their salesmen shall make such filing directly with the Securities Division.

(d) Registration becomes effective at noon of the 30th day after a completed application is filed or such earlier time upon approval of the application by the administrator, unless proceedings are instituted pursuant to G.S. 78A-39. The administrator may by order defer the effective date after the filing of any amendment but no later than noon of the 30th day after the filing of the amendment.

(e) A salesman shall only be registered in this State with one dealer.

Statutory Authority G.S. 78A-37(a); 78A-37(b); 78A-38(c); 78A-39(b)(4); 78A-49(a).

.1405 DEALER MERGER/ CONSOLIDATION/ ACQUISITION/SUCCESSION

(a) When there is a merger, consolidation, acquisition, succession, or other fundamental change the surviving or new entity shall file with the administrator, prior to such fundamental change, an amended Form BD or successor form, with the plan of fundamental change and a letter or any documents of explanation including the date of mass transfer of salesmen pursuant to Paragraph (c) of this Rule if contemplated. As soon as practicable, but not later than 30 days after the fundamental change, the surviving or new entity shall file with the administrator the current financial statements of the surviving or new entity; the amended or new charter and by-laws; and, if applicable, a copy of the certificate of merger, consolidation or other fundamental change.

(b) The registration of the surviving or new entity usually will be granted by the administrator on the same date that the fundamental change becomes effective. Where the fundamental change results in a change in the name of the surviving or new entity from the name listed on any outstanding dealer's license, the license shall be returned and a new license reflecting the new name will be issued. There will be no fee for reissuance of a license.

(c) Dealers shall effect mass transfers of salesmen in the following manner:

(1) Where the surviving or new entity is a NASD member firm, it shall follow the NASAA/NASD Central Registration Depository procedures for effecting a mass transfer of salesmen from the nonsurviving entity to the surviving or new entity. For any salesman not to be transferred, the surviving or new entity shall timely terminate registration of that salesman pursuant to the NASAA/NASD Central Registration Depository procedures. There will be no fee for these transfers.

(2) Where the surviving or new entity is a non-NASD member firm, it shall file with the Securities Division a Form U-4 or successor form for each salesman to be transferred from the nonsurviving entity to the surviving or new entity and a Form U-5 or successor form for each salesman not to be transferred. Each transferred salesman shall retain his salesman's license or notice of registration which shall suffice as evidence of registration with the surviving or new entity until renewal. The transfer of the salesman is effective upon receipt of the Form U-4 or successor form by the Securities Division. All Form U-5's or successor forms shall be filed as soon as practicable but no later than 10 business days after the fundamental change. ~~There will be no fee for these transfers.~~ A regular application fee shall be paid by the surviving or new dealer for each agent in such transfer.

Statutory Authority G.S. 78A-37(b); 78A-37(c); 78A-40(a); 78A-49(a).

.1407 EXPIRATION AND RENEWAL OF SALESMAN'S REGISTRATION

A salesman's registration shall expire on December 31 of each year unless renewed. A dealer shall file the following at least 15 days before the expiration date to renew its salesmen's registration:

(1) Dealers that are NASD member firms shall renew all salesmen by complying with the procedures for renewal of salesmen as required by the NASAA/NASD Central Registration

Depository along with the payment of ~~forty-five dollars (\$45.00)~~ fifty-five dollars (\$55.00) for each salesman made payable to the National Association of Securities Dealers.

- (2) Dealers that are non-NASD member firms shall renew all salesmen by filing with the Securities Division a listing of all salesmen to be renewed along with their current addresses and social security numbers. The salesman renewal list shall be submitted in alphabetical order as follows: last name, first name, middle name or maiden name; current address; social security number. A fee of ~~forty-five dollars (\$45.00)~~ fifty-five dollars (\$55.00) for each salesman made payable to the North Carolina Secretary of State shall be submitted along with the salesman renewal list.

Statutory Authority G.S. 78A-36(c); 78A-37(a); 78A-37(b); 78A-40(a); 78A-49(a).

.1409 TRANSFER OF SALESMAN'S REGISTRATION

(a) In order to effect a transfer of registration of a salesman from one registered dealer (the "previous dealer") to another registered dealer (the "new dealer"), the administrator shall be provided the following information:

- (1) Within ten days, a Uniform Termination Notice for Securities Industry Registration (Form U-5) is to be provided by the previous dealer pursuant to the requirements of Rule .1408 of this Section;
- (2) Uniform Application for Securities and Commodities Industry Representative (Form U-4) is to be provided by the new dealer, accompanied by a fee of ~~forty-five dollars (\$45.00)~~ fifty-five dollars (\$55.00) for issuance of the new registration, pursuant to the requirements of Rule .1402 of this Section.

(b) Every registration of a salesman expires when the employment of the salesman terminates until that salesman's registration with a new dealer has been approved.

Statutory Authority G.S. 78A-36(b); 78A-49(a).

.1412 FINANCIAL STATEMENTS

The administrator may require any dealer, either registered or making application, to file any and all financial statements which such dealer files with the Securities and Exchange Commission or any national securities exchange or national securities association of which it is a member. Each broker-dealer is required to furnish the administrator with a copy of its audited financial statements 60 days after its fiscal year ends.

Statutory Authority G.S. 78A-38(b); 78A-49(c).

.1413 SALESMAN EXAMINATION REQUIRED

(a) Every application for registration as a salesman shall show evidence of a minimum passing grade of seventy percent on the Uniform Securities Agent State Law Examination (USASLE - Series 63). The USASLE - Series 63 examination is given by the National Association of Securities Dealers (NASD). Each application for registration must also show that the applicant has passed the appropriate NASD exam. The scheduled dates, times and locations may be obtained by contacting the NASD, 1735 K Street Northwest, Washington, D.C. (202) 728-8800 or the Securities Division.

(b) The requirement of Paragraph (a) of this Rule shall not apply to any salesman who has been registered continuously since April 1, 1981; provided that a lapse in registration in this State of less than one year shall not require compliance with Paragraph (a). New registrants after April 1, 1981, who have not been registered previously in this State and previously registered salesmen in this State whose registration has lapsed for one year or more shall comply with Paragraph (a) of this Rule.

(c) The administrator may, upon just cause shown in writing, waive the requirements of Paragraph (a) of this Rule. However, the administrator generally will not honor such requests absent a showing of undue hardship.

(d) Termination of the salesman's registration with the NASD shall automatically terminate the salesman's registration with the State of North Carolina.

Statutory Authority G.S. 78A-39(b)(4); 78A-49(a).

.1416 REPORTING REQUIREMENTS OF DEALERS AND SALESMEN

(a) All bankruptcies of dealers and/or salesmen registered with the Securities Division must be

reported to the administrator within 30 (thirty) days after the filing of the petition for bankruptcy.

(b) All arbitrations involving dealers and/or salesmen registered with the Securities Division must be reported to the administrator within 30 (thirty) days of the conclusion of the proceeding. Such report must include the terms of the settlement.

(c) Any fundamental alterations in the structure or operation of the dealer must be reported to the administrator within 30 days. For a period of 60 days following such notification, the administrator shall reserve the right to review the dealer's registration in light of the alterations reported. For the purposes of this Rule .1416, "fundamental alteration" is defined as any of the following:

- (1) the opening or closing of any office, including the office of any salesperson operating apart from the dealer's premises,
- (2) any merger, consolidation, acquisition, or succession participated in by the dealer, or
- (3) the replacement of any partner, executive officer, director, or any person occupying a similar status or performing similar functions, as well as any significant changes in the duties or responsibilities assigned to any such position.

Statutory Authority G.S. 78A-38(a); 78A-38(d); 78A-38(c); 78A-49(a).

SECTION .1700 - REGISTRATION OF INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

.1702 APPLICATION FOR INVESTMENT ADVISER REGISTRATION

(a) The application for initial registration as an investment adviser pursuant to Section 78C-17(a) of the Act shall be filed upon Form ADV (Uniform Application for Investment Adviser Registration) (17 C.F.R. 279.1) with the administrator. The initial application shall include the consent to service of process required by Section 78C-46(b) of the Act, and shall include the following:

- (1) A statement or certificate showing compliance by the investment adviser with the examination requirements of Rule .1709;
- (2) Such financial statements as set forth in

Rule .1708, including at the time of application, a copy of the balance sheet for the last fiscal year, and if such balance sheet is as of a date more than 45 days from the date of filing of the application, an unaudited balance sheet prepared as set forth in Rule .1708 as of a date within 45 days of the date of filing;

- (3) Evidence of compliance with the minimum financial requirements of Rule .1704;
- (4) A copy of the surety bond required by Section 78C-17(e), if applicable;
- (5) The fee required by Section 78C-17(b) of the Act; and
- (6) Any other information the administrator may from time to time require.

(b) The application for renewal of registration as an investment adviser shall be filed on Form ADV-S (Annual Report for Investment Advisers Registered Under the Investment Advisers Act of 1940) (17 C.F.R. 279.3) and shall contain the following:

- (1) A copy of the surety bond required by Rule .1705, if applicable; ~~and~~
- (2) The fee required by Section 78C-17(b) of the Act; and
- (3) A copy of the fee schedule currently used by the investment adviser.

(c) The investment adviser shall file with the administrator, as soon as practicable but in no event later than 30 days, notice of any civil, criminal or administrative charges filed against the investment adviser which relate directly or indirectly to its activities in the securities or financial services business. This notice shall include notification of any investigation by any securities, commodities, or other financial services regulatory agency and any disciplinary, injunctive, restraining, or limiting action taken by such agencies, by any court of competent jurisdiction, or by any state administrator with respect to the investment adviser's activities in the securities or financial services business. Any amendment required by Section 78C-18(d) of the Act for an investment adviser shall be made on Form ADV in the manner prescribed by that form. Any amendment to Form ADV shall be filed with the administrator within the time period specified in the instructions to that form relating to filings made with the Securities and Exchange Commission.

(d) Registration becomes effective at noon of the 30th day after a completed application is filed or

such earlier time upon issuance of a license or written notice of effective registration, unless proceedings are instituted pursuant to G.S. 78C-19. The administrator may by order defer the effective date after the filing of any amendment but no later than noon of the 30th day after the filing of the amendment.

(e) Every investment adviser shall notify the administrator of any change of address, the opening or closing of any office (including the office of any investment adviser representative operating apart from the investment adviser's premises) or any material change thereto, in writing as soon as practicable, but no later than 30 days after the change.

(f) The registration of an investment adviser shall expire on December 31 of each year unless timely renewed. The application for renewal of registration should be filed at least 15 days before the expiration date.

Statutory Authority G.S. 78C-16(b); 78C-17(a); 78C-17(b); 78C-17(e); 78C-18(d); 78C-19(a); 78C-30(a); 78C-30(b); 78C-30(c); 78C-30(d); 78C-46(b).

.1704 MINIMUM FINANCIAL REQUIREMENTS FOR INVESTMENT ADVISERS

(a) Unless an investment adviser posts a bond pursuant to Rule .1705, an investment adviser registered or required to be registered under the Act who has custody of client funds or securities shall maintain at all times a minimum net worth of thirty-five thousand dollars (\$35,000.00), and every investment adviser registered or required to be registered under the Act who has discretionary authority over client funds or securities but does not have custody of client funds or securities shall maintain at all times a minimum net worth of ten thousand dollars (\$10,000.00).

(b) Unless otherwise exempted, as a condition of the right to continue to transact business in this state, every investment adviser registered or required to be registered under the Act shall by the close of business on the next business day notify the administrator if such investment adviser's total net worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next business day a written report with the administrator of its financial condition, including the following:

- (1) A trial balance of all ledger accounts;
- (2) A statement of all client funds or

securities which are not segregated;

- (3) A computation of the aggregate amount of client ledger debit balances; and
- (4) A statement as to the number of client accounts.

(c) For purposes of this Rule, the term "net worth" shall mean an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets: prepaid expenses (except as to items properly classified as current assets under generally accepted accounting principles), deferred charges, subordinated loans, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature; home, home furnishings, automobile(s), and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

(d) The administrator may require that a current appraisal be submitted in order to establish the worth of any asset.

Statutory Authority G.S. 78C-17(d); 78C-18(c); 78C-18(d); 78C-30(a).

.1713 INVEST ADVISER MERGER/ CONSOLIDATION/ ACQUISITION/SUCCESSION

(a) When there is a merger, consolidation, acquisition, succession, or other similar fundamental change in the ownership of a registered investment adviser, the surviving or new entity shall file with the administrator, prior to such fundamental change, an amended Form ADV or ADV-S or successor form, with the plan of fundamental change and a letter or any documents of explanation including the date of mass transfer of investment adviser representatives pursuant to Paragraph (c) of this Rule if contemplated. As soon as practicable, but not later than 30 days after the fundamental change, the surviving or new entity shall file with the administrator the current financial statements of the surviving or new entity; the amended or new charter and by-laws; and, if applicable, a copy of the certificate of merger, consolidation or other fundamental change.

(b) The registration of the surviving or new entity usually will be granted by the administrator on the same date that the fundamental change becomes effective. Where the fundamental change results in a change in the name of the surviving or

new entity from the name listed on any outstanding investment adviser's license, the license shall be returned and a new license reflecting the new name will be issued. There will be no fee for reissuance of a license.

(c) Investment advisers shall effect mass transfers of investment adviser representatives by filing with the Securities Division a Form U-4 or successor form for each investment adviser representative to be transferred from the nonsurviving entity to the surviving or new entity and a Form U-5 or successor form for each investment adviser representative not to be transferred. Each transferred investment adviser representative shall retain his investment adviser representative's license which shall suffice as evidence of registration with the surviving or new entity until renewal. The transfer of the investment adviser representative is effective upon receipt of the Form U-4 or successor form by the Securities Division. All Form U-5's or successor forms shall be filed as soon as practicable but no later than ten business days after the fundamental change. ~~There will be no fee for these transfers. A regular application fee shall be paid by the surviving or new investment adviser for each investment adviser in such transfer.~~

Statutory Authority G.S. 78C-16(b); 78C-17(a); 78C-17(c); 78C-18(b); 78C-18(c); 78C-18(d); 78C-30(a); 78C-30(b).

SECTION .1900 - REGISTRATION OF ATHLETE AGENTS

.1901 APPLICATION FOR REGISTRATION OF ATHLETE AGENTS

(a) Each applicant for registration as an athlete agent shall complete the "North Carolina Athlete Agent Registration Application" (Form NCAA1). Appended to such form shall be one of the following disclosure documents:

- (1) The National Basketball Players Association's "Application for Certification as an NBPA Player Agent";
- (2) The National Football League Players Association's "Application for NFLPA Member Contract Adviser";
- (3) The Major League Baseball Players Association's "MLBPA Player Agent Certification Statement";
- (4) The North Carolina Disclosure Form (Form NCAA3); or
- (5) Any other disclosure document which has been approved by the Secretary of

State.

(b) ~~A check in the amount of two hundred dollars (\$200.00); The registration fee for all applications filed between January 1 and June 30 will be two hundred dollars (\$200.00). The registration fee for all applications filed after June 30 will be one hundred dollars (\$100.00). Checks for registration fees shall be made payable to "Secretary of State", and shall be transmitted with the application for registration, along with a completed Form NCAA4 ("Athlete Agent Consent to Service of Process").~~ Registration becomes effective on the date of issuance of a certificate of registration to the applicant.

Statutory Authority G.S. 78C-46(b); 78C-72; 78C-81.

.1902 EXPIRATION OF REGISTRATION

Registration as an athlete agent ~~is for a period of one year and~~ shall automatically expire one on December 31 of the current year from the date of issuance of the original certificate of registration, unless renewed by the applicant in compliance with Rule .1903.

Statutory Authority G.S. 78C-72; 78C-81.

.1903 RENEWAL OF REGISTRATION

(a) A completed application for renewal of an effective registration as an athlete agent must be received by the Office of the Secretary of State ~~at least 30 days but not more than 60 days prior to the expiration of a currently effective registration between October 1 and November 30 of the current year.~~

(b) Each applicant for renewal of registration as an athlete agent shall complete and submit a Form NCAA1 ("North Carolina Athlete Agent Registration Application") along with a filing fee of two hundred dollars (\$200.00) in the form of a check made payable to "Secretary of State". It is not necessary to file Form NCAA4 ("Athlete Agent Consent to Service of Process") with an application for renewal of registration as an athlete agent.

Statutory Authority G.S. 78C-46; 78C-72; 78C-81.

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

Key:

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

NORTH CAROLINA ADMINISTRATIVE CODE

JUNE 94

| TITLE | DEPARTMENT | TITLE | DEPARTMENT |
|-------|---|-------|---|
| 10 | Human Resources | 21 | Occupational Licensing Boards |
| 11 | Insurance | 36 | - Nursing |
| 12 | Justice | 46 | - Pharmacy |
| 13 | Labor | 50 | - Plumbing & Heating Contractors |
| 15A | Environment, Health, and Natural Resources | 53 | - Practicing Counselors |
| 17 | Revenue | 54 | - Practicing Psychologists |
| 19A | Transportation | 23 | Community Colleges |
| | | 24 | Independent Agencies |
| | | 5 | - State Health Plan Purchasing Alliance Board |
| | | 25 | State Personnel |

| Citation | AD | AM | RP | With Chgs | Corr | Eff. Date | Temp. Expires |
|------------------|----|----|----|--------------|------|--------------|------------------|
| 10 NCAC 1K .0306 | | | | | ✓ | | |
| 3E .0101 | | ✓ | | ✓ | | 07/01/94 | |
| .0106 - .0107 | | ✓ | | | | 07/01/94 | |
| .0111 | | ✓ | | ✓ | | 07/01/94 | |
| .0201 | | ✓ | | ✓ | | 07/01/94 | |
| .0202 | | ✓ | | | | 07/01/94 | |
| .0204 - .0205 | | ✓ | | | | 07/01/94 | |
| .0206 | | ✓ | | ✓ | | 07/01/94 | |
| .0303 | | ✓ | | ✓ | | 07/01/94 | |
| .0304 | | ✓ | | | | 07/01/94 | |

LIST OF RULES CODIFIED

| Citation | | | | AD | AM | RP | With Chgs | Corr | Eff. Date | Temp. Expires |
|----------|------|-----|---------------|----|----|----|--------------|------|--------------|------------------|
| 10 | NCAC | 3E | .0305 - .0306 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .0309 - .0311 | | ✓ | | | | 07/01/94 | |
| | | 3R | .3020 | | ✓ | | | | 06/07/94 | 180 DAYS |
| | | | .3030 | | ✓ | | | | 06/07/94 | 180 DAYS |
| | | | .3030 | | ✓ | | | | 07/01/94 | 180 DAYS |
| | | | .4201 - .4204 | ✓ | | | ✓ | | 07/01/94 | |
| | | | .4205 | ✓ | | | | | 07/01/94 | |
| | | | .4206 | ✓ | | | ✓ | | 07/01/94 | |
| | | | .4207 | ✓ | | | | | 07/01/94 | |
| | | 3U | .0712 - .0713 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .2607 | | ✓ | | ✓ | | 07/01/94 | |
| | | 14C | .0716 | | ✓ | | | | 07/01/94 | |
| | | | .1148 | ✓ | | | ✓ | | 07/01/94 | |
| | | 14J | .0206 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .0210 | | ✓ | | ✓ | | 07/01/94 | |
| | | 14K | .0103 | | ✓ | | ✓ | | 07/01/94 | |
| | | 16A | .0401 | ✓ | | | | | 07/01/94 | |
| | | | .0402 - .0403 | ✓ | | | ✓ | | 07/01/94 | |
| | | 18J | .0119 | ✓ | | | | | 07/01/94 | |
| | | | .0801 - .0805 | ✓ | | | | | 07/01/94 | |
| | | 18M | .0906 | | ✓ | | | | 07/01/94 | |
| | | 45G | .0139 | ✓ | | | ✓ | | 07/01/94 | |
| | | | .0406 | | ✓ | | ✓ | | 07/01/94 | |
| 11 | NCAC | 13 | .0518 | ✓ | | | | | 07/01/94 | |
| | | 18 | .0019 - .0020 | ✓ | | | | | 07/01/94 | |
| | | | .0021 | ✓ | | | ✓ | | 07/01/94 | |
| 12 | NCAC | 7D | .1101 | ✓ | | | ✓ | | 07/01/94 | |
| | | | .1102 - .1103 | ✓ | | | | | 07/01/94 | |
| | | | .1104 | ✓ | | | ✓ | | 07/01/94 | |
| | | | .1105 - .1106 | ✓ | | | | | 07/01/94 | |
| | | | .1107 | ✓ | | | ✓ | | 07/01/94 | |
| | | | .1108 - .1110 | ✓ | | | | | 07/01/94 | |
| 13 | NCAC | 7F | .0101 | | ✓ | | | | 09/01/94 | |

LIST OF RULES CODIFIED

| Citation | | | | AD | AM | RP | With Chgs | Corr | Eff. Date | Temp. Expires |
|----------|------|----|---------------|----|----|----|--------------|------|--------------|------------------|
| 15A | NCAC | 1J | .0102 | | ✓ | | | | 07/01/94 | |
| | | | .0201 | | ✓ | | | | 07/01/94 | |
| | | | .0303 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .0304 | | ✓ | | | | 07/01/94 | |
| | | | .0402 | | ✓ | | | | 07/01/94 | |
| | | | .0501 | | | ✓ | | | 07/01/94 | |
| | | | .0502 - .0503 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .0505 | | ✓ | | | | 07/01/94 | |
| | | | .0602 | | ✓ | | | | 07/01/94 | |
| | | | .0603 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .0605 | | | ✓ | | | 07/01/94 | |
| | | | .0606 | | ✓ | | | | 07/01/94 | |
| | | | .0702 - .0703 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .0802 - .0803 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .0901 | | ✓ | | | | 07/01/94 | |
| | | | .0904 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .0905 | | | ✓ | | | 07/01/94 | |
| | | | .1002 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .1101 | | ✓ | | | | 07/01/94 | |
| | 1L | | .0101 | ✓ | | | | | 07/01/94 | |
| | | | .0102 | ✓ | | | ✓ | | 07/01/94 | |
| | | | .0201 - .0203 | ✓ | | | | | 07/01/94 | |
| | | | .0301 | ✓ | | | | | 07/01/94 | |
| | | | .0302 - .0303 | ✓ | | | ✓ | | 07/01/94 | |
| | | | .0401 | ✓ | | | | | 07/01/94 | |
| | | | .0501 - .0502 | ✓ | | | ✓ | | 07/01/94 | |
| | | | .0503 - .0504 | ✓ | | | | | 07/01/94 | |
| | | | .0601 - .0603 | ✓ | | | ✓ | | 07/01/94 | |
| | | | .0604 | ✓ | | | | | 07/01/94 | |
| | | | .0605 | ✓ | | | ✓ | | 07/01/94 | |
| | | | .0701 | ✓ | | | ✓ | | 07/01/94 | |
| | | | .0702 | ✓ | | | | | 07/01/94 | |
| | | | .0703 | ✓ | | | ✓ | | 07/01/94 | |

LIST OF RULES CODIFIED

| Citation | | | | AD | AM | RP | With Chgs | Corr | Eff. Date | Temp. Expires |
|----------|------|----|---------------|----|----|----|--------------|------|--------------|------------------|
| 15A | NCAC | 1L | .0801 | ✓ | | | | | 07/01/94 | |
| | | | .0901 | ✓ | | | | | 07/01/94 | |
| | | | .0902 | ✓ | | | ✓ | | 07/01/94 | |
| | | | .1001 - .1003 | ✓ | | | | | 07/01/94 | |
| | | | .1004 | ✓ | | | ✓ | | 07/01/94 | |
| | | | .1101 | ✓ | | | | | 07/01/94 | |
| | | | .1201 - .1202 | ✓ | | | | | 07/01/94 | |
| | 2D | | .0101 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .0501 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .0503 | | ✓ | | | | 07/01/94 | |
| | | | .0524 - .0525 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .0530 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .0531 - .0533 | | ✓ | | | | 07/01/94 | |
| | | | .0601 | | ✓ | | | | 07/01/94 | |
| | | | .0801 | | ✓ | | | | 07/01/94 | |
| | | | .0802 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .0803 | | ✓ | | | | 07/01/94 | |
| | | | .0804 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .0805 | ✓ | | | ✓ | | 07/01/94 | |
| | | | .0806 | ✓ | | | | | 07/01/94 | |
| | | | .0902 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .0907 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .0909 | | ✓ | | | | 07/01/94 | |
| | | | .0927 - .0928 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .0932 - .0933 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .0952 | | ✓ | | | | 07/01/94 | |
| | | | .0953 - .0954 | ✓ | | | ✓ | | 07/01/94 | |
| | | | .1002 | | ✓ | | | | 07/01/94 | |
| | | | .1109 | ✓ | | | | | 07/01/94 | |
| | 2H | | .0601 - .0607 | | | ✓ | | | 07/01/94 | |
| | | | .0609 | | | ✓ | | | 01/01/95 | |
| | 2Q | | .0101 | ✓ | | | | | 07/01/94 | |
| | | | .0102 - .0103 | ✓ | | | ✓ | | 07/01/94 | |

LIST OF RULES CODIFIED

| Citation | | | | AD | AM | RP | With Chgs | Corr | Eff. Date | Temp. Expires |
|----------|------|----|---------------|----|----|----|--------------|------|--------------|------------------|
| 15A | NCAC | 2Q | .0104 | ✓ | | | | | 07/01/94 | |
| | | | .0105 | ✓ | | | ✓ | | 07/01/94 | |
| | | | .0106 | ✓ | | | | | 07/01/94 | |
| | | | .0107 | ✓ | | | ✓ | | 07/01/94 | |
| | | | .0108 | ✓ | | | | | 07/01/94 | |
| | | | .0109 | ✓ | | | ✓ | | 07/01/94 | |
| | | | .0110 - .0111 | ✓ | | | | | 07/01/94 | |
| | | | .0201 - .0203 | ✓ | | | ✓ | | 07/01/94 | |
| | | | .0204 - .0205 | ✓ | | | | | 07/01/94 | |
| | | | .0206 | ✓ | | | ✓ | | 07/01/94 | |
| | | | .0207 | ✓ | | | | | 07/01/94 | |
| | | | .0301 - .0303 | ✓ | | | | | 07/01/94 | |
| | | | .0304 | ✓ | | | ✓ | | 07/01/94 | |
| | | | .0305 | ✓ | | | | | 07/01/94 | |
| | | | .0306 | ✓ | | | ✓ | | 07/01/94 | |
| | | | .0307 - .0311 | ✓ | | | | | 07/01/94 | |
| | | | .0401 - .0415 | ✓ | | | | | 07/01/94 | |
| | | | .0416 | ✓ | | | ✓ | | 07/01/94 | |
| | | | .0417 - .0418 | ✓ | | | | | 07/01/94 | |
| | | | .0501 - .0502 | ✓ | | | | | 07/01/94 | |
| | | | .0503 | ✓ | | | ✓ | | 07/01/94 | |
| | | | .0504 - .0506 | ✓ | | | | | 07/01/94 | |
| | | | .0507 - .0508 | ✓ | | | ✓ | | 07/01/94 | |
| | | | .0509 - .0515 | ✓ | | | | | 07/01/94 | |
| | | | .0516 | ✓ | | | ✓ | | 07/01/94 | |
| | | | .0517 - .0524 | ✓ | | | | | 07/01/94 | |
| | | | .0601 - .0606 | ✓ | | | | | 07/01/94 | |
| | 7H | | .1104 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .1204 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .1304 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .1404 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .1504 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .1604 | | ✓ | | ✓ | | 07/01/94 | |

LIST OF RULES CODIFIED

| Citation | AD | AM | RP | With Chgs | Corr | Eff. Date | Temp. Expires |
|-------------------|----|----|----|--------------|------|--------------|------------------|
| 15A NCAC 7H .1704 | | ✓ | | ✓ | | 07/01/94 | |
| .1804 | | ✓ | | ✓ | | 07/01/94 | |
| .1904 | | ✓ | | ✓ | | 07/01/94 | |
| .2104 | ✓ | | | ✓ | | 07/01/94 | |
| 10B .0113 | | ✓ | | | | 07/01/94 | |
| 10D .0002 - .0003 | | ✓ | | ✓ | | 07/01/94 | |
| 10F .0305 | | ✓ | | ✓ | | 07/01/94 | |
| .0333 | | ✓ | | | | 07/01/94 | |
| 10H .0101 | | ✓ | | ✓ | | 07/01/94 | |
| .0813 | | ✓ | | | | 07/01/94 | |
| 18A .2601 | | ✓ | | ✓ | | 07/01/94 | |
| .2610 | | ✓ | | ✓ | | 07/01/94 | |
| .2645 | ✓ | | | ✓ | | 07/01/94 | |
| 18C .0102 | | ✓ | | ✓ | | 07/01/94 | |
| .0201 - .0203 | | ✓ | | ✓ | | 07/01/94 | |
| .0301 | | ✓ | | | | 07/01/94 | |
| .0302 - .0303 | | ✓ | | ✓ | | 07/01/94 | |
| .0305 | | ✓ | | | | 07/01/94 | |
| .0307 | | ✓ | | ✓ | | 07/01/94 | |
| .0308 | | ✓ | | | | 07/01/94 | |
| .0401 | | ✓ | | | | 07/01/94 | |
| .0402 - .0405 | | ✓ | | ✓ | | 07/01/94 | |
| .0407 | | ✓ | | | | 07/01/94 | |
| .0409 | ✓ | | | | | 07/01/94 | |
| .0501 - .0502 | | ✓ | | | | 07/01/94 | |
| .0703 | | ✓ | | ✓ | | 07/01/94 | |
| .0707 - .0708 | | ✓ | | ✓ | | 07/01/94 | |
| .0710 - .0712 | ✓ | | | ✓ | | 07/01/94 | |
| .0713 | ✓ | | | | | 07/01/94 | |
| .0714 - .0715 | ✓ | | | ✓ | | 07/01/94 | |
| .0802 - .0803 | | ✓ | | ✓ | | 07/01/94 | |
| .0804 | | ✓ | | | | 07/01/94 | |
| .0805 | | ✓ | | ✓ | | 07/01/94 | |

LIST OF RULES CODIFIED

| Citation | | | | AD | AM | RP | With Chgs | Corr | Eff. Date | Temp. Expires |
|----------|------|-----|---------------|----|----|----|--------------|------|--------------|------------------|
| 15A | NCAC | 18C | .1002 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .1004 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .1101 | | ✓ | | | | 07/01/94 | |
| | | | .1102 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .1105 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .1107 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .1201 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .1203 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .1207 | | ✓ | | | | 07/01/94 | |
| | | | .1209 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .1211 | | ✓ | | | | 07/01/94 | |
| | | | .1301 - .1302 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .1303 | | ✓ | | | | 07/01/94 | |
| | | | .1406 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .1507 - .1509 | | ✓ | | | | 07/01/94 | |
| | | | .1511 - .1512 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .1516 | | ✓ | | | | 07/01/94 | |
| | | | .1519 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .1520 - .1521 | | ✓ | | | | 07/01/94 | |
| | | | .1533 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .1537 | ✓ | | | | | 07/01/94 | |
| | | 19A | .0206 | | ✓ | | ✓ | | 07/01/94 | |
| 17 | NCAC | 7B | .2203 | | | ✓ | | | 07/01/94 | |
| 19A | NCAC | 3G | .0207 | | ✓ | | | | 07/01/94 | |
| | | 3I | .0202 | | ✓ | | | | 07/01/94 | |
| | | | .0307 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .0503 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .0601 - .0602 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .0701 | | ✓ | | | | 07/01/94 | |
| | | | .0703 | | ✓ | | | | 07/01/94 | |
| 21 | NCAC | 36 | .0211 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .0213 | | ✓ | | | | 07/01/94 | |
| | | | .0218 | | ✓ | | ✓ | | 07/01/94 | |

LIST OF RULES CODIFIED

| Citation | | | | AD | AM | RP | With Chgs | Corr | Eff. Date | Temp. Expires |
|----------|------|----|---------------|----|----|----|--------------|------|--------------|------------------|
| 21 | NCAC | 36 | .0219 | | ✓ | | | | 07/01/94 | |
| | | 46 | .1607 | ✓ | | | ✓ | | 07/01/94 | |
| | | 50 | .0412 | | ✓ | | | | 08/01/94 | |
| | | 53 | .0102 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .0103 - .0105 | | | ✓ | | | 07/01/94 | |
| | | | .0201 | | | ✓ | | | 07/01/94 | |
| | | | .0203 | | | ✓ | | | 07/01/94 | |
| | | | .0204 | ✓ | | | | | 07/01/94 | |
| | | | .0301 | | ✓ | | | | 07/01/94 | |
| | | | .0303 | | | ✓ | | | 07/01/94 | |
| | | | .0304 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .0401 | | ✓ | | ✓ | | 07/01/94 | |
| | | | .0402 | ✓ | | | | | 07/01/94 | |
| | | | .0501 - .0502 | | ✓ | | | | 07/01/94 | |
| | | | .0503 | | ✓ | | ✓ | | 07/01/94 | |
| | | 54 | .2701 | ✓ | | | ✓ | | 07/01/94 | |
| | | | .2703 | ✓ | | | | | 07/01/94 | |
| 23 | NCAC | 2 | TOC | | | | | ✓ | | |
| | | 2D | .0203 | | | | | ✓ | | |
| | | | .0325 | | | | | ✓ | | |
| 24 | NCAC | 5 | .0101 | ✓ | | | | | 07/01/94 | |
| | | | .0102 | ✓ | | | ✓ | | 07/01/94 | |
| | | | .0301 - .0303 | ✓ | | | ✓ | | 07/01/94 | |
| 25 | NCAC | 1D | .2513 | | ✓ | | | | 07/01/94 | 180 DAYS |

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

COMMERCE

Energy

4 NCAC 12C .0007- Institutional Conservation Program

RRC Objection 06/16/94

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Departmental Rules

15A NCAC 1J .0303 - Filing of Required Supplemental Information
Agency Revised Rule

RRC Objection 06/16/94

Obj. Removed 06/16/94

15A NCAC 1J .0701 - Public Necessity: Health: Safety and Welfare
Agency Revised Rule

RRC Objection 06/16/94

RRC Objection 06/16/94

15A NCAC 1L .0302 - General Provisions
Agency Revised Rule

RRC Objection 06/16/94

Obj. Removed 06/16/94

15A NCAC 1L .0602 - Public Health Need
Agency Revised Rule

RRC Objection 06/16/94

Obj. Removed 06/16/94

Environmental Health

15A NCAC 18A .2610 - Storage: Handling: and Display of Food
Agency Revised Rule

RRC Objection 06/16/94

Obj. Removed 06/16/94

15A NCAC 18A .2645 - Requirements for Limited Food Service Establishments
Agency Revised Rule

RRC Objection 06/16/94

Obj. Removed 06/16/94

15A NCAC 18C .0202 - Removal of Dissolved Matter and Suspended Matter
Agency Revised Rule

RRC Objection 06/16/94

Obj. Removed 06/16/94

15A NCAC 18C .0203 - Public Well Water Supplies
Agency Revised Rule

RRC Objection 06/16/94

Obj. Removed 06/16/94

15A NCAC 18C .0402 - Water Supply Wells
Agency Revised Rule

RRC Objection 06/16/94

Obj. Removed 06/16/94

15A NCAC 18C .0403 - Surface Water Facilities
Agency Revised Rule

RRC Objection 06/16/94

Obj. Removed 06/16/94

15A NCAC 18C .0404 - Water Treatment Facilities
Agency Revised Rule

RRC Objection 06/16/94

Obj. Removed 06/16/94

15A NCAC 18C .0405 - Storage of Finished Water
Agency Revised Rule

RRC Objection 06/16/94

Obj. Removed 06/16/94

15A NCAC 18C .0710 - Other Water Treatment Plants
Agency Revised Rule

RRC Objection 06/16/94

Obj. Removed 06/16/94

15A NCAC 18C .0711 - Alternative Filtration Treatment Technologies
Agency Revised Rule

RRC Objection 06/16/94

Obj. Removed 06/16/94

15A NCAC 18C .0714 - Pilot Plant Studies
Agency Revised Rule

RRC Objection 06/16/94

Obj. Removed 06/16/94

15A NCAC 18C .0802 - Capacities: Determining Peak Demand
Agency Revised Rule

RRC Objection 06/16/94

Obj. Removed 06/16/94

15A NCAC 18C .0803 - Capacities: Determining Total Volume
Agency Revised Rule

RRC Objection 06/16/94

Obj. Removed 06/16/94

15A NCAC 18C .0805 - Capacities: Elevated Storage

RRC Objection 06/16/94

| | | |
|--|----------------------|-----------------|
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/16/94</i> |
| <i>15A NCAC 18C .1002 - Disinfection of Wells</i> | <i>RRC Objection</i> | <i>06/16/94</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/16/94</i> |
| <i>15A NCAC 18C .1004 - Disinfection of Filters</i> | <i>RRC Objection</i> | <i>06/16/94</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/16/94</i> |
| <i>15A NCAC 18C .1102 - Authorized Persons Within Watershed Area</i> | <i>RRC Objection</i> | <i>06/16/94</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/16/94</i> |
| <i>15A NCAC 18C .1209 - Untreated Domestic Sewage or Industrial Wastes</i> | <i>RRC Objection</i> | <i>06/16/94</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/16/94</i> |
| <i>15A NCAC 18C .1406 - Control of Treatment Process</i> | <i>RRC Objection</i> | <i>06/16/94</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/16/94</i> |
| <i>15A NCAC 18C .1511 - Concentration of Iron</i> | <i>RRC Objection</i> | <i>06/16/94</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/16/94</i> |
| <i>15A NCAC 18C .1512 - Concentration of Manganese</i> | <i>RRC Objection</i> | <i>06/16/94</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/16/94</i> |
| <i>15A NCAC 18C .1533 - Total Trihalomethanes Sampling/Analysis: < 10,000</i> | <i>RRC Objection</i> | <i>06/16/94</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/16/94</i> |

Environmental Management

| | | |
|--|----------------------|-----------------|
| <i>15A NCAC 2D .0101 - Definitions</i> | <i>RRC Objection</i> | <i>06/16/94</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/16/94</i> |
| <i>15A NCAC 2D .0932 - Gasoline Truck Tanks and Vapor Collection Systems</i> | <i>RRC Objection</i> | <i>06/16/94</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/16/94</i> |

Wildlife Resources and Water Safety

| | | |
|---|----------------------|-----------------|
| <i>15A NCAC 10D .0002 - General Regulations Regarding Use</i> | <i>RRC Objection</i> | <i>06/16/94</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/16/94</i> |
| <i>15A NCAC 10H .0101 - License to Operate</i> | <i>RRC Objection</i> | <i>06/16/94</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/16/94</i> |

HUMAN RESOURCES

Facility Services

| | | |
|---|----------------------|-----------------|
| <i>10 NCAC 3E .0201 - Building Code Requirements</i> | <i>RRC Objection</i> | <i>06/16/94</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/16/94</i> |
| <i>10 NCAC 3E .0206 - Elements and Equipment</i> | <i>RRC Objection</i> | <i>06/16/94</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/16/94</i> |
| <i>10 NCAC 3R .4206 - Accessibility</i> | <i>RRC Objection</i> | <i>06/16/94</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/16/94</i> |
| <i>10 NCAC 3U .0713 - Staff/Child Ratios for Medium and Large Centers</i> | <i>RRC Objection</i> | <i>06/16/94</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/16/94</i> |

Mental Health, Developmental Disabilities and Substance Abuse Services

| | | |
|--|----------------------|-----------------|
| <i>10 NCAC 45G .0139 - Security Requirements Generally</i> | <i>RRC Objection</i> | <i>06/16/94</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/16/94</i> |

Mental Health: General

| | | |
|---|----------------------|-----------------|
| <i>10 NCAC 14C .1148 - Thomas S. Community Services</i> | <i>RRC Objection</i> | <i>06/16/94</i> |
| <i>Agency Revised Rule</i> | <i>Obj. Removed</i> | <i>06/16/94</i> |

Mental Health: MR Centers*10 NCAC 16A .0402 - Explanation of Terms**Agency Revised Rule**RRC Objection 06/16/94**Obj. Removed 06/16/94**10 NCAC 16A .0403 - Designation Procedures**Agency Revised Rule**RRC Objection 06/16/94**Obj. Removed 06/16/94***INDEPENDENT AGENCIES****State Health Plan Purchasing Alliance Board***24 NCAC 5 .0302 - Designation Process**Agency Revised Rule**RRC Objection 06/16/94**Obj. Removed 06/16/94***INSURANCE****Multiple Employer Welfare Arrangements***11 NCAC 18 .0019 - "Qualified Actuary"; Maximum Net Retention Filing**Agency Revised Rule**RRC Objection 06/16/94**Obj. Removed 06/16/94**11 NCAC 18 .0021 - Certification of Reserves Filing**Agency Revised Rule**RRC Objection 06/16/94**Obj. Removed 06/16/94***JUSTICE****Criminal Justice Education and Training Standards***12 NCAC 9B .0208 - Basic Training -- Probation/Parole Officers**RRC Objection 07/14/94***Private Protective Services***12 NCAC 7D .1101 - Definitions**Agency Revised Rule**RRC Objection 06/16/94**Obj. Removed 06/16/94**12 NCAC 7D .1104 - Training and Supervision Required in Level Three**Agency Revised Rule**RRC Objection 06/16/94**Obj. Removed 06/16/94***LICENSING BOARDS AND COMMISSIONS****Board of Nursing***21 NCAC 36 .0211 - Examination**Agency Revised Rule**RRC Objection 06/16/94**Obj. Removed 06/16/94**21 NCAC 36 .0218 - Licensure Without Examination (By Endorsement)**Agency Revised Rule**RRC Objection 06/16/94**Obj. Removed 06/16/94***Professional Counselors***21 NCAC 53 .0103 - Purpose of Organization**Agency Repealed Rule**RRC Objection 06/16/94**Obj. Removed 06/16/94**21 NCAC 53 .0104 - Organization of the Board**Agency Repealed Rule**RRC Objection 06/16/94**Obj. Removed 06/16/94**21 NCAC 53 .0201 - Supervision**Agency Repealed Rule**RRC Objection 06/16/94**Obj. Removed 06/16/94**21 NCAC 53 .0303 - Work Experiences**Agency Repealed Rule**RRC Objection 06/16/94**Obj. Removed 06/16/94*

RRC OBJECTIONS

21 NCAC 53 .0305 - Exemption from Academic Qualification

Rule Withdrawn by Agency

06/16/94

21 NCAC 53 .0503 - Renewal Fee

RRC Objection

06/16/94

Agency Revised Rule

Obj. Removed

06/16/94

REVENUE

Sales and Use Tax

17 NCAC 7B .2608 - Plumbing: Heating: Air Cond/Elec Contractors: Purchases

RRC Objection

05/19/94

Rule Returned to Agency

06/16/94

17 NCAC 7B .2609 - Plumbing: Heating: Air Cond/Elec Contractors: Sales

RRC Objection

05/19/94

Rule Returned to Agency

06/16/94

17 NCAC 7B .5462 - White Goods Disposal Tax Report Form: E-500W

RRC Objection

05/19/94

Rule Returned to Agency

06/16/94

17 NCAC 7B .5464 - Ice Certificate Form: E-599Y

RRC Objection

05/19/94

Rule Returned to Agency

06/16/94

TRANSPORTATION

Division of Motor Vehicles

19A NCAC 3I .0307 - Courses of Instruction

RRC Objection

06/16/94

Agency Revised Rule

Obj. Removed

06/16/94

19A NCAC 3I .0501 - Requirements

Rule Withdrawn by Agency

06/16/94

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.

| <u>AGENCY</u> | <u>CASE NUMBER</u> | <u>ALJ</u> | <u>DATE OF DECISION</u> | <u>PUBLISHED DECISION REGISTER CITATION</u> |
|--|------------------------|------------|-----------------------------|---|
| 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 | |
| Alcoholic Beverage Control Comm. v. Daphne Ann Harrell | 94 ABC 0115 | Nesnow | 07/18/94 | |
| 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 | |
| Roy Dale Cagle v. Alcoholic Beverage Control Commission | 94 ABC 0260 | West | 07/13/94 | |
| COMMERCE | | | | |
| <i>Savings Institutions Division</i> | | | | |
| James E. Byers, et al v. Savings Institutions | 93 COM 1622 | Chess | 03/01/94 | |
| CORRECTION | | | | |
| <i>Division of Prisons</i> | | | | |
| Gene Strader v. Department of Correction | 94 DOC 0252 | Morrison | 03/21/94 | |
| CRIME CONTROL AND PUBLIC SAFETY | | | | |
| Joseph Guernsey & Parents, Robert Guernsey & Dolores Guernsey v. Pitt County Hospital Eastern Radiologists | 94 CPS 0413 | Gray | 07/11/94 | |
| <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 |
| Ross T. Bond v. Victims Compensation Commission | 93 CPS 1104 | West | 04/21/94 | |
| James A. Canady v. Crime Victims Compensation Commission | 93 CPS 1108 | Gray | 03/28/94 | |
| Virginia Roof v. Department of Crime Control & Public Safety | 93 CPS 1347 | Nesnow | 03/24/94 | |
| Karen 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 | |
| Violet 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 | |
| Percy Clark v. Crime Victims Compensation Commission | 94 CPS 0127 | Reilly | 04/19/94 | |
| J. 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 | |

CONTESTED CASE DECISIONS

| AGENCY | CASE NUMBER | ALJ | DATE OF DECISION | PUBLISHED DECISION REGISTER CITATION |
|--|--------------------------|----------|---------------------|---|
| 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 | |
| Lyman 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 | |
| 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 | |
| ENVIRONMENT, HEALTH, AND NATURAL RESOURCES | | | | |
| Ron D. Graham, Suzanne C. Graham v. Robert Cobb, Mecklenburg Cty | 93 EHR 1017 | Becton | 05/31/94 | |
| Patricia D. Solomon v. Macon County Health Department | 93 EHR 1777 | West | 05/23/94 | |
| Kathryn A. Whitley v. Macon County Health Department | 94 EHR 0088 | West | 07/13/94 | |
| Brook Hollow Estates v. Environment, Health, & Natural Resources | 94 EHR 0093 | West | 06/03/94 | |
| Oceanfront Court, David C. Gagnon v. Environment, Health, & Nat. Res. | 94 EHR 0210 | Chess | 06/21/94 | |
| 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 | |
| Tri-Circuits, Inc. v. Environment, Health, & Natural Resources | 94 EHR 0601 | Morrison | 06/30/94 | |
| Coastal Management | | | | |
| Roger Fuller v. EHNRR, Divs. of Coastal Mgmt & Environmental Mgmt | 89 EHR 1378 ² | Gray | 04/07/94 | |
| Roger Fuller v. EHNRR, Divs. of Coastal Mgmt & Environmental Mgmt | 90 EHR 0017 ² | Gray | 04/07/94 | |
| Gary E. Montalbini v. Division of Coastal Management | 93 EHR 1792 | Nesnow | 03/21/94 | |
| Paley-Midgett Partnership v. Coastal Resources Commission | 94 EHR 0315 | Gray | 06/01/94 | |
| Environmental Health | | | | |
| Jane C. O'Malley, Melvin L. Cartwright v. EHNRR & District Hlth Dept Pasquotank-Perquimans-Camden-Chowan | 91 EHR 0838 | Becton | 04/06/94 | |
| Environment, Health, & Natural Res. v. Clark Harris & Jessie Lee Harris | 93 EHR 0924 | Becton | 03/03/94 | |
| Sidney S. Tate Jr. v. Dept. of Environment, Health, & Natural Resources | 94 EHR 0005 | Reilly | 05/24/94 | |
| Scotland Water Co., Laurin Lakes v. Environment, Health, & Nat. Res. | 94 EHR 0200 | Nesnow | 04/27/94 | |
| Floyd Benn Williams v. Dept. of Environment, Health, & Nat. Res. | 94 EHR 0333 | Reilly | 05/18/94 | |
| Environmental Management | | | | |
| David Springer v. Dept. of Environment, Health, & Natural Resources | 92 EHR 1797 | Morgan | 05/19/94 | |
| Petroleum Installation Equipment Co., Inc. v. Env., Health & Nat. Res. | 93 EHR 0531 | Chess | 03/21/94 | |
| Jack Griffin v. Dept. of Environment, Health, and Natural Resources | 93 EHR 1030 | Becton | 03/21/94 | |
| Land Resources | | | | |
| Town of Kernersville (LQS 93-053) v. Environment, Health, & Nat. Res. | 93 EHR 1781 | Chess | 06/29/94 | 9:8 NCR 581 |
| Royce Perry, Paul Perry v. Dept. of Environment, Health, & Natural Res. | 94 EHR 0525 | Gray | 07/01/94 | |
| Marine Fisheries | | | | |
| Robert I. Swinson, Virginia S. Swinson v. EHNRR, Div/Marine Fisheries | 93 EHR 0394 | Gray | 04/11/94 | |
| James Goodman v. EHNRR, Division of Marine Fisheries | 94 EHR 0035 | Nesnow | 07/18/94 | 9:9 NCR 660 |
| Solid Waste Management | | | | |
| Roger Sessoms v. EHNRR/Asbestos Hazard Management Branch | 93 EHR 0951 | Gray | 03/28/94 | |
| Bertie Citizens Action Coalition, Inc.; Willard J. Oliver, Reginald Early, Herbert Jenkins, Jr., Lindwood Earl Tripp, Willie Warren Tripp, Mary Alice Cherry, and Kathy Burden v. EHNRR, Solid Waste Management Division, and East Carolina Environmental, Inc., Addington Environmental, Inc., et al. | 93 EHR 1045 | Morrison | 04/06/94 | 9:3 NCR 214 |

* Consolidated Cases.

| <u>AGENCY</u> | <u>CASE NUMBER</u> | <u>ALJ</u> | <u>DATE OF DECISION</u> | <u>PUBLISHED DECISION REGISTER CITATION</u> |
|---|------------------------|------------|-----------------------------|---|
| HUMAN RESOURCES | | | | |
| Brenda C. Robinson v. Department of Human Resources | 94 DHR 0365 | West | 06/01/94 | |
| Betty Rhodes v. Department of Human Resources | 94 DHR 0501 | Morrison | 06/02/94 | |
| <i>Distribution Child Support</i> | | | | |
| Jachell D. Parker v. Department of Human Resources | 93 DCS 0371 | Morgan | 07/14/94 | |
| <i>Division of Child Development</i> | | | | |
| Judith Fridley v. Div. of Child Development/Abuse/Neglect Unit | 93 DHR 0973 | Morrison | 03/08/94 | |
| DHR, Division of Child Development v. Joyce Gale | 93 DHR 1344 | Gray | 04/28/94 | |
| Laureen Holt, ID#26-0-00037 v. DHR, Div. of Child Development | 93 DHR 1549 | Becton | 07/13/94 | |
| Gloria C. Haith v. Department of Human Resources | 93 DHR 1707 | Nesnow | 03/22/94 | |
| Gloria C. Haith v. Daycare Consultant | 93 DHR 1787 | Nesnow | 03/14/94 | |
| Charles E. Smith v. Department of Human Resources | 93 DHR 1797 | Nesnow | 03/21/94 | |
| Scott's Loving Day Care & Nursery, Mrs. Willie L. Scott v. DHR | 94 DHR 0106 | Nesnow | 06/29/94 | |
| Belinda K. Mitchell v. Human Resources, Div. of Child Development | 94 DHR 0119 | Reilly | 06/30/94 | |
| Living Word Day Care, Jonathan Lankford v. Dept. of Human Resources | 94 DHR 0168 | Nesnow | 03/23/94 | |
| <i>Facility Services</i> | | | | |
| Charles E. Hunter, Jr., M.D. & Coastal Perfusion Svcs, Inc. v. Cert of Need Section, Div of Facility Svcs, DHR, and Wilmington Perfusion Corp. and Howard F. Marks, Jr., M.D. | 93 DHR 0746 | Morgan | 04/11/94 | |
| Presbyterian-Orthopaedic Hospital v. Department of Human Resources | 93 DHR 0805 | Reilly | 03/11/94 | |
| Judy Hoben Wallace v. Department of Human Resources | 93 DHR 0935 | Gray | 05/23/94 | |
| Lowell Stafford v. Department of Human Resources | 93 DHR 1381 | Gray | 04/15/94 | |
| <i>Division of Medical Assistance</i> | | | | |
| J.R., by and through her agent & Personal Rep., Hank Neal v. DHR | 93 DHR 0528 | Gray | 04/27/94 | |
| David Yott v. Department of Human Resources | 93 DHR 1113 | Gray | 04/05/94 | |
| Division of Medical Assistance v. Catawba Cty Dept. of Social Services | 93 DHR 1778 | West | 03/04/94 | |
| Lu Ann Leidy, MD/Dorothea Dix Hosp. Child & Youth v. Medical Assis. | 94 DHR 0448 | Ches | 06/21/94 | |
| <i>Division of Social Services</i> | | | | |
| Evelyn Moore v. Department of Human Resources | 94 DHR 0293 | Reilly | 04/15/94 | |
| Nathaniel Harrell, Annie Harrell v. Department of Social Services | 94 DHR 0440 | Gray | 06/27/94 | |
| <i>Child Support Enforcement Section</i> | | | | |
| Dalton Felton Sr. v. Department of Human Resources | 92 CSE 0532 | Morgan | 07/13/94 | |
| William Heckstall v. Department of Human Resources | 93 CSE 1077 | Reilly | 03/14/94 | |
| Luther Hatcher v. Department of Human Resources | 93 CSE 1082 | Mann | 05/24/94 | |
| Bryan Jeffrey Cole v. Department of Human Resources | 93 CSE 1091 | Becton | 03/30/94 | |
| Anthony E. Bullard v. Department of Human Resources | 93 CSE 1094 | Nesnow | 06/13/94 | |
| Dexter L. Chambers v. Department of Human Resources | 93 CSE 1124 | West | 03/28/94 | |
| Ronald E. Johnson v. Department of Human Resources | 93 CSE 1125 | Becton | 03/30/94 | |
| Roger Moore v. Department of Human Resources | 93 CSE 1127 | Becton | 04/14/94 | |
| Alvin Lee Martin v. Department of Human Resources | 93 CSE 1128 | Nesnow | 04/04/94 | |
| Robert Young v. Department of Human Resources | 93 CSE 1133 | Reilly | 04/18/94 | |
| Henry M. Dillard v. Department of Human Resources | 93 CSE 1135 | Nesnow | 06/13/94 | |
| Antonio Townsend v. Department of Human Resources | 93 CSE 1139 | Becton | 03/30/94 | |
| Keith M. Gray v. Department of Human Resources | 93 CSE 1140 | Nesnow | 06/28/94 | |
| Troy E. Pinkney v. Department of Human Resources | 93 CSE 1148 | Mann | 03/29/94 | |
| Anthony A. Macon v. Department of Human Resources | 93 CSE 1149 | Gray | 04/26/94 | |
| Walter Lee Corbett v. Department of Human Resources | 93 CSE 1150 | Reilly | 03/30/94 | |
| Joseph E. Kernstine v. Department of Human Resources | 93 CSE 1151 | Morgan | 07/15/94 | |
| Joe Louis Mayo v. Department of Human Resources | 93 CSE 1161 | West | 04/19/94 | |
| Bobby Lewis Smith v. Department of Human Resources | 93 CSE 1162 | Nesnow | 06/16/94 | |
| Louis C. Cade v. Department of Human Resources | 93 CSE 1166 | Morrison | 06/16/94 | |
| Richard J. Swann v. Department of Human Resources | 93 CSE 1167 | Reilly | 06/17/94 | |
| Nash Andrew Newsome v. Department of Human Resources | 93 CSE 1170 | Mann | 03/17/94 | |
| James E. Watson v. Department of Human Resources | 93 CSE 1171 | Gray | 04/26/94 | |
| Robert Lee Barrett v. Department of Human Resources | 93 CSE 1172 | Morrison | 04/20/94 | |

CONTESTED CASE DECISIONS

| <u>AGENCY</u> | <u>CASE NUMBER</u> | <u>ALJ</u> | <u>DATE OF DECISION</u> | <u>PUBLISHED DECISION REGISTER CITATION</u> |
|---|------------------------|------------|-----------------------------|---|
| Betty A. Williams, Fred E. Jones v. Department of Human Resources | 93 CSE 1178 | Nesnow | 04/20/94 | |
| Jeff A. Taylor v. Department of Human Resources | 93 CSE 1180 | Morgan | 07/15/94 | |
| Eric G. Sykes v. Department of Human Resources | 93 CSE 1181 | Becton | 04/20/94 | |
| Morris Ray Bethel v. Department of Human Resources | 93 CSE 1188 | West | 07/11/94 | |
| Willie C. Hollis v. Department of Human Resources | 93 CSE 1191 | Becton | 05/09/94 | |
| Ernest N. Pruitt Jr. v. Department of Human Resources | 93 CSE 1197 | Nesnow | 06/28/94 | |
| Bernadette Cook v. Department of Human Resources | 93 CSE 1202 | Gray | 04/27/94 | |
| Lem Person v. Department of Human Resources | 93 CSE 1214 | Morrison | 06/16/94 | |
| Bobby Lee McCullers Jr. v. Department of Human Resources | 93 CSE 1215 | Reilly | 06/17/94 | |
| Randall R. Rhodes v. Department of Human Resources | 93 CSE 1219 | Nesnow | 06/16/94 | |
| Michael V. Dockery v. Department of Human Resources | 93 CSE 1222 | Morgan | 07/15/94 | |
| Floyd E. Bailey v. Department of Human Resources | 93 CSE 1227 | Mann | 07/07/94 | |
| Dennis W. Nolan v. Department of Human Resources | 93 CSE 1254 | Morrison | 04/27/94 | |
| Robert Calvin Connor v. Department of Human Resources | 93 CSE 1258 | West | 04/19/94 | |
| James D. Williams v. Department of Human Resources | 93 CSE 1259 | West | 04/19/94 | |
| Marty Franzen v. Department of Human Resources | 93 CSE 1264 | Morgan | 07/15/94 | |
| Vaughn D. Pearsall v. Department of Human Resources | 93 CSE 1267 | Becton | 04/20/94 | |
| Larry D. Dawson v. Department of Human Resources | 93 CSE 1273 | Morrison | 07/07/94 | |
| McDaniel Teeter Jr. v. Department of Human Resources | 93 CSE 1274 | Morrison | 06/30/94 | |
| King D. Graham v. Department of Human Resources | 93 CSE 1275 | Becton | 05/18/94 | |
| Derek Watson v. Department of Human Resources | 93 CSE 1283 | Reilly | 06/30/94 | |
| Luther Borden v. Department of Human Resources | 93 CSE 1284 | West | 06/23/94 | |
| Walter B. Lester v. Department of Human Resources | 93 CSE 1287 | Nesnow | 06/28/94 | |
| Larry Cornelius Smith v. Department of Human Resources | 93 CSE 1302 | Morrison | 06/30/94 | |
| Robert C. Lee Jr. v. Department of Human Resources | 93 CSE 1303 | Reilly | 06/30/94 | |
| Sidney Ray Tuggle Jr. v. Department of Human Resources | 93 CSE 1307 | West | 04/25/94 | |
| Michael A. Amos v. Department of Human Resources | 93 CSE 1308 | West | 07/15/94 | |
| Gregory N. Winley v. Department of Human Resources | 93 CSE 1316 | Becton | 06/14/94 | |
| Ronald Brown v. Department of Human Resources | 93 CSE 1318 | Becton | 06/29/94 | |
| James L. Phillips v. Department of Human Resources | 93 CSE 1326 | Reilly | 06/17/94 | |
| George Aaron Collins v. Department of Human Resources | 93 CSE 1331 | West | 04/25/94 | |
| Samuel L. Dodd v. Department of Human Resources | 93 CSE 1357 | Gray | 03/31/94 | |
| William A. Sellers v. Department of Human Resources | 93 CSE 1359 | Morrison | 04/20/94 | |
| Jerry McIver v. Department of Human Resources | 93 CSE 1362 | Reilly | 06/30/94 | |
| Johnny B. Little v. Department of Human Resources | 93 CSE 1363 | West | 06/23/94 | |
| Kenneth W. Cooper v. Department of Human Resources | 93 CSE 1364 | West | 04/27/94 | |
| Nathan D. Winston v. Department of Human Resources | 93 CSE 1365 | Nesnow | 07/07/94 | |
| Charles W. Norwood Jr. v. Department of Human Resources | 93 CSE 1385 | West | 06/13/94 | |
| David L. Terry v. Department of Human Resources | 93 CSE 1386 | Mann | 05/18/94 | |
| Audwin Lindsay v. Department of Human Resources | 93 CSE 1390 | Morrison | 07/15/94 | |
| Steven A. Elmquist v. Department of Human Resources | 93 CSE 1392 | Reilly | 04/29/94 | |
| Kelvin Dean Jackson v. Department of Human Resources | 93 CSE 1394 | West | 06/13/94 | |
| Dennis E. Fountain Jr. v. Department of Human Resources | 93 CSE 1414 | Chess | 05/13/94 | |
| Mark E. Rogers v. Department of Human Resources | 93 CSE 1415 | Mann | 05/03/94 | |
| Edna VonCannon v. Department of Human Resources | 93 CSE 1417 | Morrison | 06/14/94 | |
| Thomas A. Ayers v. Department of Human Resources | 93 CSE 1431 | Morrison | 06/30/94 | |
| Daniel Thomas Hefele v. Department of Human Resources | 93 CSE 1432 | Morrison | 04/28/94 | |
| Gilbert J. Gutierrez v. Department of Human Resources | 93 CSE 1433 | Morrison | 05/13/94 | |
| Alton D. Johnson v. Department of Human Resources | 93 CSE 1434 | Reilly | 04/29/94 | |
| Darryl C. Thompson v. Department of Human Resources | 93 CSE 1435 | Reilly | 06/30/94 | |
| Chester Sanders v. Department of Human Resources | 93 CSE 1437 | West | 04/19/94 | |
| Rodney Guyton v. Department of Human Resources | 93 CSE 1439 | West | 04/21/94 | |
| Donald W. Clark v. Department of Human Resources | 93 CSE 1441 | Nesnow | 05/13/94 | |
| William E. David Jr. v. Department of Human Resources | 93 CSE 1442 | Nesnow | 05/02/94 | |
| John J. Gabriel v. Department of Human Resources | 93 CSE 1452 | Chess | 05/16/94 | |
| Robert Hayes v. Department of Human Resources | 93 CSE 1453 | Mann | 07/07/94 | |
| Clark Anthony Bryant v. Department of Human Resources | 93 CSE 1455 | Gray | 06/30/94 | |
| Timothy D. Evans v. Department of Human Resources | 93 CSE 1460 | Reilly | 04/28/94 | |
| Billy Edward Smith v. Department of Human Resources | 93 CSE 1461 | West | 04/19/94 | |
| Allen D. Terrell v. Department of Human Resources | 93 CSE 1463 | Nesnow | 05/02/94 | |
| Ray C. Moses v. Department of Human Resources | 93 CSE 1464 | Nesnow | 04/28/94 | |
| Mickey Bridgett v. Department of Human Resources | 93 CSE 1468 | Becton | 05/24/94 | |
| Bart Ransom v. Department of Human Resources | 93 CSE 1495 | Morrison | 04/29/94 | |
| William H. Simpson Sr. v. Department of Human Resources | 93 CSE 1497 | West | 04/19/94 | |
| James D. McClure Jr. v. Department of Human Resources | 93 CSE 1500 | Becton | 05/13/94 | |
| Christopher Ivan Smith v. Department of Human Resources | 93 CSE 1510 | Gray | 07/07/94 | |
| Douglas L. Cherrix v. Department of Human Resources | 93 CSE 1512 | Gray | 05/13/94 | |
| Dwayne Lamont Thompson v. Department of Human Resources | 93 CSE 1515 | Morrison | 04/21/94 | |

| <u>AGENCY</u> | <u>CASE NUMBER</u> | <u>ALJ</u> | <u>DATE OF DECISION</u> | <u>PUBLISHED DECISION REGISTER CITATION</u> |
|---|------------------------|------------|-----------------------------|---|
| Horace Lee Bass v. Department of Human Resources | 93 CSE 1520 | Morrison | 05/13/94 | |
| Michael Wilder v. Department of Human Resources | 93 CSE 1521 | Reilly | 04/28/94 | |
| James A. Cephas v. Department of Human Resources | 93 CSE 1523 | Reilly | 05/13/94 | |
| Edward E. Furr v. Department of Human Resources | 93 CSE 1524 | Reilly | 06/17/94 | |
| Mark E. Campbell v. Department of Human Resources | 93 CSE 1537 | Nesnow | 05/19/94 | |
| Barriet Easterling v. Department of Human Resources | 93 CSE 1560 | Mann | 05/18/94 | |
| Wade A. Burgess v. Department of Human Resources | 93 CSE 1568 | Morrison | 04/28/94 | |
| Billy Dale Beaney v. Department of Human Resources | 93 CSE 1569 | Morrison | 05/13/94 | |
| James E. Wiggins Sr. v. Department of Human Resources | 93 CSE 1571 | Morrison | 05/13/94 | |
| Tony A. Draughon v. Department of Human Resources | 93 CSE 1572 | Reilly | 07/07/94 | |
| Timothy J. Jones v. Department of Human Resources | 93 CSE 1576 | West | 04/19/94 | |
| Randall E. Hunter v. Department of Human Resources | 93 CSE 1579 | West | 04/19/94 | |
| Cyrus R. Luallen v. Department of Human Resources | 93 CSE 1583 | Nesnow | 06/16/94 | |
| Alton E. Simpson Jr. v. Department of Human Resources | 93 CSE 1591 | Becton | 04/20/94 | |
| Johnny T. Usher v. Department of Human Resources | 93 CSE 1592 | Chess | 05/19/94 | |
| Charles Darrell Matthews v. Department of Human Resources | 93 CSE 1596 | West | 06/13/94 | |
| John William Vance Jr. v. Department of Human Resources | 93 CSE 1597 | Becton | 05/13/94 | |
| Michael S. Rhynes v. Department of Human Resources | 93 CSE 1599 | Nesnow | 06/30/94 | |
| Brian Gilmore v. Department of Human Resources | 93 CSE 1615 | Chess | 05/13/94 | |
| Jesse Jeremy Bullock v. Department of Human Resources | 93 CSE 1632 | Morrison | 06/14/94 | |
| Ronald E. Loweke v. Department of Human Resources | 93 CSE 1635 | Reilly | 06/17/94 | |
| Robert D. Parker v. Department of Human Resources | 93 CSE 1637 | Reilly | 06/29/94 | |
| Charles F. McKirahan Jr. v. Department of Human Resources | 93 CSE 1640 | West | 06/14/94 | |
| Benjamin J. Stroud v. Department of Human Resources | 93 CSE 1648 | Becton | 05/19/94 | |
| Tony A. Miles v. Department of Human Resources | 93 CSE 1654 | Mann | 05/24/94 | |
| Dwayne L. Allen v. Department of Human Resources | 93 CSE 1655 | Mann | 05/17/94 | |
| Joe C. Dean v. Department of Human Resources | 93 CSE 1715 | Gray | 05/23/94 | |
| Vernon Bullock v. Department of Human Resources | 93 CSE 1743 | Nesnow | 07/07/94 | |
| Raymond Scott Eaton v. Department of Human Resources | 93 CSE 1761 | Becton | 06/29/94 | |
| Royston D. Blandford III v. Department of Human Resources | 94 CSE 0095 | West | 04/19/94 | |
| Daron Wayne Smith v. Department of Human Resources | 94 CSE 0300 | Gray | 06/27/94 | |

JUSTICE

Alarm Systems Licensing Board

| | | | | |
|--|-------------|--------|----------|--|
| Alarm Systems Licensing Board v. George P. Baker | 93 DOJ 0457 | Nesnow | 03/10/94 | |
|--|-------------|--------|----------|--|

Private Protective Services Board

| | | | | |
|---|-------------|----------|----------|--|
| Larry C. Hopkins v. Private Protective Services Board | 93 DOJ 1618 | Morrison | 03/07/94 | |
| Gregory K. Brooks v. Private Protective Services Board | 94 DOJ 0008 | Nesnow | 06/28/94 | |
| Stephen M. Rose v. Private Protective Services Board | 94 DOJ 0359 | Nesnow | 05/19/94 | |
| Lemuel Lee Clark Jr. v. Private Protective Services Board | 94 DOJ 0360 | Nesnow | 05/19/94 | |

Training and Standards Division

| | | | | |
|--|-------------|--------|----------|-------------|
| Curtiss Lance Poteat v. Criminal Justice Ed. & Training Sds. Comm. | 93 DOJ 0231 | Chess | 03/28/94 | |
| Willie David Moore v. Criminal Justice Ed. & Training Sds. Comm. | 93 DOJ 1071 | Nesnow | 04/11/94 | 9:3 NCR 218 |
| Glenn Travis Stout v. Criminal Justice Ed. & Training Sds. Comm. | 93 DOJ 1409 | Gray | 03/03/94 | |
| Steven W. Wray v. Sheriffs' Education & Training Standards Comm. | 93 DOJ 1803 | Chess | 06/29/94 | |
| J. Stevan North v. Sheriffs' Education & Training Standards Comm. | 94 DOJ 0040 | Chess | 06/16/94 | |
| Gregory Blake Manning v. Criminal Justice Ed. & Training Sds. Comm. | 94 DOJ 0048 | Gray | 03/29/94 | |
| William Franklin Sheetz v. Sheriffs' Education & Training Sds. Comm. | 94 DOJ 0196 | Chess | 06/16/94 | |

MORTUARY SCIENCE

| | | | | |
|---|-------------|-------|----------|--|
| Mortuary Science v. Perry J. Brown, & Brown's Funeral Directors | 93 BMS 0532 | Chess | 03/28/94 | |
|---|-------------|-------|----------|--|

PUBLIC EDUCATION

| | | | | |
|---|-------------|-------|----------|-------------|
| Nancy Watson v. Board of Education | 93 EDC 0234 | Chess | 02/28/94 | 9:2 NCR 108 |
| Janet L. Wilcox v. Carteret County Board of Education | 93 EDC 0451 | Mann | 02/21/94 | |

STATE HEALTH BENEFITS OFFICE

| | | | | |
|--|-------------|----------|----------|--|
| Linda C. Campbell v. Teachers & St Emp Major Medical Plan | 93 INS 0410 | Becton | 04/22/94 | |
| Timothy L. Coggins v. Teachers' & St Emp Comp Major Med Plan | 93 INS 0929 | Morrison | 03/04/94 | |

| <u>AGENCY</u> | <u>CASE NUMBER</u> | <u>ALJ</u> | <u>DATE OF DECISION</u> | <u>PUBLISHED DECISION REGISTER CITATION</u> |
|---|------------------------|------------|-----------------------------|---|
| STATE PERSONNEL | | | | |
| <i>Agricultural and Technical State University</i> | | | | |
| Linda D. Williams v. Agricultural and Technical State University | 93 OSP 0089 | Chess | 03/23/94 | |
| Juanita D. Murphy v. Agricultural and Technical State University | 93 OSP 0708 | Morrison | 03/16/94 | |
| Thomas M. Simpson v. Agricultural and Technical State University | 93 OSP 1393 | Gray | 03/24/94 | |
| <i>Department of Agriculture</i> | | | | |
| Donald H. Crawford v. Department of Agriculture | 94 OSP 0108 | Reilly | 05/23/94 | |
| <i>Catawba County</i> | | | | |
| Sandra J. Cunningham v. Catawba County | 93 OSP 1097 | Reilly | 04/29/94 | 9:4 NCR 292 |
| <i>North Carolina Central University</i> | | | | |
| Ha-Yilyah Ha-She'B v. NCCU | 93 OSP 0875 | Becton | 04/13/94 | 9:3 NCR 211 |
| <i>Cherry Hospital</i> | | | | |
| Charles F. Fields v. Cherry Hospital | 94 OSP 0498 | Morrison | 06/15/94 | |
| <i>Department of Commerce</i> | | | | |
| Ruth Daniel-Perry v. Department of Commerce | 93 OSP 0725 | Chess | 03/04/94 | 9:1 NCR 63 |
| <i>Department of Correction</i> | | | | |
| Leland K. Williams v. Department of Correction | 91 OSP 1287 | Chess | 02/22/94 | |
| Elroy Lewia v. North Central Area - Dept of Correction, Robert Lewis | 92 OSP 1770 | Becton | 05/24/94 | 9:6 NCR 395 |
| Steven R. Kellison v. Department of Correction | 93 OSP 0283 | Chess | 06/15/94 | |
| Bert Esworthy v. Department of Correction | 93 OSP 0711 | Chess | 04/21/94 | |
| Merron Burrus v. Department of Correction | 93 OSP 1145 | West | 06/01/94 | |
| Junius C. Page v. Dept. of Correction, Secy. Franklin Freeman | 93 OSP 1794 | Mann | 07/08/94 | |
| Richard Hopkins v. Department of Correction | 94 OSP 0041 | Chess | 06/16/94 | |
| Alfred B. Hunt v. Department of Correction | 94 OSP 0243 | Reilly | 04/20/94 | |
| Charles Horne v. Equal Emp. Opportunity Officer & Dept. of Correction | 94 OSP 0244 | Nesnow | 06/16/94 | |
| Adrian E. Graham v. Intensive Probation/Parole | 94 OSP 0261 | Morrison | 04/26/94 | |
| <i>Guilford Correctional Center</i> | | | | |
| Ann R. Williams v. Guilford Correctional Center #4440 | 94 OSP 0428 | West | 06/22/94 | |
| <i>Cosmetic Art Examiners</i> | | | | |
| Mary Quaintance v. N.C. State Board of Cosmetic Art Examiners | 94 OSP 0372 | Chess | 06/14/94 | |
| <i>Department of Crime Control and Public Safety</i> | | | | |
| Don R. Massenburg v. Department of Crime Control & Public Safety | 90 OSP 0239 | Chess | 04/28/94 | |
| Fred L. Kearney v. Department of Crime Control & Public Safety | 91 OSP 0401 | West | 03/18/94 | |
| Sylvia Nance v. Department of Crime Control & Public Safety | 92 OSP 1463 | Reilly | 03/21/94 | |
| Lewis G. Baker v. Crime Control & Public Safety, Office Adj. General | 94 OSP 0572 | Mann | 07/12/94 | |
| <i>Durham County Health Department</i> | | | | |
| Lylla Denell Stockton v. Durham County Health Department | 93 OSP 1780 | Gray | 05/25/94 | |
| <i>Elizabeth City State University</i> | | | | |
| James Charles Knox v. Elizabeth City State University | 94 OSP 0207 | Gray | 06/17/94 | |
| <i>Employment Security Commission of North Carolina</i> | | | | |
| Rejeanne B. LeFrancois v. Employment Security Commission of N.C. | 93 OSP 1069 | West | 04/08/94 | |

CONTESTED CASE DECISIONS

| <u>AGENCY</u> | <u>CASE NUMBER</u> | <u>ALJ</u> | <u>DATE OF DECISION</u> | <u>PUBLISHED DECISION REGISTER CITATION</u> |
|--|------------------------|------------|-----------------------------|---|
| <i>Department of Environment, Health, and Natural Resources</i> | | | | |
| <i>Division of Marine Fisheries</i> | | | | |
| William D. Nicely v. Environment, Health, & Natural Resources | 92 OSP 1454 | Becton | 05/04/94 | 9:5 NCR 333 |
| <i>Fayetteville State University</i> | | | | |
| Roscoe L. Williams v. Fayetteville State University | 93 OSP 0487 | West | 06/22/94 | |
| <i>Department of Human Resources</i> | | | | |
| Inez Latta v. Department of Human Resources | 93 OSP 0830 | Becton | 03/28/94 | |
| Charla S. Davis v. Department of Human Resources | 93 OSP 1762 | Gray | 03/03/94 | |
| Rose Mary Taylor v. Department of Human Resources, Murdoch Center | 93 OSP 0047 | Gray | 05/06/94 | |
| David R. Rodgers v. Jimmy Summerville, Stonewall Jackson School | 94 OSP 0087 | Chess | 03/16/94 | |
| <i>Craven County Department of Social Services</i> | | | | |
| Shirley A. Holland v. Craven Cty. Dept./Social Services & Craven Cty. | 93 OSP 1606 | Gray | 07/01/94 | |
| Nettie Jane Godwin (Lawhorn) v. Craven Cty. DSS & Craven Cty. | 93 OSP 1607 | Gray | 07/18/94 | 9:9 NCR 655 |
| Violet P. Kelly v. Craven Cty. Dept. of Social Services & Craven Cty. | 93 OSP 1805 | Reilly | 07/05/94 | |
| <i>Durham County Department of Social Services</i> | | | | |
| Belinda F. Jones v. Daniel Hudgins, Durham Cty Dept of Social Svcs | 93 OSP 0728 | Chess | 04/11/94 | |
| <i>Haywood County Department of Social Services</i> | | | | |
| Dorothy Morrow v. Haywood County Department of Social Services | 94 OSP 0186 | West | 06/17/94 | |
| <i>Mental Health/Mental Retardation</i> | | | | |
| Yvonne G. Johnson v. Blue Ridge Mental Health | 93 OSP 1604 | Becton | 03/18/94 | |
| <i>Wake County Mental Health, Developmental Disabilities, and Substance Abuse Services</i> | | | | |
| Julia Morgan Brannon v. Wake County MH/DD/SAS | 94 OSP 0214 | Reilly | 04/14/94 | |
| <i>N.C. State University</i> | | | | |
| Laura K. Reynolds v. N.C. State University - Dept. of Public Safety | 92 OSP 0828 | Morgan | 05/26/94 | |
| <i>Department of Transportation</i> | | | | |
| Glenn I. Hodge Jr. v. Samuel Hunt, Sec'y. Dept. of Transportation | 93 OSP 0297* | Morrison | 03/10/94 | 9:1 NCR 60 |
| Glenn I. Hodge Jr. v. Samuel Hunt, Sec'y. Dept. of Transportation | 93 OSP 0500* | Morrison | 03/10/94 | 9:1 NCR 60 |
| Betsy Johnston Powell v. Department of Transportation | 93 OSP 0550 | Morrison | 03/28/94 | |
| Arnold Craig v. Samuel Hunt, Secretary Department of Transportation | 93 OSP 0586 | Neanow | 07/11/94 | |
| Susan H. Cole v. Department of Transportation, Div. of Motor Vehicles | 93 OSP 0908 | Morrison | 07/15/94 | |
| Clyde Lem Hairston v. Department of Transportation | 93 OSP 0944 | Chess | 02/28/94 | |
| Henry C. Puegh v. Department of Transportation | 93 OSP 1710 | Neanow | 05/24/94 | |
| <i>University of North Carolina at Chapel Hill</i> | | | | |
| Eric W. Browning v. UNC-Chapel Hill | 93 OSP 0925 | Morrison | 05/03/94 | 9:5 NCR 342 |
| <i>UNC Hospitals</i> | | | | |
| Barry Alonzo Nichols v. UNC Hospitals Central Dist. Sect. | 94 OSP 0509 | Morrison | 06/15/94 | |
| <i>Wake County School System</i> | | | | |
| Lula Mae Freeman v. Wake County School System | 94 OSP 0576 | Morrison | 06/28/94 | |
| <i>The Whitaker School</i> | | | | |
| Dwayne R. Cooke v. The Whitaker School | 94 OSP 0328 | Chess | 06/02/94 | |

CONTESTED CASE DECISIONS

| <u>AGENCY</u> | <u>CASE NUMBER</u> | <u>ALJ</u> | <u>DATE OF DECISION</u> | <u>PUBLISHED DECISION REGISTER CITATION</u> |
|---------------|------------------------|------------|-----------------------------|---|
|---------------|------------------------|------------|-----------------------------|---|

STATE TREASURER

Retirement Systems Division

| | | | | |
|--|-------------|----------|----------|-------------|
| Molly Wiebenson v. Bd./Trustees/Teachers' & State Employees' Ret. Sys. | 92 DST 0015 | Morgan | 05/26/94 | 9:6 NCR 403 |
| Nathan Fields v. Bd./Trustees/Teachers' & State Employees' Ret. Sys. | 93 DST 0161 | Morrison | 05/18/94 | |
| John C. Russell v. Bd./Trustees/Teachers' & State Employees' Ret. Sys. | 93 DST 0164 | West | 03/07/94 | |
| Robert A. Slade v. Bd./Trustees/N.C. Local Govtl. Emp. Ret. System | 93 DST 0785 | Becton | 03/18/94 | 9:1 NCR 68 |
| Connie B. Grant v. Bd./Trustees/Teachers' & State Employees' Ret. Sys. | 93 DST 0883 | Chess | 06/15/94 | |
| James E. Walker, Ind. & Admin for the Estate of Sarah S. Walker v. Bd./Trustees/N.C. Local Govtl. Emp. Ret. System | 93 DST 1054 | Becton | 05/31/94 | 9:7 NCR 490 |
| Elizabeth M. Dudley v. Bd./Trustees/Teachers' & State Emps' Ret. Sys. | 93 DST 1474 | Nesnow | 03/28/94 | |
| Kenneth A. Glenn v. Bd./Trustees/Teachers' & St Employees' Ret. Sys. | 93 DST 1612 | Morrison | 05/18/94 | |
| Joseph Fulton v. Bd./Trustees/Teachers' & State Employees' Ret. Sys. | 93 DST 1731 | Becton | 05/25/94 | |

UNIVERSITY OF NORTH CAROLINA

| | | | | |
|---|-------------|-------|----------|--|
| Nixon Omolodun v. UNC Physicians and Associates | 94 UNC 0295 | Chess | 06/27/94 | |
|---|-------------|-------|----------|--|

STATE OF NORTH CAROLINA

COUNTY OF CRAVEN

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
93 OSP 1607

NETTIE JANE GODWIN (LAWHORN),
Petitioner,

v.

CRAVEN COUNTY DEPARTMENT OF
SOCIAL SERVICES AND CRAVEN COUNTY,
Respondent.

RECOMMENDED DECISION

This matter was heard before Beecher R. Gray, administrative law judge, in New Bern on April 19 and 21, 1994. Upon Respondent's oral motion, without objection from Petitioner, an order was orally entered on the record allowing Respondent, for purposes of this hearing, to introduce materials in Petitioner's personnel file which go beyond those matters made public by Chapter 126 of the General Statutes of North Carolina. At the conclusion of all evidence, the parties requested and received leave to file proposed decisions and written arguments not later than June 1, 1994. Respondent's proposed decision was received in the Office of Administrative Hearings on June 1, 1994. Petitioner's proposed decision was filed in the Office of Administrative Hearings on June 6, 1993. Respondent immediately thereafter filed a letter objecting to Petitioner's late filing, citing a strategic advantage to Petitioner by being able to first read Respondent's proposal before Petitioner's was filed. Based on Petitioner's late filing and Respondent's objection thereto, Petitioner's proposed decision was not considered in the determination of this case.

APPEARANCES

Petitioner: David P. Voerman, Esq.
Respondent: Cynthia L. Turco, Esq.

ISSUE

Whether Respondent's decision to terminate the employment of Petitioner on July 15, 1993 for unacceptable personal conduct is supported by substantial evidence amounting to just cause.

FINDINGS OF FACT

1. The parties received notice of hearing by certified mail more than fifteen (15) days prior to the hearing and each stipulated that notice of hearing is in all respects proper.
2. Petitioner is a resident of Craven County. She was employed by Respondent as a Social Worker on November 19, 1990. When her employment was terminated by Respondent on July 15, 1993, Petitioner was classified as a Social Worker II in a skills training program known as the JOBS program. Petitioner's duties as a Social Worker II in the JOBS program involved counseling recipients of Aid to Families with Dependent Children (AFDC), Social Security, and other benefits with regard to assessment of needs for training and skill development. She also handled certain fiscal responsibilities relating to her clients, including providing assistance with budgeting and management of financial resources and, in some cases, assuming responsibilities as a payee of client funds.
3. In 1987 Petitioner's husband died, leaving outstanding partnership notes due at United Carolina Bank. Petitioner paid off those notes even though she was not legally obligated to do so.

4. In the late fall of 1987, Petitioner and her mother opened a joint checking account in a local bank. The mother directed the deposit of certain benefit checks she routinely received, including retirement and social security, into this joint account. Petitioner also placed funds into this account which became co-mingled with her mother's funds. At about the same time, Petitioner's mother transferred certain insurance policies to Petitioner. Petitioner became both beneficiary and owner of the policies.
5. Petitioner was experiencing financial problems and elected to allow the cash value of the insurance policies to be used to pay premiums due until the policies were exhausted. Petitioner did not disclose this to her mother and was under no obligation to do so since she was the sole owner and beneficiary of the policies.
6. At some time prior to September, 1992, Petitioner's mother experienced some physical problems and was placed in a nursing home for recuperation. Petitioner signed for personal financial responsibility for the uncovered portion of the cost of her mother's care at the nursing home. No particular funds were designated or promised to be used to pay this obligation to the nursing home.
7. Petitioner's mother was mentally competent at the time she was admitted to the nursing home and remained so throughout her stay. She was not a terminal resident but rather envisioned a recuperative period followed by a return to independent living. During the time of the events material to this matter, Petitioner's mother had not executed a power of attorney to any person.
8. Petitioner received monthly statements from the nursing home for the cost of her mother's care not covered by medicaid or other public program. Petitioner did not pay the monthly bills from the nursing home from September, 1992 through May, 1993.
9. During the period when Petitioner did not pay the monthly bills to the nursing home, she used the co-mingled money in the joint checking account for her own financial needs.
10. On June 22, 1993, the nursing home filed an adult protective services complaint under the provisions of Chapter 108A, Article 6 of the General Statutes with the Craven County Department of Social Services because Petitioner had not paid for her mother's care at the nursing home for a number of months.
11. On June 23, 1993, Petitioner paid the nursing home bill in full from the proceeds of a settlement with a fire insurance company regarding a home Petitioner lost to fire.
12. The adult protective services complaint regarding Petitioner's mother was investigated by Pitt County Department of Social Services since Petitioner was an employee of Craven County. Pitt County eventually issued a finding of substantiation as to the charge that Petitioner had exploited her mother by not paying the excess part of her expenses at the nursing home. Respondent did not rely on this substantiation in its decision to terminate the employment of Petitioner. Respondent used only summary notes from Pitt County's investigation to corroborate Respondent's own factual investigation.
13. Based on having received this adult protective services complaint against Petitioner, Respondent conducted a review of Petitioner's client files to determine whether any discrepancies existed. None were found.
14. On June 25, 1993, Respondent's Director, Nancy Coston, convened a meeting with Petitioner and a second-level supervisor to discuss the allegations made by the adult protective services complaint filed by the nursing home. During this conference, Petitioner admitted that she had been careless and had not paid the nursing home bills on time. She indicated to Director Coston that she had been experiencing personal financial problems and had used money in the joint account to pay obligations other than the nursing home bills. Petitioner further stated that it was not good judgment to have done this but that her mother had not been harmed, even though she was unaware that Petitioner had

- not kept current with the nursing home bills. Petitioner agreed that the matter would be substantiated as an adult protective services complaint and would be referred to the district attorney's office for investigation.
15. Respondent assumed that Petitioner's mother was an elderly, disabled person who, because of Medicaid eligibility and need for some level of institutionalized nursing care, also was vulnerable. Respondent did not conduct an investigation to determine whether Petitioner's mother was actually disabled or vulnerable or mentally or physically incompetent or incapacitated.
 16. Respondent assumed that Petitioner's mother status in the nursing home was jeopardized or potentially jeopardized because of the tardiness of the payments made by Petitioner in June, 1993 for the months of September, 1992 through June, 1993. There is no evidence in this contested case that Petitioner's mother was threatened with eviction or placed under any other jeopardy as to her status at the nursing home as a result of the untimely payment of her monthly bills to the nursing home.
 17. Petitioner was given written notice on July 7, 1993 of a pre-dismissal conference scheduled for July 8, 1993 to discuss her personal conduct and whether her employment should be terminated.
 18. At the pre-dismissal conference on July 8, 1993, Respondent provided Petitioner with a letter setting forth the factual allegations concerning Petitioner's conduct regarding the adult protective services complaint about her nonpayment of bills for her mother's care. Petitioner was given an opportunity to respond to each of the factual allegations.
 19. After the pre-dismissal conference, Director Coston concluded, from all of the information before her, that Petitioner's failure to timely pay her mother's nursing home bills from a bank account held jointly by Petitioner and her mother constituted unacceptable personal conduct. Director Coston concluded that this personal conduct by Petitioner demonstrated a threat of harm to clients within the department, given the relationship between Petitioner's outside conduct and the nature of her client-related work within the department.
 20. On July 15, 1993, Petitioner was dismissed from employment with Respondent because of her personal conduct in the handling of her mother's financial affairs with the nursing home from September, 1992 through June 23, 1993.
 21. In its dismissal letter of July 15, 1993, Respondent provides the following reason for terminating Petitioner's employment:

Based on my investigation and your admissions to me at conferences on June 25, 1993, July 8, 1993, and your letter of June 28, 1993, I have concluded that you **WILLFULLY AND KNOWINGLY EXPLOITED A DISABLED ELDERLY PERSON**. (emphasis added). These acts, committed outside of duty hours are incompatible with public service and are therefore violations of the personal conduct expected of a social worker employed at this agency. Your actions were particularly egregious when considered in relation to your current job responsibilities and the mission of the Craven County Department of Social Services. Such actions not only harm the disabled elderly person, but also adversely impact on the credibility of this agency.

For these reasons, I have decided to terminate your employment as a Social Worker II with the Craven County Department of Social Services effective July 15, 1993.

22. Article 6 of Chapter 108A of the General Statutes of North Carolina is entitled Protection of the Abused, Neglected, or Exploited Disabled Adult Act. In the definitions section, G.S. 108A-101 (Cum. Supp. 1993), the following is provided, in pertinent part:

(d) [t]he words "disabled adult" shall mean any person 18 years of age or over or any lawfully emancipated minor who is present in the State of North Carolina and who is physically or mentally incapacitated due to mental retardation, cerebral palsy, epilepsy or autism; organic brain damage caused by advanced age or other physical degeneration in connection therewith; or due to conditions incurred at any age which are the result of accident, organic brain damage, mental or physical illness, or continued consumption or absorption of substances.

. . .

(j) [t]he word "exploitation" means the illegal or improper use of a disabled adult or his resources for another's profit or advantage.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, I make the following conclusions of law.

1. The parties are properly before the Office of Administrative Hearings.
2. Petitioner was a career State employee as that term is used in Chapter 126 of the General Statutes of North Carolina at the time of her dismissal from the Craven County Department of Social Services on July 15, 1993. Petitioner was a local government employee subject to, and afforded the protections of, the State Personnel Act, G.S. Chapter 126, at the time of her dismissal.
3. Respondent has not shown by a preponderance of the evidence in this contested case hearing that Petitioner's conduct amounted to exploitation of a disabled elderly person as that phrase is used in Article 6 of Chapter 108A of the General Statutes. Although Respondent has attempted to distance itself from the statutory definitions of "disabled elderly person" and "exploitation," it cited the exact phrase in its letters of charges and allegations to Petitioner as well as its July 15, 1993 letter of dismissal. These charges and allegations were brought against Petitioner under the umbrella of a Chapter 108A, Article 6 adult protective services complaint alleging that Petitioner had exploited a disabled elderly person. Respondent's attempt now to show that its dismissal of Petitioner was based solely upon its determination of Petitioner's conduct and in no way in reliance on whether her conduct fits the statutory prohibitions is unavailing.
4. Respondent has failed to carry its burden of demonstrating just cause for Petitioner's dismissal from the Craven County Department of Social Services on July 15, 1993 for unacceptable personal conduct.

RECOMMENDED DECISION

Based upon the foregoing findings of fact and conclusions of law, it is hereby recommended that Respondent's decision to terminate the employment of Petitioner Nettie Jane Godwin (Lawhorn) on July 15, 1993 for inappropriate personal conduct be reversed for lack of just cause. It is recommended that Petitioner be reinstated to the position she held on July 15, 1993; that she receive back pay from that date; that she receive reasonable attorney's fees and costs; and she receive all other benefits to which she would have become entitled but for her involuntary separation on July 15, 1993.

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 State Personnel Commission will issue an advisory opinion to the Director of the Craven County Department of Social Services. G.S. 150B-23(a). The agency that will make the final decision in this contested case is the Director of the Craven County Department of Social Services.

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.

This the 18th day of July, 1994.

Beecher R. Gray
Administrative Law Judge

Y.

**N.C. DEPARTMENT OF ENVIRONMENT,
HEALTH, AND NATURAL RESOURCES,
DIVISION OF MARINE FISHERIES
Respondent.**

RECOMMENDED DECISION

This matter was heard before Dolores O. Nesnow administrative law judge, on June 22, 1994 in Williamston, North Carolina.

APPEARANCES

Petitioner: James Goodman, appearing pro se

Respondent: Jay L. Osborne, Esq.
Assistant Attorney General
Amy R. Gillespie, Esq.
Associate Attorney General

ISSUE

Whether Respondent's recommendation of denial of Petitioner's application for a pound net set in Albemarle Sound is proper.

FINDINGS OF FACT

1. The parties received notice of hearing at least fifteen (15) days prior to the date of the hearing.
2. G.S. § 113-182 authorizes the Division of Marine Fisheries (hereinafter "DMF") to license, regulate or prohibit all forms of marine and estuarine resources in coastal fishing waters. This includes the time, place or manner of any methods or equipment that may be employed in taking fish.
3. Petitioner is a commercial fisherman. Petitioner applied for a pound net permit to be located approximately one fourth of a mile east of Sandy Point Beach in Albemarle Sound on August 28, 1993.
4. In accordance with N.C. Marine Fisheries Rule 15A NCAC 3J .0107, DMF gave public notice of Petitioner's proposed pound net set on September 24, 1993.
5. Letters of objection to the proposed site were received by DMF on October 12 and October 13, 1993.
6. A public meeting was held by Dr. William T. Hogarth, the Director of DMF, in accordance with 15A NCAC 3J .0107(b)(1) on December 2, 1993, to discuss this proposed pound net location.

7. Concerns were raised at said meeting, inter alia, as to safety problems that could arise due to the proposed site of Petitioner's pound net.
8. After considering the relevant evidence and consulting with his staff, Dr. Hogarth approved Petitioner's application under 15A NCAC 3J .0107(b)(1) on the condition that the proposed pound net be moved at least 300 yards east of the present proposed site.
9. When Petitioner failed to place a net in the conditionally approved location, the conditional approval became a denial.
10. Petitioner properly filed a Petition for a Contested Case on January 12, 1994. His grounds for the petition were that he was deprived of property and that DMF acted erroneously.
11. On June 22, 1994 an administrative hearing was held. Both sides presented evidence, and 14 exhibits were received into evidence.
12. No evidence was presented at the contested case hearing supporting Petitioner's allegation that Dr. Hogarth's decision was improperly influenced.
13. The principal objection to Petitioner's proposed site is that it would create safety problems due to the water sport activities that take place during the camping season in the same area as Petitioner's proposed pound net.
14. 15A NCAC 3J .0107(b)(1)(C) reads, in pertinent part:

The Fisheries Director may deny [a] permit application if it is determined that granting the permit will unduly interfere with existing, traditional uses of the area
15. Sandy Point Beach Campground has been in existence since 1955. It is a family campground with approximately 45 sites. Boating, water skiing and swimming have been, and continue to be, primary activities at this campground. These activities take place in the same area as the petitioner's proposed pound net.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, I make the following conclusions of law.

1. The parties are properly before the Office of Administrative Hearings, each party had at least 15 days notice of the hearing, and notice of the hearing was in all ways proper.
2. The water sports and recreation occurring near Sandy Point Beach are "existing, traditional uses of the area" under 15A NCAC 3J .0107(b)(1)(C).
3. Petitioner's proposed pound net would conflict with the recreational uses of the area and create a safety hazard.
4. Dr. Hogarth was not improperly influenced by any of his employees.
5. Dr. Hogarth did not act erroneously, arbitrarily, or capriciously in determining that Petitioner's proposed pound net site would conflict with an existing and traditional use.
6. The Division of Marine Fisheries' decision is upheld.

RECOMMENDED DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby recommended that the Marine Fisheries Commission affirm the recommendation of the Respondent North Carolina Division of Marine Fisheries and deny Petitioner's application for the proposed pound net set.

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 Marine Fisheries Commission.

This the 18th day of July, 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.

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

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

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

CUMULATIVE INDEX
(April 1994 - March 1995)

| Pages | Issue |
|-----------|------------|
| 1 - 75 | 1 - April |
| 76 - 122 | 2 - April |
| 123 - 226 | 3 - May |
| 227 - 305 | 4 - May |
| 306 - 348 | 5 - June |
| 349 - 411 | 6 - June |
| 412 - 503 | 7 - July |
| 504 - 587 | 8 - July |
| 588 - 666 | 9 - August |

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

AGRICULTURE

Plant Industry, 127

COMMERCE

Alcoholic Beverage Control Commission, 423
Energy Division, 4

CRIME CONTROL AND PUBLIC SAFETY

State Highway Patrol, Division of, 243

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Coastal Management, 443
DEM/Air Quality, 80
Departmental Rules, 254
Environmental Management, 81, 258, 352, 616
Health Services, 323, 370, 445
Mining Commission, 442
NPDES Permit, 3, 232
Solid Waste Management, 171, 364
Water Resources, 165, 255
Wildlife Resources Commission, 38, 42, 84, 358
Wildlife Resources Commission Proclamation, 125

FINAL DECISION LETTERS

Voting Rights Act, 2, 312, 506, 594

GOVERNOR/LT. GOVERNOR

Executive Orders, 1, 123, 227, 306, 349, 412, 504, 588

HUMAN RESOURCES

Child Day Care Commission, 10
Children's Services, 136
Day Care Rules, 148
Facility Services, 4, 128, 423, 509

Medical Assistance, 318, 440, 513, 597

Mental Health, Developmental Disabilities and Substance Abuse Services, 13, 24, 36, 313, 430

Social Services, 136, 595

Vocational Rehabilitation Services, 434

INDEPENDENT AGENCIES

State Health Plan Purchasing Alliance Board, 99

INSURANCE

Life and Health Division, 525

Medical Database Commission, 605

Multiple Employer Welfare Arrangements, 76

Special Services Division, 76

JUSTICE

Alarm Systems Licensing Board, 351, 614

Criminal Justice Education and Training Standards Commission, 149

State Bureau of Investigation, 234, 530

LABOR

Mine and Quarry Division, 239

OSHA, 77, 160

Variance, 230

LICENSING BOARDS

Acupuncture Licensing Board, 44

Barber Examiners, 563

Chiropractic Examiners, 376

Cosmetic Art Examiners, 280

Landscape Architects, Board of, 95

Medical Examiners, 192, 565

Nursing, Board of, 45

Optometry, Board of Examiners, 194

Physical Therapy Examiners, 566

Plumbing, Heating and Fire Sprinkler Contractors, Board of, 96

Practicing Psychologists, Board of, 97

Professional Counselors, Board of Licensed, 50

LIST OF RULES CODIFIED

List of Rules Codified, 53, 196, 281, 378, 635

PUBLIC EDUCATION

Elementary and Secondary Education, 375, 540

SECRETARY OF STATE

Securities Division, 476, 616

STATE PERSONNEL

Office of State Personnel, 477

TAX REVIEW BOARD

Orders of Tax Review, 415

TRANSPORTATION

Highways, Division of, 85

Motor Vehicles, Division of, 89, 276, 542

NORTH CAROLINA ADMINISTRATIVE CODE

*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 at one-half the new subscription price.*

PRICE LIST FOR THE SUBSCRIPTION YEAR

| Volume | Title | Chapter | Subject | New Subscription* | Quantity | Total Price |
|--------|-----------|---------|------------------------------------|----------------------|----------|----------------|
| 1 - 53 | Full Code | | All titles | \$750.00 | | |
| 1 | 1 | 1 - 38 | Administration | 90.00 | | |
| 2 | 2 | 1 - 24 | Agriculture | 75.00 | | |
| 3 | 2 | 25 - 52 | Agriculture | 75.00 | | |
| 4 | 3 | 1 - 4 | Auditor | 10.00 | | |
| 5 | 4 | 1 - 2 | Commerce (includes ABC) | 45.00 | | |
| 6 | 4 | 3 - 20 | Commerce | 90.00 | | |
| 7 | 5 | 1 - 2 | Correction | 60.00 | | |
| 8 | 5 | 3 - 4 | Correction | 30.00 | | |
| 9 | 6 | 1 - 4 | Council of State | | | |
| | 7 | 1 - 12 | Cultural Resources | 60.00 | | |
| 10 | 8 | 1 - 9 | Elections | 10.00 | | |
| 11 | 9 | 1 - 4 | Governor/Lt. Governor | 45.00 | | |
| 12 | 10 | 1 - 2 | Human Resources | 30.00 | | |
| 13 | 10 | 3A - 3K | Human Resources | 90.00 | | |
| 14 | 10 | 3L - 3R | Human Resources | | | |
| | | | (includes CON) | 45.00 | | |
| 15 | 10 | 3S - 3W | Human Resources | 30.00 | | |
| 16 | 10 | 4 - 6 | Human Resources | 30.00 | | |
| 17 | 10 | 7 | Human Resources | 30.00 | | |
| 18 | 10 | 8 - 9 | Human Resources | 30.00 | | |
| 19 | 10 | 10 | Human Resources | 30.00 | | |
| 20 | 10 | 11 - 14 | Human Resources | 60.00 | | |
| 21 | 10 | 15 - 17 | Human Resources | 45.00 | | |
| 22 | 10 | 18 | Human Resources | 75.00 | | |
| 23 | 10 | 19 - 30 | Human Resources | 90.00 | | |
| 24 | 10 | 31 - 33 | Human Resources | 30.00 | | |
| 25 | 10 | 34 - 41 | Human Resources | 60.00 | | |
| 26 | 10 | 42 | Human Resources | 45.00 | | |
| 27 | 10 | 43 - 51 | Human Resources | 90.00 | | |
| 28 | 11 | 1 - 19 | Insurance | 90.00 | | |
| 29 | 12 | 1 - 12 | Justice | 90.00 | | |
| 30 | 13 | 1 - 6 | Labor | 30.00 | | |
| 31 | 13 | 7 | OSHA | 45.00 | | |
| 32 | 13 | 8 - 16 | Labor | 45.00 | | |
| 33 | 14A | 1 - 11 | Crime Control and Public Safety | 45.00 | | |
| 34 | 15A | 1 - 2 | EHNR (includes EMC) | 90.00 | | |
| 35 | 15A | 3 - 6 | EHNR | 45.00 | | |
| 36 | 15A | 7 | Coastal Management | 45.00 | | |
| 37 | 15A | 8 - 9 | EHNR | 30.00 | | |
| 38 | 15A | 10 | Wildlife | 45.00 | | |

| Volume | Title | Chapter | Subject | New Subscription* | Quantity | Total Price |
|--------|-------|---------|---------------------------|---|----------|----------------|
| 39 | 15A | 11 - 18 | EHNR | 90.00 | _____ | _____ |
| 40 | 15A | 19 - 26 | EHNR | | _____ | _____ |
| | | | (includes Breathalyzer) | 75.00 | _____ | _____ |
| 41 | 16 | 1 - 6 | Education | 30.00 | _____ | _____ |
| 42 | 17 | 1 - 6 | Revenue | 75.00 | _____ | _____ |
| 43 | 17 | 7 - 11 | Revenue | 60.00 | _____ | _____ |
| 44 | 18 | 1 - 8 | Secretary of State | 30.00 | _____ | _____ |
| 45 | 19A | 1 - 6 | Transportation | 90.00 | _____ | _____ |
| 46 | 20 | 1 - 9 | Treasurer | 45.00 | _____ | _____ |
| 47 | 21 | 1 - 16 | Licensing Boards | 75.00 | _____ | _____ |
| 48 | 21 | 17 - 37 | Licensing Boards | 75.00 | _____ | _____ |
| 49 | 21 | 38 - 70 | Licensing Boards | | _____ | _____ |
| | 22 | 1 - 2 | Administrative Procedures | 75.00 | _____ | _____ |
| 50 | 23 | 1 - 3 | Community Colleges | 10.00 | _____ | _____ |
| 51 | 24 | 1 - 3 | Independent Agencies | 10.00 | _____ | _____ |
| 52 | 25 | 1 | State Personnel | 60.00 | _____ | _____ |
| 53 | 26 | 1 - 4 | Administrative Hearings | 10.00 | _____ | _____ |
| | | | | Subtotal | _____ | _____ |
| | | | | (North Carolina subscribers add 6% sales tax) | _____ | _____ |
| | | | | Total | _____ | _____ |

(Make checks payable to Office of Administrative Hearings.)

* This price includes the title in its current form plus supplementation for the subscription year.

MAIL TO:

**OFFICE OF ADMINISTRATIVE HEARINGS
POST OFFICE DRAWER 27447
RALEIGH, NORTH CAROLINA 27611-7447**

Office of Administrative Hearings
P.O. Drawer 27447
Raleigh, North Carolina 27611-7447

FOLD HERE

NORTH CAROLINA REGISTER ORDER FORM

Please enter my subscription for the *North Carolina Register* to start with the _____ issue.
(\$105.00/year subscription. N.C. subscribers please add sales tax.)

Renew *North Carolina Register*

Check Enclosed ☐ Please bill me

Please make checks payable to Office of Administrative Hearings

NAME _____ ADDRESS _____
CITY _____ STATE _____ ZIP _____
PHONE _____

(Return to Office of Administrative Hearings - fold at line, staple at bottom and affix postage.)

CHANGE OF ADDRESS

1. Present Address

NAME

ADDRESS

CITY

STATE

ZIP

2. New Address

NAME

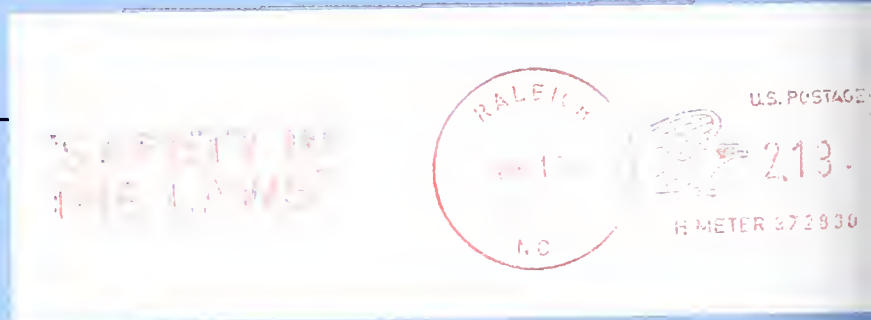
ADDRESS

CITY

STATE

ZIP

Office of Administrative Hearings
P.O. Drawer 27447
Raleigh, North Carolina 27611-7447



FIRST CLASS MAIL

585
UNIV. OF NORTH CAROLINA
LAW LIBRARY CB# 3385
VAN HECKE-WETTACH C64-R
CHAPEL HILL

NC 27599