

NORTH CAROLINA REGISTER

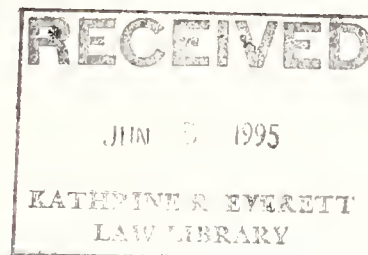
**VOLUME 10 • ISSUE 5 • Pages 297 - 335
June 1, 1995**

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Contested Case Decisions

PUBLISHED BY

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INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

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

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

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and twenty dollars (\$120.00) for 24 issues. Individual issues may be purchased for ten dollars (\$10.00).

Requests for subscription to the *North Carolina Register* should be directed to the Office of Administrative Hearings, PO Drawer 27447, Raleigh, NC 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 40 occupational licensing boards. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

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

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page. Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.
- (2) The full publication and supplement service is printed and distributed by Barclays Law Publishers. It is available in hardcopy, CD-ROM and diskette format. For subscription information, call 1-800-888-3600.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. 10:01 NCR 1-67, April 3, 1995 refers to Volume 10, Issue 1, pages 1 through 67 of the *North Carolina Register* issued on April 3, 1995.

FOR INFORMATION CONTACT: Office of Administrative Hearings, ATTN: Rules Division, PO Drawer 27447, Raleigh, NC 27611-7447, (919) 733-2678, FAX (919) 733-3462.

NORTH CAROLINA REGISTER



**Volume 10, Issue 5
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June 1, 1995

This issue contains documents officially
filed through May 17, 1995.

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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
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9:21	02/01/95	01/10/95	01/18/95	02/16/95	03/03/95	03/20/95	05/01/95
9:22	02/15/95	01/25/95	02/01/95	03/02/95	03/17/95	03/20/95	05/01/95
9:23	03/01/95	02/08/95	02/15/95	03/16/95	03/31/95	04/20/95	06/01/95
9:24	03/15/95	02/22/95	03/01/95	03/30/95	04/17/95	04/20/95	06/01/95
10:1	04/03/95	03/13/95	03/20/95	04/18/95	05/03/95	05/22/95	07/01/95
10:2	04/17/95	03/24/95	03/31/95	05/02/95	05/17/95	05/22/95	07/01/95
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10:5	06/01/95	05/10/95	05/17/95	06/16/95	07/03/95	07/20/95	09/01/95
10:6	06/15/95	05/24/95	06/01/95	06/30/95	07/17/95	07/20/95	09/01/95
10:7	07/03/95	06/12/95	06/19/95	07/18/95	08/02/95	08/21/95	10/01/95
10:8	07/14/95	06/22/95	06/29/95	07/31/95	08/14/95	08/21/95	10/01/95
10:9	08/01/95	07/11/95	07/18/95	08/16/95	08/31/95	09/20/95	11/01/95
10:10	08/15/95	07/25/95	08/01/95	08/30/95	09/14/95	09/20/95	11/01/95
10:11	09/01/95	08/11/95	08/18/95	09/18/95	10/02/95	10/20/95	12/01/95
10:12	09/15/95	08/24/95	08/31/95	10/02/95	10/16/95	10/20/95	12/01/95

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 day of the next calendar month.

**EXECUTIVE ORDER NO. 77
TRANSIT 2001 COMMISSION**

WHEREAS, Transportation 2001 is a comprehensive plan that was developed to provide the safest, most efficient and unified transportation system possible for North Carolina; and

WHEREAS, public transportation provides mobility alternatives that promote a positive quality of life, enhancing employment, education, recreation, cultural and social opportunities in urban and rural areas; and

WHEREAS, public transportation provides economic and environmental benefits; and

WHEREAS, public transportation needs are extending beyond municipal boundaries, creating the need for regional cooperation; and

WHEREAS, the roles and responsibilities of local and state governments in the provision of public transportation services need to be examined; and

WHEREAS, public transit strategies can help mitigate the growth in urban congestion, reducing pressure on urban highways; and

WHEREAS, the North Carolina Department of Transportation is committed to working with local governments to assist in providing efficient and effective public transportation services that are successful, productive and well utilized.

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

Section 1. Establishment.

The Transit 2001 Commission is hereby established to assist the Department of Transportation in developing a master plan for public transportation. All members shall be appointed by the Governor and shall serve at his pleasure. Vacancies shall be filled by the Governor.

Section 2. Technical Committee.

A Transit 2001 Technical Committee shall be created to provide input to the Transit 2001 Commission. All members shall be appointed by the Secretary of the North Carolina Department of Transportation and serve at his pleasure.

Section 3. Master Plan.

No later than fifteen months from the issuance of this Executive Order, the North Carolina Department of Transportation and the Transit 2001 Commission shall recommend to the Governor a master plan for public transportation.

This Executive Order shall be effective immediately and shall remain in effect until the Commission submits the master plan to the Governor.

Done in the Capital City of Raleigh, North Carolina, this the 2nd day of May, 1995.

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:CMK:TGL:jdp

DJ 166-012-3

95-0590

April 27, 1995

David A. Holec, Esq.

City Attorney

P. O. Box 1388

Lumberton, North Carolina 28359

Dear Mr. Holec:

This refers to two annexations [Ordinance Nos. 1486 and 1487 (1995)] and their designation to districts in the City of Lumberton in Robeson 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 March 2, 1995.

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:

Elizabeth Johnson

Acting Chief, Voting Section

U.S. Department of Justice

Civil Rights Division

Voting Section

P.O. Box 66128

Washington, D.C. 20035-6128

DLP:GS:JSS:jdp
DJ 166-012-3
95-0771

May 12, 1995

Laurence S. Graham, Esq.
Interim City Attorney
P. O. Box 7207
Greenville, North Carolina 27835-7207

Dear Mr. Graham:

This refers to 20 annexations [Ordinance Nos. 92, 95-97, 115-119, 130, 148-152, 159-160 (1994), and 3, 4, and 14 (1995)] and their designation to districts of the City of Greenville in Pitt 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 March 15, 1995.

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:

Elizabeth Johnson
Acting Chief, Voting Section

TITLE 4 - DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Commerce, Credit Union Division intends to amend rule cited as 4 NCAC 6C .0203.

Proposed Effective Date: September 1, 1995.

A Public Hearing will be conducted at 10:00 a.m. on June 19, 1995 at the North Carolina Credit Union Division, 1110 Navaho Drive, Suite 300, Raleigh, NC 27609.

Reason for Proposed Action: To maintain parity for state chartered credit unions with Federally chartered credit unions, and to maintain consistency with our approval process for new charters being approved or disapproved in conformity with criteria and policies set out in Chapter 1 of the National Credit Union Administration's Interpretative Ruling and Policy Statement 94-1. In order to protect the safety and soundness of state chartered credit unions, the Administrator must have the authority to deviate from IRPS 94-1 where deemed appropriate.

Comment Procedures: Any interested person may present his/her comments either in writing prior to or at the hearing or orally at the hearing, for a maximum of ten minutes. Any person may request information by writing or calling Mr. Antonio Knox, Credit Union Division, 1110 Navaho Drive, Suite 300, Raleigh, NC 27609, Telephone (919) 850-2929.

Fiscal Note: This Rule does not affect the expenditures or revenues of local government or state funds.

CHAPTER 6 - CREDIT UNION DIVISION

SUBCHAPTER 6C - CREDIT UNIONS

SECTION .0200 - ORGANIZATION OF CREDIT UNIONS

.0203 FIELDS OF MEMBERSHIP

(a) ~~Parity. To preserve and protect the welfare of state chartered credit union, the Administrator may approve fields of membership and allow state chartered credit unions the same latitude with regard to membership limitations and restrictions as is available to federally chartered credit unions.~~

(b) ~~New Charters. The field(s) of membership of an applicant for a new credit union shall be reviewed and approved or disapproved in conformity with criteria and policies set out in Chapter 1 of the National Credit Union Administration's Interpretative Ruling and Policy Statement 89-1, entitled CHARTERING AND FIELD OF MEMBERSHIP POLICY, which are adopted by reference pursuant to G.S. 150B-14(e).~~

(c) ~~Expansion Requests. Requests for expanded multiple fields of membership for existing credit unions shall be reviewed and approved or disapproved in conformity with criteria and policies set out in Chapter 1, Part 2, pages 2-312.45 to 2-312.56 of the National Credit Union Administration's Interpretative Ruling and Policy Statement 89-1, entitled CHARTERING AND FIELD OF MEMBERSHIP POLICY (Rel. 20-2/90 Pub. 161), which are adopted by reference pursuant to G.S. 150B-14(e).~~

(d) ~~In allowing an expansion of the field of membership, any such credit union would be bound by membership limitations or restrictions contained in its charter or bylaws as amended and approved by the Administrator.~~

(a) Purpose. Every credit union chartered under the laws of this state must adopt bylaws containing a section defining its field of membership. The Administrator is required to approve that definition of the field of membership and any subsequent changes to it and will do so according to the policy and guidelines set forth in this Rule.

(b) Parity. In order to preserve and protect the welfare of state chartered credit unions, the Administrator, to the fullest extent feasible, intends to allow state chartered credit unions the same degree of latitude and flexibility in defining the field of membership as is allowed federally chartered credit unions by the National Credit Union Administration.

(c) New Charter Applications. Generally, the Administrator shall evaluate and either approve or disapprove the definition of the field of membership contained in the bylaws of a credit union seeking to be chartered in this state on the basis of the applicable criteria described in the National Credit Union Administration's Interpretative Ruling and Policy Statement 94-1, adopted May 12, 1994, ("IRPS 94-1"); provided, however, that the Administrator may, in his sole discretion, disregard, modify or expand the application of those criteria as he deems appropriate.

(d) Changes to Field of Membership. Generally, the Administrator shall evaluate and either approve or disapprove a proposed change in the definition of the field of membership contained in the bylaws of a credit union chartered in this state on the basis of the criteria described in IRPS 94-1; provided however, that the Administrator may in his sole discretion disregard, modify or expand the application of those criteria as he deems appropriate.

(e) Immediate Family Members. Each credit union shall include in its bylaws a list of those individuals who by virtue of a close relationship to the primary members of the common bond group are considered "immediate family" and are included in the field of membership of the credit union. Since the definition of "immediate family" is a part of the credit union's bylaws, it is subject to prior approval by the Administrator of Credit Unions.

(f) Multiple Groups in the Field of Membership. A credit union may have within its field of membership a collection of distinct occupational or associational common bonds. Each such group with its own common bond must be within the credit union's operational area. A credit union's operational area is that geographic area which, as deter-

mined by the Administrator in his sole discretion, reasonably and effectively may be served by the Service capabilities and/or service facilities of the credit union. Service facilities include full service branches and shared service facilities.

(g) Forms. Forms prescribed in IRPS 94.1 for use by federal credit unions may be used by state chartered credit unions requesting approval by the Administrator of bylaw amendments involving field of membership changes.

(h) Notice of Criteria Changes. In those instances where the Administrator elects to deviate in any manner from the

field of membership criteria described in IRPS 94-1, the Administrator shall inform the affected credit union(s) in writing of the change so that the credit union will have a reasonable opportunity to comply with the modified criteria.

Statutory Authority G.S. 54-109.1; 54-109.2(e); 54-109.3(3); 54-109.4; 54-109.11(3); 54-109.12; 54-109.21(25); 54-109.22.

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 .0210.

Temporary: This Rule was filed as a temporary rule effective May 18, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

Proposed Effective Date: September 1, 1995.

A Public Hearing will be conducted at 2:00 p.m. on June 20, 1995 at the State Bureau of Investigations, Conference Room, 3320 Old Garner Road, Raleigh, NC 27626.

Reason for Proposed Action: The Alarm Systems Licensing Board's rules require an alarm systems business to maintain an individual licensed by the Board of Electrical Contractors. However, the Board of Electrical Contractors has just notified the Alarm Board that individuals experienced in burglar alarm installation will no longer be able to take the Electrical Contractors exam if the applicant has only burglar alarm installation experience. Therefore, the Alarm Board is providing an alternative for all who don't qualify for the electrical test.

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 through July 3, 1995 on this Rule. Written comments must be delivered to the Alarm Systems Licensing Board, 3320 Old Garner Road, Raleigh, NC 27626.

Fiscal Note: This Rule does not affect the expenditures or revenues of local government or state funds.

CHAPTER 11 - NORTH CAROLINA ALARM SYSTEMS LICENSING BOARD

SECTION .0200 - PROVISIONS FOR LICENSEES

.0210 ELECTRICAL CONTRACTING LICENSE REQUIREMENTS

(a) Each firm, association, corporation, department, division, or branch office required to be licensed pursuant to G.S. 74D-2(a) must maintain at all times a licensee or registered employee who holds a license for either a SP-LV, limited, intermediate or unlimited examination as administered by the North Carolina Board of Examiners of Electrical Contractors. Contractors, or has passed an electrical test approved by the Board. Pursuant to 12 NCAC 11 .0206, each firm, association, corporation, department, division, or branch office must maintain in its records a copy of the licensee's or registered employee's Electrical Contractors License or a copy of the certification of test completion. In the event the licensee holding the electrical contractor's license or individual who has passed the electrical test given by the Board ceases to perform his duties ~~as the electrical contractor licensee~~, the business entity shall notify the Board in writing within 10 working days. The business entity must obtain a substitute electrical contractor licensee or have an employee pass the electrical test given by the Board within 30 days after the original electrical contract licensee or individual who has passed the test ceases to serve.

(b) A licensee or registered employee possessing the electrical test certificate must complete six contact hours of continuing education per year provided by course sponsors on the Board of Examiners of Electrical Contractors approved sponsor list. For purposes of this Section, the continuing education requirements for maintaining the electrical license or electrical certificate is set forth in 21 NCAC 18B .1101 through .1108.

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 amend rule cited as 15A NCAC 2B .0304.

Proposed Effective Date: November 1, 1995.

A Public Hearing will be conducted at 7:00 p.m. on June 20, 1995 at the Avery County Middle School (Cafeteria), Avery High School Road, Newland, NC.

Reason for Proposed Action:

North Toe River - French Board River Basin

NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION

ANNOUNCEMENT OF A PUBLIC HEARING TO RECLASSIFY THE NORTH TOE RIVER WATERSHED IN AVERY AND MITCHELL COUNTIES

A public hearing will be held by the N.C. Department of Environment, Health and Natural Resources on behalf of the Environmental Management Commission. The Department seeks public comment on the proposed reclassification of a portion of the North Toe River watershed that is to be used by the Town of Spruce Pine for drinking water supply purposes. Changes in stream classifications can affect activities in and adjacent to these waters. Local governments with land use authority in water supply watersheds are required to develop, implement and enforce ordinances that comply with North Carolina Water Supply Watershed Protection Rules.

The first section of this announcement will discuss the area affected by the current WS-III Classification and the changes that are being proposed. The second section will provide a summary of the requirements associated with the current WS-III classification and the proposed WS-IV reclassification. The last section will provide information on the public hearing and how to submit comments.

IMPORTANT NOTE: At the time of this publication the Environmental Management Commission is considering modifications to the Water Supply Watershed Protection Rules. The proposed modifications are designed to make the program more flexible for local governments to administer.

Proposed Classification Change

North Toe River (French Broad River Basin)

Affected Area:

The North Toe River, including tributaries, is currently classified as WS-III and WS-III Trout from its source to a point 0.5 miles upstream of Banjo Branch (just upstream of the Town of Spruce Pine). The North Toe River, and a section of Banjo Branch, is classified as WS-III Trout CA (Critical Area) from a point 0.5 miles upstream of Banjo Branch to a point 0.2 miles downstream of Banjo Branch where a water supply intake for the Town of Spruce Pine had initially been intended.

Proposed Change:

The proposal is to reclassify portions of the North Toe River and its tributaries from Classes WS-III, WS-III Trout, and WS-III Trout CA (Critical Area) to Classes C, C Trout, WS-IV, WS-IV Trout and WS-IV Trout CA. This proposal would remove the land use requirements associated with water supply protection for the section of the North Toe River, including tributaries, from its source to a point 0.2 miles upstream of Birchfield Creek. Downstream of this point to a point 0.5 miles upstream of U.S. Highway 19, the North Toe River, including tributaries, would be classified as WS-IV. From this point to U.S. Highway 19, a WS-IV Trout CA is applicable.

Local Governments with Land Use Authority under the Current WS-III Classification:

Avery and Mitchell Counties, and the Towns of Newland and Sugar Mountain.

Local Governments with Land Use Authority under the Proposed WS-IV Classification:

Avery and Mitchell Counties.

Summary of Requirements

The following chart summarizes the requirements related to the WS-III water supply classification which are currently in

PROPOSED RULES

place. These are the major provisions of the water supply regulation (15A NCAC 2B .0104, .0202 and .0211); to review all of them, write or call the contact person listed below for more information. The following requirements are currently applicable to the North Toe River and its tributaries from its source to the water supply intake that was to be located just upstream of the Town of Spruce Pine, North Carolina.

Requirements for a WS-III Classification

	Wastewater <u>Dischargers</u>	Development Criteria		<u>5%/70% Provision</u>	Agriculture <u>BMPs</u>
		W/O Engineered Stormwater, <u>Low Density Opt.</u>	W/Engineered Stormwater, <u>High Density Opt.</u>		
Critical Area	General Permits	1du*/acre or up to 12% built upon area	12-30% built upon area	Not Allowed	Required (1)
Balance of Watershed	Domestic & Non-process industrial	2du*/acre or up to 24% built upon area	24-50% built upon area	Allowed	Not Required (1)

The following requirements are proposed to be applicable to the North Toe River and tributaries from a point 0.3 miles upstream of Birchfield Creek downstream to U.S. Highway 19 where a water supply intake for the Town of Spruce Pine is to be located.

Requirements for a WS-IV Classification

	Wastewater <u>Dischargers</u>	Development Criteria		<u>5%/70% Provision</u>	Agriculture <u>BMPs</u>
		W/O Engineered Stormwater, <u>Low Density Opt.</u>	W/Engineered Stormwater, <u>High Density Opt.</u>		
Critical Area	Domestic & Industrial (2)	2du*/acre or up to 24% built upon area (3)	24-50% built upon area (3)	Not Allowed	Required (1)
Protected Area	Domestic & Industrial	2du*/acre or up to 24% built upon area (3,4)	24-70% built upon area (3,4)	Not Allowed	Not Required (1)

The following Notes are applicable to both of the above classifications.

Notes:

- * du means dwelling unit.
- Critical area is one-half mile and draining to water supply intake.
- Requirements applicable to new development. Existing single family lots are exempt.
- Buffers for development activities required along all perennial waters; 30 foot buffer for low density and 100 foot buffer for high density development.
- Wet detention basins are required with the high density option. Local governments will assume ultimate responsibility for the operation and maintenance of these stormwater control devices.
- (1) All agricultural activities are subject to provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990. A ten foot vegetated buffer or equivalent control as determined by the Soil and Water Conservation Commission is required in the critical area. Animal operations which are deemed permitted under 15A NCAC 2H .0217 are allowed in all water supply watersheds.
- (2) New industrial process wastewater discharges are allowed but will require additional treatment requirements.
- (3) Applies only to projects requiring a Sediment/Erosion Control Plan.
- (4) 1/3 acre lot or 36% built upon area is allowed for projects without a curb and gutter street system.

The purpose of the development density controls, the wastewater discharge requirements and the agricultural management practices are to prevent the degradation of the water quality for use as a drinking water supply from pollutant impacts.

The Water Supply Watershed Protection Rules, which includes the proposed WS-IV reclassification, requires a 10 foot vegetated buffer (or equivalent control as determined by the Soil and Water Conservation Service) for Christmas tree farming activities in the critical area. There is **no** mandatory requirement for fencing of livestock from surface waters in the water supply watershed.

Public Hearing Information

PURPOSE: The purpose of this hearing and the written comment period is to receive comments on the proposed reclassification from interested people. The written comment period will be open until July 3, 1995. The EMC is interested in comments in favor of, opposed to, or alternatives to the proposed changes.

The EMC may make some changes in final rules without renote and rehearing, as long as the adopted rules do not differ substantially from the proposed rules. **The EMC may adopt final management requirements, rules and classifications that are more or less stringent than those being noticed.** (See NCGS 150B 21.2(f) for this authority.) The EMC must determine that the final adopted rules are not substantially different from the proposed rules. All interested and potentially affected persons are strongly encouraged to read the entire announcement and supporting information and make comments on the proposal presented. The proposed effective date for final rule amendments is November 1, 1995.

Comment Procedures: *You may submit comments, statements, data and other information in writing prior to, during or after the hearing but no later than July 3, 1995. You may also present verbal comments at the hearing. The Hearing Officer may limit the length of time that you may speak so that all those who wish to speak may have an opportunity to do so. We encourage you to submit written comments. You may obtain further explanations and details of the proposed reclassification by writing or calling:*

Steve Zoufaly
DEHNR/Division of Environmental Management
PO Box 29535
Raleigh, NC 27626-0535
(919) 733-5083, Ext. 566

Fiscal Note: *This Rule does not affect the expenditures or revenues of local government or state funds.*

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2B - SURFACE WATER STANDARDS MONITORING

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

.0304 FRENCH BROAD RIVER BASIN

(a) Places where the schedules may be inspected:

- (1) Clerk of Court:
 - Avery County
 - Buncombe County
 - Haywood County
 - Henderson County
 - Madison County
 - Mitchell County
 - Transylvania County
 - Yancey County

- (2) North Carolina Department of Environment, Health, and Natural Resources
Asheville Regional Office
Interchange Building
59 Woodfin Place
Asheville, North Carolina
- (b) Unnamed Streams. Such streams entering Tennessee will be classified "B."
- (c) The French Broad River Basin Schedule of Classifications and Water Quality Standards was amended effective:
 - (1) September 22, 1976;
 - (2) March 1, 1977;
 - (3) August 12, 1979;
 - (4) April 1, 1983;
 - (5) August 1, 1984;
 - (6) August 1, 1985;
 - (7) February 1, 1986;
 - (8) May 1, 1987;
 - (9) March 1, 1989;
 - (10) October 1, 1989;
 - (11) January 1, 1990;
 - (12) August 1, 1990;
 - (13) August 3, 1992;
 - (14) October 1, 1993.
- (d) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective March 1, 1989 as follows:
 - (1) Cataloochee Creek (Index No. 5-41) and all tributary waters were reclassified from Class C-trout and Class C to Class C-trout ORW and Class C ORW.
 - (2) South Fork Mills River (Index No. 6-54-3) down to Queen Creek and all tributaries were reclassified from Class WS-I and Class WS-III-trout to Class WS-I ORW and Class WS-III-trout ORW.
- (e) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective October 1, 1989 as follows: Cane River (Index No. 7-3) from source to Bowlens Creek and all tributaries were reclassified from Class C trout and Class C to Class WS-III trout and Class WS-III.
- (f) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective January 1, 1990 as follows: North Toe River (Index No. 7-2) from source to Cathis Creek (Christ Branch) and all tributaries were reclassified from Class C trout and Class C to Class WS-III trout and Class WS-III.
- (g) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 2B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.
- (h) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective October 1, 1993 as follows: Reasonover Creek [Index No. 6-38-14-(1)] from source to Reasonover Lake Dam and all tributaries were reclassified from Class B Trout to Class WS-V and B Trout, and Reasonover Creek [Index No. 6-38-14-(4)] from Reasonover Lake Dam to Lake Julia Dam and all tributaries were reclassified from Class C Trout to Class WS-V Trout.
- (i) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective November 1, 1995 as follows: North Toe River [Index Numbers 7-2-(0.5) and 7-2-(37.5)] from source to a point 0.2 miles downstream of Banjo Branch, including tributaries, has been reclassified from Class WS-III, WS-III Trout and WS-III Trout CA (critical area) to Class WS-IV Trout, WS-IV, WS-IV Trout CA, and C Trout.

Statutory Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNH intends to amend rule cited

as 15A NCAC 19C .0206.

Proposed Effective Date: *October 1, 1995.*

A Public Hearing *will be conducted at 1:00 p.m. on June 22, 1995 at the Archdale Building, Ground Floor Hearing Room, 512 N. Salisbury St. Raleigh, NC.*

Reason for Proposed Action: *The Department proposes an increase in the fee for medical exams in the program to offset an anticipated reduction in appropriations. This rule increases the fee that the Department charges to industry by an amount sufficient to cover the anticipated reduction.*

Comment Procedures: *All persons interested in this matter are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to Dan Baucom, Division of Epidemiology, Occupational Health Section, PO Box 27687, Raleigh, NC 27611-7687. All written comments must be received by July 3, 1995. Persons who wish to speak at the hearing should contact Mr. Baucom at (919) 715-3563. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing.*

Fiscal Note: *This Rule affects the expenditure or distribution of State funds subject to the Executive Budget Act, Article 1 of Chapter 143.*

CHAPTER 19 - HEALTH: EPIDEMIOLOGY

SUBCHAPTER 19C - OCCUPATIONAL HEALTH

SECTION .0200 - DUSTY TRADES PROGRAM

.0206 FEES FOR MEDICAL EXAMS IN DUSTY TRADES

(a) Employers whose employees receive periodic radiographs from the Department's mobile x-ray unit pursuant to G.S. 97-60 will be charged a fee for each employee x-rayed. The fee will be ~~twelve dollars (\$12.00)~~ fifty dollars (\$50.00) per employee.

(b) Employers will be charged a fee for each employee screened by the chest consultant pursuant to G.S. 97-60. The fee for this will be five dollars (\$5.00) per x-ray.

Statutory Authority G.S. 97-73(b).

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 intends to amend rules cited as 18 NCAC 6 .1205 - .1206, .1208, .1302 - .1305, .1313 with changes from the

proposed text noticed in the North Carolina Register, Volume 9, Issue 9, pages 616 - 628.

Proposed Effective Date: *September 1, 1995.*

Reason for Proposed Action: *To further assist small business in capital formation.*

Comment Procedures: *Interested persons may make comments, in writing, by mail addressed to Mr. Gene Cella, Administrator, Securities Division, N.C. Department of the Secretary of State, 300 N. Salisbury Street, Raleigh, NC 27603-5909. The comment period will end on July 3, 1995.*

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

Fiscal Note: *These Rules do not affect the expenditures or revenues of local government or state funds.*

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 plus an unlimited number of persons excluded from the calculation of purchasers in Rule 501(e)(1)(iv) of Regulation D, 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 effecting or attempting to effect purchases or sales of securities in 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 (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) With offers made solely in reliance on 3(a)(11) or 4(2) of the Securities Act of 1933, 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;
- (iv) ~~containing an undertaking to furnish to the administrator, upon written request, evidence of compliance with Subparagraphs (1), (2), and (3) of this Paragraph (b); and~~
 - (iv) 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;
- (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~~ State;
 - (D) A Notice of Completion of Offering/Final Sales Report in compliance with Rule .1315 of this Chapter as if Rule .1315 applied to offerings exempted under this Rule .1205 of this Section;
 - (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 sale in North Carolina;
 - (F) With offerings made solely in reliance on Rule 504 of Regulation D, 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

(b)(4) of this Rule shall not be required if the security is offered to not more than five individuals plus an unlimited number of persons excluded from the calculation of purchasers of Rule 501(e)(1)(iv) of Regulation D who reside in this State. ~~If the issuer is relying on the exclusion from the filing requirements for less than 5 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 securities 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) Expenses shall be limited to 25% as calculated in Rule .1307(b) of this Chapter, as if Rule .1307 were applicable to offerings exempted under this Rule .1205 of this Section.

(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. For purposes of this Rule only, a notice given by an issuer that it proposes to make, is making, or has made an offering of securities not registered or required to be registered, either pursuant to federal or state law, shall not be deemed to offer any securities for sale if:

- (1) Such notice is not used for the purpose of conditioning the market in this state for any of the securities offered;
- (2) Such notice states that the securities offered will not be, or have not been registered under applicable federal or state law, and may not be offered or sold in North Carolina absent registration or an applicable exemption from registration requirements;
- (3) Such notice contains no more than the following additional information:
 - (A) The name of the issuer;
 - (B) The title, amount and basic terms of the securities offered, the amount of the offering, if any, made by selling securities holders, the time of the offering and a brief statement of the manner and purpose of the offering without naming the underwriters;
 - (C) Any statement or legend required by State or foreign law or administrative authority; and
- (4) Any notice contemplated by this Paragraph (c) may take the form of a news release or a written

communication directed to security holders or employees, as the case may be, or other published statements.

(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 or statement filed pursuant to Part (b)(4)(A) of this Rule, 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 effecting or attempting to effect purchases or sales of securities in 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 nonaccredited 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

- (B) protect that particular individual or entity; and 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 of a security sold in reliance upon the exemption provided by Rule .1206 of this Section, ~~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, 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)(4) 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 (1), (2), and (3) of Rule .1205(b) or 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. state; and Such notice to the administrator shall be made prior to any~~

~~offer of securities in this state.~~

(6) that either no securities offerings have occurred in the last three years, or that information identifying such offerings is included.

(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 plus an unlimited number of persons excluded from the calculation or purchasers in Rule 501(e)(1) of Regulation D who reside in this State. ~~If the issuer is relying on the exclusion from the filing requirements for less than five (5) 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) Expenses shall be limited to 25% as calculated in Rule .1307(b) of this Chapter, as if Rule .1307 were applicable to offerings exempted under this Rule .1208 of this Section.

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

Statutory Authority G. S. 78A-17(17); 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) Except as indicated in Paragraph (c) of Rule .1304 of this Section, an issuer of securities registered by coordination must file for re-registration within 30 days prior to the expiration of the security's current 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) The applicant must submit, for review by the Administrator, financial statements as of a date within four months prior to the filing of the registration. For offerings greater than five hundred thousand dollars (\$500,000), these financial statements must be audited.

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

(f) Except as indicated in Paragraph (c) of Rule .1304 of this Section, an issuer of securities registered by qualification must file for re-registration within 30 days prior to the expiration of the security's current registration. The request for re-registration must meet all the requirements of G.S. 78A-27, and be accompanied by a report of sales to date in North Carolina expressed in units and dollars.

Statutory Authority G.S. 78A-27(d); 78A-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 ~~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 to be offered over a period exceeding one year must be renewed by payment of a renewal fee of one hundred dollars (\$100.00) and by filing a sales report (Form USR-1) of the amount of the securities sold in this state to date and the balance of unsold securities effectively registered in this states 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 of this Section.

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 all persons who will be offering and selling the securities in North Carolina.

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

.1313 REGISTRATION OF DPP, REIT, AND LLC SECURITIES

(a) As a condition to the registration of direct participation program securities, real estate investment trusts, and limited liability companies, 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 question-

naire 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).

The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 150B-21.9(a). State agencies are required to respond to RRC as provided in G.S. 150B-21.12(a).

DEPARTMENT OF COMMERCE

Banking Commission

<i>4 NCAC 31 .0101 - Definitions; Filings</i>	<i>RRC Objection</i>	<i>04/20/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/20/95</i>
<i>4 NCAC 31 .0402 - Annual Statement</i>	<i>RRC Objection</i>	<i>04/20/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/20/95</i>

DEPARTMENT OF CULTURAL RESOURCES

Division of State Library

<i>7 NCAC 2E .0301 - Qualifications for Grants</i>	<i>RRC Objection</i>	<i>04/20/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/20/95</i>

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Coastal Management

<i>15A NCAC 7H .0306 - General Use Standards for Ocean Hazard Areas</i>	<i>RRC Objection</i>	<i>05/18/95</i>
<i>15A NCAC 7H .0308 - Specific Use Standards for Ocean Hazard Areas</i>	<i>RRC Objection</i>	<i>03/16/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Cont'd</i>	<i>04/20/95</i>
<i>Rule Returned to Agency</i>		<i>04/20/95</i>
<i>Agency Filed Rule for Codification Over RRC Objection</i>		<i>Eff. 05/04/95</i>
<i>15A NCAC 7M .0202 - Policy Statements</i>	<i>RRC Objection</i>	<i>03/16/95</i>
<i>Rule Returned to Agency</i>	<i>Obj. Cont'd</i>	<i>04/20/95</i>
<i>Agency Filed Rule for Codification Over RRC Objection</i>		<i>Eff. 05/04/95</i>

Environmental Management

<i>15A NCAC 2D .0902 - Applicability</i>	<i>RRC Objection</i>	<i>04/20/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/20/95</i>

Radiation Protection

<i>15A NCAC 11 .0104 - Definitions</i>	<i>RRC Objection</i>	<i>04/20/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/20/95</i>
<i>15A NCAC 11 .0503 - Equipment Radiation Level Limits</i>	<i>RRC Objection</i>	<i>04/20/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/20/95</i>

Wildlife Resources and Water Safety

<i>15A NCAC 10C .0205 - Public Mountain Trout Waters</i>	<i>RRC Objection</i>	<i>04/20/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/20/95</i>
<i>15A NCAC 10F .0330 - Carteret County</i>	<i>RRC Objection</i>	<i>04/20/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>04/20/95</i>
<i>15A NCAC 10K .0001 - Course Requirements</i>		
<i>Rule Withdrawn by Agency</i>		<i>04/20/95</i>

HUMAN RESOURCES

Aging

10 NCAC 22R .0202 - County Funding Plans	RRC Objection	04/20/95
Agency Revised Rule	Obj. Removed	04/20/95

Medical Assistance

10 NCAC 26H .0104 - Cost Reporting: Auditing and Settlements		
Rule Withdrawn by Agency		04/20/95
10 NCAC 26M .0301 - Program Definition	RRC Objection	04/20/95
Agency Revised Rule	RRC Objection	04/20/95
10 NCAC 26M .0302 - Access to Care	RRC Objection	04/20/95
Agency Revised Rule	RRC Objection	04/20/95
10 NCAC 26M .0303 - Patient Informing	RRC Objection	04/20/95
10 NCAC 26M .0304 - Relationship with Carolina Access	RRC Objection	04/20/95
Agency Revised Rule	RRC Objection	04/20/95
10 NCAC 26M .0305 - Relationship with EPSDT program	RRC Objection	04/20/95
Agency Revised Rule	RRC Objection	04/20/95
10 NCAC 26M .0306 - Relationship with Sub-Contractors	RRC Objection	04/20/95
Agency Revised Rule	RRC Objection	04/20/95
10 NCAC 26M .0307 - Utilization Review Requirements	RRC Objection	04/20/95
Agency Revised Rule	RRC Objection	04/20/95
10 NCAC 26M .0308 - Enrollee and Sub-Contractor Appeals and Grievances	RRC Objection	04/20/95

LICENSING BOARDS AND COMMISSIONS

Board of Cosmetic Art Examiners

21 NCAC 14F .0014 - Salon Renewal	RRC Objection	03/16/95
No Response from Agency	Obj. Cont'd	04/20/95
21 NCAC 14I .0401 - App. for Lic. by Individuals Who Have Been Convicted of a Felony	RRC Objection	03/16/95
No Response from Agency	Obj. Cont'd	04/20/95
21 NCAC 14I .0402 - Requests for Preapplication Review of Felony Convictions	RRC Objection	03/16/95
No Response from Agency	Obj. Cont'd	04/20/95

Licensing Board for General Contractors

21 NCAC 12 .0701 - Improper Practice		
Rule Withdrawn by Agency		04/20/95

Board of Practicing Psychologists

21 NCAC 54 .2704 - HSP-P Requirements On and After June 30, 1994	RRC Objection	05/18/95
21 NCAC 54 .2705 - HSP-PP Requirements	RRC Objection	05/18/95
21 NCAC 54 .2706 - HSP-PA Requirements On and After June 30, 1994	RRC Objection	05/18/95

PUBLIC EDUCATION

Elementary and Secondary Education

16 NCAC 6C .0207 - Prospective Teacher Scholarship Loans	RRC Objection	02/16/95
Agency Responded	Obj. Cont'd	03/16/95
Agency Revised Rule	Obj. Removed	04/20/95

REVENUE

Sales and Use Tax

<i>17 NCAC 7B .1123 - Certain Sales to Commercial Livestock and Poultry Farmers</i>	<i>RRC Objection</i>	<i>03/16/95</i>
	<i>Obj. Removed</i>	<i>04/20/95</i>
<i>17 NCAC 7B .5445 - Commercial Swine, Livestock/Poultry Farmers' Cert. Form: E-599S</i>	<i>RRC Objection</i>	<i>03/16/95</i>
<i>Agency Repealed Rule</i>	<i>Obj. Removed</i>	<i>04/20/95</i>

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>Division of Purchase and Contract</i>				
Scuter-Sanders Tractor Corp. v. Admin., Div of Purchase & Contract	94 DOA 0803	Nesnow	03/06/95	
<i>State Construction Office</i>				
W. M. Piatt & Company v. State Construction Office, DOA	94 DOA 0738	Nesnow	04/11/95	10:3 NCR 221
ALCOHOLIC BEVERAGE CONTROL COMMISSION				
Ali Alsaras v. Alcoholic Beverage Control Commission	94 ABC 0526	Chess	05/16/95	
Norman D. Forbes v. Alcoholic Beverage Control Commission	94 ABC 0787	Gray	03/17/95	
Albert Stanley Tomanec v. Alcoholic Beverage Control Commission	94 ABC 1168	Becton	03/07/95	
Robert Johnson v. Alcoholic Beverage Control Commission	94 ABC 1661	West	05/01/95	
Stinking Mercury, Inc. v. Alcoholic Beverage Control Commission	94 ABC 1682	Chess	05/03/95	
Alcoholic Beverage Control Comm. v. Depot Stop N Go, Inc.	94 ABC 1694	Mann	03/29/95	
Bryan Lynn Whitaker, Susan Ansley Whitaker v. ABC Commission	94 ABC 1784	Mann	04/19/95	
Diamond Club, Inc. v. Alcoholic Beverage Control Commission	94 ABC 1803	Mann	04/07/95	
Ray E. Bailey v. Alcoholic Beverage Control Commission	95 ABC 0210	Gray	05/01/95	
CRIME CONTROL AND PUBLIC SAFETY				
<i>Crime Victims Compensation Commission</i>				
John Pavlikianidis v. Victims Compensation Commission	94 CPS 0237	Morrison	03/21/95	10:2 NCR 176
Wayne L. Utley v. Crime Victims Compensation Commission	94 CPS 1180	Becton	03/07/95	
Kristine S. Ray v. Crime Victims Compensation Commission	94 CPS 1673	Chess	04/20/95	
Shirley Moody Myers v. Crime Victims Compensation Commission	94 CPS 1674	Chess	04/20/95	
Thomasine Inman v. Crime Victims Compensation Commission	94 CPS 1731	Nesnow	03/09/95	
Irmgard Gordos v. Crime Victims Compensation Commission	94 CPS 1782	Gray	03/09/95	
Ellen Sherwin v. Crime Vic Comp James Byrum Emp/ Baptist Hosp	95 CPS 0012	West	03/22/95	
Lynn H. Henderson v. CPS, Victims Compensation Commission	95 CPS 0212	Morrison	05/08/95	
ENVIRONMENT, HEALTH, AND NATURAL RESOURCES				
Setzer Bros. Inc. v. Environment, Health, and Natural Resources	94 EHR 1676	Nesnow	03/09/95	
John W. VanHoy, Jr. & Adjacent Land Owners v. EHNR and Shugart Enterprises, Inc.	95 EHR 0016	Phipps	03/17/95	
<i>Coastal Resources</i>				
Howard C. Slack v. Coastal Resources Comm, EHNR	95 EHR 0140	Phipps	03/22/95	10:2 NCR 185
<i>Davidson County Health Department</i>				
John Dee Clodfelter v. Davidson County Health Dept.; EHNR	94 EHR 1037	Chess	03/13/95	
<i>Environmental Health</i>				
EEE-ZZZ Lay Drain Company, Inc. v. On-Site Wastewater Section, Division of Environmental Health	94 EHR 0745	Chess	04/24/95	

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>Environmental Management</i>				
Empire Power Co. and George Clark v. EHNHR, Div. of Env. Mgmt. and Duke Power Company	92 EHR 0021* ¹	Gray	04/03/95	
Empire Power Co. and George Clark v. EHNHR, Div. of Env. Mgmt. and Duke Power Company	92 EHR 0053* ¹	Gray	04/03/95	
Kenan Oil Company, Inc. v. EHNHR, Div. of Environmental Mgmt.	94 EHR 0894	Nesnow	05/08/95	
<i>Hyde County Health Department</i>				
Fritzner Henry v. Hyde County Health Department	94 EHR 0924	Gray	03/09/95	
<i>Macon County Health Department</i>				
Four Residents on Genva Circle v. Macon County Health Department	94 EHR 1202	Nesnow	03/27/95	
<i>Maternal and Child Health</i>				
Middleburg Variety v. EHNHR, Maternal & Child Health, Nutrition Svcs.	94 EHR 1601	Chesa	05/01/95	
Taisser Shchadeh v. EHNHR, Maternal & Child Health, Nutrition Svcs.	94 EHR 1711	Chesa	05/02/95	
Philip Haskins v. EHNHR, Div. of Maternal & Child Health	94 EHR 1777	Chesa	03/09/95	
<i>New Hanover County Health Department</i>				
Gus Kalogiros v. New Hanover Co. (Health Dept.), Adm & Env. Svcs	94 EHR 1073	Morrison	04/28/95	
EQUAL EMPLOYMENT OPPORTUNITY				
Marsha Dianne McKoy v. DHR, Div. of MH/DD/SAS, Caswell Center	90 EEO 0379	Chesa	04/03/95	
HUMAN RESOURCES				
Helen J. Walls, D/B/A Walls Young World v. Human Resources	94 DHR 1362	Becton	03/20/95	
<i>Division of Child Development</i>				
Iola Malloy v. DHR, Division of Child Development	94 DHR 0849	Mann	03/03/95	
Esther Elder v. DHR, Division of Child Development	94 DHR 1771	Reilly	03/17/95	
<i>Facility Services</i>				
William H. Cooke v. DHR, Division of Facility Services	94 DHR 0565	Gray	03/16/95	
Mildred Reece, Calvin Reece v. DHR, Division of Facility Svcs, Domiciliary & Group Care Section	94 DHR 1783	Gray	03/16/95	
<i>Bingo Licensure Section</i>				
The Regular Veterans Association of the United States and the Sixteen Posts of the Regular Veterans Association of the United States and the Regular Veterans Association Auxiliary Located in the State of North Carolina v. DHR, Division of Facility Services, Bingo Licensure Section	95 DHR 0040	Morrison	04/13/95	
<i>Certificate of Need Section</i>				
The Carrolton of Fayetteville, Inc. and Highland House of Fayetteville, Inc. and Richard Allen, Sr. v. DHR, Division of Facility Services, Certificate of Need Section and Pine Manor Rest Home, Inc., d/b/a Pine Manor Health Care	94 DHR 0197* ²	Reilly	04/05/95	

* Consolidated cases.

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
The Carrolton of Fayetteville, Inc. and Highland House of Fayetteville, Inc. and Richard Allen, Sr. v. DHR, Division of Facility Services, Certificate of Need Section and Pine Manor Rest Home, Inc., d/b/a Pine Manor Health Care	94 DHR 0198*2	Reilly	04/05/95	
Retirement Villages, Inc. (Lessor), and Liberty Healthcare Ltd. Partnership (Lessee) D/B/A Countryside Villa of Duplin v. DHR, Division of Facility Services, Certificate of Need Section and Beaver Properties/Wallace, Inc., and Brian Center Health & Retirement/Wallace, Inc.	94 DHR 0403	Chess	12/14/94	
<i>Division of Social Services</i>				
<i>Child Support Enforcement Section</i>				
Daniel J. Carter v. Department of Human Resources	91 CSE 1103	Morrison	03/03/95	
Shawn Dominic Caldwell v. Department of Human Resources	92 CSE 1449	Reilly	03/29/95	
William Zonta Thompson v. Department of Human Resources	92 CSE 1559	Reilly	03/29/95	
Jackie E. Hackney v. Department of Human Resources	93 CSE 1088	Chess	03/20/95	
Frank M. Swett v. Department of Human Resources	93 CSE 1123*3	Reilly	05/16/95	
Elbert Quick v. Department of Human Resources	93 CSE 1169	Chess	03/08/95	
Clement McMillan v. Department of Human Resources	93 CSE 1208	Chess	03/08/95	
James R. Gray v. Department of Human Resources	93 CSE 1268	Chess	03/08/95	
Lacy Green, Jr. v. Department of Human Resources	93 CSE 1295	Chess	03/08/95	
Leon McNair v. Department of Human Resources	93 CSE 1317	Becton	04/04/95	
Edwin A. Clarke v. Department of Human Resources	93 CSE 1319	Chess	03/08/95	
Wolfgang R. Walker v. Department of Human Resources	93 CSE 1374	Gray	04/28/95	
Wyatt Roseboro v. Department of Human Resources	93 CSE 1423	Becton	04/25/95	
Lloyd Lane Speake v. Department of Human Resources	93 CSE 1451	Chess	03/22/95	
Richard L. Hiott v. Department of Human Resources	93 CSE 1509	Mann	04/21/95	
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Henry C. Banks v. Department of Human Resources	93 CSE 1556	Chess	03/22/95	
Lucille B. Dutter v. Department of Human Resources	93 CSE 1558	Chess	03/13/95	
Charles Bascom Kiker v. Department of Human Resources	93 CSE 1561	Mann	04/21/95	
Wade E. Hampton v. Department of Human Resources	93 CSE 1593	Chess	04/20/95	
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Cary G. Dannelly v. Department of Human Resources	94 CSE 1033	Nesnow	03/24/95	
Robert G. Baker v. Department of Human Resources	94 CSE 1094	Chess	03/06/95	
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Morgan Pate, Jr. v. Department of Human Resources	94 CSE 1127	Mann	03/20/95	
Robert E. Dudley, Sr. v. Department of Human Resources	94 CSE 1128	Mann	03/31/95	
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James McFadden v. Department of Human Resources	94 CSE 1132	West	03/14/95	
Anthony D. McCain v. Department of Human Resources	94 CSE 1141	Nesnow	05/16/95	
John C. Kay v. Department of Human Resources	94 CSE 1143	Chess	04/13/95	
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James C. Rogers v. Department of Human Resources	94 CSE 1153	Gray	04/04/95	
Ruby Fewell Henry v. Department of Human Resources	94 CSE 1157	Nesnow	03/16/95	
Michael Leon McCain v. Department of Human Resources	94 CSE 1158	Becton	05/16/95	
George C. Flowers v. Department of Human Resources	94 CSE 1184	Mann	05/02/95	
Kendrick William Sims v. Department of Human Resources	94 CSE 1186	Chess	05/01/95	
Richard Dill v. Department of Human Resources	94 CSE 1195	Mann	03/29/95	
Ted C. Jenkins v. Department of Human Resources	94 CSE 1218	Gray	03/15/95	
Anthony J. Gibbons v. Department of Human Resources	94 CSE 1219	Gray	03/15/95	
Aaron C. Harris v. Department of Human Resources	94 CSE 1225	Reilly	04/10/95	
Donald L. Costello Sr. v. Department of Human Resources	94 CSE 1228	West	03/17/95	
Kelvin L. Lankford v. Department of Human Resources	94 CSE 1229	West	03/17/95	
Jeffrey Thomas Chambers v. Department of Human Resources	94 CSE 1231	Nesnow	03/03/95	
Robert J. Holden v. Department of Human Resources	94 CSE 1232	Nesnow	03/15/95	
Michael L. Wright v. Department of Human Resources	94 CSE 1237	Gray	03/15/95	
Terry S. Gurganus v. Department of Human Resources	94 CSE 1239	Gray	03/02/95	
John Napoleon Window Cross Pullium v. Dept of Human Resources	94 CSE 1241	Gray	03/15/95	

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Clarence Benjamin Banks Jr. v. Department of Human Resources	94 CSE 1247	Morrison	05/17/95	
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David House v. Department of Human Resources	94 CSE 1256	Reilly	03/15/95	
Aqustin S. Sanchez v. Department of Human Resources	94 CSE 1259	West	03/06/95	
Ricky Ratliff v. Department of Human Resources	94 CSE 1261	West	03/17/95	
Willie McNeil Jr. v. Department of Human Resources	94 CSE 1262	West	03/17/95	
Ray Douglas Brickhouse v. Department of Human Resources	94 CSE 1263	West	03/17/95	
Tyron G. Moore v. Department of Human Resources	94 CSE 1264	West	03/17/95	
Paul A. Card v. Department of Human Resources	94 CSE 1266	Nesnow	03/13/95	
Darrin Yancey v. Department of Human Resources	94 CSE 1269	Nesnow	03/15/95	
Douglas L. Lucas v. Department of Human Resources	94 CSE 1270	Nesnow	03/15/95	
Gregory D. Simpson v. Department of Human Resources	94 CSE 1272	Becton	03/15/95	
Michael Lynn Avery v. Department of Human Resources	94 CSE 1274	Becton	03/15/95	
Elvia M. Graham v. Department of Human Resources	94 CSE 1275	Becton	03/15/95	
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Noah L. Houston, Sr. v. Department of Human Resources	94 CSE 1284	Chess	04/26/95	
Shannon Vanderaa v. Department of Human Resources	94 CSE 1286	Mann	03/21/95	
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Vincent R. Valles Sr. v. Department of Human Resources	94 CSE 1333	West	03/17/95	
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Mark A. West v. Department of Human Resources	94 CSE 1335	West	03/17/95	
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Spencer P. Johnson v. Department of Human Resources	94 CSE 1580	Reilly	04/10/95	
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Constance F. Lawrence v. Sheriff's Ed. & Training Stds. Comm.	95 DOJ 0076	Morrison	04/06/95	
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<i>Occupational Safety & Health Division</i>				
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William Hewett v. State Board of Education	94 EDC 0533	Gray	03/31/95	10:2 NCR 179
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<i>Caswell County Health Department</i>				
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<i>Department of Correction</i>				
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<i>Fayetteville State University</i>				
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<i>Forsyth Stokes Mental Health Center</i>				
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<i>Department of Human Resources</i>				
Eugene Hightower, Jr. v. Department of Human Resources, EEO	94 OSP 1811	West	05/04/95	
Rebecca Johnson v. Human Resources, Special Care Center	95 OSP 0138	West	03/31/95	
<i>Cherry Hospital</i>				
William H. Cooke v. DHR, Cherry Hospital	93 OSP 1547	Gray	03/16/95	
<i>Iredell County Department of Social Services</i>				
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<i>North Carolina State University</i>				
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Lillian C. Daniels v. UNC Hospital	95 OSP 0056	Morrison	05/11/95	
<i>Wake County</i>				
Mark Morgan v. Wake County	94 OSP 0937	Nesnow	04/28/95	10:4 NCR 287
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John W. Parris v. Bd. of Trustees//NC Local Gov. Emp. Retirement Sys.	91 DST 1093	Nesnow	05/04/95	
Channie S. Chapman v. Bd/Trustees//NC Local Gov. Emp. Ret Sys.	94 DST 0443	Morrison	05/15/95	

STATE OF NORTH CAROLINA
COUNTY OF MADISON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
94 DOJ 1710

RICKY DALE MCDEVITT,
Petitioner,

vs.

NORTH CAROLINA SHERIFFS'
EDUCATION AND TRAINING
STANDARDS COMMISSION,
Respondent.

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PROPOSAL FOR DECISION

The above-entitled contested case was commenced by the filing of a Request for an Appointment of Administrative Law Judge to preside pursuant to G.S. 150B-49(e). A hearing was held before Administrative Law Judge Dolores O. Nesnow on April 7, 1995, in Asheville, North Carolina.

APPEARANCES

For Petitioner: Ricky Dale McDevitt
Petitioner appeared *pro se*.

For Respondent: John J. Aldridge III
Associate Attorney General
N.C. Department of Justice
Attorney for Respondent.

ISSUE

Did Respondent properly deny Petitioner's application for Certification as a Justice Officer (Jailer) on the grounds that Petitioner had prior criminal convictions and was not of good moral character?

RULES AT ISSUE

12 NCAC 10B.0204(d)(1)
12 NCAC 10B.0204(d)(3)
12 NCAC 10B.0204(d)(6)

STIPULATION AGREEMENTS

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, that both parties received proper Notice of Hearing required pursuant to North Carolina General Statutes 150B-38.

2. The North Carolina Sheriffs' Education and Training Standards Commission has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10, Subchapter 10B, to certify justice officers as either deputy sheriffs or jailers, and to deny, revoke, or suspend such certification.

3. 12 NCAC 10B.0204(d)(1),(3), and (6) provide that:

(d) the Commission may revoke, suspend or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of:

- (1) A crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor within the five year period prior to the date of appointment.
- (3) Four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(b) as Class B misdemeanors regardless of the date of commission or of conviction.
- (6) Any combination of four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(a) as a Class A misdemeanor or defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor regardless of the date of commission or conviction.

4. 12 NCAC 10B .0103(10)(b) provides that a Class B misdemeanor means an act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this state, or any other jurisdiction, either civil or military, for which the maximum punishment allowable for the designated offense under the laws and statutes of the jurisdiction in which the offense occurred includes imprisonment for a term of more than six months but not more than two years. Class B misdemeanor expressly includes either first or subsequent offenses of N.C.G.S. 20-138(a) or (b). A Class B misdemeanor also includes a violation of N.C.G.S. 20-138.1 if the defendant was sentenced under punishment level 1 or punishment level 2 for the offense and also includes a violation of N.C.G.S. 20-28(b)(driving while license permanently revoked or suspended).

5. 12 NCAC 10B .0103(10)(a) provides that a Class A Misdemeanor means an act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this State, or any other jurisdiction, either civil or military, for which the maximum punishment allowable for the offense under the laws and statutes of the jurisdiction in which the offense occurred includes imprisonment for a term of not more than six months.

6. 12 NCAC 10B .0204(b)(2) provides that the Commission shall revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer fails to meet or maintain any of the minimum employment or certification standards required by 12 NCAC 10B .0300.

7. 12 NCAC 10B .0301(a)(8) provides that every justice officer employed or certified as a deputy sheriff or jailer in North Carolina shall be of good moral character.

8. The Petitioner was charged and convicted of the following criminal offenses on the dates and times as indicated:

<u>Charge</u>	<u>Disposition</u>
a. 93 CR 03713 Fishing without a license on 14 May 1993.	Convicted 2 June 1993
b. 91 CR 330 Driving while license permanently revoked on 10 April 1991.	Convicted 28 August 1991
c. 91 CR 331 Carrying a concealed weapon on 10 April 1991	Convicted 28 August 1991
d. 91 CR 1098 Driving while license permanently revoked on 22 September 1991	Convicted 20 November 1991
e. 85 CR 795 Level I DWI on 16 April 1985	Convicted 19 July 1985
f. Level II DWI on 12 November 1983	Convicted 9 February 1984

g. 80-3447
DUI on 29 November 1980

Convicted 19 December 1980

9. The offenses referenced in Paragraph 8 and their dispositions, constitute Class B Misdemeanor convictions pursuant to 12 NCAC 10B .0103(10)(b), except for the 1993 fishing without a license conviction and the 1991 carrying a concealed weapon conviction, both of which constitute Class A Misdemeanor convictions pursuant to 12 NCAC 10B .0103(10)(a).

10. Petitioner was appointed as a jailer with the Madison County Sheriff's Office on 12 April 1994. On 26 September 1994, Joan G. Neuner, Director of the Sheriffs' Education and Training Standards Commission, sent to Petitioner by certified mail, a letter advising Petitioner that probable cause had been found to believe that his certification was subject to being denied, based upon probable cause to believe that Petitioner was convicted of 5 Class B Misdemeanors and two Class A Misdemeanors. This letter further advised Petitioner that probable cause existed to believe that his certification was subject to being denied based on his lack of good moral character as evidenced by his extensive criminal history record and his repeated involvement in illegal activities.

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

FINDINGS OF FACT

1. Julia Lohman, Assistant Director of the Respondent's Sheriffs' Standards Division, is responsible for daily operations within the division. Ms. Lohman also processes applications and conducts criminal background investigations where necessary.

2. When Ms. Lohman received the Petitioner's Personal History Statement in April of 1994, she noted that he had been convicted of a Class B Misdemeanor.

3. Ms. Lohman had also received the Clerk of Court's record and the "DCI" Terminal Inquiry Report on Petitioner.

4. Subsequently, Petitioner was denied his application for a Justice Officer (Jailer) for the following reasons:

- a. Class B Misdemeanor within the last five years (12 NCAC 10B .0204(d)(1).
- b. Failure to meet minimum standards (12 NCAC 10B (b)(2).
- c. Lack of good moral character (12 NCAC 10B .0301(a)(8).
- d. Four or more Class B Misdemeanors (12 NCAC 10B .0204(d)(3)(6).

5. On September 26, 1994, the Respondent sent the Petitioner a letter notifying him of the Commission's decision to deny his application for certification.

6. The decision was deferred to allow Petitioner the opportunity to file request for a hearing, which Petitioner did.

7. Petitioner worked part-time for the Madison County Sheriffs' Department starting in November of 1993 for approximately six months. He then began to work there on a full-time basis, and has remained there pending the final decision of the Commission.

8. Petitioner does not deny the charges or the convictions but he believes that he is of good moral character.

9. Petitioner testified that most of the charges were 10 years ago and that, at that time, he was involved with alcohol.

10. Petitioner testified that he has been separated for two years from his wife and that he has sole custody of his two small children. He is presently 30 years of age.

11. Petitioner testified that the work he does at the Madison County Sheriff's Department is "more than a job to me - it's the things I believe in."

12. Petitioner's work as a Jailer/Dispatcher is "unarmed."

13. Petitioner stated that the letter from Petitioner to the Commission, dated November 21, 1994, states that the concealed weapon charge involved a "hunting knife." This, he testified, was incorrect because the letter was written by a social worker who was trying to help him. He testified that the knife was a switchblade but the social worker did not know that.

14. Sheriff James Dedrick Brown, the Sheriff of Madison County for the last eight years, testified on behalf of the Petitioner.

15. Sheriff Brown testified that he hired the Petitioner approximately three years ago part-time, and that the Petitioner has been working for him full-time for the last two years.

16. Sheriff Brown testified that Petitioner works as a Jailer and Dispatcher, which is a combined task position in Madison County.

17. Sheriff Brown testified that he has been very satisfied with the Petitioner's performance. He testified that Petitioner is the best Dispatcher and Jailer that he has. The sheriff further testified that the Petitioner always comes in during the night when he is called to work, that Petitioner always arrives half an hour before his starting time, and that the only time the Petitioner takes time away from work is when he has to take his children to the doctor.

18. Sheriff Brown also testified that everyone at the Sheriff's Department likes the Petitioner, that Petitioner caught on to the computer system quickly, even at the time when the dispatcher was responsible for the "911" calls.

19. Sheriff Brown further testified that Petitioner does an excellent job and that there are no "ifs, and/or buts about it," the Petitioner is the best Jailer/Dispatcher he has.

20. The Sheriff also testified that Petitioner is an honest man and that he only hires honest people. He testified that he believes in Petitioner and knows him to be a good father. He has met his children and they are "nice kids." He testified that the Petitioner, who does not have a driver's license, can walk to work and is able to support his children with this job.

21. The Sheriff testified that he is aware that a dispatcher does not need to be certified by the Commission, but that in Madison County the positions are designated as Dispatcher/Jailer.

22. Sheriff Brown also testified that he has had the opportunity to call the Petitioner in to work at all hours of the day or night and that he has never smelled alcohol on his breath. The Sheriff further testified that his wife is able to smell alcohol at a great distance and that while she knows the Petitioner, she too has never smelled alcohol on or about his body.

23. Danny Goldforth is the Chief of Police in Marshall, a town in Madison County.

24. Chief Goldforth is familiar with the Petitioner, has known him all of his life, but did not know him well until he came to work at the Madison County Sheriff's Department.

25. Chief Goldforth testified that Petitioner is renting a mobile home from him and has been for the past year and a half. He testified that Petitioner has always been early with the rent and has taken good care of the property.

26. Chief Goldforth has never seen any alcohol or smelled any alcohol on Petitioner's breath.

27. Chief Goldforth also testified that in his working with the Madison County Sheriff's Department he has had several people comment to him that Petitioner is doing a great job.

28. In Chief Goldforth's opinion, Petitioner's moral character is "one of the best."

29. Hoyle Duncan is a Special Deputy with the Madison County Sheriff's Department. Deputy Duncan is retired but is called back to service on occasion.

30. Deputy Duncan testified that he knows Petitioner and has worked along side him for two and a half to three years. Deputy Duncan testified that he did not know Petitioner before they began to work together.

31. Deputy Duncan testified that he sees Petitioner two to three times a week and that they often have the opportunity to talk together. Petitioner talks about his family life and Deputy Duncan has seen him interact with his children.

32. Deputy Duncan testified that he, too, was a single parent and has been able to sympathize and advise Petitioner.

33. Deputy Duncan also testified that he does not know anything bad about the Petitioner. That he believes him to be trustworthy and that at work all the deputies say he is the best deputy in the county because he tries "real hard.". Deputy Duncan testified that Petitioner comes in a lot earlier than his scheduled time, that he stays late, and that he doesn't "impose himself on you."

34. David Ray Satterfield is the Highway Patrolman who arrested Petitioner in 1991 for "driving while license revoked." Trooper Satterfield is retired now but 12 months after the first arrest he saw Petitioner driving again and "took a warrant out on him," knowing that he did not have a license.

35. Trooper Satterfield testified that he saw the Petitioner during the time he was in jail awaiting trial and that the owner of the company Petitioner then worked for came and bailed him out. That employer told Trooper Satterfield that the Petitioner was an "excellent employee."

36. Trooper Satterfield testified that he has known people "to turn their lives around." He testified that more times than not it does not happen but in this case he believes Petitioner is one of the people who has succeeded.

37. Trooper Satterfield testified that he takes DWIs very seriously but that if an arrest has caused someone to change his ways, then the law has accomplished what it was supposed to do. He testified further that he "normally don't do what I'm doing today."

38. Petitioner testified that the social worker believes in him and the four law enforcement officers who came to testify on his behalf believe in him as well. He testified that his life has changed and that he wants to make his career in the Sheriff's Department. Petitioner further testified that he wants this job very much but that if he doesn't get it he will continue to stay on the right track.

Based upon the above Findings of fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The Respondent has the authority to deny Petitioner's application for certification based on the authority cited in the rules noted earlier in this decision.

2. The Petitioner committed offenses for which he can correctly be denied certification.

3. The rules citing various offenses as grounds for denial of certification provide that the Commission "may" deny certification based on those offenses.

4. Based upon the strong showing of support and testimony attributing good character as well as excellent employment habits to the Petitioner by law enforcement officers, three of whom have known and worked with Petitioner over the last two to three years, there has been sufficient evidence to show that the Respondent should, in this instance, use its discretionary authority and permit the Petitioner to be certified as a Jailer.

5. The rule citing the requirement for good moral character provide that the Commission "shall" deny certification based on a lack of good moral character.

6. Again giving due deference to trustworthy and reliable people who have known Petitioner and have observed him directly for an extended period of time, the evidence indicates that Petitioner's moral character is good.

7. It is, therefore, concluded that the Petitioner has good moral character and the Commission would be correct in allowing the certification of Petitioner as a Justice Officer (Jailer).

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

PROPOSAL

That the initial decision to deny Petitioner's application for certification as a Jailer be REVERSED.

ADDENDUM

While it is clear that Petitioner could find other employment which did not require certification from the Commission, reality has placed him in the employ of the Sheriff of Madison County. It is there he has established himself as a valuable member of the organization and it is there he is able to walk to work and to find support and affirmation among his fellow officers. While Petitioner may find employment in another area, he has in fact become a member of the Sheriff's Department where he has proved himself to a noteworthy degree.

ORDER

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

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this proposal for decision, to submit proposed findings of fact and to present oral and written arguments to the agency. G.S. 150B-40(e).

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 Sheriffs' Education and Training Standards Commission.

This the 4th day of May, 1995.

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
		Mortuary Science	34
*21	Occupational Licensing Boards	Nursing	36
22	Administrative Procedures	Nursing Home Administrators	37
23	Community Colleges	Occupational Therapists	38
24	Independent Agencies	Opticians	40
25	State Personnel	Optometry	42
26	Administrative Hearings	Osteopathic Examination & Reg. (Repealed)	44
27	NC State Bar	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
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Note: Title 21 contains the chapters of the various occupational licensing boards.

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.0401 - .0402	10:02 NCR 150	07/01/95		

AGRICULTURE

2 NCAC 34 .0904	10:04 NCR 228	08/01/95		
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CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

21 NCAC 08F .0105	10:04 NCR 255	08/01/95		
.0113	10:04 NCR 255	08/01/95		
08G .0401	10:04 NCR 255	08/01/95		
08J .0005	10:04 NCR 255	08/01/95		
.0008	10:04 NCR 255	08/01/95		
08M .0102	10:04 NCR 255	08/01/95		
.0104	10:04 NCR 255	08/01/95		
.0306	10:04 NCR 255	08/01/95		
.0401	10:04 NCR 255	08/01/95		
08N .0203	10:04 NCR 255	08/01/95		
.0302	10:04 NCR 255	08/01/95		
.0307	10:04 NCR 255	08/01/95		

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21 NCAC 10 .0203	10:04 NCR 261	08/01/95		
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23 NCAC 02C .0108	10:03 NCR 208	09/01/95		
.0211	10:03 NCR 208	09/01/95		
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COMMERCE

4 NCAC 06C .0203	10:05 NCR 300	09/01/95		
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CORRECTION

5 NCAC 05 .0001	10:01 NCR 12	07/01/95		
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7 NCAC 02F .0002	10:01 NCR 12	07/01/95		
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.0104	10:01 NCR 13				Correction to Notice
.0202	10:01 NCR 13				Correction to Notice
.0211	10:01 NCR 13				Correction to Notice
.0301	10:01 NCR 13				Correction to Notice
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.0304	10:05 NCR 301	11/01/95			
.0316	10:04 NCR 246	01/01/96			
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.0531	10:01 NCR 13	07/01/95	x	x	
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19C .0206	10:05 NCR 305	10/01/95	x			

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.0306 - .0318	10:02 NCR 58	09/01/95
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.1801 - .1802	10:04 NCR 264	08/01/95				
.2001	10:04 NCR 264	08/01/95				
01E .0804	10:04 NCR 264	08/01/95				
01K .0312	10:04 NCR 264	08/01/95				

TRANSPORTATION

19A NCAC 02D .0801	10:04 NCR 254	09/01/95				
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BARCLAYS OFFICIAL NORTH CAROLINA ADMINISTRATIVE CODE - 1995

DESCRIPTION	CODE	ONE-TIME PURCHASE PRICE	ANNUAL SUBSCRIPTION PRICE
Title 1 - Dept. of Administration - Full Title	201 00 00	\$63.00	\$90.00
Division of Purchase & Contract	201 10 05	\$21.00	\$30.00
Federal Block Grant Funds	201 10 33	\$17.50	\$25.00
Title 2 - Dept. of Agriculture - Full Title	202 00 00	\$98.00	\$140.00
Food & Drug Protection Division	202 15 09	\$28.00	\$40.00
Structural Pest Control Committee	202 15 34	\$21.00	\$30.00
Agricultural Markets	202 15 43	\$21.00	\$30.00
Plant Industry	202 15 48	\$21.00	\$30.00
Animal Industry	202 15 52	\$21.00	\$30.00
Title 3 - Dept. of State Auditor - Full Title	203 00 00	\$7.00	\$10.00
Title 4 - Dept. of Commerce - Full Title	204 00 00	\$87.50	\$125.00
Alcoholic Beverage Control Commission	204 15 02	\$12.00	\$40.00
Banking Commission	204 15 03	\$24.50	\$35.00
Credit Union Division	204 15 06	\$14.00	\$20.00
Savings & Loan Division	204 15 09	\$14.00	\$20.00
Industrial Commission/Workers Compensation	204 15 10	\$14.00	\$20.00
Savings Institutions Division	204 15 16	\$24.50	\$35.00
Title 5 - Dept. of Corrections - Full Title	205 00 00	\$56.00	\$80.00
Division of Prisons	205 15 02	\$24.50	\$35.00
Title 6 - Council of State - Full Title	206 00 00	\$21.00	\$30.00
Title 7 - Dept. of Cultural Resources - Full Title	207 00 00	\$21.00	\$30.00
Title 8 - State Board of Elections - Full Title	208 00 00	\$7.00	\$10.00
Title 9 - Offices of the Governor & Lt. Governor - Full Title	209 00 00	\$31.50	\$45.00
Title 10 - Dept. of Human Resources - Full Title	210 00 00	\$346.50	\$495.00
Licensing of Health Facilities	210 20 10	\$45.50	\$65.00
Detention Facilities	210 20 20	\$31.50	\$45.00
Mental Health & Rehabilitation Services	210 20 30	\$77.00	\$110.00
Social Services	210 20 40	\$119.00	\$170.00
Children Services/Day Care	210 20 41	\$31.50	\$45.00
Services for the Aging	210 20 42	\$31.50	\$45.00
Services for the Blind	210 20 43	\$28.00	\$40.00
Services for the Deaf & Hard of Hearing	210 20 44	\$17.50	\$25.00
Employment Opportunities	210 20 45	\$35.00	\$50.00
Title 11 - Dept. of Insurance - Full Title	211 00 00	\$63.00	\$90.00
Insurance	211 10 01	\$56.00	\$80.00
Consumer Services	211 10 04	\$24.50	\$35.00
Fire & Rescue Services	211 10 05	\$17.50	\$25.00
Agent Services	211 10 06	\$28.00	\$40.00
Engineering & Building Codes	211 10 08	\$21.00	\$30.00
Title 12 - Dept. of Justice - Full Title	212 00 00	\$63.00	\$90.00
Private Protective Services	212 10 07	\$21.00	\$30.00
Police & Sheriff's Education & Training Standards	212 10 09	\$31.50	\$45.00
NC Alarm Systems Licensing Board	212 10 11	\$17.50	\$25.00
Title 13 - Dept. of Labor - Full Title	213 00 00	\$77.00	\$110.00
Mine & Quarry Safety	213 15 06	\$14.00	\$20.00
General Safety/OSHA	213 20 00	\$31.50	\$45.00
Wage & Hour Rules	213 15 12	\$14.00	\$20.00
Boiler & Pressure Vessel Safety	213 15 13	\$14.00	\$20.00
Apprenticeship & Training	213 15 14	\$14.00	\$20.00
Elevator & Amusement Device Safety	213 15 15	\$14.00	\$20.00
Title 14A - Dept. of Crime Control & Public Safety - Full Title	214 00 00	\$31.50	\$45.00
Alcohol Law Enforcement	214 00 08	\$17.50	\$25.00
Victims Compensation Fund	214 00 11	\$14.00	\$20.00
Title 15A - Dept. of Environ., Health, & Nat. Resources - Full Title	215 00 00	\$276.50	\$395.00
Environmental Management	215 15 00	\$115.50	\$165.00
Air Quality	215 15 10	\$49.00	\$70.00
Water Quality	215 15 20	\$49.00	\$70.00
Land & Waste Management	215 15 30	\$56.00	\$80.00
Solid Waste Management	215 15 31	\$35.00	\$50.00
Underground Storage Tanks	215 15 32	\$17.50	\$25.00

DESCRIPTION	CODE	ONE-TIME PURCHASE PRICE	ANNUAL SUBSCRIPTION PRICE
Coastal Management	215 15 40	\$31.50	\$45.00
Environmental Health	215 25 00	\$106.00	\$160.00
Radiation/Nuclear Waste	215 25 10	\$42.00	\$60.00
Sanitation	215 25 20	\$35.00	\$50.00
Public Health	215 25 30	\$59.50	\$85.00
Intoxilizer & Breathalyzer	215 25 31	\$17.50	\$26.00
Title 16 - Dept. of Public Instruction - Full Title	216 00 00	\$21.00	\$30.00
Elementary & Secondary Education	216 10 06	\$21.00	\$30.00
Title 17 - Dept. of Revenue - Full Title	217 00 00	\$91.00	\$130.00
Taxes on Individuals	217 15 10	\$31.50	\$45.00
Taxes on Business	217 15 20	\$56.00	\$80.00
Sales & Use Tax Division	217 15 27	\$31.50	\$45.00
Motor Fuels Tax Division	217 15 29	\$21.00	\$30.00
Title 18 - Secretary of State - Full Title	218 00 00	\$21.00	\$30.00
Securities Division	218 10 06	\$21.00	\$30.00
Title 19A - Dept. of Transportation - Full Title	219 00 00	\$63.00	\$90.00
Division of Highways	219 10 02	\$28.00	\$40.00
Division of Motor Vehicles	219 10 03	\$35.00	\$50.00
Title 20 - Dept. of the State Treasurer - Full Title	220 00 00	\$31.50	\$45.00
Title 21 - Occupational Licensing Boards - Full Title	221 00 00	\$143.50	\$205.00
Title 22 - Administrative Procedures Act - Repealed	222 00 00	\$0.00	\$0.00
Title 23 - Dept. of Community Colleges - Full Title	223 00 00	\$7.00	\$10.00
Title 24 - Independent Agencies - Full Title	224 00 00	\$7.00	\$10.00
Title 25 - Office of State Personnel - Full Title	225 00 00	\$42.00	\$60.00
Title 26 - Office of Administrative Hearings - Full Title	226 00 00	\$7.00	\$10.00
Title 27 - North Carolina State Bar - Full Title	227 00 00	\$42.00	\$60.00
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CD-ROM North Carolina Administrative Code	266 00 00	- -	\$750.00
CD-ROM North Carolina Administrative Code (When purchased with the Full Code in Print)	266 50 00	- -	\$250.00
Master Index	288 50 00	\$295.00	\$475.00
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