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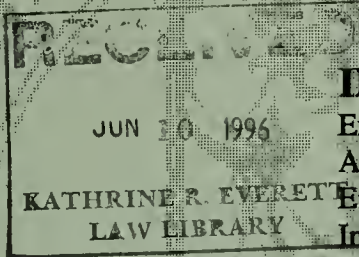
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# **NORTH CAROLINA REGISTER**

**VOLUME 11 • ISSUE 5 • Pages 270 - 314  
June 3, 1996**



## **IN THIS ISSUE**

Executive Order  
Agriculture  
Environment, Health, and Natural Resources  
Insurance  
Public Education  
Refrigeration  
Revenue  
Transportation  
Rules Review Commission  
Contested Case Decisions

## **PUBLISHED BY**

*The Office of Administrative Hearings  
Rules Division  
PO Drawer 27447  
Raleigh, NC 27611-7447  
Telephone (919) 733-2678  
Fax (919) 733-3462*



# **NORTH CAROLINA REGISTER**



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**June 3, 1996**


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filed through May 10, 1996.

Office of Administrative Hearings  
Rules Division  
424 North Blount Street (27601)  
PO Drawer 27447  
Raleigh, NC 27611-7447  
(919) 733-2678  
FAX (919) 733-3462

Julian Mann III, Director  
James R. Scarcella Sr., Deputy Director  
Molly Masich, Director of APA Services  
Ruby Creech, Publications Coordinator  
Teresa Kilpatrick, Editorial Assistant  
Jean Shirley, Editorial Assistant

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FILING DEADLINES			NOTICE OF RULE-MAKING PROCEEDINGS		NOTICE OF TEXT (either column A or column B)							
volume and issue number	issue date	last day for filing	end of comment period	earliest register issue for publication of text	earliest date for public hearing	A. non-substantial economic impact			B. substantial economic impact			
						end of required comment period	deadline to submit to RRC for review at next RRC meeting	first legislative day of the next regular session	end of required comment period	deadline to submit to RRC for review at next RRC meeting	first legislative day of the next regular session	
10:17	12/01/95	11/07/95	01/30/96	02/01/96								
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10:19	01/02/96	12/07/95	03/04/96	03/15/96								
10:20	01/16/96	12/20/95	03/18/96	04/01/96								
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## EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings 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.

### GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) other information the Codifier of Rules determines to be helpful to the public.

**COMPUTING TIME:** In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

### FILING DEADLINES

**ISSUE DATE:** The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month closest to (either before or after) the first or fifteenth respectively that is not a Saturday, Sunday, or holiday for State employees.

**LAST DAY FOR FILING:** The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

### NOTICE OF RULE-MAKING PROCEEDINGS

**END OF COMMENT PERIOD TO A NOTICE OF RULE-MAKING PROCEEDINGS:** This date is 60 days from the issue date. An agency shall accept comments on the notice of rule-making proceeding until the text of the proposed rules is published, and the text of the proposed rule shall not be published until at least 60 days after the notice of rule-making proceedings was published.

**EARLIEST REGISTER ISSUE FOR PUBLICATION OF TEXT:** The date of the next issue following the end of the comment period.

### NOTICE OF TEXT

**EARLIEST DATE FOR PUBLIC HEARING:** The hearing date shall be at least 15 days after the date a notice of the hearing is published.

### END OF REQUIRED COMMENT PERIOD

(1) **RULE WITH NON-SUBSTANTIAL ECONOMIC IMPACT:** An agency shall accept comments on the text of a proposed rule for at least 30 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

(2) **RULE WITH SUBSTANTIAL ECONOMIC IMPACT:** An agency shall accept comments on the text of a proposed rule published in the Register and that has a substantial economic impact requiring a fiscal note under G.S. 150B-21.4(b1) for at least 60 days after publication or until the date of any public hearing held on the rule, whichever is longer.

**DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION:** The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

**FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY:** This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.

**EXECUTIVE ORDER NO. 95**  
**COUNCIL ON HEALTH POLICY INFORMATION**

WHEREAS, the value of reliable, timely, and comprehensive health information is crucial for policy-making and program management; and,

WHEREAS, every effort must be made to remove obstacles which hinder the use of data by health policy makers; and,

WHEREAS, interagency communication and cooperation is necessary for agencies responsible for the creation of effective health policy since no single umbrella agency has authority for all health programs; and,

WHEREAS, North Carolina has been awarded funds from the Robert Wood Johnson Foundation to develop a comprehensive State health data plan to enhance the use of health data for policy decision-making and program management.

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

**Section 1. Establishment and Rescission.**

The Council on Health Policy Information ("the Council") is hereby established. Hunt Administration Executive Order 38 is hereby rescinded. This Council is the successor organization to that one.

**Section 2. Members of the Council.**

A. There shall be 37 members of the Council. The membership shall include the following persons or their designees:

- (1) State Health Director. DEHNR;
- (2) Governor's Advisor for Policy. Budget and Technology;
- (3) Director of the Division of Medical Assistance, DHR;
- (4) Director of the Office of State Planning, Office of the Governor;
- (5) State Budget Officer, Office of the Governor;
- (6) Director of the Office of Rural Health and Resources Development, DHR;
- (7) Director of the Division of Aging, DHR;
- (8) Director of the Division of Social Services, DHR;
- (9) Director of the Division of Facility Services, DHR;
- (10) Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse, DHR;
- (11) Chair of the State Health Coordinating Council, DHR;

- (12) Chair of the Commission for Health Services, DEHNR;
  - (13) Director of the Division of Maternal and Child Health, DEHNR;
  - (14) Executive Director of the North Carolina Health Care Reform Commission;
  - (15) Chair of the Minority Health Advisory Council, DEHNR;
  - (16) Director of the Health Policy Unit of the Cecil G. Sheps Center for Health Services Research, University of North Carolina at Chapel Hill;
  - (17) Director of the State Center for Health and Environmental Statistics, DEHNR;
  - (18) Two representatives of certified statewide data processors doing business in North Carolina, named by the Governor;
  - (19) Two representatives of private insurance companies doing business within North Carolina, named by the Governor;
  - (20) One member of the North Carolina House of Representatives, named by the Governor upon recommendation by the Speaker of the House;
  - (21) One member of the North Carolina State Senate, named by the Governor upon recommendation by the President Pro Tempore of the Senate;
  - (22) Commissioner of the Department of Insurance;
  - (23) Commissioner of the Department of Labor;
  - (24) President of the North Carolina Health Care Facilities Association;
  - (25) President of the North Carolina Association of Local Health Directors;
  - (26) President of the North Carolina Hospital Association;
  - (27) Executive Director of the North Carolina Association for Home Care;
  - (28) Executive Director of the North Carolina Association of Long-Term Care Facilities;
  - (29) President of the North Carolina Medical Society;
  - (30) President of the Old North State Medical Society;
  - (31) Director of the Duke University Center for Health Policy Research and Education;
  - (32) President of North Carolina Citizens for Business and Industry;
  - (33) President of the North Carolina Child Advocacy Institute;
  - (34) Executive Director of the North Carolina Partnership for Children, Inc.;
  - (35) Executive Director of the State Health Plan Purchasing Alliance Board.
- B. The Chair and Assistant Chair shall be selected

by the members of the Council. All members shall serve at the pleasure of the Governor. All vacancies shall be filled by the Governor.

**Section 3. Functions.**

A. The Council shall meet monthly or at the call of the Chair.

B. The Council shall submit to the Governor a State Health Data Plan which outlines:

(1) how North Carolina can further enhance data-based health policy-making through improved health statistics and information systems; and

(2) how best to institutionalize a process for collaborative health policy formulation and implementation.

C. To execute its responsibilities, the Council shall have the power to:

(1) collect existing program data and request additional data from public and private sources as needed;

(2) hold public hearings; and

(3) set up ad hoc committees.

**Section 4. Administration.**

A. Financial support for the Council shall be provided only through a grant from the Robert Wood Johnson Foundation, to be administered by DEHNR pursuant to the Executive Budget Act.

B. Members of the Council shall be reimbursed for necessary travel and subsistence expenses as authorized under state law. Funds for such expenses shall be made available from funds provided by the grant from the Robert Wood Johnson Foundation.

C. The continuation of this Executive Order, or any renewal or extension thereof, is dependent upon and subject to the availability of funds for the purposes set forth herein (See N.C.G.S. 143-34.2).

This Executive Order shall become effective immediately.

Done in Raleigh, North Carolina, this the 24th day of April 1996.



*A Notice of Rule-making Proceedings is a statement of subject matter of the agency's proposed rule making. The agency must publish a notice of the subject matter for public comment at least 60 days prior to publishing the proposed text of a rule. Publication of a temporary rule serves as a Notice of Rule-making Proceedings and can be found in the Register under the section heading of Temporary Rules. A Rule-making Agenda published by an agency serves as rule-making proceedings and can be found in the Register under the section heading of Rule-making Agendas. Statutory reference: G.S. 150B-21.2.*

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

**CHAPTER 10 - WILDLIFE RESOURCES  
COMMISSION**

*Notice of Rule-making Proceedings is hereby given by the NC Wildlife Resources Commission in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.*

**Citation to Existing Rules Affected by this Rule-Making:** 15A NCAC 10F .0302. Other rules may be proposed in the course of the rule-making process.

**Authority for the rule-making:** G.S. 75A-3; 75A-15

**Statement of the Subject Matter:** Local Water Safety Regulations/Town of Atlantic Beach

**Reason for Proposed Action:** Amend Rules to regulate boat speeds in congested areas by establishing no-wake zones.

**Comment Procedures:** The record will be open for receipt of written comments from June 3, 1996 through August 2, 1996. Such written comments must be delivered or mailed to the North Carolina Wildlife Resources Commission, 512 North Salisbury Street, Raleigh, North Carolina 27604-1188.

**TITLE 21 - OCCUPATIONAL LICENSING BOARDS**

**CHAPTER 60 - BOARD OF  
REFRIGERATION EXAMINERS**

*Notice of Rule-making Proceedings is hereby given by the State Board of Refrigeration Examiners in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.*

**Citation to Existing Rules Affected by this Rule-Making:** 21 NCAC 60 .0204, .0207, .0314. Other rules may be proposed in the course of the rule-making process.

**Authority for the rule-making:** G.S. 87-54; 87-57; 87-64

**Statement of the Subject Matter:** 21 NCAC 60 .0204 and .0207 describe the licensing examination and set out requirements to sit for the exam. 21 NCAC 60 .0314 regulates the manner in which the license may be used.

**Reason for Proposed Action:** 21 NCAC 60 .0204 and .0207 are proposed to be amended to establish requirements to sit for the transport refrigeration examination. 21 NCAC 60 .0314 is proposed to be amended to clarify circumstances under which a refrigeration contractor's license is required.

**Comment Procedures:** Any interested person may submit written comments on the proposed rules by mailing the comments to Barbara Hines, PO Box 10666, Raleigh, NC 27605, by August 2, 1996.

*This Section contains the text of proposed rules. At least 60 days prior to the publication of text, the agency must publish a notice of rule-making proceedings. The agency must accept comments on the proposed rule for at least 30 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. The required comment period is 60 days for a rule that has a substantial economic impact of at least five million dollars (\$5,000,000). Statutory reference: G.S. 150B-21.2.*

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

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the EHNHR - Commission for Health Services intends to amend rule cited as 15A NCAC 18A .2601. Notice of Rule-making Proceedings was published in 11:01 NCR 24.

**Proposed Effective Date:** April 1, 1997

A Public Hearing will be conducted at 1:30 p.m. on June 26, 1996 at the Archdale Building - Ground floor Hearing Room, 512 N. Salisbury St., Raleigh, NC.

**Reason for Proposed Action:** This rule revision is proposed so that the rule will concur with Legislative changes brought about in the 1995 Legislative Session. Also, an address change is necessary due to our recent move.

**Comment Procedures:** All persons interested in this matter is invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to Grady L. Balentine, Department of Justice, PO Box 629, Raleigh, NC 27602-0629. All written comments must be received by July 3, 1996. Persons who wish to speak at the hearing should contact Mr. Balentine at (919) 733-4618. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or proposed changes from staff pursuant to comments made during the public hearing process.

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

150B-21.2(f).

**Fiscal Note:** This Rule does not affect the expenditures or revenues of state or local government funds. This Rule does not have a substantial economic impact of at least five million dollars (\$5,000,000) in a 12-month period.

## CHAPTER 18 - ENVIRONMENTAL HEALTH

### SUBCHAPTER 18A - SANITATION

#### SECTION .2600 - SANITATION OF RESTAURANTS AND OTHER FOODHANDLING ESTABLISHMENTS

##### .2601 DEFINITIONS

The following definitions shall apply in the interpretation and enforcement of this Section:

- (1) "Approved" means determined by the Department to be in compliance with this Section. Food service equipment which meets National Sanitation Foundation standards or equal shall be considered as approved. The National Sanitation Foundation Commercial Food Service Equipment Standards are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Health, ~~1330 St. Mary's Street,~~ 2728 Capital Blvd., Raleigh, North Carolina. Copies may be obtained from NSF International, P.O. Box 13014, Ann Arbor, Michigan 48113-0140, at a cost of three hundred and twenty five dollars (\$325.00). Food which complies with requirements of the North Carolina Department of Agriculture or United States Department of Agriculture and the requirements of this Section shall be considered as approved.
- (2) "Catered elderly nutrition site" means an establishment or operation where food is served, but not prepared on premises, operated under the guidelines of the N.C. Department of Human Resources, Division of Aging.
- (3) "Commissary" means a food stand that services mobile food units and pushcarts. The commissary may or may not serve customers at the food stand's location.
- (4) "Department of Environment, Health, and Natural Resources" or "Department" means the North



- Carolina Department of Environment, Health, and Natural Resources. The term also means the authorized representative of the Department.
- (5) "Drink stand" means those establishments in which only beverages are prepared on the premises and are served in multi-use containers, such as glasses or mugs.
  - (6) "Eating and cooking utensils" means any kitchenware, tableware, glassware, cutlery, utensils, containers, or other equipment with which food or drink comes in contact during storage, preparation, or serving.
  - (7) "Employee" means any person who handles food or drink during preparation or serving, or who comes in contact with any eating or cooking utensils, or who is employed at any time in a room in which food or drink is prepared or served.
  - (8) "Food" means any raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.
  - (9) "Food stand" means those food service establishments which prepare or serve foods and which do not provide seating facilities for customers to use while eating or drinking. Establishments which only serve such items as dip ice cream, popcorn, candied apples, or cotton candy are not included.
  - (10) "Hermetically sealed container" means a container designed and intended to be secure against the entry of micro-organisms and to maintain the commercial sterility of its contents after processing.
  - (11) "Limited food service establishment" means a food service establishment as described in G.S. 130A-247(7). ~~which operates for a total of 60 days or less per year and more than 15 days per year.~~
  - (12) "Local Health Director" means the administrative head of a local health department or his authorized representative.
  - (13) "Mobile food unit" means a vehicle-mounted food service establishment designed to be readily moved.
  - (14) "Person" means any individual, firm, association, organization, partnership, business trust, corporation, or company.
  - (15) "Potentially hazardous food" means any food or ingredient, natural or synthetic, in a form capable of supporting the growth of infectious or toxigenic microorganisms, including *Clostridium botulinum*. This term includes raw or heat treated foods of animal origin, raw seed sprouts, and treated foods of plant origin. The term does not include foods which have a pH level of 4.6 or below or a water activity (Aw) value of 0.85 or less.
  - (16) "Private club" means a private club as defined in

G.S. 130A-247(2).

- (17) "Pushcart" means a mobile piece of equipment or vehicle which serves hot dogs or foods which have been prepared, pre-portioned, and individually pre-wrapped at a restaurant or commissary.
- (18) "Responsible person" means the individual present in a food service establishment who is the apparent supervisor of the food service establishment at the time of inspection. If no individual is the apparent supervisor, then any employee is the responsible person.
- (19) "Restaurant" means all establishments and operations where food is prepared or served at wholesale or retail for pay, or any other establishment or operation where food is prepared or served that is subject to the provisions of G.S. 130A-248. The term does not include establishments which only serve such items as dip ice cream, popcorn, candied apples, or cotton candy.
- (20) "Sanitarian" means a person authorized to represent the Department on the local or state level in making inspections pursuant to state laws and rules.
- (21) "Sanitize" means the approved bactericidal treatment by a process which meets the temperature and chemical concentration levels in 15A NCAC 18A .2619.
- (22) "Sewage" means the liquid and solid human body waste and liquid waste generated by water-using fixtures and appliances, including those associated with foodhandling. The term does not include industrial process wastewater or sewage that is combined with industrial process wastewater.
- (23) "Single service" means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping materials, toothpicks, and similar articles intended for one-time, one person use and then discarded.
- (24) "Temporary food establishment" means those food or drink establishments which operate for a period of 15 days or less, in connection with a fair, carnival, circus, public exhibition, or other similar gathering.

Authority G.S. 130A-248.

## TITLE 19A - DEPARTMENT OF TRANSPORTATION

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Transportation intends to adopt rules cited as 19A NCAC 02D .1101 - .1112. Notice of Rule-making Proceedings was published in 10:23 NCR 2957.

Proposed Effective Date: April 1, 1997

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

**Reason for Proposed Action:** Pursuant to G.S. 136.28.4, the Department is adopting rules to administer the DBE-MBE-WBE Programs which are currently operational in the Division of Highways.

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

**Fiscal Note:** These Rules do not affect the expenditures or revenues of state or local government funds. These Rules do not have a substantial economic impact of at least five million dollars (\$5,000,000) in a 12-month period.

## CHAPTER 2 - DIVISION OF HIGHWAYS

### SUBCHAPTER 2D - HIGHWAYS OPERATIONS

#### SECTION .1100 - DISADVANTAGED BUSINESS ENTERPRISE, MINORITY BUSINESS ENTERPRISE AND WOMEN BUSINESS ENTERPRISE PROGRAMS FOR HIGHWAY AND BRIDGE CONSTRUCTION CONTRACTS

##### .1101 PURPOSE

(a) The North Carolina Department of Transportation shall ensure that Disadvantaged Business Enterprises (DBE) have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds.

(b) The North Carolina Department of Transportation shall ensure that Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) have the maximum opportunity to participate in the performance of contracts financed with non-Federal funds.

Authority G.S. 136-28.4; 143B-348.

##### .1102 DEFINITIONS

For purposes of the rules in this Section, the following terms shall apply:

- (1) Socially and economically disadvantaged individual means a person who is a citizen or lawful permanent resident of the United States and who is:
  - (a) A Black American;
  - (b) A Hispanic American;

- (c) An Asian-Pacific American;
- (d) A Native American;
- (e) An Asian-Indian American;
- (f) A Woman;
- (g) A member of another group or an individual found to be economically and socially disadvantaged by the Small Business Administration under Section 8(a) of the Small Business Administration Act, as amended [15 U.S.C. 637(d)];
- (h) A member of another group, or an individual found to be economically and socially disadvantaged by the North Carolina Department of Transportation.

(2) Disadvantaged Business Enterprise (DBE) means a small business concern, as defined pursuant to Section 3 of the Small Business Act (15 U.S.C. 632) and implementing regulations which is:

- (a) Owned and controlled by one or more socially and economically disadvantaged individuals;
- (b) A firm which has been found to be socially and economically disadvantaged by the Small Business Act under the 8(a) program; or
- (c) A firm which has been certified as socially and economically disadvantaged by the North Carolina Department of Transportation except that such term shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has average annual gross receipts over the preceding three fiscal years in excess of fourteen million dollars (\$14,000,000) as adjusted by the Department for inflation.

(3) An Owned and Controlled Business means a business:

- (a) Which is at least 51 percent owned by one or more eligible individuals, or in case of a publicly owned business at least 51 percent of the stock is owned by one or more eligible individuals; and
- (b) Whose management and daily business operations are controlled by one or more of the eligible individuals who own it.

(4) Eligible Individual means a socially and economically disadvantaged individual as defined in this Rule on projects financed in whole or in part with Federal funds. On projects financed with non-Federal funds, eligible individual means a minority or woman individual as defined in this Rule.

(5) Eligible Firm means a firm owned and controlled by an eligible individual as defined in this Rule.

(6) An eligible manufacturer means a firm owned and controlled by an eligible individual that operates



or maintains a factory or establishment which produces on the premises the materials or supplies obtained by the contractor.

- (7) An eligible regular dealer means a firm that owns, operates, or maintains a store, warehouse, or other establishment in which materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be an eligible regular dealer, the firm must engage in, as its principal business and in its own name, the purchase and sale of products in question. A regular dealer in such items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns and operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this Rule.
- (8) Minority means a citizen or lawful permanent resident of the United States who is:
- (a) A Black American;
  - (b) A Hispanic American;
  - (c) An Asian-Pacific American;
  - (d) A Native American; or
  - (e) An Asian-Indian American.
- (9) Minority Business (MB) means a business firm which is owned and controlled by one or more minorities, except that such term shall not include any concern or group of concerns controlled by the same minority individual or individuals which has average annual gross receipts over the preceding three fiscal years in excess of fourteen million dollars (\$14,000,000) as adjusted by the Department for inflation.
- (10) Woman means a citizen or lawful permanent resident of the United States who is female.
- (11) Women Business (WB) means a business firm which is owned and controlled by one or more women, except that such term shall not include any concern or group of concerns controlled by the same female individual or individuals which has average annual gross receipts over the preceding three fiscal years in excess of fourteen million dollars (\$14,000,000) as adjusted by the Department for inflation.

*Authority G.S. 143B-348.*

### **.1103 CERTIFICATION OF FIRMS**

(a) Any Disadvantaged Business Enterprise, Minority Business Enterprise, or Women Business Enterprise firms wishing to participate in the goals programs of the Department shall be certified by the Department.

(b) The Department will conduct a certification review after it receives a completed Schedule A and checklist which is available at no cost from the Civil Rights and Business Development Section of the Contractual Services Unit, P.O.

Box 25201, Raleigh, NC, telephone 919-733-2300. The certification review shall be conducted in accordance with the Code of Federal Regulations, 49 CFR 23. The standards of eligibility shall be those prescribed by the Code of Federal Regulations, 49 CFR 23.53, which is hereby incorporated by reference including all subsequent amendments and editions. This publication is available at a cost of twenty-three dollars (\$23.00) from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington, DC 20402-9328, telephone 202-512-1800.

*Authority G.S. 136-28.4; 143B-348.*

### **.1104 ANNUAL RENEWAL OF CERTIFICATION**

(a) Each firm certified as a Disadvantaged Business Enterprise, Minority Business Enterprise, or Women Business Enterprise shall renew its certification annually. The annual review shall be conducted in accordance with the Code of Federal Regulations, 49 CFR 23.

(b) In the event a firm fails to renew its certification within 15 months of the issuance of its most recent certification, that firm's name shall be removed from the Department's Disadvantaged/Minority/Women Business Enterprise Directory which is published monthly and can be obtained at no cost from the Division of Highways, P.O. Box 25201, Raleigh, NC 27611, telephone 919-733-2300.

*Authority G.S. 143B-348.*

### **.1105 CHANGE IN OWNERSHIP OR CONTROL**

(a) At any time there is a change of ownership or control of a firm certified with the Department, that firm shall submit a revised Schedule A which is available at no cost from the Civil Rights and Business Development Section of the Contractual Services Unit, P.O. Box 25201, Raleigh, NC 27611, telephone 919-733-2300.

(b) The Department shall evaluate the firm using standards of eligibility as prescribed in the Code of Federal Regulations, 49 CFR 23.53.

*Authority G.S. 143B-348.*

### **.1106 DECERTIFICATION**

(a) Each firm certified with the Department shall at all times comply with the standards of eligibility as prescribed in 49 CFR 23.

(b) In the event the Department finds a firm in non-compliance with the standards of eligibility, that firm shall be decertified and its name removed from the Disadvantaged/Minority Business Enterprise Directory.

*Authority G.S. 143B-348.*

### **.1107 APPEALS OF DENIAL OF CERTIFICATION**

(a) Any firm which believes it has been wrongly denied certification or which believes it has been wrongly decerti-

fied may file an appeal of that denial to the Department's Director of Civil Rights, P.O. Box 25201, Raleigh, NC 27611, telephone 919-733-2300.

(b) The filed appeal must be received by the Director of Civil Rights within 20 calendar days of the notice of denial. Upon receipt of the appeal, the Director shall schedule a hearing for the firm with the Department's DBE Appeals Committee.

(c) If the denial of certification is upheld by the Appeals Committee, the firm may file a written appeal within 180 days of the initial denial with the U.S. Department of Transportation, 400 7th Street, S.W., Washington, DC 20590, telephone 202-336-1111, in accordance with the Code of Federal Regulations, 49 CFR 23.55.

Authority G.S. 143B-348.

#### .1108 GOALS

(a) For each highway or bridge construction project determined appropriate by the Department, a disadvantaged business enterprise goal or minority and women business enterprise goals shall be established. The goal or goals shall be prescribed in the project proposal as a percent of the bidder's bid price.

(b) The Contractor shall exercise all necessary and reasonable steps to ensure that eligible firms participate in at least the percentage of the contract as required by the project proposal.

Authority G.S. 136-28.4; 143B-348.

#### .1109 COUNTING PARTICIPATION TOWARD MEETING THE GOAL

(a) All bidders, at the time a bid proposal is submitted, shall also submit a listing of participation on the appropriate form, contained in the proposal, in order for the bid to be considered responsive. For a firm to be counted toward meeting the goal, the firm shall be certified by the Department as evidenced by a current letter of certification or by its listing on the current Disadvantaged/Minority/Women Business Enterprise Directory, which is published monthly by the department and is available at no cost from the Civil Rights & Business Development Section, P.O. Box 25201, Raleigh, NC 27611, telephone 919-733-2300.

(b) If a firm is determined to be an eligible firm and certified by the Department, the total dollar value of the participation provided by the firm shall be counted toward the goal. The total dollar value of participation by the certified firm shall be based upon unit or lump sum prices agreed upon by the prime contractor and the certified firm.

(c) The Contractor may count toward its appropriate goal a portion of the total dollar value of participation with a joint venture eligible under the standards of this Rule equal to the percentage of the ownership and control of the eligible partner in the joint venture.

(d) The Contractor may count toward its goal only the expenditures to the certified eligible firm that perform a

commercially useful function in the work of a contract. An eligible firm is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether an eligible firm is performing a commercially useful function, the Department shall evaluate the amount of work subcontracted, industry practices, and other relevant factors.

(e) A contractor may count toward its goal 60 percent of its expenditures for materials and supplies required to complete the contract and obtained from an eligible regular dealer, and 100 percent of such expenditures to an eligible manufacturer.

(f) A contractor may count toward its goal the following expenditures to eligible firms that are not manufacturers or regular dealers:

- (1) The fees and commissions charged for providing a bona fide service such as professional, technical, consultant, or managerial services and assistance in the procurement of essential personnel, facilities, equipment, or supplies required for the performance of the contract, provided that the fee or commission is determined by the Department to be reasonable and not excessive as compared to fees customarily allowed for similar services.
- (2) The fees charged for the delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the Department to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- (3) The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract provided that the fee or commission is determined by the Department to be reasonable and not excessive as compared with the fees customarily allowed for similar services.

(g) For a given contract line item or contracts financed with non-federal funds, the Contractor shall designate the goal to which the total dollar value of participation awarded to a firm owned and controlled by a minority woman shall be credited. The total dollar value for such firms shall be credited to one goal only and shall not be split or duplicated between the Minority Business or Women Business goals.

(h) On projects funded entirely with non-federal funds, should the contractor submit with his bid submittal participation in excess of the goal(s) by an amount equal to or greater than one thousand dollars (\$1,000), then the Department will place on deposit for future use by the contractor the amount of participation in excess of the goal(s). Separate accounts will be maintained by the Department for minority and women goals. The contractor may accumulate



excess participation for a period not to exceed 24 months.

*Authority G.S. 136-28.4; 143B-348.*

#### **.1110 NON-ATTAINMENT OF GOALS**

(a) When the low bidder fails to obtain the participation required to satisfy goals established in the project proposal, he shall submit information to demonstrate to the Department he has made sufficient reasonable good faith efforts to satisfy the goals. The submission shall be received by the Department on or prior to the date and time specified in the project proposal. The following factors will be evaluated by the Department prior to determining whether the contractor has demonstrated good faith efforts:

- (1) Whether the bidder attended any pre-bid meetings that were scheduled by the Department to inform eligible firms of subcontracting opportunities;
- (2) Whether the bidder provided written notice to a reasonable number of eligible firms that their interest in the contract was being solicited;
- (3) Whether the bidder followed up initial solicitations of interest by contacting eligible firms to determine with certainty they were interested;
- (4) Whether the bidder selected portions of the work to be performed by eligible firms in order to increase the likelihood of meeting the contract goals;
- (5) Whether the bidder provided interested eligible firms with adequate information about the plans, specifications, and requirements of the contract;
- (6) Whether the bidder negotiated in good faith with interested eligible firms not rejecting them as unqualified without sound reasons based on a thorough investigation of their capabilities;
- (7) Whether quotations were received from interested eligible firms but rejected as unacceptable without sound reasons why the quotations were considered unacceptable. For projects funded in whole or part with Federal funds, the fact that the DBE firm's quotation for the work is not the lowest quotation received shall not in itself be considered a sound reason for rejecting the quotation as unacceptable. Nothing in this Rule shall be construed to require the Contractor to accept unreasonable quotes in order to satisfy the goals;
- (8) Whether the bidder made efforts to assist interested eligible firms in obtaining any required insurance;
- (9) Whether the bidder specifically negotiated with subcontractors to assume part of the responsibility to meet the contract goals.

(b) In the event one bidder is the apparent low bidder on two projects within the same letting and located in the same geographic area of the state, as a part of the good faith effort, the Department shall consider allowing the bidder to combine participation in like goals programs as long as the overall goal value of both projects is achieved.

(c) In the event the apparent low bidder on a project funded entirely with non-federal funds fails to meet the goal(s) required by the proposal, he may as a part of his good faith effort, request the Department to consider the withdrawal of sufficient in-kind participation previously deposited by him in accordance with Rule .1109(h) of this Section to satisfy the goal(s) requirement.

(d) If the apparent low bidder fails to submit sufficient participation by eligible firms to satisfy the contract goals and upon determination by the Department based upon the information submitted that the apparent lowest responsive bidder failed to make sufficient reasonable efforts to meet the contract goals, the Board of Transportation may reject the bid.

(e) In the event the Board of Transportation does not award the contract to the lowest responsive bidder, the Board of Transportation may award the contract to the next lowest responsive bidder that can satisfy the Department that the contract goals have been met or demonstrated a reasonable good faith effort to do so.

*Authority G.S. 136-28.4; 143B-348.*

#### **.1111 PERFORMANCE RELATED REPLACEMENT OF ELIGIBLE FIRMS**

The Department may allow replacement of an eligible firm for the following performance related reasons:

- (1) If an eligible firm listed by the contractor and submitted at the time of bidding does not perform in a satisfactory manner, the contractor shall make all necessary, reasonable efforts to replace the eligible firm with another eligible firm in the same category as the firm originally submitted.
- (2) Any substitution of eligible firms after award of the contract must be approved by the Department. The contractor shall submit any requests for substitutions through the Resident Engineer, and the request must provide the basis or reason for the proposed substitution.
- (3) To demonstrate necessary, reasonable efforts, the contractor shall document the steps he has taken to replace eligible firms with other eligible firms. Such documentation shall include but not be limited to the following:
  - (a) Copies of written notification to eligible firms that their interest is solicited in subcontracting the work defaulted by the previous subcontractor or in subcontracting other work in the contract;
  - (b) Efforts to negotiate with eligible firms for specific sub-bids including at a minimum:
    - (i) The names, addresses, and telephone numbers of eligible firms that were contacted;
    - (ii) A description of the information provided eligible firms regarding the plans and specifications for portions

- of the work to be performed;
- (c) A statement of why additional agreements with eligible firms were not reached;
  - (d) For each eligible firm rejected as unqualified, the reasons for the contractor's conclusion; and
  - (e) Efforts made to assist the eligible firms contacted, if needed in obtaining bonding or insurance required by the contractor.
- (4) Failure of the contractor to demonstrate reasonable efforts to replace an eligible firm with another eligible firm shall be just cause to disqualify the contractor from further bidding for a period of up to six months after notification by certified mail.

Authority G.S. 136-28.4; 143B-348.

#### **.1112 REPLACEMENT OF AN ELIGIBLE FIRM REMOVED BY DECERTIFICATION**

The Department may allow replacement of an eligible firm under the following conditions:

- (1) If the Department has approved a Request For Subcontract for a particular eligible firm, and that eligible firm is subsequently decertified by the Department, the Department shall not require the prime contractor to solicit replacement participation equal to the remaining work to be performed by the certified firm.
- (2) If a prime contractor has a listed eligible firm in his low bid submittal and that firm is decertified prior to the Department approving a Request for Subcontract for the named eligible firm, the prime contractor shall be required to make a good faith effort in accordance with Rule .1111(3) of this Section to:
  - (a) Replace the decertified firm with a certified firm; or
  - (b) Obtain replacement participation in other areas of the work.

Authority G.S. 136-28.4; 143B-348.

\*\*\*\*\*

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Transportation intends to adopt rules cited as 19A NCAC 06B .0401 - .0417. Notice of Rule-making Proceedings was published in 10:23 NCR 2957.

**Proposed Effective Date:** April 1, 1997

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

Raleigh, NC 27611. The demand must be received within 15 days of this Notice.

**Reason for Proposed Action:** Pursuant to G.S. 136-44.36, the Department is adopting rules to administer the Rail Industrial Access Program which is currently operational.

**Comment Procedures:** Any interested person may submit written comments on the proposed rules by mailing the comments to Emily Lee, Department of Transportation, P.O. Box 25201, Raleigh, NC 27611, within 30 days after the proposed rules are published.

**Fiscal Note:** These Rules affect the expenditure or distribution of State funds subject to the Executive Budget Act, Article 1 of Chapter 143. These Rules do not have a substantial economic impact of at least five million dollars (\$5,000,000) in a 12-month period.

### **CHAPTER 6 - DEPUTY SECRETARY - TRANSIT, RAIL, AND AVIATION**

#### **SUBCHAPTER 6B - PUBLIC TRANSPORTATION AND RAIL DIVISION**

#### **SECTION .0400 - RAIL INDUSTRIAL ACCESS PROGRAM**

##### **.0401 DEFINITION OF PROGRAM**

For purposes of this Subchapter, the following definitions shall apply:

- (1) The term "Rail Industrial Access Program" or "RIAP" means the Department of Transportation program which provides funding to cover a portion of the costs of constructing or rehabilitating railroad industrial access tracks to serve a new or expanded industry.
- (2) "Department" means the North Carolina Department of Transportation.
- (3) "Grantee" means the entity which receives a RIAP grant from DOT.
- (4) "Project" means the construction of a spur track and related facilities under the RIAP.

Authority G.S. 136-44.36; 143B-350(f) and (g).

##### **.0402 IDENTIFYING INFORMATION**

Information related to RIAP may be obtained from:

Director, Rail Division  
N.C. DOT  
P.O. Box 25201  
1 South Wilmington Street  
Raleigh, NC 27611  
Telephone 919-733-4713

Authority G.S. 136-44.36; 143B-350(f) and (g).



**.0403 FUNDING RECIPIENTS**

The following organizations shall be eligible to apply for Rail Industrial Access Funding:

- (1) Municipal and county governments;
- (2) Non-profit or for-profit community development organizations;
- (3) Railroads; and
- (4) Industries.

*Authority G.S. 136-44.36; 143B-350(f) and (g).*

**.0404 ELIGIBLE COSTS**

Costs eligible for RIAP funding are as follows:

- (1) Site preparation, including grading and drainage;
- (2) Track construction;
- (3) Switches; and
- (4) Grade crossings and signals.

*Authority G.S. 136-44.36; 143B-350(f) and (g).*

**.0405 INELIGIBLE COSTS**

Costs which are not eligible for RIAP program costs are as follows:

- (1) Engineering;
- (2) Relocation of utilities;
- (3) Acquisition of rights of way; and
- (4) Rail dock.

*Authority G.S. 136-44.36; 143B-350(f) and (g).*

**.0406 APPLICATION**

Candidates for RIAP funding shall complete and submit a funding application to the Department of Transportation. Copies of the application may be obtained from:

Director, Rail Division

North Carolina Department of Transportation

P.O. Box 25201

1 South Wilmington Street

Raleigh, NC 27611

Telephone 919-733-4713

*Authority G.S. 136-44.36; 143B-350(f) and (g).*

**.0407 COUNTY AND CITY CERTIFICATION**

An applicant shall provide a certified copy of the resolution of support from the county and city government (if applicable) to the Department. An interim letter of support may be accepted pending receipt of a formal resolution.

*Authority G.S. 136-44.36; 143B-350(f) and (g).*

**.0408 REQUIRED EASEMENT CERTIFICATIONS**

A property easement certification shall be provided by the applicant with the completed application that provides written assurance that all required easements have or will be obtained.

*Authority G.S. 136-44.36; 143B-350(f) and (g).*

**.0409 INDUSTRY CERTIFICATION**

The industry shall certify that it will provide the jobs and rail traffic (carloads) indicated in the project application.

*Authority G.S. 136-44.36; 143B-350(f) and (g).*

**.0410 APPLICATION EVALUATION**

The Department shall evaluate the following when recommending rail projects to the Board of Transportation for approval:

- (1) Employment created in first two years;
- (2) Capital investment in first two years;
- (3) Annual rail traffic;
- (4) Whether the project is located in a county designated as distressed by the North Carolina Department of Commerce as defined in G.S. 143B-437(b) or is eligible to receive Appalachian Regional Commission funding;
- (5) Whether the project is served by a shortline railroad; and
- (6) Impact on local or regional income or economic development.

*Authority G.S. 136-44.36; 143B-350(f) and (g).*

**.0411 ALLOCATION OF FUNDING**

(a) After evaluation of public benefits, including new employment and capital investment and funding available, the Department may award up to a maximum 50% of total project costs. Except as provided in Paragraph (b) of this Rule, a project shall receive no more than 20% of the annual budgeted funding for the RIAP in any fiscal year.

(b) The North Carolina Board of Transportation may approve funding above the maximum for individual projects based on the following criteria:

- (1) Comparison of project costs, benefits, and grantee resources; and
- (2) Availability of funding.

*Authority G.S. 136-44.36; 143B-350(f) and (g).*

**.0412 PROCUREMENTS**

All procurements shall be handled as follows:

- (1) Procurements shall be conducted through formal, competitive bidding;
- (2) Prior to advertising for bids, the Grantee shall submit the request for bids to the Department for review and approval;
- (3) The Grantee shall solicit bids from at least three firms;
- (4) The Grantee shall submit to the Department a certified tabulation of the bids received and a recommendation for bid award;
- (5) The Department shall review and approve the bid prior to the execution of a contract between the

Grantee and the selected bidder. The Grantee shall submit the following information when requesting bid approval:

- (a) Bid list;
- (b) Copy of proposed contract;
- (c) Certified tabulation of bids results;
- (d) Copy of signed bid submitted by the recommended bidder; and

- (6) After the Department approves a contract award, the Grantee shall submit a copy of the executed contract to the Department.

*Authority G.S. 143-129; 143B-350(f) and (g); 136-44.36.*

#### **.0413 REQUESTS FOR REIMBURSEMENT**

- (a) The Grantee may submit requests for reimbursement to the Department no more than once a month.
- (b) The Grantee shall submit monthly progress reports.
- (c) The Grantee shall submit invoices to the Department at the following address:

Grants Administrator  
Public Transportation and Rail Divisions  
North Carolina Department of Transportation  
P.O. Box 25201  
Raleigh, NC 27611

The Grantee shall submit invoices in the same format and detail as cost items appear in the project bid and construction contracts.

- (d) The Grantee shall indicate on invoices the total costs for the invoiced period and specify the current amount due.
- (e) The Department shall examine requests for reimbursement to verify that costs are necessary to accomplish the project and within the scope of the project as described in the approved project budget.

*Authority G.S. 143B-350(f) and (g).*

#### **.0414 RETAINAGE**

The Department may withhold a retainage of 10 percent of the approved payment amount until the project is completed and accepted and the final audit has been conducted.

*Authority G.S. 143B-350(f) and (g).*

#### **.0415 OWNERSHIP AND MAINTENANCE RESPONSIBILITY**

- (a) Once constructed, all rail industrial access tracks shall be owned by the Grantee or by the industry served.
- (b) After construction, the track owner shall be responsible for maintaining the project tracks.

*Authority G.S. 136-44.36; 143B-350(f) and (g).*

#### **.0416 REPORTING REQUIREMENTS**

The grant recipient shall report to the Department as follows:

- (1) After each of the first two years following com-

pletion, the grant recipient shall provide information verifying the industry's employment as indicated in the project application and industry certification;

- (2) For the first five years following project completion, the grant recipient shall provide verification of the industry's rail use as indicated in the project application and industry certification.

*Authority G.S. 136-44.36; 143B-350(f) and (g).*

#### **.0417 REPAYMENT**

(a) If the project tracks are abandoned, relocated, or sold without a grant assignment, the track owner shall repay the Department its contribution to the cost of construction and materials less depreciation.

(b) The Grantee may be required to repay the Department if:

- (1) During the first five years rail use falls below the goal levels specified in the industry certification;
- (2) Job goals (as specified in the industry certification) for the first two years are not met.

*Authority G.S. 136-44.36; 143B-350(f) and (g).*

*The Codifier of Rules has entered the following temporary rule(s) in the North Carolina Administrative Code. Pursuant to G.S. 150B-21.1(e), publication of a temporary rule in the North Carolina Register serves as a notice of rule-making proceedings unless this notice has been previously published by the agency.*

## TITLE 2 - DEPARTMENT OF AGRICULTURE

**Rule-making Agency:** *North Carolina Board of Agriculture*

**Rule Citation:** 2 NCAC 9C .0701 - .0702, .0704

**Effective Date:** *May 13, 1996*

**Findings Reviewed by Julian Mann, III:** *Approved*

**Authority for the rule-making:** *G.S. 106-139*

**Reason for Proposed Action:** *To remove portions of rules which have been preempted by federal rules.*

**Comment Procedures:** *Written comments may be submitted no later than August 2, 1996, to David S. McLeod, Secretary, Board of Agriculture, PO Box 27647, Raleigh, NC 27611.*

## CHAPTER 9 - FOOD AND DRUG PROTECTION DIVISION

### SUBCHAPTER 9C - CURRENT GOOD MANUFACTURING PRACTICES FOR SPECIFIC FOOD INDUSTRIES

#### SECTION .0700 - BOTTLED WATER

##### .0701 SCOPE

(a) The source approval requirements of this Section apply to bottled water sources located within the state. Bottled water from sources located outside the state must comply with the source approval requirements of Title 21, Code of Federal Regulations, Part 129, which is adopted by reference in 2 NCAC 9B .0016(f)(15).

~~(b) The labeling requirements of this Section apply to bottled water offered for sale in the state.~~

*History Note: Authority G.S. 106-139;  
Eff. April 1, 1992;  
Temporary Amendment Eff. May 13, 1996.*

##### .0702 DEFINITIONS

For the purposes of this Section:

- (1) "Approved source" when used in reference to a plant's product or operations water, means a source of water and the water therefrom, whether it be from a spring, well, municipal water supply, or any other source that has been

approved by the Department of Agriculture's designated representative, the Department of Environment, Health, and Natural Resources, Environmental Health Division, Public Water Supply Section in accordance with this Section;

- (2) "Spring" means a natural orifice in the earth's surface through which water freely flows without the aid of mechanical means;
- (3) "Well" means a hole that is cored, bored, drilled, jetted, dug or otherwise constructed so as to tap an aquifer through which water is derived by mechanical means. ~~If the water rises to the surface on its own without aid of mechanical means due to hydrostatic pressure, the well would be an artesian well.~~

*History Note: Authority G.S. 106-139;  
Eff. April 1, 1992;  
Temporary Amendment Eff. May 13, 1996.*

##### .0704 LABELING

~~Bottled water which uses the word "spring" or "well" in its labeling to describe the product, other than in a trade name or company name, shall be deemed to be misbranded unless the source of such water conforms to the definitions of those terms in Rule .0702 of this Section.~~

*History Note: Authority G.S. 106-139;  
Eff. April 1, 1992;  
Temporary Repeal Eff. May 13, 1996.*



*This Section includes the Register Notice citation to Rules approved by the Rules Review Commission (RRC) at its meeting of May 16, 1996 pursuant to G.S. 150B-21.17(a)(1) and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules are published below when the rules have been approved by RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register. The rules published in full text are identified by an \* in the listing of approved rules. Statutory reference: G.S. 150B-21.17.*

*These rules will become effective on the 31st legislative day of the 1997 Regular Session of the General Assembly or a later date if specified by the agency unless a bill is introduced before the 31st legislative day that specifically disapproves the rule. If a bill to disapprove a rule is not ratified, the rule will become effective either on the day the bill receives an unfavorable final action or the day the General Assembly adjourns. Statutory reference: G.S. 150B-21.3.*

#### APPROVED RULE CITATION

11	NCAC	12	.0551 *
11	NCAC	16	.0703
16	NCAC	01A	.0001 *
16	NCAC	01A	.0003 *
17	NCAC	05C	.2101 *

#### REGISTER CITATION TO THE NOTICE OF TEXT

10:22 NCR 2831  
 10:22 NCR 2832  
 Not Required, G.S. 150B-21.5(a)(2)  
 Not Required, G.S. 150B-21.5(b)(1)  
 10:24 NCR 3059

### TITLE 11 - DEPARTMENT OF INSURANCE

### CHAPTER 12 - LIFE AND HEALTH DIVISION

#### SECTION .0500 - ACCIDENT AND HEALTH: GENERAL NATURE

#### .0551 CANCER INSURANCE REQUIREMENTS

Cancer policy requirements. Cancer policies approved in this State ~~must~~ shall comply with the following ~~items~~:

- (1) The policy ~~must~~ shall have a pre-existing conditions sticker that complies with 11 NCAC 12 .0543 and reads as follows: NO RECOVERY FOR PRE-EXISTING DIAGNOSED CANCER - READ CAREFULLY No benefits will be provided during the first ~~two years~~ 12 months of the policy for cancer diagnosed ~~prior to~~ before the 30th day ~~following~~ after the effective date shown in the policy schedule.
- (2) In the definition of cancer, clinical diagnosis of cancer ~~must~~ shall be accepted as evidence that cancer exists in an insured when a pathological diagnosis cannot be made, provided ~~such~~ the medical evidence substantially documents the diagnosis of cancer and the insured received definitive treatment for cancer. ~~Whenever~~ If the requisite pathological clinical diagnosis can only be made postmortem, liability ~~should~~ shall be assumed retroactively beginning with the date of the terminal admission to the hospital for ~~no~~ not less than 45 days ~~prior to~~ before the date of death.

- (3) A cancer policy ~~cannot~~ shall not have a waiting period any longer than 30 days ~~from~~ after the effective date.
- (4) Benefits ~~must~~ shall be provided for unrelated cancers diagnosed after the effective date of the policy.
- (5) Under the benefits provisions of the policy, provided the contract offers these benefits, ~~our~~ the minimum standards are as follows:
  - (a) Benefits for blood and ~~plasma plasma~~ the ~~benefits should~~ shall cover actual charges incurred, including fees for administering the blood.
  - (b) The ~~word term~~ "In-patient" ~~should~~ shall precede ~~the words~~ "drugs" and "medicines" ~~drugs and medicines~~ if the policy is an in-hospital indemnity contract or does not provide out-patient benefits.
  - (c) Ambulance benefits ~~should~~ shall include transportation from one medical facility to another.
  - (d) First diagnosed or first occurrence cancer benefits shall be no less favorable than other generally offered cancer benefits and shall be offered in addition to core benefits.
- (6) Cancer coverage may include other diseases or conditions; provided, however, it ~~must~~ shall be properly labeled -- CANCER AND SPECIFIED DISEASE(S).
- (7) Cancer and dread disease policies are defined as "Medical Expense" policies ~~in regard to~~ for the purposes of loss ratio requirements as set forth in



the NAIC guidelines.

*History Note:* Authority G.S. 58-2-40; 58-51-1; 58-51-95;  
Eff. July 1, 1986;  
Amended Eff. April 1, 1997; April 1, 1989.

## TITLE 16 - DEPARTMENT OF PUBLIC EDUCATION

### CHAPTER 1 - DEPARTMENTAL RULES

#### SUBCHAPTER 1A - ORGANIZATIONAL RULES

##### **.0001 DEFINITIONS**

As used in this Title:

- (1) "Basic Education Program" (BEP) means that comprehensive program developed by the SBE and implemented by each LEA in accordance with the provisions of G.S. 115C-81.
- (2) "Certificate" means that document issued by the Department to professional public school employees that indicates that they have met the minimum criteria for serving in a professional position.
- (3) "Certificate of attendance" means that document issued by LEAs to students pursuant to 16 NCAC 6D .0103(a).
- (4) "Department" means the Department of Public Education- Instruction.
- (5) "Graduation certificate" means that document issued by LEAs to students pursuant to 16 NCAC 6D .0103(c).
- (6) "Local Education Agency" (LEA) means local board of education. As used in 16 NCAC 6H .0005 - .0010, LEA includes the Departments of Human Resources and Correction.
- (7) "State Board of Education" (SBE) means the head of the Department of Public Education- Instruction.
- (8) "Superintendent" means the Superintendent of Public Instruction.

*History Note:* Authority N.C. Constitution, Article IX, Section 5;  
Eff. February 1, 1976;  
Amended Eff. April 1, 1997; January 1, 1993; August 1, 1991; July 1, 1986.

##### **.0003 ORGANIZATION OF DEPARTMENT**

The department is organized according to its statement of organization which it adopts in accordance with G.S. 150B-10. The public may obtain a copy of the statement of organization by writing the Department at 114 West Edenton Street, Raleigh, North Carolina 27603-1712 or by contacting the Office of Administrative Hearings.

*History Note:* Authority G.S. 115C-12(3); N.C. Constitu-

tion, Article IX, Sec. 5;  
Eff. July 1, 1986;  
Repealed Eff. April 1, 1997.

## TITLE 17 - DEPARTMENT OF REVENUE

### CHAPTER 5 - CORPORATE INCOME AND FRANCHISE TAX DIVISION

#### SUBCHAPTER 5C - CORPORATE INCOME TAX

#### SECTION .2100 - DISSOLUTIONS AND WITHDRAWALS

##### **.2101 DISSOLUTIONS/FILING REQUIREMENT**

~~The "Business Corporation Act" provides for an administrative and a voluntary dissolution of corporations.~~

- (1) ~~Voluntary Dissolution~~ A corporation is dissolved immediately upon the effective date of filing the articles of dissolution with the Secretary of State. Although a tax clearance is no longer a part of the Secretary of State's voluntary dissolution process, this in no way relieves the corporation of its liability to file all tax reports and returns due and pay all taxes due the Department of Revenue. The Department will continue to notify a corporation of any unfulfilled tax requirements. After the end of the end of the year in which dissolution occurs, a dissolved corporation is not subject to the annual franchise tax unless the corporation engages in business activities not appropriate to winding up and liquidating its business and affairs.

- (2) ~~Administrative Dissolution~~ The Secretary of State may administratively dissolve corporations for various non-compliance reasons, one of the most common reasons being the failure of a corporation to file its annual report to the Secretary of State. Once this dissolution occurs, the corporation may apply to the Secretary of State for reinstatement within two years after the date of dissolution. This application must contain a certificate from the Department of Revenue stating that all taxes owed by the corporation have been paid. The request for the "certificate of good standing" must be in writing and signed by an officer of the corporation. The request shall be directed to the Office Examination Division of the Department of Revenue.

(a) A corporation that has been voluntarily dissolved pursuant to G.S. 55-14-01 shall file all tax reports and returns due and pay all taxes due the Department of Revenue. The Department shall notify such corporation of any unfulfilled tax requirements. After the end of the year in which the dissolution occurs, a dissolved corporation shall not be subject to the annual franchise tax unless the corpora-

tion engages in business activities not appropriate to winding up and liquidating its business affairs.

(b) A corporation that has been administratively dissolved pursuant to G.S. 55-14-21 shall file all reports and returns due and pay all taxes due the Department.

*History Note: Authority G.S. 55-14-01; 55-14-20; 105-130.16; 105-262;*

*Eff. February 1, 1976;*

*Amended Eff. April 1, 1997; January 1, 1995; January 1, 1994; November 1, 1991; April 1, 1991.*

*This Section contains the agenda for the next meeting of the Rules Review Commission on Thursday, June 20, at 10:00 a.m. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners by Monday, June 17, at 5:00 p.m. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Any one wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.*

**RULES REVIEW COMMISSION MEMBERS**

**Appointed by Senate**

Vernice B. Howard  
Teresa L. Smallwood  
Charles H. Henry  
Philip O. Redwine - Vice Chairman

**Appointed by House**

Jennie J. Hayman - Chairman  
Bill Graham  
Paul Powell  
Ed Shelton

**RULES REVIEW COMMISSION MEETING DATES**

June 20, 1996  
July 18, 1996  
August 15, 1996  
September 19, 1996

October 17, 1996  
November 21, 1996  
December 19, 1996

**MEETING DATE: JUNE 20, 1996**

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**FOLLOW UP MATTERS FROM PREVIOUS MEETING:**

**Medical Board -** 21 NCAC 32H .0702

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**LOG OF FILINGS**

**RULES SUBMITTED: APRIL 20, 1996 THROUGH MAY 20, 1996**

AGENCY/DIVISION	RULE NAME	RULE	ACTION
<b>DHR/DIVISION OF MEDICAL ASSISTANCE</b>			
	Notice of Estate Recovery	10 NCAC 50D .0101	Adopt
	Permanently Institutionalized	10 NCAC 50D .0102	Adopt
	Ages 55 and Over	10 NCAC 50D .0103	Adopt
	Reconsideration Review	10 NCAC 50D .0201	Adopt
	Permanently Institutionalized	10 NCAC 50D .0301	Adopt
	Ages 55 and Over	10 NCAC 50D .0302	Adopt
	Filing Claim	10 NCAC 50D .0401	Adopt
	Collection of Claims	10 NCAC 50D .0402	Adopt
	Recovery Not Cost Effective	10 NCAC 50D .0501	Adopt
	Undue Hardship	10 NCAC 50D .0502	Adopt
	Determination of Undue Hardship	10 NCAC 50D .0503	Adopt
<b>DEHNR/ENVIRONMENTAL MANAGEMENT COMMISSION</b>			
	Neuse River Basin	15A NCAC 2B .0315	Amend
	Definitions	15A NCAC 2D .0101	Amend
	Compliance with Emission Standards	15A NCAC 2D .0501	Amend
	Sulfur Dioxide Emissions	15A NCAC 2D .0516	Amend
	Miscellaneous Volatile Emissions	15A NCAC 2D .0518	Amend

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Control of Nitrogen Dioxide	15A NCAC 2D .0519	Amend
Control and Prohibition	15A NCAC 2D .0520	Repeal
Control of Visible Emissions	15A NCAC 2D .0521	Amend
New Source	15A NCAC 2D .0524	Amend
National Emission Standards	15A NCAC 2D .0525	Repeal
Sources	15A NCAC 2D .0531	Amend
Excess Emissions	15A NCAC 2D .0535	Amend
Control of Mercury Emissions	15A NCAC 2D .0537	Amend
Odor Control	15A NCAC 2D .0539	Adopt
Purpose and Scope	15A NCAC 2D .0601	Amend
Sources Covered	15A NCAC 2D .0604	Amend
Program Schedule	15A NCAC 2D .0608	Amend
Airport Facilities	15A NCAC 2D .0804	Amend
Parking Facilities	15A NCAC 2D .0805	Amend
Definitions	15A NCAC 2D .0901	Amend
Applicability	15A NCAC 2D .0902	Amend
Automobile	15A NCAC 2D .0917	Amend
Can Coating	15A NCAC 2D .0918	Amend
Coil Coating	15A NCAC 2D .0919	Amend
Paper Coating	15A NCAC 2D .0920	Amend
Fabric and Vinyl Coating	15A NCAC 2D .0921	Amend
Metal Furniture Coating	15A NCAC 2D .0922	Amend
Surface Coating	15A NCAC 2D .0923	Amend
Magnet Wire Coating	15A NCAC 2D .0924	Amend
Bulk Gasoline Plants	15A NCAC 2D .0926	Amend
Bulk Gasoline Terminals	15A NCAC 2D .0927	Amend
Gasoline Service Stations	15A NCAC 2D .0928	Amend
Petroleum Refinery Sources	15A NCAC 2D .0929	Repeal
Coating	15A NCAC 2D .0934	Amend
Factory Surface Coating	15A NCAC 2D .0935	Amend
Manufacture of Rubber Tires	15A NCAC 2D .0937	Amend
Miscellaneous Volatile Emissions	15A NCAC 2D .0951	Amend
Vapor Return Piping	15A NCAC 2D .0953	Amend
Stage II Vapor Recovery	15A NCAC 2D .0954	Amend
Case-by-Case Maximum	15A NCAC 2D .1109	Amend
National Emission Standards	15A NCAC 2D .1110	Adopt
Maximum Control Technology	15A NCAC 2D .1111	Adopt
Definitions	15A NCAC 2D .1202	Amend
Reporting	15A NCAC 2D .1204	Amend
Emission Standards	15A NCAC 2D .1205	Amend
Operational Standards	15A NCAC 2D .1206	Amend
Purpose	15A NCAC 2D .1901	Adopt
Definitions	15A NCAC 2D .1902	Adopt
Permissible Open Burning	15A NCAC 2D .1903	Adopt
Air Curtain Burners	15A NCAC 2D .1904	Adopt
Regional Office Locations	15A NCAC 2D .1905	Adopt
Delegation	15A NCAC 2D .1906	Adopt
Permit Requirements	15A NCAC 2H .0610	Amend
Definitions	15A NCAC 2Q .0103	Amend
Compliance Schedule	15A NCAC 2Q .0109	Amend
Applicability	15A NCAC 2Q .0201	Amend
Definitions	15A NCAC 2Q .0202	Amend
Permit & Application Fees	15A NCAC 2Q .0203	Amend
Inflation Adjustment	15A NCAC 2Q .0204	Amend
Annual Emissions Reporting	15A NCAC 2Q .0207	Amend
Facilities	15A NCAC 2Q .0302	Amend
Permitting of Facilities	15A NCAC 2Q .0311	Amend



Purpose of Section	15A NCAC 2Q .0501	Amend
Applicability	15A NCAC 2Q .0502	Amend
Definitions	15A NCAC 2Q .0503	Amend
Application	15A NCAC 2Q .0507	Amend
Permit Content	15A NCAC 2Q .0508	Amend
Case-by-Case MACT Procedures	15A NCAC 2Q .0526	Adopt

**DEHNR/COMMISSION FOR HEALTH SERVICES**

Definitions	15A NCAC 18A .2701	Amend
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**NC BOARD OF PHARMACY**

Office of the Board	21 NCAC 46 .1204	Amend
Examination	21 NCAC 46 .1505	Amend
Pharmacy Permits	21 NCAC 46 .1601	Amend
License by Reciprocity	21 NCAC 46 .1602	Amend
Out-of-State Pharmacies	21 NCAC 46 .1607	Amend
Excessive Dispensing	21 NCAC 46 .1811	Adopt
Certificate of Experience	21 NCAC 46 .1910	Repeal
Committee on Nominations	21 NCAC 46 .2104	Amend
Drugs and Devices	21 NCAC 46 .2403	Amend
Responsibilities	21 NCAC 46 .2502	Amend
Patient Counseling	21 NCAC 46 .2504	Amend

**NC PSYCHOLOGY BOARD**

Fees	21 NCAC 54 .1605	Amend
Issuance of License	21 NCAC 54 .1705	Amend
Certificate of Registration	21 NCAC 54 .2202	Amend
Renewal of Certificate	21 NCAC 54 .2203	Amend

**NC REAL ESTATE COMMISSION**

Agency Agreements	21 NCAC 58A .0104	Amend
Handling and Accounting	21 NCAC 58A .0107	Amend
Reporting Criminal Convictions	21 NCAC 58A .0113	Adopt
Filing and Fees	21 NCAC 58A .0302	Amend
Time and Place	21 NCAC 58A .0401	Amend
Subject Matter	21 NCAC 58A .0402	Amend
Business Entities	21 NCAC 58A .0502	Amend
License Renewal	21 NCAC 58A .0503	Amend
Active and Inactive	21 NCAC 58A .0504	Amend
Reinstatement	21 NCAC 58A .0505	Amend
Salesman to be Supervised	21 NCAC 58A .0506	Amend
Cancellation	21 NCAC 58A .0510	Adopt
Subpoenas	21 NCAC 58A .0610	Amend
Continuing Education	21 NCAC 58A .1702	Amend
Scope	21 NCAC 58C .0104	Amend
Course Scheduling	21 NCAC 58C .0305	Amend
Textbooks	21 NCAC 58C .0306	Amend
Real Estate Instructors	21 NCAC 58C .0307	Amend
Instructional Delivery Methods	21 NCAC 58C .0311	Adopt
Exception	21 NCAC 58C .0312	Adopt
Application	21 NCAC 58E .0203	Amend
Renewal of Approval	21 NCAC 58E .0204	Amend
Elective Course	21 NCAC 58E .0302	Amend
Criteria	21 NCAC 58E .0304	Amend
Instructional Delivery Methods	21 NCAC 58E .0310	Adopt
Course Completion Reporting	21 NCAC 58E .0406	Amend
Per Student Fee	21 NCAC 58E .0407	Amend

Renewal of Course	21 NCAC 58E .0411	Amend
Minimum Class Size	21 NCAC 58E .0503	Amend
Student Participation Standards	21 NCAC 58E .0511	Amend

**RULES REVIEW OBJECTIONS**

**ACUPUNCTURE LICENSING BOARD**

21 NCAC 1 .0709 - Procedure of Revocation of Licensure	RRC Objection	04/18/96
Agency Revised Rule	Obj. Removed	04/18/96

**AGRICULTURE**

**Pesticide Board**

2 NCAC 9L .1806 - Crop Advisor Exemption	RRC Objection	03/21/96
Agency Revised Rule	Obj. Removed	03/21/96

**AUCTIONEERS COMMISSION**

21 NCAC 4B .0202 - Filing and Fees	RRC Objection	03/21/96
Agency Revised Rule	Obj. Removed	03/21/96
21 NCAC 4B .0403 - Apprentice Auctioneer License	RRC Objection	03/21/96
Agency Revised Rule	Obj. Removed	03/21/96
21 NCAC 4B .0602 - Advertising	RRC Objection	03/21/96
Agency Revised Rule	Obj. Removed	03/21/96

**ENVIRONMENT, HEALTH, AND NATURAL RESOURCES**

**Coastal Resources Commission**

15A NCAC 7H .0208 - Use Standards	RRC Objection	03/21/96
Agency Revised Rule	Obj. Cont'd	03/21/96
Rule Returned to Agency	Obj. Cont'd	04/18/96
Agency Filed Rule for Codification Over RRC Objection	Eff.	05/01/96
15A NCAC 7H .2303 - Permit Fee	RRC Objection	05/16/96
Agency Revised Rule	Obj. Removed	05/16/96
15A NCAC 7H .2305 - Specific Conditions	RRC Objection	05/16/96
Agency Revised Rule	Obj. Removed	05/16/96

**Environmental Management**

15A NCAC 2B .0216 - Fresh Surface Water Quality Standards for Ws-iv Waters	RRC Objection	05/16/96
Agency Revised Rule	Obj. Removed	05/16/96
15A NCAC 2H .0219 - Minimum Design Requirements	RRC Objection	04/18/96
Rule Returned to Agency	Obj. Cont'd	05/16/96
Agency Filed Rule for Codification Over RRC Objection	Eff.	06/01/96

**Commission for Health Services**

15A NCAC 13B .1401 - Requirement for Permit	RRC Objection	04/18/96
Agency Revised Rule	Obj. Removed	04/18/96
15A NCAC 13B .1402 - General Provisions for SW Compost Facilities	RRC Objection	04/18/96
Agency Revised Rule	Obj. Removed	04/18/96
15A NCAC 13B .1404 - Siting/Design Requirements for SW Compost Facilities	RRC Objection	04/18/96
Agency Revised Rule	Obj. Removed	04/18/96
15A NCAC 13B .1405 - Application Requirements for SW Compost Facilities	RRC Objection	04/18/96
Agency Revised Rule	Obj. Removed	04/18/96
15A NCAC 13B .1406 - Operational Requirements for Solid Waste Compost Facilities	RRC Objection	04/18/96
Agency Revised Rule	Obj. Cont'd	04/18/96

# RULES REVIEW COMMISSION

<i>Rule Returned to Agency</i>	<i>Obj. Cont'd</i>	05/16/96
<i>Agency Filed Rule for Codification Over RRC Objection</i>	<i>Eff.</i>	06/01/96
15A NCAC 13B .1407 - Classification/Distribution of Solid Waste Compost Products	<i>RRC Objection</i>	04/18/96
<i>Agency Revised Rule</i>	<i>Obj. Cont'd</i>	04/18/96
<i>Rule Returned to Agency</i>	<i>Obj. Cont'd</i>	05/16/96
<i>Agency Filed Rule for Codification Over RRC Objection</i>	<i>Eff.</i>	06/01/96
15A NCAC 13B .1408 - Methods for Testing and Reporting Requirements	<i>RRC Objection</i>	04/18/96
<i>Agency Revised Rule</i>	<i>Obj. Cont'd</i>	04/18/96
<i>Rule Returned to Agency</i>	<i>Obj. Cont'd</i>	05/16/96
<i>Agency Filed Rule for Codification Over RRC Objection</i>	<i>Eff.</i>	06/01/96
15A NCAC 13B .1409 - Approval of Alternative Procedures and Requirements	<i>RRC Objection</i>	04/18/96
<i>Rule Returned to Agency</i>	<i>Obj. Cont'd</i>	05/16/96
<i>Agency Filed Rule for Codification Over RRC Objection</i>	<i>Eff.</i>	06/01/96
15A NCAC 18A .1723 - Springs	<i>RRC Objection</i>	04/18/96
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	04/18/96
15A NCAC 18A .1727 - Continuous Disinfection		
<i>Rule Withdrawn by Agency</i>		04/18/96
15A NCAC 18A .1805 - Inspection Forms		
<i>Rule Withdrawn by Agency</i>		04/18/96
<b>Wildlife Resources Commission</b>		
15A NCAC 10D .0003 - Hunting on Game Lands	<i>RRC Objection</i>	05/16/96
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	05/16/96
15A NCAC 10K .0001 - Course Requirements	<i>RRC Objection</i>	03/21/96
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	03/21/96
15A NCAC 10K .0003 - Instructor Certification Requirements		
<i>Rule Withdrawn by Agency</i>		03/21/96
<b>FEE-BASED PRACTICING PASTORAL COUNSELORS</b>		
21 NCAC 45 .0201 - Information Required	<i>RRC Objection</i>	02/15/96
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	03/21/96
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	04/18/96
21 NCAC 45 .0301 - Types	<i>RRC Objection</i>	02/15/96
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	03/21/96
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	04/18/96
21 NCAC 45 .0402 - Second Notice	<i>RRC Objection</i>	02/15/96
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	03/21/96
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	04/18/96
21 NCAC 45 .0501 - Continuing Education Requirements	<i>RRC Objection</i>	02/15/96
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	03/21/96
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	04/18/96
21 NCAC 45 .0601 - Equivalency	<i>RRC Objection</i>	02/15/96
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	03/21/96
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	04/18/96
21 NCAC 45 .0701 - Issuance of Temporary Certificate	<i>RRC Objection</i>	02/15/96
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	03/21/96
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	04/18/96
21 NCAC 45 .0802 - Types of Supervision	<i>RRC Objection</i>	02/15/96
<i>Agency Revised Rule</i>	<i>Obj. Cont'd</i>	02/15/96
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	03/21/96
<i>Rule Returned to Agency</i>	<i>Obj. Cont'd</i>	04/18/96
21 NCAC 45 .0901 - Requirements for Individual Psychotherapy Experience	<i>RRC Objection</i>	02/15/96
<i>Agency Revised Rule</i>	<i>Obj. Cont'd</i>	02/15/96
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	03/21/96
<i>Rule Returned to Agency</i>	<i>Obj. Cont'd</i>	04/18/96
21 NCAC 45 .1001 - Code of Ethics	<i>RRC Objection</i>	02/15/96



*No Response from Agency*  
*Rule Returned to Agency*

*Obj. Cont'd*                      03/21/96  
*Obj. Cont'd*                      04/18/96

**HEARING AID DEALERS AND FITTERS BOARD**

21 NCAC 22L .0001 - *Committee on Investigations*  
*RRC Reviewed Rule*  
*Agency Revised Rule*

*Extended Review*              01/18/96  
*RRC Objection*                02/15/96  
*Obj. Removed*                03/21/96

**HUMAN RESOURCES**

**Medical Care Commission**

10 NCAC 3C .5401 - *Definitions*  
*Agency Responded*  
*Rule Returned to Agency*

*RRC Objection*                01/18/96  
*Obj. Cont'd*                    02/15/96  
*Obj. Cont'd*                    03/21/96  
*Eff. 05/01/96*

10 NCAC 3C .5402 - *Physician Req for Inpatient Rehabilitation Facilities or Units*  
*Agency Responded*  
*Rule Returned to Agency*  
*Agency Filed Rule for Codification Over RRC Objection*

*RRC Objection*                01/18/96  
*Obj. Cont'd*                    02/15/96  
*Obj. Cont'd*                    03/21/96  
*Eff. 05/01/96*

10 NCAC 3C .5407 - *Comprehensive Rehabilitation Personnel Administration*  
*Agency Responded*  
*Rule Returned to Agency*  
*Agency Filed Rule for Codification Over RRC Objection*

*RRC Objection*                01/18/96  
*Obj. Cont'd*                    02/15/96  
*Obj. Cont'd*                    03/21/96  
*Eff. 05/01/96*

10 NCAC 3C .5408 - *Comprehensive Inpatient Rehabilitation Program Staffing Req.*  
*Agency Responded*  
*Rule Returned to Agency*  
*Agency Filed Rule for Codification Over RRC Objection*

*RRC Objection*                01/18/96  
*Obj. Cont'd*                    02/15/96  
*Obj. Cont'd*                    03/21/96  
*Eff. 05/01/96*

10 NCAC 3C .5409 - *Staff Training for Inpatient Rehabilitation Facilities or Unit*  
*Agency Responded*  
*Rule Returned to Agency*  
*Agency Filed Rule for Codification Over RRC Objection*

*RRC Objection*                01/18/96  
*Obj. Cont'd*                    02/15/96  
*Obj. Cont'd*                    03/21/96  
*Eff. 05/01/96*

10 NCAC 3C .5412 - *Additional Requirements for Traumatic Brain Injury Patients*  
*Agency Responded*  
*Rule Returned to Agency*  
*Agency Filed Rule for Codification Over RRC Objection*

*RRC Objection*                01/18/96  
*Obj. Cont'd*                    02/15/96  
*Obj. Cont'd*                    03/21/96  
*Eff. 05/01/96*

10 NCAC 3C .5413 - *Additional Requirements for Spinal Cord Injury Patients*  
*Agency Responded*  
*Rule Returned to Agency*  
*Agency Filed Rule for Codification Over RRC Objection*

*RRC Objection*                01/18/96  
*Obj. Cont'd*                    02/15/96  
*Obj. Cont'd*                    03/21/96  
*Eff. 05/01/96*

**Commission for Mental Health, Developmental Disabilities and Substance Abuse Services**

10 NCAC 15A .0100 and .0200  
*Rules Withdrawn by Agency*

03/21/96

10 NCAC 15A .0126 - *Resolution of Differences of Opinion*  
*Agency Revised Rule*

*RRC Objection*                05/16/96  
*Obj. Removed*                05/16/96

**Social Services Commission**

10 NCAC 39D .0304 - *Alternative Work Experience*

*Extended Review*              01/18/96  
*RRC Objection*                02/15/96  
*Obj. Cont'd*                    03/21/96  
*Obj. Removed*                04/18/96

*Agency Responded*  
*RRC Reconsidered this Rule*  
10 NCAC 46D .0106 - *Allocation*  
*Rule Withdrawn by Agency*

*RRC Objection*                01/18/96  
*Obj. Cont'd*                    03/21/96

10 NCAC 46D .0107 - *Reimbursement*  
*Rule Withdrawn by Agency*

*RRC Objection*                01/18/96  
*Obj. Cont'd*                    03/21/96

10 NCAC 46D .0202 - *Review Criteria for Start-Up Funds*

*RRC Objection*                01/18/96

*Rule Withdrawn by Agency*

*Obj. Cont'd*

*03/21/96*

**INSURANCE**

**Agent Services Division**

*11 NCAC 6A .0904 - Regulatory Matters*

*RRC Objection*

*03/21/96*

*Agency Revised Rule*

*Obj. Removed*

*03/21/96*

**Consumer Services Division**

*11 NCAC 4 .0502 - Assumed Expenses and Current Scale*

*RRC Objection*

*03/21/96*

*Agency Revised Rule*

*Obj. Removed*

*03/21/96*

*11 NCAC 4 .0505 - Standards for Basic Illustrations*

*RRC Objection*

*03/21/96*

*Agency Revised Rule*

*Obj. Removed*

*03/21/96*

*11 NCAC 4 .0506 - Standards for Supplemental Illustrations*

*RRC Objection*

*03/21/96*

*Agency Revised Rule*

*Obj. Removed*

*03/21/96*

*11 NCAC 4 .0509 - Annual Certifications*

*RRC Objection*

*03/21/96*

*Agency Revised Rule*

*Obj. Removed*

*03/21/96*

**JUSTICE**

**Private Protective Services**

*12 NCAC 7D .0808 - Concealed Weapons*

*RRC Objection*

*03/21/96*

*No Response from Agency*

*Obj. Cont'd*

*04/18/96*

*Agency Revised Rule*

*Obj. Removed*

*05/16/96*

**MARITAL AND FAMILY THERAPY CERTIFICATION BOARD**

*21 NCAC 31 .0102 - Address*

*RRC Objection*

*02/15/96*

*No Response from Agency*

*Obj. Cont'd*

*03/21/96*

*Agency Repealed Rule*

*Obj. Removed*

*04/18/96*

*21 NCAC 31 .0104 - Fees*

*RRC Objection*

*02/15/96*

*No Response from Agency*

*Obj. Cont'd*

*03/21/96*

*Agency Repealed Rule*

*Obj. Removed*

*04/18/96*

*21 NCAC 31 .0304 - Subsequent Reexaminations*

*RRC Objection*

*02/15/96*

*No Response from Agency*

*Obj. Cont'd*

*03/21/96*

*Rule Withdrawn by Agency*

*Obj. Cont'd*

*04/18/96*

*21 NCAC 31 .0502 - Approved Supervision*

*RRC Objection*

*02/15/96*

*No Response from Agency*

*Obj. Cont'd*

*03/21/96*

*Agency Revised Rule*

*Obj. Removed*

*04/18/96*

**MEDICAL BOARD**

*21 NCAC 32H .0101 - Authority: Intent and Goals*

*RRC Objection*

*04/18/96*

*Agency Repealed Rule*

*Obj. Removed*

*04/18/96*

*21 NCAC 32H .0303 - Sponsor Hospital*

*RRC Objection*

*04/18/96*

*Agency Revised Rule*

*Obj. Removed*

*04/18/96*

*21 NCAC 32H .0402 - Emergency Medical Technician-Paramedic Performance*

*RRC Objection*

*04/18/96*

*Agency Revised Rule*

*Obj. Removed*

*04/18/96*

*21 NCAC 32H .0403 - Emergency Medical Technician-Intermediate Performance*

*RRC Objection*

*04/18/96*

*Agency Revised Rule*

*Obj. Removed*

*04/18/96*

*21 NCAC 32H .0406 - Emergency Medical Tech.: Advanced Intermediate Performance*

*RRC Objection*

*04/18/96*

*Agency Revised Rule*

*Obj. Removed*

*04/18/96*

*21 NCAC 32H .0702 - Requests*

*RRC Objection*

*04/18/96*

*No Response from Agency*

*Obj. Cont'd*

*05/16/96*

**NURSING**

21 NCAC 36 .0228 - Clinical Nurse Specialist Practice	RRC Objection	03/21/96
Agency Revised Rule	Obj. Removed	03/21/96

### **NURSING HOME ADMINISTRATORS**

21 NCAC 37C .0101 - Petitions for Adoption of Rules	RRC Objection	03/21/96
Agency Revised Rule	Obj. Removed	03/21/96
21 NCAC 37C .0102 - Procedure for Adoption of Rules	RRC Objection	03/21/96
Agency Revised Rule	Obj. Removed	03/21/96
21 NCAC 37D .0412 - Initial On-the-Job Training	RRC Objection	03/21/96
Agency Revised Rule	Obj. Removed	03/21/96
21 NCAC 37F .0101 - Prerequisites for Temporary Licensure	RRC Objection	03/21/96
Agency Revised Rule	Obj. Removed	03/21/96
21 NCAC 37I .0101 - Investigation: Discipline: and Contested Case Proceedings	RRC Objection	03/21/96
Agency Revised Rule	Obj. Removed	03/21/96

### **PUBLIC EDUCATION**

#### **State Board of Education**

16 NCAC 1A .0003 - Organization of Department	RRC Objection	05/16/96
Agency Repealed Rule	Obj. Removed	05/16/96
16 NCAC 6D .0106 - Limited English Proficiency Programs	RRC Objection	03/21/96
No Response from Agency	Obj. Cont'd	04/18/96
Agency Revised Rule	Obj. Removed	05/16/96
16 NCAC 6H .0007 - Special Education Assessment and Placement Procedures	RRC Objection	05/16/96
Agency Revised Rule	Obj. Removed	05/16/96

### **SECRETARY OF STATE**

#### **Boxing Commission**

18 NCAC 9 .0101 - Purpose, Applicability and Scope of the Rules	RRC Objection	03/21/96
Agency Revised Rule	Obj. Removed	03/21/96
18 NCAC 9 .0103 - North Carolina State Boxing Commission	RRC Objection	03/21/96
Agency Revised Rule	Obj. Removed	03/21/96
18 NCAC 9 .0104 - Conduct of Boxing Matches	RRC Objection	03/21/96
Agency Rewrote Rule as 18 NCAC 9 .0104 through .0109	Obj. Removed	03/21/96
18 NCAC 9 .0106 - Licensing Requirements and Duties of Licensees	RRC Objection	03/21/96
Agency Revised Rule and Recodified to 18 NCAC 9 .0111	Obj. Removed	03/21/96
18 NCAC 9 .0107 - Contracts and Financial Arrangements	RRC Objection	03/21/96
Agency Revised Rule and Recodified to 18 NCAC 9 .0112	Obj. Removed	03/21/96
18 NCAC 9 .0108 - Kickboxing	RRC Objection	03/21/96
Agency Rewrote Rule as 18 NCAC 9 .0113 through .0116	Obj. Removed	03/21/96
18 NCAC 9 .0117 - Toughman Match	RRC Objection	04/18/96
Agency Revised Rule	Obj. Removed	04/18/96

### **SUBSTANCE ABUSE PROFESSIONALS**

21 NCAC 68 .0101 - Definitions	RRC Objection	04/18/96
Agency Revised Rule	Obj. Removed	04/18/96
21 NCAC 68 .0206 - Process for Prevention Consultant Certification	RRC Objection	04/18/96
Agency Revised Rule	Obj. Removed	04/18/96
21 NCAC 68 .0403 - Employer Inservice Event	RRC Objection	04/18/96
Agency Revised Rule	Obj. Removed	04/18/96

### **VETERINARY MEDICAL BOARD**

21 NCAC 66



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**RULES REVIEW COMMISSION**

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<i>Rules Withdrawn by Agency</i>		
21 NCAC 66 .0203 - License Required to Practice; Faculty Cert.; Zoo Veterinary Cert.	RRC Objection	03/21/96
Agency Revised Rule	Obj. Removed	04/18/96
21 NCAC 66 .0206 - Minimum Standards for Continuing Education	RRC Objection	04/18/96
Agency Revised Rule	Obj. Removed	04/18/96
21 NCAC 66 .0207 - Minimum Facility and Practice Standards	RRC Objection	04/18/96
Agency Revised Rule	Obj. Removed	04/18/96
21 NCAC 66 .0301 - Application and Examination	RRC Objection	04/18/96
Agency Revised Rule	Obj. Removed	04/18/96
21 NCAC 66 .0303 - SPCL/REG./VET./TECH./INTERNS/PRECEP;REN/TECH./REG	RRC Objection	04/18/96
Agency Revised Rule	Obj. Removed	04/18/96
21 NCAC 66 .0606 - Who Shall Hear Contested Cases	RRC Objection	04/18/96
Agency Revised Rule	Obj. Removed	04/18/96
21 NCAC 66 .0703 - Subpoenas	RRC Objection	04/18/96
Agency Revised Rule	Obj. Removed	04/18/96

*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.*

**OFFICE OF ADMINISTRATIVE HEARINGS**

*Chief Administrative Law Judge*  
JULIAN MANN, III

*Senior Administrative Law Judge*  
FRED G. MORRISON JR.

**ADMINISTRATIVE LAW JUDGES**

Brenda B. Becton  
Sammie Chess Jr.  
Beecher R. Gray  
Meg Scott Phipps

Robert Roosevelt Reilly Jr.  
Dolores Nesnow Smith  
Thomas R. West

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b>ALCOHOLIC BEVERAGE CONTROL COMMISSION</b>				
Fuad Saif Murshed v. Alc. Bev. Ctl. Comm. & Durham Mem. Bapt. Ch.	95 ABC 0922	Chess	04/24/96	
Alcoholic Beverage Control Commission v. Tremik, Inc.	95 ABC 0925	Morrisson	03/25/96	
Alcoholic Beverage Control Commission v. Maria Virginia Tramontano	95 ABC 1200	West	04/23/96	
Alcoholic Beverage Control Commission v. Huffman Oil Co., Inc.	95 ABC 1251	West	04/03/96	11:03 NCR 166
Pinakin P. Talate v. Alcoholic Beverage Control Commission	95 ABC 1329	West	04/10/96	
Alcoholic Beverage Control Commission v. Entrepreneur, Inc.	95 ABC 1363	Reilly	05/02/96	
Alcoholic Beverage Control Commission v. Henry Franklin Gurganus	95 ABC 1389	West	04/01/96	
Andrew Parker v. Alcoholic Beverage Control Commission	95 ABC 1402	Phipps	03/27/96	
Barraq Sabri Alquza v. Alcoholic Beverage Control Commission	95 ABC 1424	Phipps	04/03/96	
Alcoholic Beverage Control Comm. v. Partnership T/A T & L Groceries	95 ABC 1443	West	03/26/96	
Alcoholic Beverage Control Commission v. Cashion's Food Mart, Inc.	95 ABC 1444	Gray	03/13/96	
Bro Bee, Inc. v. Alcoholic Beverage Control Commission	95 ABC 1480	West	04/15/96	
Alcoholic Beverage Control Commission v. Donald Ray Doak	95 ABC 1488	West	03/29/96	
Alcoholic Beverage Control Commission v. Janice Lorraine Jeter	96 ABC 0013	Reilly	04/26/96	
Alcoholic Beverage Control Commission v. Kubbard, Inc.	96 ABC 0017	Reilly	05/20/96	
George Wright and Alice Ramsuer v. Alcoholic Beverage Control Comm.	96 ABC 0058	Becton	04/16/96	
Alcoholic Beverage Control Commission v. Robert Montgomery McKnight	96 ABC 0135	Phipps	05/09/96	
Alcoholic Beverage Control Commission v. Jacqueline Robin Anthony	96 ABC 0184	Phipps	05/09/96	
<b>COMMISSION FOR AUCTIONEERS</b>				
John W. Foster v. Auctioneer Licensing Board	96 CFA 0201	Phipps	05/06/96	
<b>CRIME CONTROL AND PUBLIC SAFETY</b>				
Helen B. Hunter-Reid v. Crime Victims Compensation Commission	95 CPS 1336	Nesnow Smith	03/29/96	11:02 NCR 93
Kenneth Saunders v. Victims Compensation Commission	95 CPS 1445	Chess	03/26/96	
Ruby H. Ford v. Crime Victims Compensation Commission	96 CPS 0110	Reilly	04/18/96	
Manuel Cervantes v. Victims Compensation Fund	96 CPS 0118	Chess	03/19/96	

# CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b>ENVIRONMENT, HEALTH, AND NATURAL RESOURCES</b>				
Gribble & Assoc. & Four Seasons Car Wash v. EHNHR	95 EHR 0576	Gray	04/25/96	
David Martin Shelton v. Rockingham County Dept/Public Health, EHNHR	95 EHR 0941	West	05/01/96	
Kinston Urological Associates, P.A. v. N.C. Cancer Program	95 EHR 1198*2	Nesnow Smith	03/27/96	11:02 NCR 97
Kinston Urological Associates, P.A. v. N.C. Cancer Program	95 EHR 1199*2	Nesnow Smith	03/27/96	11:02 NCR 97
Elsie & Tony Cecchini v. Environment, Health, & Natural Resources	95 EHR 1240	Reilly	04/22/96	
Gerald Mac Clamrock v. Environment, Health, & Natural Resources	96 EHR 0168	Phipps	05/06/96	
<i>Coastal Resources</i>				
Martin W. Synger v. Division of Coastal Management	95 EHR 1006	Chess	05/13/96	
J. E. Smith Construction Co. v. Division of Coastal Management	96 EHR 0074	Nesnow Smith	02/23/96	
Theodore D. Barris v. Town of Long Beach, NC & Coastal Mgmt, EHNHR	96 EHR 0277	West	05/09/96	
<i>Environmental Health</i>				
Paradise Ridge Home Owners by Anne Norburn v. EHNHR, Env. Health	96 EHR 0162	Phipps	05/06/96	
<i>Environmental Management</i>				
Herman E. Smith v. Division of Environmental Management	95 EHR 0962	West	04/30/96	
Conover Lumber Co., Inc. v. EHNHR, Division of Environmental Mgmt.	95 EHR 1081	Reilly	04/12/96	
Jack West d/b/a Jack West Tree Service v. Environmental Mgmt. Comm.	95 EHR 1421	Morrison	04/08/96	
<i>Land Resources</i>				
K&G Properties, Inc. v. EHNHR, Division of Land Resources	95 EHR 1078	Nesnow Smith	03/25/96	
<i>Marine Fisheries</i>				
Robert I. Swinson, Sr. v. EHNHR, Health & Nat. Res., Marine Fisheries	95 EHR 0320	Chess	03/29/96	11:03 NCR 168
Grayden L. Fulcher and Michael Styron, Sr. v. Div. of Marine Fisheries	96 EHR 0003	Reilly	03/06/96	
<i>WIC Program</i>				
Lazelle Marks v. EHNHR, Division of Maternal and Child Health	95 EHR 0870	West	03/27/96	
Bob's Quick Mart, Bobby D. Braswell v. Env., Health, & Natural Res.	96 EHR 0091	Nesnow Smith	04/02/96	
Larry E. Mis v. USDA-Food/Cons Svc, Cory Meneces-WIC Prog., EHNHR	96 EHR 0164	Phipps	03/19/96	
<b>EQUAL EMPLOYMENT OPPORTUNITIES</b>				
Carl D. Davis v. Department of Correction	91 EEO 1101	Nesnow Smith	05/06/96	
<b>HUMAN RESOURCES</b>				
Cassandra M. Deshazo v. Christine E. Carroll, Chf Chld Abuse/Neg. Sec.	95 DHR 1410	Phipps	03/28/96	
Medicus Robinson v. Department of Human Resources	96 DHR 0167	Nesnow Smith	04/12/96	
<i>Division of Child Development</i>				
Molly Fallin v. Department of Human Resources	94 DHR 0872*3	Gray	05/15/96	
Molly Fallin v. Department of Human Resources	95 DHR 1013*3	Gray	05/15/96	
Mary T. Hill v. DHR, Division of Child Development	95 DHR 1192	Phipps	03/27/96	
Iola Roberson v. DHR, Division of Child Development	95 DHR 1244	Gray	05/16/96	
<i>Division of Facility Services</i>				
Eloise Brown v. Dept. of Human Resources, Division of Facility Services	95 DHR 1002	Phipps	03/07/96	
<i>Group Care Licensure Section</i>				
Alex L. McCall v. DHR, Div/Facility Svcs, Group Care Licensure Sec.	95 DHR 1456	Nesnow Smith	03/26/96	
<i>Medical Facilities Licensure Section</i>				
Stacey Yvette Franklin v. Facility Services, Medical Facilities Lic. Sec.	96 DHR 0358	Morrison	05/16/96	



<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<i>Division of Social Services</i>				
Rozena Chambliss v. Department of Human Resources	95 DHR 1044	Nesnow Smith	03/12/96	
Addie & Major Short v. Department of Human Resources	95 DHR 1063	Morrison	03/19/96	
Mr. and Mrs. Jessie Stevenson v. DHR, Division of Social Services	95 DHR 1072	Phipps	03/15/96	
William G. Fisher v. DHR, Div. of Social Services, Prog Integrity Branch	95 DHR 1234	Morrison	03/19/96	
Verna F. Nunn v. Department of Human Resources	95 DHR 1330	Gray	04/11/96	
Nancy Hooker, Helen Tyndall v. Department of Human Resources	96 DHR 0155	Gray	04/26/96	
<i>Child Support Enforcement Section</i>				
Donald E. Rideout Jr. v. Department of Human Resources	95 CSE 0952	Reilly	04/18/96	
Christopher F. Roakes v. Department of Human Resources	95 CSE 1131	Becton	05/03/96	
Richard R. Fox, Sr. v. Department of Human Resources	95 CSE 1169	Becton	03/19/96	
Joselito D. Pilar v. Department of Human Resources	95 CSE 1180	Chess	03/01/96	
David Lee Grady v. Department of Human Resources	95 CSE 1218	Morrison	03/26/96	
Patrick Orlando Crump v. Department of Human Resources	95 CSE 1221	Nesnow Smith	03/05/96	
Peter Robert Kovolsky v. Department of Human Resources	95 CSE 1230	Becton	03/11/96	
Tony Lee Zapata v. Department of Human Resources	95 CSE 1266	Gray	05/02/96	
Lawrence Dow Dean v. Department of Human Resources	95 CSE 1267	Morrison	03/29/96	
Carl E. Coffey v. Department of Human Resources	95 CSE 1270	Nesnow Smith	03/15/96	
Keith Dewayne Senters v. Department of Human Resources	95 CSE 1273	Phipps	04/01/96	
Mickey Turner v. Department of Human Resources	95 CSE 1278	Nesnow Smith	03/14/96	
James Joseph Gallagher v. Department of Human Resources	95 CSE 1280	Chess	03/19/96	
James Thomas McRae v. Department of Human Resources	95 CSE 1296	Chess	03/15/96	
Vincent E. Kochler v. Department of Human Resources	95 CSE 1301	Phipps	05/09/96	
David J. Moseley v. Department of Human Resources	95 CSE 1304	Chess	03/29/96	
Derrick L. Conyers v. Department of Human Resources	95 CSE 1308	Reilly	03/13/96	
Charles Edward Smith v. Department of Human Resources	95 CSE 1309	West	03/07/96	
Kevin Vereen v. Department of Human Resources	95 CSE 1315	Phipps	05/06/96	
James Curtis Witwer v. Department of Human Resources	95 CSE 1331	Becton	03/26/96	
Thornell Bowden v. Department of Human Resources	95 CSE 1345	Morrison	03/07/96	
Henry S. Sada v. Department of Human Resources	95 CSE 1367	Nesnow Smith	03/21/96	
Charles F. Moore v. Department of Human Resources	95 CSE 1369	Chess	03/27/96	
Daniel Leslie Baker v. Department of Human Resources	95 CSE 1373	Morrison	03/12/96	
John L. Pike v. Department of Human Resources	95 CSE 1376	Nesnow Smith	03/21/96	
Wm. R. Evans v. Department of Human Resources	95 CSE 1377	Becton	03/11/96	
Rory J. Curry v. Department of Human Resources	95 CSE 1380	Mann	03/15/96	
Lorin A. Brown v. Department of Human Resources	95 CSE 1382	Reilly	04/18/96	
Marcus Anthony Butts v. Department of Human Resources	95 CSE 1405	Nesnow Smith	03/27/96	
Cynthia Pinder v. Department of Human Resources	95 CSE 1406	Becton	03/11/96	
Rhonnice J. Williams v. Department of Human Resources	95 CSE 1407	Chess	05/06/96	
Ramon Domenech v. Department of Human Resources	95 CSE 1408	Phipps	03/11/96	
Dennis L. McNeill v. Department of Human Resources	95 CSE 1435	Becton	03/13/96	
Tony A. Rogers v. Department of Human Resources	95 CSE 1436	Chess	05/16/96	
Rick E. Atkins v. Department of Human Resources	95 CSE 1437	Phipps	04/01/96	
Timothy A. Ratley (Jeanes) v. Department of Human Resources	95 CSE 1465	Morrison	03/26/96	
Richard E. Reader v. Department of Human Resources	95 CSE 1469	Nesnow Smith	04/29/96	
Wilbur Dewayne Bault v. Department of Human Resources	95 CSE 1475	West	03/13/96	
James C. Smith v. Department of Human Resources	96 CSE 0034	Gray	05/10/96	
Ronald D. Johnson v. Department of Human Resources	96 CSE 0084	Nesnow Smith	03/27/96	
Johnny Leary v. Department of Human Resources	96 CSE 0085	Becton	05/03/96	
John W. Scott v. Department of Human Resources	96 CSE 0130	Mann	03/15/96	
Calvin S. Austin v. Department of Human Resources	96 CSE 0140	Phipps	05/17/96	
Derek Henslee v. Department of Human Resources	96 CSE 0188	Reilly	05/17/96	
Norman Waycaster v. Department of Human Resources	96 CSE 0245	Becton	05/16/96	
Lorenzo Wilson v. Department of Human Resources	96 CSE 0257	Phipps	05/06/96	
Thornell Bowden v. Department of Human Resources	96 CSE 0370	Morrison	05/17/96	
Carl R. Ritter v. Department of Human Resources	96 CSE 0380	West	05/08/96	
Melinda S. Tunner v. Department of Human Resources, Child Sup. Enf.	95 DCS 0921	Morrison	05/09/96	
Jeanne G. Bishop v. Department of Human Resources, Child Sup. Enf.	95 DCS 0958	West	04/04/96	
Rebecca Beaver v. Department of Human Resources, Child Sup. Enf.	95 DCS 1114	Reilly	04/26/96	
Laura Heidorf v. Department of Human Resources, Child Support Enf.	96 DCS 0065	Reilly	03/22/96	
<b>INSURANCE</b>				
Carol M. Hall v. Teachers & State Employees Comp. Major Medical Plan	95 INS 1141	Phipps	04/01/96	
Arthur Wayne Dempsey v. Department of Insurance	95 INS 1255	Nesnow Smith	04/22/96	

# CONTESTED CASE DECISIONS

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Deborah B. Beavers v. Teachers & St. Emp. Comp. Major Med. Plan	95 INS 1411	Nesnow Smith	05/10/96	11:05 NCR 308	
Nadia A. Hakim v. Department of Insurance	95 INS 1422	Nesnow Smith	03/26/96		
JUSTICE					
<i>Education and Training Standards Division</i>					
Freddie Lavern Thompson v. Criml. Justice Ed. & Training Stda. Comm.	95 DOJ 0731	Chess	02/29/96	11:01 NCR 50	
Shane Douglas Crawford v. Sheriffs' Ed. & Training Stda. Comm.	95 DOJ 0943	Reilly	05/17/96		
Valerie Maxine Brewington v. Criml. Justice Ed. & Training Stda. Comm.	95 DOJ 1129	Nesnow Smith	04/12/96		
Patricia Josephine Bonanno v. Sheriffs' Ed. & Training Stda. Comm.	95 DOJ 1152	Chess	03/25/96		
Rick M. Evoy v. Criminal Justice Ed. & Training Stda. Comm.	95 DOJ 1235	Chess	03/25/96		
Gregory Lee Daughtridge v. Sheriffs' Ed. & Training Stda. Comm.	96 DOJ 0027	Reilly	03/19/96		
Carlton Gerald v. Criminal Justice Ed. & Training Stda. Comm.	96 DOJ 0068	Gray	03/26/96		
Ken Montic Oxendine v. Criminal Justice Ed. & Training Stda. Comm.	96 DOJ 0071	West	03/28/96		
David Kent Knight v. Sheriffs' Ed. & Training Stda. Comm.	96 DOJ 0115	West	03/28/96		
<i>Private Protective Services Board</i>					
Timothy A. Hawkins v. Private Protective Services Board	95 DOJ 1419	West	04/12/96	11:01 NCR 50	
William F. Combs v. Private Protective Services Board	96 DOJ 0022	West	03/22/96		
PUBLIC INSTRUCTION					
Lavern K. Suggs v. NC Board of Education	95 EDC 0383	Nesnow Smith	03/13/96	11:01 NCR 50	
J.T.S. & T.S., Parents of E.M.S. v. Chapel Hill-Carrboro City Schl. Sys.	95 EDC 1194	Mann	04/12/96		
Candyce Ewanda Newsome v. Hertford County Board of Education	96 EDC 0344	Chess	05/15/96		
STATE PERSONNEL					
<i>Department of Administration</i>					
Carlton Gerald v. State Capitol Police, Department of Administration	96 OSP 0116	Gray	04/25/96	11:01 NCR 50	
<i>Administrative Office of the Court</i>					
Ethel R. Tyson v. NC Judicial Dept., Administrative Office of the Court	96 OSP 0080	Nesnow Smith	03/15/96		
<i>Appalachian State University</i>					
Janice S. Walton v. Appalachian St University, Claude Cooper, Bill Ragan	96 OSP 0062	West	03/13/96		
Janice S. Carroll v. Appalachian St University, Claude Cooper, Bill Ragan	96 OSP 0063	West	03/07/96		
<i>Caldwell County</i>					
Blake C. Pace v. Caldwell County	96 OSP 0047	Morrison	04/01/96		
<i>NC Central University</i>					
Francina Y. Tate v. Chancellor Julia L. Chambers, NC Central Univ.	95 OSP 1432	Nesnow Smith	04/22/96		
<i>Central North Carolina School for the Deaf</i>					
Felicia S. Milton v. Central North Carolina School for the Deaf	95 OSP 1241	Chess	05/17/96	11:01 NCR 50	
<i>Department of Correction</i>					
Haydee Craver v. Department of Correction, Pender Correctional Inst.	95 OSP 1046	Gray	03/12/96		
Gregory Allen Jones v. Department of Correction, Supt. Bonnie Boyette	95 OSP 1290	Phipps	05/14/96		
Calvia L. Hill v. Department of Correction, McCain Correctional Hospital	95 OSP 1460	Gray	05/17/96		
Brenda Propst v. Foothills Correctional Institution	96 OSP 0199	Morrison	04/09/96		
Haydee C. Craver v. Department of Correction, Christopher Phillips	96 OSP 0348	Phipps	05/15/96		
<i>East Carolina University</i>					
Bela E. Karvaly, Ph.D. v. ECU Bd. of Trustees, Ch. Richard R. Eakin	96 OSP 0150	Chess	05/08/96		
<i>Employment Security Commission</i>					

# CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Gene S. Baker v. Gov. James B. Hunt, Jr., Ann Q. Duncan, Chairman, Employment Security Commission	93 OSP 0707	Becton	05/16/96	11:05 NCR 300
Patricia Gary v. Employment Security Commission	95 OSP 0793	Chess	05/14/96	
<i>Department of Environment, Health, and Natural Resources</i>				
Roberta Ann "Robin" Hood v. Environment, Health, & Natural Resources	95 OSP 0035	Reilly	04/09/96	
<i>Fayetteville State University</i>				
William C. Neal v. Fayetteville State University	95 OSP 0392	Nesnow Smith	04/22/96	
<i>Department of Human Resources</i>				
Ophelia Webb v. Edard R. Inman, Dir. Alamance Cty DSS, Alamance Cty DSS, Alamance County, and DHR	96 OSP 0112	Gray	03/13/96	
<i>Caswell Center</i>				
Ramona C. Jenkins v. Department of Human Resources, Caswell Center	89 OSP 0411	Becton	03/26/96	
Ramona C. Jenkins v. Department of Human Resources, Caswell Center	91 OSP 0522	Becton	03/26/96	11:02 NCR 89
Franklin D. Sutton v. Department of Human Resources, Caswell Center	94 OSP 0766	Nesnow Smith	03/21/96	
<i>Wake County Department of Social Services</i>				
Phylis Gilbert v. Wake County Department of Social Services	95 OSP 1238	Phipps	05/17/96	
<i>Department of Labor</i>				
Kevin P. Kolbe, Sr. v. Department of Labor	95 OSP 0968	Morrison	03/14/96	11:01 NCR 58
<i>New Hanover County Board of Health</i>				
Tabandeh Zand v. New Hanover County Board of Health	95 OSP 1035	Nesnow Smith	03/01/96	
<i>North Carolina State University</i>				
Vernell Mitchell v. North Carolina Cooperative Extension	96 OSP 0132	Gray	05/10/96	
<i>Department of Transportation</i>				
Pearlie M. Simuel-Johnson v. Department of Transportation	94 OSP 0589 <sup>+1</sup>	Gray	03/01/96	
Dorothy J. Grays v. Div. of Motor Vehicles, Dept. of Transportation	94 OSP 1044	Reilly	04/12/96	11:03 NCR 173
Pearlie M. Simuel-Johnson v. Department of Transportation	95 OSP 0837 <sup>+1</sup>	Gray	03/01/96	
Melvin Duncan v. Department of Transportation	95 OSP 1462	Morrison	03/08/96	
Greg Brown v. Department of Transportation	96 OSP 0048	Reilly	05/02/96	
Jesse Wayne Castle v. State Highway Maint., Guess Rd., Durham, NC	96 OSP 0087	Gray	04/15/96	
Archie Brooks v. W. F. Rosser, Department of Transportation	96 OSP 0239	Nesnow Smith	05/17/96	
<i>Tri-County Mental Health Complex</i>				
Deborah Heil v. Tri-County Mental Health Complex	95 OSP 1100	Nesnow Smith	03/22/96	
<i>University of North Carolina</i>				
Jerel H. Bonner v. School of Nursing UNC at Chapel Hill	96 OSP 0026	Gray	03/12/96	11:01 NCR 61
Bela E. Karvaly, Ph.D. v. UNC Bd. of Gov., Pres. C.D. Spangler, Jr.	96 OSP 0151	Chess	05/08/96	
UNIVERSITY OF NORTH CAROLINA				
Sylvia Jeffries v. University of NC Hospitals at Chapel Hill	96 UNC 0067	Gray	04/16/96	

<sup>+</sup> Consolidated cases.



**STATE OF NORTH CAROLINA**  
**COUNTY OF WAKE**

**IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
93 OSP 0707**

**GENE S. BAKER,** )  
    **Petitioner,** )  
 )  
    **v.** )  
 )  
**GOVERNOR JAMES B. HUNT, JR. AND ANN Q.** )  
**DUNCAN, CHAIRMAN, EMPLOYMENT SECURITY** )  
**COMMISSION,** )  
    **Respondent.** )

**RECOMMENDED DECISION**

This matter was heard before the undersigned administrative law judge in Raleigh, North Carolina on November 14 and 15, 1995. The Petitioner initiated this contested case in July 1993 in order to appeal his dismissal following the Respondents' decision to designate the Internal Audit Manager I position at the Employment Security Commission as policy making exempt.

**APPEARANCES**

For Petitioner: *Pro se.*

For Respondent: T. S. Whitaker, Chief Counsel, and V. Henry Gransee, Jr., Deputy Chief Counsel, North Carolina Employment Security Commission, Raleigh, North Carolina.

**ISSUES**

1. Whether the position of Internal Audit Manager I at the Employment Security Commission was properly designated as policy making exempt.
2. Whether the Petitioner was properly dismissed from his position as Internal Audit Manager I at the Employment Security Commission.

**STATUTES AND RULES INVOLVED**

N.C. Gen. Stat. §126-5(b)  
N.C. Gen. Stat. §126-5(c)  
N.C. Gen. Stat. §§126-5(d)(1) & (6)  
N.C. Gen. Stat. §126-5(e)  
N.C. Gen. Stat. §126-5(h)

**EXHIBITS**

The following exhibits offered by the Petitioner were received in evidence:

- P2. ESC Administrative Bulletin No. 7 (91).
- P3. Job Description for Internal Auditing Manager I position.
- P5. WPPR's for Gene Baker covering the period July 1, 1989-June 30, 1993.
- P6. Letter from Daniel L. Lowery to Ann Q. Duncan dated November 12, 1991.
- P7. Letter from Joseph G. Elliott to William D. Flowers dated May 6, 1993.
- P8. "Under the Dome," *The News & Observer*, October 2, 1993 .
- P9. Letter from H.W. Campbell dated October 26, 1993.
- P10. September 15, 1993 Memorandum from Mike Gaddis re: Gene Stewart Baker.

Ruling on the Admissibility of Petitioner's Exhibit 4

The Petitioner's Exhibit 4 (P4), Government Auditing Standards (1988), was conditionally received in evidence subject to the Petitioner providing copies of it to the undersigned and to counsel for the Respondents. The Petitioner did not provide a copy of his exhibit to the undersigned until after the Respondents objected to its admission in its Proposed Recommended Decision filed on April 4, 1996. The Petitioner has apparently never furnished the Respondents a copy of P4. The Respondents acknowledge that they have a 1993 copy of the Government Auditing Standards, but P4 is a 1988 version.

The Petitioner originally proffered a photocopy of a portion of P4. The entire document was only proffered when the Respondents objected to the Petitioner only offering a portion of the document. The Petitioner explained that he felt that the portion of P4 he had copied was all that was relevant to the issues in this case contested case and that he might have some difficulty procuring other copies of the entire book.

Since the Petitioner is appearing *pro se*, he has not had the benefit counsel to advise him about how to prepare all the documents he proposed to offer as evidence at the hearing. Although the Respondents are entitled to copies of all of the Petitioner's exhibits, the Respondents have not demonstrated any undue prejudice resulting from not having a copy of P4 furnished to them by the Petitioner. Recognizing the Petitioner's *pro se* status and the Respondents' failure to demonstrate undue prejudice, P4 is hereby received in evidence.

The following exhibits offered by the Respondent were received in evidence:

- R1. Request for Position Classification effective August 1, 1982.
- R2. Job Description, Director of Systems Audit and Risk Management.
- R3. Letter to Graham Cooke, Personnel Director from Doug Deaton, Section Chief, Position Management Division, Dated September 3, 1982.
- R4. Career Advancement Opportunities, August 1, 1983.
- R5. Request for Position Classification effective October 1, 1983.
- R6. Letter to Harold G. Wiggins, Internal Auditing Manager I, from Glenn R. Jernigan, Chairman, dated November 14, 1983.
- R7. Memo to Directors, etc. from Glenn R. Jernigan, Chairman, dated January 3, 1984, Re: Systems Audit and Risk Management Unit.
- R8. Memo to John Higgins, Governor's Office, from David T. Flaherty, Chairman, dated May 7, 1985, Re: Exempt positions established for ESC.
- R9. Memo to Directors, etc. from Joe Hensgen, EDP Systems Auditor, dated April 25, 1986, Re: Access to IMS Files.
- R10. Memo to All Commission Employees from Betsy Y. Justus, Chairman, dated September 7, 1988, Re: Internal Security and Internal Audit.
- R11. Memo to Tom Whitaker, Clarence Jones, etc. from Ann Q. Duncan, Chairman, dated August 3, 1992, Re: Organization Changes.
- R12. Memo to Jim Bennett, Director of Personnel Appointments, Governor's Office, from Ann Q. Duncan, Chairman dated April 23, 1993, Re: Policy-making Exempt Position Possibilities (As Discussed).
- R13. Organizational Chart.
- R14. Letter to Governor James B. Hunt, Jr. from S. Davis Phillips, Secretary, NC Department of Commerce, dated April 26, 1993, Re: List of exempt positions.
- R15. Letter to Ron Penny, State Personnel Director, from Governor James B. Hunt, Jr. dated April 29, 1993.
- R16. Letter to Governor James B. Hunt, Jr. from Ron Penny dated April 29, 1993.
- R17. Letter to Gene Baker, Internal Auditing Manager I, from Ann Q. Duncan, dated May 3, 1993, Re: Your position designated as policy-making exempt.
- R18. Letter to Gene Baker from Ann Q. Duncan dated June 11, 1993 Re: Employment terminated.
- R20. Internal Security Handbook
- R21. Letter to Gene Baker from Mike Gaddis, Director, Employment Practices and Priorities Division, OSP, Re: Priority Re-employment.

Based upon the official documents in the file, sworn testimony of the witnesses, and other competent and admissible evidence, the undersigned makes the following:

FINDINGS OF FACT

1. The Petitioner, Gene S. Baker, is a registered Republican, a citizen of Wayne County, North Carolina, and a former employee of the Employment Security Commission ("ESC").
2. The Petitioner began his eight years as a State government employee as Governor James G. Martin's Advisor to Public Education.
3. The Petitioner was first employed with the ESC on February 24, 1986 as an analyst in the Testing and Research Unit of Employment Services. In April 1986, he was promoted to Assistant to the Chief Deputy Commissioner. In November 1986, that position was eliminated and the Petitioner was transferred to the position of Director of the Systems Audit & Risk Management Unit (Internal Auditing Manager I), pay grade 76. He held that position until his dismissal on June 11, 1993.
4. Respondent Ann Q. Duncan is a registered Republican. As of the date of the hearing, Ms. Duncan was the Chairman of the North Carolina Employment Security Commission and as such, pursuant to N. C. Gen. Stat. §96-4(a), was the Chief Executive Officer vested with all the authority of the ESC when the full Commission was not in session. Ms. Duncan was originally appointed to this office on August 1, 1990, by Governor James G. Martin, a Republican, and was subsequently reappointed on October 1, 1993 by Respondent Governor James B. Hunt, Jr., a Democrat.
5. In April of 1993, Chairman Duncan was asked to submit a list of ESC employees whom she felt should be designated policy-making exempt. By statute, policy-making exempt is defined as "a position delegated with the authority to impose the final decision as to a settled course of action to be followed within a department, agency, or division." N.C. Gen. Stat. §126-5(b).
6. Chairman Duncan delegated to Joseph G. Elliot, her Chief Deputy, the task of preparing a list of ESC positions that the Governor's Office could consider policy-making exempt under N.C. Gen. Stat. §126-5(d)(1). Mr. Elliot prepared a list for Chairman Duncan's approval.
7. Neither Chairman Duncan nor anyone else told Mr. Elliot which ESC positions he should list as policy-making exempt positions. Mr. Elliot made that determination based on his many years of experience with ESC and his knowledge of positions that had been designated exempt in the past.
8. Chairman Duncan submitted the list as prepared by Mr. Elliot without any changes or comments. She never told or asked Mr. Elliot to include any position or incumbent on the list.
9. Mr. Elliot prepared a two page list consisting of seventeen positions. The first page consisted of "Recommended" positions for designation as exempt policy-making positions. The second page was labeled "Supplemental" positions for consideration for designation as exempt policy-making positions. He did the list in two pages because neither he nor Chairman Duncan knew how many positions would be designated as exempt.
10. On April 23, 1993, Chairman Duncan proposed that the Internal Auditing Manager I position be designated as a policy-making exempt position.
11. During the month of April 1993, Chairman Duncan met at least once at the Governor's Office to discuss the designation of positions as exempt. She took an organizational chart with positions, but no names, on it to that meeting. Representatives of the Governor's Office the Attorney General's Office, and the Office of State Personnel examined all of the positions on the list. No names were mentioned. Only the positions were discussed. The incumbents filling the positions were not discussed or considered. Chairman Duncan was told that Governor Hunt wanted the designations to be in compliance with the law and the total number of positions designated as exempt throughout State government was to be less than number designated by the previous administration.
12. Chairman Duncan also discussed the list on at least one occasion with Herbert W. Campbell, then the Personnel Director of the Department of Commerce, because he was responsible for incorporating ESC's list into Commerce's list. ESC is administratively housed in Commerce as an independent commission.



13. Mr. Campbell included all of the positions on the first page of the list prepared by Mr. Elliot and the two deputy director positions that are the first two positions on the supplemental list. In all, he recommended that twelve ESC positions be designated as policy-making exempt.
14. Governor Hunt designated as exempt the ESC positions recommended by Commerce without any changes.
15. On April 29, 1993, pursuant to N.C. Gen. Stat. §126-5(d)(1), Governor Hunt designated the ESC's Internal Auditing Manager I position as policy-making exempt.
16. On May 3, 1993, Chairman Duncan wrote the Petitioner informing him that effective May 18, 1993, pursuant to the provisions of N.C. Gen. Stat. §§126-5(c) and 126-5(d)(1), Governor James B. Hunt, Jr. was designating the Internal Auditing Manager I position as policy-making exempt.
17. Chairman Duncan's letter to the Petitioner did not mention any procedure for challenging the designation of the position as policy-making exempt. The letter did, however, inform the Petitioner that "[t]he provisions of Chapter 126 will no longer apply to your position except as to the policies and rules established by the State Personnel Commission pursuant to G.S. 126-4(1), 126-4(2), 126-4(3), 126-4(4), 126-4(5), 126-4(6), and 126-7 and Articles 6 and 7."
18. The Petitioner acknowledged receipt of Chairman Duncan's notice of his forthcoming exempt status on May 10, 1993.
19. The Petitioner was dismissed from State employment on June 11, 1993 based upon his exempt status. Chairman Duncan made the decision to dismiss the Petitioner based on a recommendation from ESC's then Administrative Services Director, George G. Morris. Mr. Morris came to ESC from the State Auditor's Office where he had experience investigating fraud and abuse claims.
20. After arriving at ESC in June 1993, Mr. Morris reviewed the Internal Audit operations and decided that he was not satisfied with the condition of that unit. Based upon his review, Mr. Morris recommended that the Petitioner be dismissed and replaced with someone with a background and experience in fraud, waste, and abuse investigations.
21. Other than Mr. Morris' recommendation to Chairman Duncan, no one asked, recommended or told either Chairman Duncan or Mr. Morris to replace the Petitioner.
22. The Petitioner filed a Petition for a Contested Case Hearing with the Office of Administrative Hearings on July 6, 1993 challenging his dismissal as being discriminatory and retaliatory and also challenging the designation of his position as policy-making exempt.
23. On September 15, 1993, the Office of State Personnel sent the Petitioner a letter informing him of his right to priority reemployment consideration.
24. This contested case was stayed on November 10, 1993, pending an investigation by the Office of State Personnel regarding whether the position the Petitioner held was properly designated policy-making exempt. On September 15, 1994, the Office of State Personnel sent the Petitioner a letter notifying him that it was going to conduct an investigation into the designation of his position as policy-making exempt. There is nothing in the record to show that the Office of State Personnel ever completed its investigation.
25. The Legislature enacted legislation, effective June 1, 1995, that removed the provision in N.C. Gen. Stat. § 126-5(c)(1) that provided for investigation of the designation of a position as policy-making exempt by the Office of State Personnel.
26. The stay was lifted on August 17, 1995.
27. As the Director of Systems Audit and Risk Management, the Petitioner's "primary responsibility . . . [was] the direction of the Systems Audit and Risk Management Program." (R2) The position reported to the Chairman's office.
28. The position as Director of ESC's System Audit and Risk Management or Internal Audit Unit was first established

as a new position in September 1982 with the position classification of Internal Auditing Manager I. The Internal Auditor classifications are generally utilized for financial and compliance auditing of agency fiscal operations. The ESC position originally included financial and compliance auditing of agency fiscal operations, but there was a "much greater emphasis on the analysis of security systems than is typically found in the position of Internal Auditor." (R3) The Petitioner, like his predecessors, did not perform financial audits, but rather performance reviews of ESC activities, with particular emphasis on improper activities by employees.

29. The first incumbent placed in the position was designated policy-making exempt with responsibilities for: administration of all operations of the created Systems Audit and Risk Management Unit, including supervisor of a staff of two professional positions and one clerical position. The Unit's responsibilities were to include financial audits of ESC monies; operational audits of ESC operations, including compliance with legal and regulatory requirements and policy guidelines; assurance of physical security of ESC facilities; risk analyses of ESC operations and facilities, including safeguard and cost benefits analysis; investigation of alleged or suspected fraud or misuse of public funds or facilities by ESC employees; and the establishment and maintenance of control systems. An area of special importance was insuring control of data processing functions with its opportunity for electronic abuse. (R4)
30. The first incumbent signed a letter dated November 14, 1983, acknowledging that he served at the pleasure of the Chairman of ESC, then Glenn R. Jernigan, a Democrat and that the position played "a significant part [in] the formation and implementation of policies and programs for this administration." (R6)
31. Chairman Jernigan's successor, David T. Flaherty, a Republican, also believed the position should be exempt, although during Republican Governor Martin's administration the position was designated non-exempt and retained that designation during the remainder of Governor Martin's administration. Until then, the position historically had been designated policy-making exempt.
32. As the Director of ESC's System Audit and Risk Management or Internal Audit Unit, the Petitioner had authority to access all ESC data and records, including personnel files. He conducted background checks on new employees and employees promoted to management or sensitive positions.
33. Use of Federal or other government auditing standards such as those described in the Government Auditing Standards (P4) were never required for the investigations or audits the Petitioner performed. Such standards were never referenced or found in the reports, findings, documents, or investigations supervised by the Petitioner while he was in the position.
34. The financial audits of ESC grants and funds made by federal and state financial auditors were required to reference governmental auditing standards. The federal Department of Labor had such audits performed by federal auditors or by the State Auditor under the "single audit" concept. These audits were a requirement of federal and some state grants or appropriations to ESC.
35. The Petitioner is not a certified public accountant. The Petitioner has a B.S. degree in Business Administration, a masters in Vocational Education and School Administration, and a "six-year degree in . . . School Administration, Finance, and Management." (T. vol.2, p.175). He spent eighteen years in public education.
36. The Petitioner did not perform financial audits. According to his testimony, "an internal auditor is not a public auditor, it is not a state auditor - it is an auditor that does reviews of policies, procedures, and program operations and performances . . . ." (T. vol.2, p.172).
37. The Petitioner's responsibilities for financial audits involved review of the completed financial audits to ascertain what the findings and recommendations were so that he could advise and recommend appropriate policy action by ESC.
38. The Petitioner's major responsibilities included monitoring and investigation of ESC policy violations and recommending policy changes to the Chairman. To perform these duties, he had the authority to investigate whatever he believed needed investigating to fulfill his responsibilities. He had authority to make recommendations to the Chairman's office for improvements in security, economy, efficiency, whether procedural or operational. The Petitioner had total access to ESC information, whether confidential or not, so that he could identify weaknesses

and risks and make recommendations for improvement.

39. The Petitioner acted as spokesperson on Internal Audit matters to other state agencies. He spoke for ESC with the U.S. Department of Labor Regional Office and had the authority, according to Chairman Duncan, to speak for ESC with law enforcement agencies. He had total access to all ESC resources (property, records, and personnel). He had a duty to conduct investigations and make recommendation. He reviewed and investigated sensitive personnel hires. He produced a policy handbook on internal audit matters. He had the authority to investigate all divisions of ESC.

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

### CONCLUSIONS OF LAW

1. North Carolina General Statutes section 126-5(d)(1) allows the Governor to designate certain positions as exempt policy-making. The rationale for creating exempt positions is "to allow the governor to employ top level state employees on an at-will basis, and to reposition these employees as he felt necessary in order to further the agenda of the administration." Stott v. Haworth, 916 F.2d 134, 142 (4th Cir. 1990).
2. Pursuant to the provisions of N.C. Gen. Stat. §§126-5(c) and (h), an employee occupying a position that is designated exempt policy-making can challenge such a designation by filing a Petition for a Contested Case Hearing.
3. Procedurally, the Petitioner did not challenge the designation of his position as policy-making exempt until he was dismissed from that position.
4. The Petitioner contends that he was not given notice of his appeal rights when he received notice on May 3, 1993, that his position would become exempt effective May 18, 1993. The remedy for such a procedural violation would be to provide the Petitioner with a hearing which in fact has occurred in this instance. Thus if the Petitioner was entitled to notice of his appeal rights, any damage caused by the failure to furnish him notice of his appeal rights has been cured by these proceedings.
5. A threshold inquiry regarding whether a position is properly designated policy-making exempt is whether the position involves "government decisionmaking on issues where there is room for political disagreement on goals or their implementation?" Stott, supra at 142 (quoting Jimenez Fuentes v. Torres Gaztambide, 807 F.2d 236, 241-42 (1st Cir. 1986) (en banc), cert. denied, 481 U.S. 1014, 107 S.Ct. 1888, 95 L. Ed. 2d 496 (1987)).
6. If it is determined that the position relates to partisan political interests or concerns, then "the next step is to examine the particular responsibilities of the position to determine whether it resembles a policymaker, a privy to confidential information, a communicator, or some other office holder whose function is such that party affiliation is an equally appropriate requirement. . . . [I]n conducting this inquiry, courts focus on the powers inherent in a given office, as opposed to the functions performed by a particular occupant of that office." Stott, supra at 142 (quoting Jimenez Fuentes v. Torres Gaztambide, 807 F.2d 236, 241-42 (1st Cir. 1986) (en banc), cert. denied, 481 U.S. 1014, 107 S.Ct. 1888, 95 L. Ed. 2d 496 (1987)).
7. The classification of "exempt" in North Carolina's personnel scheme should be accorded great deference. Thus the burden of proof rests on the Petitioner to show that political affiliation was not necessary or essential to the effective performance of his position. Stott v. Martin, 783 F. Supp. 970 (E.D.N.C. 1992).
8. In Stott v. Martin, 783 F. Supp. 970, 976 (E.D.N.C. 1992), the court considered the holding in Jimenez Fuentes v. Torres Gaztambide, 807 F.2d 236, 241-42 (1st Cir. 1986) (en blanc), cert. denied, 481 U.S. 1014, 107 S.Ct. 1888, 95 L. Ed. 2d 496 (1987) and held:

Among the indicia relevant to this second inquiry are " 'relative pay, technical competence, power to control others, authority to speak in the name of policymakers, public perception, influence on programs, contact with elected officials, and responsiveness to partisan politics and political leaders.' " [quoting Ecker v. Cohalan, 542 F. Supp 896, 901 (E.D.N.Y. 1982)].



9. Pursuant to the provisions of Chapter 96 of the North Carolina General Statutes, the Employment Security Commission is responsible for collecting and administering unemployment insurance contributions and benefits, establishing and maintaining free public employment offices, providing vocational guidance, establishing and maintaining an information system that maintains up-to-date job-related information on current and former participants in State job training and education programs, evaluating the effectiveness of job training, education, and placement programs to determine if specific goals and objectives are attained and making recommendations regarding the continuation of State funding for programs evaluated. The responsibilities delegated to ESC "involve government decisionmaking on issues where there is room for political disagreement on goals or their implementation[.]" Stott v. Haworth, supra at 141 (quoting Jimenez Fuentes v. Torres Gaztambide, 807 F.2d 236, 241-42 (1st Cir. 1986) (en banc), cert. denied, 481 U.S. 1014, 107 S.Ct. 1888, 95 L. Ed. 2d 496 (1987)).
10. The Petitioner's position required that he review sensitive internal operations of ESC. He was also involved in recommending, reviewing, and participating in implementing policies and procedures to guide the entire operation of ESC. In order to perform the duties of his position, he necessarily had access to confidential information and was involved in many confidential communications. In order to perform the responsibilities of the position, the Internal Audit Manager has open-ended authority "to access all ESC resources." (R20)
11. An internal auditing position can be considered either a technical position, involving "political[ly] neutral, technical and professional matters," or one which "has access to confidential information and /or 'great influence in the formulation and implementation of policies' of the agency." Morales Morales v. Rafael Arias, 856 F.2d 396, 398 (1st Cir. 1988).
12. The Petitioner was more than a mere "bean counter." Not only did the Petitioner act as spokesperson on Internal Audit matters to other state agencies, he spoke for ESC with the U.S. Department of Labor Regional Office and had the authority, according to Chairman Duncan, to speak for ESC with law enforcement agencies. His total access to all ESC data, his duty to make investigations and recommendations, his review and investigation of sensitive personnel hires, his policy handbook on internal audit matters, as well as his authority to investigate all divisions and offices of ESC clearly show he was no technocrat performing purely financial audits. Indeed, his connection with financial audits of ESC was to review them and make recommendations to the Chairman's office about any needed changes in ESC operations.
13. Despite whatever actual duties the Petitioner may have performed, as Judge Britt noted in Stott v. Martin, 783 F.Supp. 970, 975 when he quoted the following from the Fourth Circuit opinion in Stott v. Haworth, 916 F.2d 134, 142 (4th Cir. 1990), the focus is on the functions of the position:

We would note that in conducting this inquiry, courts focus on the powers inherent in a given office, as opposed to the functions performed by a particular occupant of that office. 'The relevant inquiry is to the function of the public office in question and not the actual past duties of the particular employee involved.' 'Thus, if an officeholder performs fewer or less important functions than usually attend his position, he may still be exempt from the prohibition against political terminations if his position inherently encompasses tasks that make his political affiliation an appropriate requirement for effective performance.' (Cites omitted.) So it is, in this Petitioner's case, and the Respondents properly designated his position as policy making and were within the law in dismissing him from the policy making position he held.
14. Focusing on the powers inherent in the position the Petitioner held, the Internal Audit Manager I position at the Employment Security Commission "has access to confidential information and /or 'great influence in the formulation and implementation of policies of the agency.'" Therefore, the Respondents properly designated his position as policy making and were within the law in dismissing him from the policy making position he held.

### **RECOMMENDED DECISION**

The designation of the position as exempt should be upheld in that the Petitioner failed to carry his burden of proving that his position should not have been designated exempt.

The Petitioner's dismissal should be upheld since Respondents properly complied with Chapter 126 of the North Carolina General Statutes regarding his dismissal.

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 section 150B-36(b).

NOTICE

Before the agency makes the FINAL DECISION, it is required by North Carolina General Statutes section 150B-36(a) to give each party an opportunity to file exceptions to this RECOMMENDED DECISION, and to present written arguments to those in the agency who will make the final decision.

The agency is required by North Carolina General Statutes section 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.

This the 16th day of May, 1996.

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Brenda B. Becton  
Administrative Law Judge

**STATE OF NORTH CAROLINA**  
**COUNTY OF WAKE**

**IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
95 INS 1411**

**DEBORAH B. BEAVERS,**  
**Petitioner,**

**v.**

**N.C. TEACHERS' AND STATE EMPLOYEES'**  
**COMPREHENSIVE MAJOR MEDICAL PLAN**  
**Respondent.**

)  
)  
)  
)  
)  
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)

**RECOMMENDED DECISION**

This matter was heard before Administrative Law Judge Dolores O. Nesnow Smith on April 16, 1996, in Durham, North Carolina.

**APPEARANCES**

**Petitioner:** Jolinda Steinbacher  
Attorney at Law  
370 Knollwood Street  
Winston-Salem, NC 27103

**Respondent:** Evelyn B. Terry  
General Counsel  
N.C. Teachers & State Employees  
Comprehensive Major Medical Plan  
4905 Creedmoor Road  
Raleigh, NC 27612

**ISSUE**

Did the Respondent err in denying Petitioner's claim for coverage under the State's major medical plan?

**STATUTE AND RULES AT ISSUE**

N.C. Gen. Stat. 135-40.1(1a)  
N.C. Gen. Stat. 135-40.4  
N.C. Gen. Stat. 135-40.6(1)(4)(5)(6)(7) and (8)

**WITNESSES**

**For Petitioner:** Deborah Beavers  
Dr. Craig Fowler

**For Respondent:** Harold Wright  
Dr. William Parham

**EXHIBITS**

**For Petitioner:** P#2 - P#8

**For Respondent:** R#1 - R#6  
R#8 - Redacted  
R#9 - Redacted



R#10 - R#14

**FINDINGS OF FACT**

1. Petitioner is a State employee covered by the State Comprehensive Major Medical Plan (Plan) set forth in N.C. Gen. Stat. § 135-40 et seq.
2. Respondent, through its agent and Claims Processing Contractor, Blue Cross/Blue Shield (BC/BS), denied coverage for treatment of a fungal infection of Petitioner's eye.
3. On September 24, 1993, Petitioner underwent a surgical procedure to correct myopia (near-sightedness) in both eyes known as a radial keratotomy. The surgery was performed by Dr. Michael L. Steiner.
4. Following the radial keratotomy, Petitioner suffered no infection or similar complication.
5. In order to further improve plaintiff's vision following the initial surgery, Dr. Steiner performed an enhancement surgery to the left eye on December 27, 1993.
6. Sometime thereafter in January 1993, Petitioner developed pain, redness, and decreased vision in the left eye.
7. Petitioner was referred to the Duke Medical Center Department of Ophthalmology on January 19, 1994 where she was treated by Dr. W. Craig Fowler.
8. Dr. Fowler is a Board Certified Ophthalmologist who treats patients and teaches as an Assistant Professor of Ophthalmology at Duke.
9. Dr. Fowler has extensive experience in treating various fungal infections of the eye and has performed numerous surgeries.
10. Upon seeing the Petitioner, Dr. Fowler diagnosed a severe infection of the left eye known as fungal keratitis and endophthalmitis. He admitted Petitioner to the hospital where she stayed from January 20, 1994 through February 4, 1994.
11. Dr. Fowler was unable to control the infection with medication and injections into the eye. He therefore performed surgery which included penetrating keratoplasty or an emergency corneal transplantation.
12. Dr. Fowler continued to follow plaintiff throughout 1994 and on September 14, 1994, further surgery was performed including cataract extraction and lens implantation.
13. Petitioner thereafter recovered fairly well, particularly in light of the severity of the infection which usually would have lead to the loss of the eye.
14. The medical expenses incurred as a result of the infection were in excess of \$22,000.00. The exact amount of the expense is still under investigation.
15. The treatment and surgeries which resulted from the fungal infection are the type generally covered by the Plan.
16. Petitioner filed a claim for payment of medical expenses under the Plan through BC/BS.
17. On September 21, 1994, Petitioner's claim was denied on the grounds that the fungal infection was a complication of a non-covered procedure, namely the prior radial keratotomy.
18. Although the Plan lists a radial keratotomy as a non-covered procedure, nowhere in the Plan as set forth in N.C. Gen. Stat. § 135-40 et seq. or in the State Employees' Handbook which explains coverage is it stated that complications resulting from non-covered procedures are excluded from coverage.

19. The initial decision to deny Petitioner's claim was made by Dr. Cates, a family physician who works for BC/BS and who does not have a background in Ophthalmology.
20. Dr. Cates' written decision includes no reference to the basis for his determination as to the causal relationship between the radial keratotomy and the fungal keratitis.
21. Following this initial denial of coverage, Petitioner applied for a first level appeal which again was considered by BC/BS on behalf of the State.
22. During this appeal, BC/BS hired an independent outside consultant to review Petitioner's claim.
23. This independent consultant prepared a written report which was given to BC/BS.
24. Due to internal policy and contracts with independent consultants, the Respondent and BC/BS refuse to reveal the identity of the independent consultant or to provide a copy of his or her report.
25. The Respondent also did not provide information regarding the outside consultant's credentials, experience, or qualifications.
26. On the basis of the opinion of this undisclosed independent consultant, the Petitioner's first level appeal was denied.
27. After that denial, Petitioner filed a second level appeal. At the second level, Dr. Allen McBride, the then Medical Director for BC/BS, gave his recommendation regarding the appeal on April 27, 1995.
28. Dr. McBride is not an ophthalmologist and his recommendation relied upon the independent consultant's report.
29. Based upon that report, Dr. McBride concluded that the treatment rendered was due to a complication from a non-covered radial keratotomy.
30. During the course of the second level appeal, Dr. William Parham replaced Dr. McBride at BC/BS and thus gave his recommendation in the case.
31. Although Dr. Parham has a medical degree, he has not practiced since 1987. Dr. Parham's area of specialty was Internal and Pulmonary Medicine. He has never practiced in the field of Ophthalmology.
32. Dr. Parham also referred to the independent consultant's report. Dr. Parham was unaware of the name or the credentials of the independent consultant. He had, in fact, not seen the consultant's report.
33. Dr. Parham reviewed the note of Dr. McBride, the statement of Dr. Cates from the first appeal, and a one sentence "summary" of the opinion of the undisclosed consultant which was contained in an interoffice memo.
34. Based upon this, along with medical records of the treating physician, Dr. Fowler, Dr. Parham also recommended that coverage be denied.
35. During his evaluation of the case, Dr. Parham had a note from Dr. Fowler requesting that they discuss the case.
36. Dr. Parham did not contact Dr. Fowler.
37. Dr. Parham agreed that if the fungal keratitis was not related to the prior radial keratotomy or enhancement, the treatment would be covered under the Plan.
38. Dr. Parham testified that if Dr. Fowler, as the treating physician, did not relate the fungal infection to the prior radial keratotomy, "It would be more difficult for me to come to a comfortable conclusion."

39. Based upon Dr. Parham's recommendation, Petitioner's second level appeal was denied.

40. Petitioner appealed yet again. At that level of appeal, Deputy Executive Administrator Harold Wright gathered information and made a recommendation that Petitioner's claim be denied.

41. Mr. Wright, the Deputy Executive Administrator for the State Plan has no medical training.

42. Mr. Wright presented certain documentation along with his summary and recommendation to the Board of Trustees.

43. Mr. Wright had never seen the independent reviewer's report and did not forward the report to the Board of Trustees.

44. In the process of gathering information, Mr. Wright also received a letter from Dr. Fowler, which set forth his opinions in the case.

45. In that letter Dr. Fowler stated:

It is unfortunate that whoever is reviewing this case does not realize this problem is an infection that does not stem from any other problem. It has never been my opinion that this infection was not the result of everyday events.

46. Dr. Fowler further stated:

It is impossible for me, or in my opinion for any physician, to state with any degree of medical certainty that Ms. Beavers' eye infection of January 1994 was caused by or related to the prior radial keratotomy or enhancement. Stated conversely, it is impossible for me to state with any degree of medical certainty that the infection was not the result of everyday activities and events. Although some of my records may refer to a fungal infection "post radial keratotomy, "such reference is merely to the time sequence, that is, that the infection occurred after the radial keratotomy, and not directly as a result of it.

47. After receiving the information and recommendation from Mr. Wright, the Board of Trustees again denied Petitioner's claim for coverage.

48. The basis for the denial of Petitioner's claim is that complications from non-covered procedures are not covered. This statement is contained in a medical policy developed by BC/BS.

49. Neither the Comprehensive Major Medical Plan as set forth at N.C. Gen. Stat. § 135-40 et seq., nor the State Employees' Handbook states that complications of non-covered procedures are excluded from coverage.

50. The Respondent has rule-making authority at G.S. 135-39.8.

51. There is no rule prohibiting coverage for complications of non-covered procedures.

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

### CONCLUSIONS OF LAW

1. Benefits under the Plan are paid pursuant to G.S. 135-40 to 135-40.7.

G.S. 135-40.7 lists the expenses which are not covered by the Plan. Radial keratotomy is listed as a non-covered procedure.

Nowhere in that list of exclusions to medical coverage, or elsewhere in the statute, is it stated that complications of a non-covered procedure are not covered.

2. Respondent contends that the exemption of complications from a non-covered procedure arises from a



"policy" of BC/BS.

In fact, the statute at G.S. 135-40(b) provides that expenses will not be covered for "costs denied by the claims processor as part of its overall program of claim review and cost containment."

The North Carolina Court of Appeals reviewed coverage under the Plan in Vass v. Bd. of Trustees of State Employees' Medical Plan, 108 N.C. App. 251, 423 S.E. 2d 769 (1992). Therein, the Board of Trustees denied plaintiff's claim under the Plan for coverage of a radial keratotomy, which, at that time, was not on the list of exclusions.

The Court of Appeals found that "nowhere in the list of exclusions to medical coverage is it specifically stated that radial keratotomy is not a covered procedure." Id. at 258, 423 S.E. 2d at 754.

In Vass, as in the case at hand, the Board of Trustees argued that the denial of coverage was based upon a policy of the claims processing contractor. In rejecting this basis for denial of coverage, the Court of Appeals held that while the claims processing contractor is authorized by G.S. §135-40(b) to determine medical benefits for the Medical Plan, nowhere is it suggested that the contractor is authorized to deny benefits other than in conformity with the statutory language in N.C.G.S. §§ 135-40.6 to 40.7.

G.S. 135-40(b) can not be construed to authorize the Claims Processing Contractor to determine benefits other than in conformity with the statutory language.

3. The Board of Trustees of the Plan is an agency under the Administrative Procedures Act (APA, G.S. 150-B) and the provisions of the APA apply to the Board. Vass v. Bd. of Trustees of State Employees Medical Plan, 324 N.C. 402, 379 S.E. 2d 26, (1989).

In a 1986 Attorney General's opinion it was determined that:

When 150B-2(8a) and 150B-11(1) are read together, it is apparent that any procedures, whether formal or informal, that directly or substantially affect the rights or procedures of nonagency persons must be adopted as rules. See Opinion of Attorney General to Elizabeth H. Drury, Director, Office of Legislative and Legal Affairs, Department of Human Resources, 26 NCAC 25 (1989) (Emphasis added)\*\*

N.C. Gen. Stat. 150B-2(8a) provides, in pertinent part, that:

(8a) "Rule means any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency.

G.S. 150B-2(8a)a provides that statements concerning internal management of an agency including policies and procedures are exempt from rulemaking provided those statements do not directly or substantially affect the right or duties of a person no employed by that agency.

4. The Policy of the claims processing contractor exempting coverage for complications of a non-covered procedure substantially affects those people who are covered by the Plan and must be either a statutory provision or a rule. Being neither, it has not effect.

5. Since there is no binding regulation barring fungal infections or complications of a non-covered procedure, it is concluded that Petitioner's claim for benefits for expenses incurred due to the fungal keratitis must be allowed.

6. It is not necessary to resolve the parties' disagreement over whether the Petitioner's fungal keratitis was in fact a complication of the radial keratotomy.

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\*N.C. Gen. Stat. 150B-11(1) (repealed in 1991) was part of Article 2 of the APA, all of which was repealed in 1991 and replaced by Article 2A. To a great extent, Article 2A recodified the procedures for rulemaking which had duties of a person not employed by that by that agency.

RECOMMENDED DECISION

The Petitioner's fungal keratitis was covered under the Plan and her claim for benefits must be paid.

ORDER

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

NOTICE

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

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

The agency that will make the final decision in this contested case is the N.C. Teachers' and State Employees' Comprehensive Major Medical Plan.

This the 9th day of May, 1996.

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Dolores Nesnow Smith  
Administrative Law Judge

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

**TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE**

**TITLE      DEPARTMENT      LICENSING BOARDS      CHAPTER**

1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Auctioneers	4
4	Commerce	Barber Examiners	6
5	Correction	Certified Public Accountant Examiners	8
6	Council of State	Chiropractic Examiners	10
7	Cultural Resources	General Contractors	12
8	Elections	Cosmetic Art Examiners	14
9	Governor	Dental Examiners	16
10	Human Resources	Dietetics/Nutrition	17
11	Insurance	Electrical Contractors	18
12	Justice	Electrolysis	19
13	Labor	Foresters	20
14A	Crime Control & Public Safety	Geologists	21
15A	Environment, Health, and Natural Resources	Hearing Aid Dealers and Fitters	22
16	Public Education	Landscape Architects	26
17	Revenue	Landscape Contractors	28
18	Secretary of State	Marital and Family Therapy	31
19A	Transportation	Medical Examiners	32
20	Treasurer	Midwifery Joint Committee	33
*21	Occupational Licensing Boards	Mortuary Science	34
22	Administrative Procedures	Nursing	36
23	Community Colleges	Nursing Home Administrators	37
24	Independent Agencies	Occupational Therapists	38
25	State Personnel	Opticians	40
26	Administrative Hearings	Optometry	42
27	NC State Bar	Osteopathic Examination & Reg. (Repealed)	44
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		Pharmacy	46
		Physical Therapy Examiners	48
		Plumbing, Heating & Fire Sprinkler Contractors	50
		Podiatry Examiners	52
		Professional Counselors	53
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		Refrigeration Examiners	60
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**Note:** Title 21 contains the chapters of the various occupational licensing boards.





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*This index provides information related to notices, rules and other documents published in the Register. The information provided below includes notices and rules published on or after December 1, 1995 and will be cumulative through March 1997. For assistance contact the Rules Division at 919/733-2678.*

\* Fiscal Note = Rule-making agency has determined that the rule does not impact state or local funds and does not have a substantial economic impact. See G.S. 150B-21.4.

## ACUPUNCTURE LICENSING BOARD

21 NCAC 01 .0301		10:22 NCR 2860								
21 NCAC 01 .0705	10:17 NCR 2228		10:22 NCR 2834	*	Approve	04/18/96	*		11:04 NCR 220	
21 NCAC 01 .0709	10:17 NCR 2228		10:22 NCR 2834	*	Approve	04/18/96	*		11:04 NCR 220	

## ADMINISTRATIVE HEARINGS

26 NCAC 03	11:03 NCR 110									
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## ADMINISTRATION

### State Building Commission

1 NCAC 30G .0101		11:04 NCR 194								
1 NCAC 30G .0102		11:04 NCR 194								
1 NCAC 30G .0103		11:04 NCR 194								
1 NCAC 30G .0104		11:04 NCR 194								
1 NCAC 30G .0105		11:04 NCR 194								

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2 NCAC 09C .0701		11:05 NCR 282								
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2 NCAC 52B .0200	10:24 NCR 3056									
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<b>Credit Union Division</b>										
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4 NCAC 06C .0407	10:18 NCR 2398									
4 NCAC 06C .0409	10:18 NCR 2398									
<b>State Ports Authority</b>										
4 NCAC 13	10:24 NCR 3056									
<b>COMMUNITY COLLEGES</b>										
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23 NCAC 02E .0203	10:24 NCR 3058									
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<b>USS North Carolina Battleship Commission</b>										
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7 NCAC 05 .0203	10:18 NCR 2398		11:04 NCR 188	*						
7 NCAC 05 .0204	10:18 NCR 2398		11:04 NCR 188	*						
7 NCAC 05 .0207	10:18 NCR 2398		11:04 NCR 188	*						

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11:01 NCR 2



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## Coastal Resources Commission

15A NCAC 07 11:04 NCR 183  
 15A NCAC 07H .0106 10:16 NCR 1921  
 15A NCAC 07J .0102 10:24 NCR 3045

## Environmental Management Commission

15A NCAC 02 10:24 NCR 3045  
 15A NCAC 02 11:04 NCR 183  
 15A NCAC 02B .0223 11:02 NCR 75  
 15A NCAC 02B .0223 11:03 NCR 109  
 15A NCAC 02B .0224 10:18 NCR 2400  
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 15A NCAC 02B .0229 11:03 NCR 109  
 15A NCAC 02B .0303 10:18 NCR 2400  
 15A NCAC 02B .0315 11:02 NCR 75  
 15A NCAC 02L .0106 10:19 NCR 2508  
 15A NCAC 02L .0202 10:20 NCR 2591  
 15A NCAC 02P .0402 10:19 NCR 2512

## Health Services, Commission for

15A NCAC 18A 11:04 NCR 183  
 15A NCAC 18A .1814  
 15A NCAC 18A .2601  
 15A NCAC 20D .0243

## Marine Fisheries Commission

15A NCAC 03I .0019  
 15A NCAC 03J .0401  
 15A NCAC 03M .0202 11:03 NCR 110  
 15A NCAC 03M .0504 11:03 NCR 110  
 15A NCAC 03M .0511 11:03 NCR 110

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15A NCAC 10B .0123	11:02 NCR 76									
15A NCAC 10B .0203	11:02 NCR 76									
15A NCAC 10B .0208	11:02 NCR 76									
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15A NCAC 10C .0107	11:02 NCR 76									
15A NCAC 10C .0205	11:02 NCR 76									
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15A NCAC 10D .0002	11:02 NCR 76									
15A NCAC 10D .0003	11:02 NCR 76									
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15A NCAC 10F .0103	10:19 NCR 2506		11:01 NCR 14	*						
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15A NCAC 10F .0310	11:02 NCR 76		11:01 NCR 14	*						
15A NCAC 10F .0342	11:02 NCR 76		11:01 NCR 14	*						
15A NCAC 10F .0348	11:02 NCR 76		11:01 NCR 14	*						
15A NCAC 10G	11:01 NCR 13									

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15A NCAC 10G .0100	11:02 NCR 76									
15A NCAC 101 .0001	10:22 NCR 2829		11:04 NCR 191	*						11:03 NCR 104
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10 NCAC 03U .0604	11:03 NCR 109									
10 NCAC 03U .0704	10:19 NCR 2506		11:04 NCR 188	*						
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10 NCAC 03U .2701	10:20 NCR 2593									
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10 NCAC 03R .3020		10:21 NCR 2699								
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					Action	Date				
10 NCAC 42D .1409		10:21 NCR 2729								
10 NCAC 42D .1410		10:21 NCR 2729								
10 NCAC 42D .1411		10:21 NCR 2729								
10 NCAC 42D .1827		10:21 NCR 2729								
10 NCAC 42D .1828		10:21 NCR 2729								
10 NCAC 42D .1829		10:21 NCR 2729								
10 NCAC 42D .1830		10:21 NCR 2729								
10 NCAC 42V .0201		10:20 NCR 2597	11:03 NCR 111	*						
10 NCAC 42V .0802		10:20 NCR 2597	11:03 NCR 111	*						
10 NCAC 42V .0803		10:20 NCR 2597	11:03 NCR 111	*						
<b>INSURANCE</b>										
11 NCAC 12 .0551	10:18 NCR 2399		10:22 NCR 2831	*	Approve	05/16/96	*		11:05 NCR 283	
11 NCAC 16 .0703	10:18 NCR 2399		10:22 NCR 2832	*	Approve	05/16/96			11:05 NCR 284	
<b>JUSTICE</b>										
<b>Attorney General/Company Police</b>										
12 NCAC 021 .0101										
12 NCAC 021 .0206										
12 NCAC 021 .0210										
<b>Alarm Systems Licensing Board</b>										
12 NCAC 11 .0202	10:24 NCR 3057				Approve	04/18/96			11:04 NCR 208	
					Approve	04/18/96			11:04 NCR 208	
					Approve	04/18/96			11:04 NCR 208	
<b>LABOR</b>										
<b>Occupational Safety and Health</b>										
13 NCAC 07F	11:03 NCAC 106									
13 NCAC 07F .0101		11:03 NCR 119								
13 NCAC 07F .0201	11:03 NCR 106									



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					Action	Date				
13 NCAC 07F .0301	11-03 NCR 106									
<b>MEDICAL BOARD</b>										
21 NCAC 32H	10-18 NCR 2400									
21 NCAC 32H .0101	10-18 NCR 2400		10-22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0102	10-18 NCR 2400		10-22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0201	10-18 NCR 2400		10-22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0203	10-18 NCR 2400		10-22 NCR 2835	*	Approve	04/18/96	*			
21 NCAC 32H .0301	10-18 NCR 2400		10-22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0302	10-18 NCR 2400		10-22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0303	10-18 NCR 2400		10-22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0401	10-18 NCR 2400		10-22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0402	10-18 NCR 2400		10-22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0403	10-18 NCR 2400		10-22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0404	10-18 NCR 2400		10-22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0406	10-18 NCR 2400		10-22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0407	10-18 NCR 2400		10-22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0408	10-18 NCR 2400		10-22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0409	10-18 NCR 2400		10-22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0501	10-18 NCR 2400		10-22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0502	10-18 NCR 2400		10-22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0504	10-18 NCR 2400		10-22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0505	10-18 NCR 2400		10-22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0506	10-18 NCR 2400		10-22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0507	10-18 NCR 2400		10-22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0601	10-18 NCR 2400		10-22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0602	10-18 NCR 2400		10-22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0701	10-18 NCR 2400		10-22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	

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					Action	Date				
21 NCAC 32H .0702	10:18 NCR 2400		10:22 NCR 2835	*	Object	04/18/96				
21 NCAC 32H .0801	10:18 NCR 2400		10:22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0901	10:18 NCR 2400		10:22 NCR 2835	*	Approve	04/18/96	*		11:04 NCR 221	
21 NCAC 32H .0902	10:18 NCR 2400		10:22 NCR 2835	*	Approve	04/18/96			11:04 NCR 221	
<b>PSYCHOLOGY BOARD</b>										
21 NCAC 54 .2704					Approve	04/18/96			11:04 NCR 236	
21 NCAC 54 .2706					Approve	04/18/96			11:04 NCR 236	
<b>PUBLIC EDUCATION</b>										
16 NCAC 01A .0001					Approve	05/16/96			11:05 NCR 286	
16 NCAC 01A .0003					Approve	05/16/96			11:05 NCR 283	
<b>Standards Board for Public School Administration</b>										
16 NCAC 07	10:23 NCR 2957									
<b>REFRIGERATION EXAMINERS</b>										
21 NCAC 60 .0204	11:05 NCR 272									
21 NCAC 60 .0207	11:05 NCR 272									
21 NCAC 60 .0314	11:05 NCR 272									
<b>REAL ESTATE COMMISSION</b>										
21 NCAC 58A .0101	10:22 NCR 2829		11:03 NCR 114	*						
21 NCAC 58A .0105	10:22 NCR 2829		11:03 NCR 114	*						
21 NCAC 58A .0109	10:22 NCR 2829		11:03 NCR 114	*						
21 NCAC 58A .0110	10:22 NCR 2829		11:03 NCR 114	*						
21 NCAC 58A .0302	10:22 NCR 2829		11:03 NCR 114	*						
21 NCAC 58A .0503	10:22 NCR 2829		11:03 NCR 114	*						

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					Action	Date				
21 NCAC 58A .0504	10:22 NCR 2829		11:03 NCR 114	*						
21 NCAC 58A .1501	10:22 NCR 2829		11:03 NCR 114	*						
21 NCAC 58A .1502	10:22 NCR 2829		11:03 NCR 114	*						
21 NCAC 58A .1601	10:22 NCR 2835		11:03 NCR 114	*						
<b>REVENUE</b>										
17 NCAC 01C .0504		10:20 NCR 2599								
17 NCAC 01C .0506		10:20 NCR 2599								
17 NCAC 05C .0102			11:03 NCR 113	*						
17 NCAC 05C .2101			10:24 NCR 3059	*	Approve	05/16/96	*		11:05 NCR 284	
17 NCAC 06B .0612			10:22 NCR 2833	*	Approve	04/18/96	*		11:04 NCR 211	
17 NCAC 06B .3716			10:22 NCR 2833	*	Approve	04/18/96	*		11:04 NCR 211	
17 NCAC 07B .1101			10:21 NCR 2688	*	Approve	04/18/96	*		11:04 NCR 212	
17 NCAC 07B .1105			10:21 NCR 2688	*	Approve	04/18/96			11:04 NCR 212	
17 NCAC 07B .1108			10:21 NCR 2688	*	Approve	04/18/96			11:04 NCR 212	
17 NCAC 07B .1109			10:21 NCR 2688	*	Approve	04/18/96			11:04 NCR 212	
17 NCAC 07B .1110			10:21 NCR 2688	*	Approve	04/18/96			11:04 NCR 212	
17 NCAC 07B .1112			10:21 NCR 2688	*	Approve	04/18/96			11:04 NCR 212	
17 NCAC 07B .1114			10:21 NCR 2688	*	Approve	04/18/96			11:04 NCR 212	
17 NCAC 07B .1123			10:21 NCR 2688	*	Approve	04/18/96	*		11:04 NCR 212	
17 NCAC 07B .1602			10:21 NCR 2688	*	Approve	04/18/96	*		11:04 NCR 212	
17 NCAC 07B .1701			10:21 NCR 2688	*	Approve	04/18/96	*		11:04 NCR 212	
17 NCAC 07B .1702			10:21 NCR 2688	*	Approve	04/18/96	*		11:04 NCR 212	
17 NCAC 07B .1802			10:21 NCR 2688	*	Approve	04/18/96	*		11:04 NCR 212	
17 NCAC 07B .2401			10:21 NCR 2688	*	Approve	04/18/96	*		11:04 NCR 212	
17 NCAC 07B .2601			10:21 NCR 2688	*	Approve	04/18/96			11:04 NCR 212	
17 NCAC 07B .4002			10:21 NCR 2688	*	Approve	04/18/96			11:04 NCR 212	
17 NCAC 07B .4004			10:21 NCR 2688	*	Approve	04/18/96			11:04 NCR 212	



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17 NCAC 07B .4008			10:21 NCR 2688	*	Approve	04/18/96	*		11:04 NCR 212	
17 NCAC 07B .4301			10:21 NCR 2688	*	Approve	04/18/96	*		11:04 NCR 212	
17 NCAC 07B .4408			10:21 NCR 2688	*	Approve	04/18/96	*		11:04 NCR 212	
17 NCAC 07B .4902			10:21 NCR 2688	*	Approve	04/18/96	*		11:04 NCR 212	
Tax Review Board										11:02 NCR 72

## SOCIAL WORK, BOARD OF

21 NCAC 63 .0306		10:21 NCR 2739	11:03 NCR 118	*						
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## SOIL SCIENTISTS, BOARD FOR LICENSING

21 NCAC 69 .0101	10:19 NCR 2507	11:04 NCR 200	11:04 NCR 200							
21 NCAC 69 .0102	10:19 NCR 2507	11:04 NCR 200	11:04 NCR 200							
21 NCAC 69 .0103	10:19 NCR 2507	11:04 NCR 200	11:04 NCR 200							
21 NCAC 69 .0104	10:19 NCR 2507	11:04 NCR 200	11:04 NCR 200							
21 NCAC 69 .0201	10:19 NCR 2507	11:04 NCR 200	11:04 NCR 200							
21 NCAC 69 .0202	10:19 NCR 2507	11:04 NCR 200	11:04 NCR 200							
21 NCAC 69 .0301	10:19 NCR 2507	11:04 NCR 200	11:04 NCR 200							
21 NCAC 69 .0302	10:19 NCR 2507	11:04 NCR 200	11:04 NCR 200							
21 NCAC 69 .0303	10:19 NCR 2507	11:04 NCR 200	11:04 NCR 200							
21 NCAC 69 .0304	10:19 NCR 2507	11:04 NCR 200	11:04 NCR 200							
21 NCAC 69 .0305	10:19 NCR 2507	11:04 NCR 200	11:04 NCR 200							
21 NCAC 69 .0306	10:19 NCR 2507	11:04 NCR 200	11:04 NCR 200							
21 NCAC 69 .0307	10:19 NCR 2507	11:04 NCR 200	11:04 NCR 200							
21 NCAC 69 .0308	10:19 NCR 2507	11:04 NCR 200	11:04 NCR 200							
21 NCAC 69 .0401	10:19 NCR 2507	11:04 NCR 200	11:04 NCR 200							
21 NCAC 69 .0402	10:19 NCR 2507	11:04 NCR 200	11:04 NCR 200							
21 NCAC 69 .0501	10:19 NCR 2507	11:04 NCR 200	11:04 NCR 200							

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## STATE PERSONNEL COMMISSION

25 NCAC 01J .0613

10:23 NCR 2960

25 NCAC 01J .0613

Approve 03/21/96

11:01 NCR 26

## SUBSTANCE ABUSE PROFESSIONALS CERTIFICATION BOARD

21 NCAC 68 10:18 NCR 2401

21 NCAC 68 0101 10:18 NCR 2401

10:22 NCR 2850

Approve 04/18/96

11:04 NCR 238

21 NCAC 68 0102 10:18 NCR 2401

10:22 NCR 2850

Approve 04/18/96

11:04 NCR 238

21 NCAC 68 0201 10:18 NCR 2401

10:22 NCR 2850

Approve 04/18/96

11:04 NCR 238

21 NCAC 68 0202 10:18 NCR 2401

10:22 NCR 2850

Approve 04/18/96

11:04 NCR 238

21 NCAC 68 0203 10:18 NCR 2401

10:22 NCR 2850

Approve 04/18/96

11:04 NCR 238

21 NCAC 68 0204 10:18 NCR 2401

10:22 NCR 2850

Approve 04/18/96

11:04 NCR 238

21 NCAC 68 0205 10:18 NCR 2401

10:22 NCR 2850

Approve 04/18/96

11:04 NCR 238

21 NCAC 68 0206 10:18 NCR 2401

10:22 NCR 2850

Approve 04/18/96

11:04 NCR 238

21 NCAC 68 0207 10:18 NCR 2401

10:22 NCR 2850

Approve 04/18/96

11:04 NCR 238

21 NCAC 68 0208 10:18 NCR 2401

10:22 NCR 2850

Approve 04/18/96

11:04 NCR 238

21 NCAC 68 0209 10:18 NCR 2401

10:22 NCR 2850

Approve 04/18/96

11:04 NCR 238

21 NCAC 68 0210 10:18 NCR 2401

10:22 NCR 2850

Approve 04/18/96

11:04 NCR 238

21 NCAC 68 0211 10:18 NCR 2401

10:22 NCR 2850

Approve 04/18/96

11:04 NCR 238

21 NCAC 68 0212 10:18 NCR 2401

10:22 NCR 2850

Approve 04/18/96

11:04 NCR 238

21 NCAC 68 0213 10:18 NCR 2401

10:22 NCR 2850

Approve 04/18/96

11:04 NCR 238

21 NCAC 68 0401 10:18 NCR 2401

10:22 NCR 2850

Approve 04/18/96

11:04 NCR 238

21 NCAC 68 0402 10:18 NCR 2401

10:22 NCR 2850

Approve 04/18/96

11:04 NCR 238

21 NCAC 68 0403 10:18 NCR 2401

10:22 NCR 2850

Approve 04/18/96

11:04 NCR 238

21 NCAC 68 0404 10:18 NCR 2401

10:22 NCR 2850

Approve 04/18/96

11:04 NCR 238

21 NCAC 68 0405 10:18 NCR 2401

10:22 NCR 2850

Approve 04/18/96

11:04 NCR 238

21 NCAC 68 0406 10:18 NCR 2401

10:22 NCR 2850

Approve 04/18/96

11:04 NCR 238

21 NCAC 68 0407 10:18 NCR 2401

10:22 NCR 2850

Approve 04/18/96

11:04 NCR 238

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21 NCAC 68 .0701	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*		11:04 NCR 238	
21 NCAC 68 .0702	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*		11:04 NCR 238	
21 NCAC 68 .0703	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*		11:04 NCR 238	
21 NCAC 68 .0704	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96			11:04 NCR 238	
21 NCAC 68 .0705	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96			11:04 NCR 238	
21 NCAC 68 .0706	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*		11:04 NCR 238	
21 NCAC 68 .0707	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*		11:04 NCR 238	
21 NCAC 68 .0708	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96			11:04 NCR 238	
21 NCAC 68 .0709	10:18 NCR 2401		10:22 NCR 2850	*	Approve	04/18/96	*		11:04 NCR 238	

## TRANSPORTATION

19A NCAC 06B .0401	10:23 NCR 2957		11:05 NCR 279	state						
19A NCAC 06B .0402	10:23 NCR 2957		11:05 NCR 279	state						
19A NCAC 06B .0403	10:23 NCR 2957		11:05 NCR 279	state						
19A NCAC 06B .0404	10:23 NCR 2957		11:05 NCR 279	state						
19A NCAC 06B .0405	10:23 NCR 2957		11:05 NCR 279	state						
19A NCAC 06B .0406	10:23 NCR 2957		11:05 NCR 279	state						
19A NCAC 06B .0407	10:23 NCR 2957		11:05 NCR 279	state						
19A NCAC 06B .0408	10:23 NCR 2957		11:05 NCR 279	state						
19A NCAC 06B .0409	10:23 NCR 2957		11:05 NCR 279	state						
19A NCAC 06B .0410	10:23 NCR 2957		11:05 NCR 279	state						
19A NCAC 06B .0411	10:23 NCR 2957		11:05 NCR 279	state						
19A NCAC 06B .0412	10:23 NCR 2957		11:05 NCR 279	state						
19A NCAC 06B .0413	10:23 NCR 2957		11:05 NCR 279	state						
19A NCAC 06B .0414	10:23 NCR 2957		11:05 NCR 279	state						
19A NCAC 06B .0415	10:23 NCR 2957		11:05 NCR 279	state						
19A NCAC 06B .0416	10:23 NCR 2957		11:05 NCR 279	state						
19A NCAC 06B .0417	10:23 NCR 2957		11:05 NCR 279	state						

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Highways, Division of										
19A NCAC 02D .1101	10:23 NCR 2957		11:05 NCR 274	*						
19A NCAC 02D .1102	10:23 NCR 2957		11:05 NCR 274	*						
19A NCAC 02D .1103	10:23 NCR 2957		11:05 NCR 274	*						
19A NCAC 02D .1104	10:23 NCR 2957		11:05 NCR 274	*						
19A NCAC 02D .1105	10:23 NCR 2957		11:05 NCR 274	*						
19A NCAC 02D .1106	10:23 NCR 2957		11:05 NCR 274	*						
19A NCAC 02D .1107	10:23 NCR 2957		11:05 NCR 274	*						
19A NCAC 02D .1108	10:23 NCR 2957		11:05 NCR 274	*						
19A NCAC 02D .1109	10:23 NCR 2957		11:05 NCR 274	*						
19A NCAC 02D .1110	10:23 NCR 2957		11:05 NCR 274	*						
19A NCAC 02D .1111	10:23 NCR 2957		11:05 NCR 274	*						
19A NCAC 02D .1112	10:23 NCR 2957		11:05 NCR 274	*						

Motor Vehicles, Division of

19A NCAC 03E .0500 11:01 NCR 13





# BARCLAYS OFFICIAL NORTH CAROLINA ADMINISTRATIVE CODE - 1995

DESCRIPTION	CODE	ONE-TIME PURCHASE PRICE	ANNUAL SUBSCRIPTION PRICE
<b>Title 1 - Dept. of Administration - Full Title</b>	<b>201 00 00</b>	<b>\$63.00</b>	<b>\$90.00</b>
Division of Purchase & Contract	201 10 05	\$21.00	\$30.00
Federal Block Grant Funds	201 10 33	\$17.50	\$25.00
<b>Title 2 - Dept. of Agriculture - Full Title</b>	<b>202 00 00</b>	<b>\$98.00</b>	<b>\$140.00</b>
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
<b>Title 3 - Dept. of State Auditor - Full Title</b>	<b>203 00 00</b>	<b>\$7.00</b>	<b>\$10.00</b>
<b>Title 4 - Dept. of Commerce - Full Title</b>	<b>204 00 00</b>	<b>\$87.50</b>	<b>\$125.00</b>
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
<b>Title 5 - Dept. of Corrections - Full Title</b>	<b>205 00 00</b>	<b>\$56.00</b>	<b>\$80.00</b>
Division of Prisons	205 15 02	\$24.50	\$35.00
<b>Title 6 - Council of State - Full Title</b>	<b>206 00 00</b>	<b>\$21.00</b>	<b>\$30.00</b>
<b>Title 7 - Dept. of Cultural Resources - Full Title</b>	<b>207 00 00</b>	<b>\$21.00</b>	<b>\$30.00</b>
<b>Title 8 - State Board of Elections - Full Title</b>	<b>208 00 00</b>	<b>\$7.00</b>	<b>\$10.00</b>
<b>Title 9 - Offices of the Governor &amp; Lt. Governor - Full Title</b>	<b>209 00 00</b>	<b>\$31.50</b>	<b>\$45.00</b>
<b>Title 10 - Dept. of Human Resources - Full Title</b>	<b>210 00 00</b>	<b>\$346.50</b>	<b>\$495.00</b>
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
<b>Title 11 - Dept. of Insurance - Full Title</b>	<b>211 00 00</b>	<b>\$63.00</b>	<b>\$90.00</b>
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NC Alarm Systems Licensing Board	212 10 11	\$17.50	\$25.00
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