

The **NORTH CAROLINA REGISTER**

IN THIS ISSUE

EXECUTIVE ORDERS

IN ADDITION

Final Decision Letters

PROPOSED RULES

Community Colleges

Economic and Community Development

Environment, Health, and Natural Resources

Human Resources

Justice

Nursing, Board of

RRC OBJECTIONS

CONTESTED CASE DECISIONS

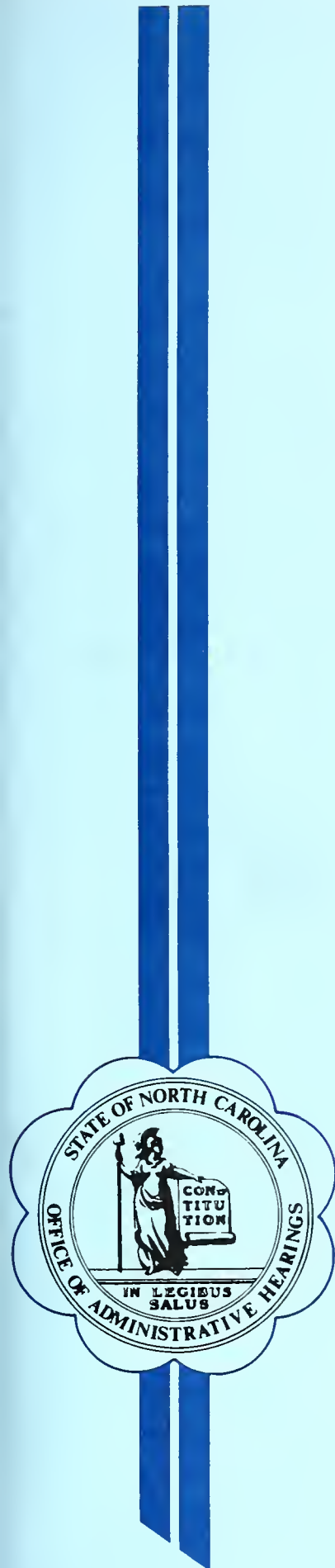
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INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

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

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

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

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

ADOPTION AMENDMENT, AND REPEAL OF RULES

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

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

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

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

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

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

TEMPORARY RULES

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

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% of is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

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

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication are available.

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

CITATION TO THE NORTH CAROLINA REGISTER

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

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

NORTH CAROLINA REGISTER



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ISSUE CONTENTS

I. EXECUTIVE ORDER	
Executive Order 178	1464
II. IN ADDITION	
Final Decision Letters	1465
III. PROPOSED RULES	
Community Colleges	
Community Colleges	1535
General Provisions	1531
Miscellaneous Programs	1598
Economic and Community Development	
Banking Commission	1467
Environment, Health, and Natural Resources	
Coastal Management	1507
Environmental Management	1487
Radiation Protection Commission	1520
Human Resources	
Social Services Commission	1471
Justice	
N.C. Alarm Systems Licensing Board	1486
Licensing Boards	
Nursing, Board of	1528
IV. RRC OBJECTIONS	1609
V. CONTESTED CASE DECISIONS	
Index to ALJ Decisions	1613
Text of Selected Decisions	
91 EHR 0446	1628
92 DOJ 0130	1632
VI. CUMULATIVE INDEX	1638

NORTH CAROLINA REGISTER
Publication Schedule
(August 1992 - December 1993)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing	Earliest Date for Adoption by Agency	Last Day to Submit to RRC	*Earliest Effective Date
*****	*****	*****	*****	*****	*****	*****
08/03/92	07/13/92	07/20/92	08/18/92	09/02/92	09/20/92	11/02/92
08/14/92	07/24/92	07/31/92	08/29/92	09/13/92	09/20/92	11/02/92
09/01/92	08/11/92	08/18/92	09/16/92	10/01/92	10/20/92	12/01/92
09/15/92	08/25/92	09/01/92	09/30/92	10/15/92	10/20/92	12/01/92
10/01/92	09/10/92	09/17/92	10/16/92	10/31/92	11/20/92	01/04/93
10/15/92	09/24/92	10/01/92	10/30/92	11/14/92	11/20/92	01/04/93
11/02/92	10/12/92	10/19/92	11/17/92	12/02/92	12/20/92	02/01/93
11/16/92	10/23/92	10/30/92	12/01/92	12/16/92	12/20/92	02/01/93
12/01/92	11/06/92	11/13/92	12/16/92	12/31/92	01/20/93	03/01/93
12/15/92	11/24/92	12/01/92	12/30/92	01/14/93	01/20/93	03/01/93
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12/01/93	11/05/93	11/15/93	12/16/93	12/31/93	01/20/94	03/01/94
12/15/93	11/24/93	12/01/93	12/30/93	01/14/94	01/20/94	03/01/94

* The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st business day of the next calendar month.

**EXECUTIVE ORDER NUMBER 178
WAIVING CERTAIN PENALTIES
PURSUANT TO CHAPTER 166A
OF THE GENERAL STATUTES
OF NORTH CAROLINA**

WHEREAS, this year's sweet potato crops ("yams") are among the largest in recent years; and

WHEREAS, the recent heavy rainfall has caused an increase in the weight of the yams in the fields due to soil moisture and water saturation; and

WHEREAS, substantial portions of the crops may be lost if they are not removed from the fields soon; and

WHEREAS, there is a substantial likelihood that the farmers of the state will be unable to remove their yams from the fields before crop deterioration occurs (with the equipment now available to them for that purpose) if they are required to adhere to the weight restrictions presently imposed by N.C.G.S. 20-88, 10-96, and 20-118; and

WHEREAS, under the provisions of N.C.G.S. 166A-4(3) and 166A-6(c)(3), the Governor, with the concurrence of the Council of State, may waive the penalties for exceeding the weight limits imposed by said statutes in the event of an imminent threat of widespread damage from a natural or man-made accidental cause within the meaning of N.C.G.S. 166A-4(3) and 166A-6(c)(3); and

WHEREAS, with the concurrence of the Council of State, I have found that because (i) they must adhere to the weight restrictions of N.C.G.S. 20-88, 20-96 and 20-118, farmers may be unable to remove their yams from the fields soon enough, (ii) their inability to do so likely will result in damages to their crops causing them to suffer losses and, therefore, (iii) there is an imminent threat of widespread damage from a natural or man-made accidental cause within the meaning of N.C.G.S. 166A-4(3);

THEREFORE, pursuant to the authority vested in me by the Constitution and laws of this State and with the concurrence of the Council of State, it is **ORDERED**:

Section 1. The Division of Motor Vehicles shall

waive penalties arising under N.C.G.S. 20-88, 20-96, and 20-118 that otherwise would be assessed against vehicles transporting unprocessed yams to processing facilities on the highways of the State.

Section 2. Notwithstanding the waivers set forth above, penalties shall not be waived under the following conditions:

- (1) When the vehicle weight exceeds the maximum gross vehicle weight criteria established by the manufacturer (GVWR) or 90,000 pounds gross vehicle weight, whichever is less.
- (2) When tandem axle weights exceed 42,000 pounds and single axle weights exceed 22,000 pounds.

Section 3. The vehicles described above will be exempt from the vehicle licensing and tax requirements of N.C.G.S. 105, Subchapter 5, Article 36B.

Section 4. This Order shall not be in effect on highways of the Interstate Highway System and bridges posted pursuant to N.C.G.S. 136-72.

Section 5. This Order shall be effective immediately and shall remain in effect until November 15, 1992.

Done in the Capital City of Raleigh, North Carolina, this the 15th day of October, 1992.

G.S. 120-30.9H, effective July 16, 1986, requires that all letters and other documents issued by the Attorney General of the United States in which a final decision is made concerning a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 be published in the North Carolina Register.

U.S. Department of Justice

Civil Rights Division

Voting Section

P.O. Box 66128

Washington, D.C. 20035-6128

JRD:GS:FHD:tlb
DJ 166-012-3
92-3551

September 20, 1992

Robert C. Cogswell, Jr., Esq.
City Attorney
P. O. Box 1513
Fayetteville, North Carolina 28302-1513

Dear Mr. Cogswell:

This refers to the salary increase for the mayor, mayor pro tem and the city council of the City of Fayetteville in Cumberland County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on August 4, 1992.

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

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

By:

Steven H. Rosenbaum
Chief, Voting Section

U.S. Department of Justice

Civil Rights Division

Voting Section

P.O. Box 66128

Washington, D.C. 20035-6128

JRD:LLT:BMT:tlb

DJ 166-012-3

92-3515

October 20, 1992

Michael Crowell, Esq.
Tharrington, Smith & Hargrove
P. O. Box 1151
Raleigh, North Carolina 27602

Dear Mr. Crowell:

This refers to the Chapter 809 (1992), which provides for a seven-member board of education elected from single-member districts, by a substantial plurality as provided under state law for party primaries, for regular four-year terms staggered 3-4 and establishes candidate qualifications, runoff provisions, an implementation schedule, procedures for filling vacancies, and a districting plan for the Edgecombe County School District in Edgecombe County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on August 3, 1992.

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

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

By:

Steven H. Rosenbaum
Chief, Voting Section

**TITLE 4 - DEPARTMENT OF
ECONOMIC AND COMMUNITY
DEVELOPMENT**

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Banking Commission intends to adopt rules cited as 4 NCAC 3F .0201, .0301 - .0304, .0401 - .0403, .0501 - .0509, .0601, .0602, .0701 and repeal rules cited as 4 NCAC 3F .0001 - .0003.

The proposed effective date of this action is February 1, 1993.

The public hearing will be conducted at 9:00 a.m. on November 17, 1992 at the Dobbs Building, Suite 6210, 430 North Salisbury Street, Raleigh, NC.

Reason for Proposed Action: Money Transmitters, Codified at Chapter 53, Article 16, of the North Carolina General Statutes was extensively revised effective October 1, 1992. The Banking Commission proposes to adopt new rules to reflect the statutory changes.

Comment Procedures: Comments must be submitted in writing not later than Wednesday, December 2, 1992. Written comments should be directed to: T. Mercedes Oglukian, Assistant General Counsel, North Carolina Banking Commission, P.O. Box 29512, Raleigh, NC 27626-0512.

CHAPTER 3 - BANKING COMMISSION

**SUBCHAPTER 3F - LICENSEES UNDER
MONEY TRANSMITTERS ACT**

.0001 APPLICATION FOR LICENSE

No person, other than those exempted by G.S. 53-195, may sell or issue checks in this state as a service or for a fee or other consideration without first obtaining a license from the Commissioner of Banks. Application for a license shall be accomplished by the execution of Form NC-SCA and the payment of the statutory investigation fee. That form contains a request for a license to operate a business of selling and issuing checks, money orders, or other instruments as a service or for a fee or other consideration and incorporates all

statutory requirements and criteria. The form may be obtained from and should be filed with:

The Commissioner of Banks
P.O. Box 951
Raleigh, North Carolina 27602.

Statutory Authority G.S. 53-92; 53-194; 53-196; 53-197.

.0002 ISSUANCE OF LICENSE

Following the receipt of Form NC-SCA, the Commissioner of Banks will investigate the facts and upon a determination by him that all statutory requirements and criteria have been satisfied he shall issue a license, Form NC-SCA-1. Such license shall be renewed annually.

Statutory Authority G.S. 53-92; 53-194; 53-200.

.0003 REQUIRED REPORTS

Each licensee will submit to the Commissioner of Banks annually on or before June 30th evidence that the required bond is in effect, as well as certified financial statements and a list of the locations, including agencies, at which the licensee engages in the business of selling checks in this state.

Statutory Authority G.S. 53-92; 53-198; 53-204.

SECTION .0200 - ADMINISTRATIVE

.0201 DEFINITIONS

(a) As used in the Rules, unless the context clearly requires otherwise:

- (1) Terms defined in G.S. 53-193 shall have the same meaning as set forth therein;
- (2) "Money Transmitters Act" shall mean the Money Transmitters Act codified at Chapter 53, Article 16 of the North Carolina General Statutes (G.S. 53-192, et seq.);
- (3) "State" shall mean the State of North Carolina;
- (4) "Applicant" shall mean a person who applies for a license under the Money Transmitters Act;
- (5) "Controlling person" shall mean any 10% equity owner of an applicant or licensee;
- (6) "Executive officer" shall mean any employee (other than a director) of the applicant or licensee who participates in or has the authority to participate in

major policymaking decisions.

(b) An application for a license, amendment to the application, annual statement, notice, or any other document which is required by law or regulation to be filed with the Commissioner shall be addressed as follows:

Commissioner of Banks
Post Office Box 29512
Raleigh, North Carolina 27626-0512

Statutory Authority G.S. 53-193; 53-196; 53-206.1; 150B-21.2.

SECTION .0300 - LICENSING

.0301 APPLICATION FOR A LICENSE

(a) Any person who wishes to sell or issue checks in this State pursuant to the Money Transmitters Act must first obtain a license issued by the Commissioner. An application for a license can be obtained from and should be filed pursuant to Rule .0201(b) of this Subchapter.

(b) An application for a Money Transmitters' license shall include the following:

- (1) Certified copies of the following documents, where applicable:
 - (A) The applicant's Articles of Incorporation, limited partnership agreement, or other organizational documents,
 - (B) A certified copy of the applicant's Assumed Name Certificate,
 - (C) A Certificate of Existence or Certificate of Good Standing from the applicant's state of incorporation,
 - (D) A Certificate of Authority to do business in this State;
- (2) A description of the applicant's business experience, operations and organizational structure;
- (3) The identity of the applicant's controlling persons and their percentage of equity ownership;
- (4) If the applicant is not a publicly traded corporation, or a subsidiary of such corporation, the identity, business experience, education and financial information of its executive officers and directors;
- (5) Disclosure of any criminal proceedings pending against or criminal convictions entered against the applicant, its directors or executive officers;
- (6) Disclosure of any civil proceedings pending against or civil judgments

entered against the applicant, its directors or executive officers which involve fraud, dishonesty or like offense;

- (7) Disclosure of any of the following proceedings involving the applicant, its subsidiaries or parent: bankruptcy; assignment for the benefit of creditors; receivership; conservatorship; enforcement proceedings resulting in the revocation or suspension of a license or other privilege to sell or issue checks in any state;
 - (8) The name and location of each agent and subagent authorized by the applicant to sell its checks in this State;
 - (9) A certified consolidated financial statement of the applicant for the previous fiscal year, or where the applicant is a wholly-owned subsidiary of another corporation, the certified independent financial statement (not consolidated with the parent company) of the applicant and, either the certified consolidated financial statement of its parent for the previous fiscal year, or the most recent 10K report filed with the Securities and Exchange Commission by its parent;
 - (10) A specimen copy of the checks to be sold or issued by the applicant within this State;
 - (11) A copy of the applicant's authorized agent agreement or contract;
 - (12) A surety bond as set forth in G.S. 53-198 or evidence of compliance with G.S. 53-199(b).
- (c) In addition to the documents and information listed in Paragraph (b) of this Rule, the Commissioner may require additional information necessary to complete an investigation pursuant to G.S. 53-200.
- (d) Incomplete application files may be closed and deemed denied without prejudice when the applicant has not submitted information requested by the Commissioner within 30 days of such request.

Statutory Authority G.S. 53-194; 53-196; 53-198; 53-199(b); 53-200; 53-206.1; 150B-21.2.

.0302 ISSUANCE OF A LICENSE

On receipt of a completed application and payment of the investigation fee required by G.S. 53-197, the Commissioner will investigate the applicant pursuant to G.S. 53-200. If the Commission-

er finds that the applicant has met the provisions of G.S. 53-200, the Commissioner shall issue the applicant a license.

Statutory Authority G.S. 53-197; 53-200; 53-206.1; 150B-21.2.

.0303 LICENSE FEES

A licensee shall pay a license fee of one thousand dollars (\$1,000) within five days after the issuance of the license and annually thereafter on or before December 31 of each year.

Statutory Authority G.S. 53-202; 53-206.1; 150B-21.2.

.0304 AGENT LOCATION FEE

A licensee shall pay to the Commissioner within five days after the issuance of a license, and annually thereafter on or before December 31 of each year, an agent location fee of ten dollars (\$10.00) for each location within this State at which its checks are sold. Notwithstanding the number of locations within this State, the agent location fee shall not exceed five thousand dollars (\$5,000) per annum for each licensee.

Statutory Authority G.S. 53-202; 53-206.1; 150B-21.2.

SECTION .0400 - OPERATIONS

.0401 CERTIFICATE OF AUTHORITY

A licensee shall issue a certificate of authority for each location at which its checks are sold or issued. The certificate must be posted in public view and shall state as follows: "Checks of (licensee) are sold at this location pursuant to Section 7 of the Money Transmitters Act (N.C. Gen. Stat. § 53-203)."

Statutory Authority G.S. 53-203; 53-206.1; 150B-21.2.

.0402 REQUIRED AND PERMISSIBLE INVESTMENTS

Unencumbered direct or indirect obligations of the United States, any agency or instrumentality thereof and general obligations of this or any state, county or other political subdivision thereof shall have a minimum rating of BAA by Moody's Investors Service or BBB by Standard and Poors.

Statutory Authority G.S. 53-193; 53-199.1; 53-206.1; 150B-21.2.

.0403 SURRENDER OF LICENSE

A licensee shall surrender its license to the Commissioner no later than 30 days after it has ceased operations in this State.

Statutory Authority G.S. 53-206.1; 150B-21.2.

SECTION .0500 - REPORTING AND NOTIFICATIONS

.0501 GENERALLY ACCEPTED ACCOUNTING PRINCIPLES

For the purposes of the Money Transmitters Act and this Subchapter, all required financial statements shall be prepared according to generally accepted accounting principles.

Statutory Authority G.S. 53-204(a); 53-206.1; 150B-21.2.

.0502 STATEMENT OF NET WORTH

The statement of net worth required by G.S. 53-204(a) shall include:

- (1) A certified consolidated financial statement of the licensee for the previous fiscal year;
- (2) If the licensee is a wholly-owned subsidiary, it must provide its certified independent financial statement (not consolidated with the parent company), and either the certified consolidated financial statement of its parent for the previous fiscal year or the most recent 10K report filed with the Securities and Exchange Commission by its parent;
- (3) The statement of net worth described in Items (1) and (2) of this Rule shall be filed no later than April 30 for the preceding fiscal year.

Statutory Authority G.S. 53-204(a); 53-206.1; 150B-21.2.

.0503 ANNUAL STATEMENT

(a) On or before December 31 of each year, a licensee must file an annual statement which can be obtained from and should be filed pursuant to Rule .0201(b) of this Subchapter.

(b) The annual statement referenced in Paragraph (a) of this Rule shall include the following:

- (1) The address of the offices at which the licensee sells or issues checks in this State and the names and locations of the persons authorized by the licensee to sell or issue checks in this State;

- (2) A Certificate of Continuation of the surety bond required by G.S. 53-198 or evidence of continued compliance with G.S. 53-199(b);
- (3) A Certificate of Existence or Certificate of Good Standing from the state of incorporation, where applicable.

Statutory Authority G.S. 53-198; 53-199(b); 53-204(a); 53-206.1; 150B-21.2.

.0504 AGENT ACTIVITY REPORTS

A licensee shall file each quarter, for the quarter then ended, a report of agent activity which contains the following information:

- (1) The name of each agent or subagent in this State and the address at which he sells or issues checks in this State;
- (2) The total number and dollar amount of the checks sold or issued by each agent or subagent in this State.

Statutory Authority G.S. 53-204(a); 53-206.1; 150B-21.2.

.0505 AMENDMENTS TO APPLICATION

A licensee must maintain a current application with the Commissioner. If the information contained in the application is or becomes inaccurate in any material respect, the licensee shall file a correcting amendment as soon as practicable, but in no event later than 30 days after the effective date of such change. An amendment to the application can be obtained from and should be filed pursuant to Rule .0201(b) of this Subchapter.

Statutory Authority G.S. 53-206.1; 150B-21.2.

.0506 REVOCATION OR CANCELLATION OF SURETY BOND

A licensee must immediately notify the Commissioner in writing of revocation or cancellation of its surety bond furnished pursuant to G.S. 53-198.

Statutory Authority G.S. 53-198; 53-206.1; 150B-21.2.

.0507 CEASING OPERATIONS

A licensee must immediately notify the Commissioner in writing of its decision to cease operations in this State under the Money Transmitters Act.

Statutory Authority G.S. 53-206.1; 150B-21.2.

.0508 IMPAIRMENT OF MINIMUM NET

WORTH

A licensee must immediately notify the Commissioner in writing if, at any time, it fails to meet the minimum net worth requirement of G.S. 53-201. The notification shall be accompanied by a detailed plan to restore the minimum net worth.

Statutory Authority G.S. 53-201; 53-206.1; 150B-21.2.

.0509 DISHONOR OR DEFAULT IN PAYMENT INSTRUMENT

A licensee must immediately notify the Commissioner in writing if it dishonors or defaults in the payment of any check sold or issued because it lacks the funds to honor the check.

Statutory Authority G.S. 53-206.1; 150B-21.2.

SECTION .0600 - EXAMINATION; BOOKS AND RECORDS

.0601 RECORD AND BOOKKEEPING REQUIREMENTS

(a) Licensee. Each licensee shall maintain at an office the following:

- (1) A record of outstanding checks sold;
- (2) A statement of assets, liabilities and owner's equity;
- (3) A statement of income and expenses for the current fiscal year to date;
- (4) A ledger of dormant checks sold in this State. The ledger shall detail the date of issuance and the amount of the check.

(b) Agent. Each agent shall maintain at its office a record of the disposition of all checks received from the licensee. The record shall contain an accounting of all proceeds from those checks paid to the licensee and all proceeds due to the licensee.

Statutory Authority G.S. 53-204(b); 53-206.1; 150B-21.2.

.0602 EXAMINATION FEE

Each licensee shall pay the cost of an examination conducted by the Commissioner or his designee pursuant to G.S. 53-204(b). The cost of such examination shall be the hourly rate established annually by resolution of the North Carolina State Banking Commission pursuant to 4 NCAC 3C .1601(b), plus travel expenses and the per diem subsistence allowance provided for State employees pursuant to G.S. 138-5 through G.S. 138-7.

and any regulations promulgated thereunder.

Statutory Authority G.S. 53-204(b); 53-206.1; 150B-21.2.

SECTION .0700 - LICENSE REVOCATION

.0701 HEARINGS

Any hearings conducted pursuant G.S. 53-206 and 53-207 shall proceed in accordance with 4 NCAC 3B .0200 et seq., and Chapter 150B of the North Carolina General Statutes.

Statutory Authority G.S. 53-206; 53-206.1; 53-207; 150B-21.2.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to amend rules cited as 10 NCAC 41E .0514; 41G .0602, .1102; 41R .0003.

The proposed effective date of this action is March 1, 1993.

The public hearing will be conducted at 10:00 a.m. on December 2, 1992 at the Division of Social Services, Albemarle Building, Room 943-2, 325 N. Salisbury St., Raleigh, N.C.

Reason for Proposed Action: To bring state regulations into compliance with ADA recently enacted Americans with Disabilities Act.

Comment Procedures: Comments may be presented in writing before or at the public hearing or orally at the hearing. Time limits for oral remarks may be imposed by the Commission Chairman. Any person may request copies of these Rules by calling or writing to Don Bowen, Division of Social Services, 325 N. Salisbury St., Raleigh, NC 27603, (919) 733-3055.

Editor's Note: These Rules were filed as temporary amendments effective October 14, 1992 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

CHAPTER 41 - CHILDREN'S SERVICES

SUBCHAPTER 41E - LICENSING OF GROUP HOMES FOR CHILDREN

SECTION .0500 - MINIMUM STANDARDS FOR PRIVATE AND PUBLIC GROUP HOMES

.0514 CHILD CARE AND DEVELOPMENT: HEALTH

(a) Medical Program. Every group home shall have a planned program of medical care.

- (1) Medical Requirements for Admission. No child shall be accepted into a group home without having had a physical examination within 90 days prior to admission, which shall include a signed statement ~~by a physician, physician's assistant or nurse practitioner that the child appears to be free of communicable diseases, and specifying any medical conditions and defects the child might have.~~ from a licensed medical provider specifying the child's current medical condition and medications prescribed and indicating the presence of any communicable disease or medical condition which may pose a significant risk of transmission in the facility. If a child is in the custody of a department of social services, is already scheduled to have and is having a physical completed annually, and is entering a private group home, the schedule of annual physicals shall not be changed. However a copy of the most recent physical shall be sent by the responsible department of social services to the private group home for the child's record there except that in shelter homes, the physical examination and statement shall be obtained within one week of a child's admission.

- (A) ~~The medical examination shall include a tuberculin test (or x ray if there has been a history of contacts), an examination for intestinal parasites, and a blood test for venereal disease if indicated.~~
- (B) ~~If these tests prove positive, treatment shall be given immediately, and admission to the home delayed until further tests show the child to be noninfectious.~~
- (C) ~~A child admitted to a group home shall be immunized against diphtheria,~~

- tetanus, whooping cough, poliomyelitis, red measles (rubeola), and rubella prior to admission, or as soon after as practical. Documentation of these immunizations shall be obtained within 30 days of a child's admission.
- (2) **Medical Care.** Arrangements shall be made with at least one licensed physician and one dentist for the care of children in the home.
 - (3) **Hospital Care.** Arrangements shall be made with a hospital for the admission of children from the group home in the event of serious illness or in an emergency.
 - (4) **First Aid.**
 - (A) Houseparents shall receive training and be able to administer first aid.
 - (B) First aid kits shall be available for instant use.
 - (5) **Home Medical Care Practices.**
 - (A) Houseparents shall be able to recognize the common symptoms of illnesses of children and to note any marked physical or emotional handicaps of children.
 - (B) A sterile clinical thermometer shall be kept available for use.
 - (C) No medication shall be given except under the direction of a physician.
 - (D) Medicine supply cabinets shall be kept locked when not in immediate use.
 - (6) **Medical Records.** Each child shall have a personal medical record available which shall include:
 - (A) the statement of the physician who examined him at the time of admission to the home;
 - (B) a record of his immunizations; this record shall be obtained within 30 days of a child's admission to the home;
 - (C) consent of parents or guardians for medical care;
 - (D) a record of the medical care and examinations given while in care, including a record of hospitalizations, significant illnesses or accidents, and treatment given.
 - (7) **Dental Records.** Included in a child's medical record shall be a dental record, showing dates of examinations and by whom given.
- (b) **Routine Aspects of Health, Personal Hygiene, and Safety.**

- (1) **Sleep.** Each child in a group home shall have enough sleep for his age at regular and reasonable hours and under conditions conducive to rest. While children are asleep, at least one staff member shall be near enough to hear calls.
 - (2) **Hygiene.** Children shall be taught and helped to keep themselves clean. They shall receive training in all aspects of personal hygiene. Bathing and toilet facilities shall be in working order and kept clean.
 - (3) **Toilet Articles.**
 - (A) Each child shall have his own clearly identified toothbrush, comb, towel and wash cloth and his own separate place for keeping these personal articles.
 - (B) Towels, wash cloths, and bed linens shall be changed weekly or more often as required by good hygiene.
 - (4) **Safety.** Any child care staff transporting a child less than two years of age shall have such child properly secured in a child passenger restraint system which is of a type and which is installed in a manner approved by the Commissioner of Motor Vehicles.
- (c) **Nutrition.**
- (1) Meals served to all children shall provide for their nutritional requirements as advised by the National Research Council (Recommended Daily Dietary Allowances).
 - (2) Any modified food needs of an individual child shall be provided under the direction of a physician.
 - (3) The menus shall be planned by or in consultation with a registered nutritionist or dietitian.

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

SUBCHAPTER 41G - MINIMUM STANDARDS FOR CHILD CARING INSTITUTIONS

SECTION .0600 - PRIVATE INSTITUTION SOCIAL SERVICES

.0602 ADMISSION SERVICES

- (a) Admission policies shall be clearly defined in writing and available to persons or agencies making inquiries. Admission policies shall be careful-

ly reviewed from time to time and changed as needs and conditions in the community change.

(b) Admission services shall be in accordance with the stated policies of the institution. Admissions shall be limited to those children who need care apart from their families and for whom the institution is qualified by staff, program, facilities, and services to give appropriate care.

(c) Staff responsibility for decisions on admissions shall be clearly established.

(d) Decisions on admissions shall be based upon a study of the total situation of the child and his particular needs. The study shall be made prior to admission and shall include all information which will enable a careful analysis of the application to determine if the institution's program of care is appropriate for the child.

(e) When parents or other relatives with legal responsibility for a child apply for the child's admission the institution shall ascertain what community resources are available to keep the child in his own home, such as financial assistance, homemaker services, day care services, and other supportive services. County departments of social services where requested can assist families in evaluating community resources available to them.

(f) Children shall be accepted by written application signed by the person or representative of the agency having legal authority to place the children. Written agreements shall be made setting forth the responsibilities of the institution and of the person or agency having legal authority for caring and planning for the child. Provision shall be made for continuing relationships between the institution, the legally responsible person or agency, and the child during the period of placement.

(g) The provisions of the North Carolina interstate placement laws (G.S. 110-50 to 110-57 and 110-57.1 et. seq.) shall be met when out of state children are being considered for admission or discharge. North Carolina interstate placement laws require the approval of the North Carolina Department of Human Resources prior to placement of a child by an out of state agency. Correspondence relative to admission, progress, and discharge of children in custody of out of state agencies shall be routed through the North Carolina Department of Human Resources, division of social services, as outlined in its operational manual.

(h) No child shall be accepted in an institution without a medical examination and a statement signed by a licensed physician ~~declaring the child free of communicable disease and specifying any~~

~~condition or defects the child might have and any medications prescribed.~~ medical provider specifying the child's current medical condition and medications prescribed and indicating the presence of any communicable disease which may pose a significant risk of transmission in the facility.

(i) In the event of emergency admissions the required admission procedures shall be completed within two weeks following admission. If more than five percent of an institution's population are admitted on an emergency basis, in any 12 month period, the institution shall provide an identifiable program for the provision of emergency care in a living unit separate from other children in residence.

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

SECTION .1100 - PUBLIC INSTITUTION SOCIAL SERVICES

.1102 ADMISSION SERVICES

(a) Admission policies shall be clearly defined in writing and available to persons or agencies making inquiries. Admission policies shall be carefully reviewed from time to time and changed as needs and conditions in the community change.

(b) Admission services shall be in accordance with the stated policies of the institution. Admissions shall be limited to those children who need care apart from their families and for whom the institution is qualified by staff, program, facilities, and services to give appropriate care.

(c) Staff responsibility for decisions on admission shall be clearly established.

(d) Decisions on admissions shall be based upon a study of the total situation of the child and his particular needs. The study shall be made prior to admission and shall include all information which will enable a careful analysis of the application to determine if the institution's program of care is appropriate for the child.

(e) When parents or other relatives with legal responsibility for a child apply for the child's admission, the institution shall ascertain what community resources are available to keep the child in his own home, such as financial assistance, homemaker services, day care services, and other supportive services. County departments of social services, where requested, can assist families in evaluating community resources available to them.

(f) A public institution shall not accept legal custody of children. Children shall be accepted by written application signed by the person or repre-

sentative of the agency having legal authority to place the children. Written agreements shall be made setting forth the responsibilities of the institution and of the person or agency having legal authority for caring and planning for the child. Provision shall be made for continuing relationships between the institution, the legally responsible person or agency, and the child during the period of placement.

(g) The provisions of the North Carolina interstate placement laws (G.S. 110-50 through 110-57 and 110-57.1 et. seq.) shall be met when out of state children are being considered for admission or discharge. North Carolina interstate placement laws require the approval of the North Carolina Department of Human Resources prior to placement of a child by an out of state agency. Correspondence relative to admission, progress, and discharge of children in custody of out of state agencies shall be routed through the North Carolina Department of Human Resources, division of social services, as outlined in its operational manual.

(h) No child shall be accepted in an institution without a medical examination and a statement signed by a licensed physician ~~declaring the child free of communicable disease and specifying any condition or defects the child might have and any medications prescribed.~~ medical provider specifying the child's current medical condition and medications prescribed and indicating the presence of any communicable disease which may pose a significant risk of transmission in the facility.

(i) In the event of emergency admissions, the required admission procedures shall be completed within two weeks following admission. If more than five percent of an institution's population are admitted on an emergency basis, in any 12 month period, the institution shall provide an identifiable program for the provision of emergency care in a living unit separate from other children in residence.

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

SUBCHAPTER 41R - LICENSING STANDARDS: RESIDENTIAL CAMPS PROVIDING FOSTER CARE FOR CHILDREN

.0003 PROGRAM REQUIREMENTS AND SERVICES

(a) The camp shall have a written description of services provided by the camp to address the needs of the population served. The document shall

include a description of the camp's plan for family involvement and for the provision of services, making it clear which services are provided directly by the camp and which are provided in cooperation with either family or community resources.

(b) The written description of the camp's plan shall be utilized in providing daily activities and structures for meeting the physical, social, emotional, educational and developmental needs of children in care.

(c) The camp shall designate the staff responsible for planning, implementing, and evaluating its various program activities and functions and its arrangements for groupings of children in care.

(d) The camp shall designate the staff responsible for periodic assessment of each child's progress in care and for determining when changes need to be made in the child's plan of care.

(e) The camp shall specify who is authorized to admit and discharge children. Prior to the admission of a child, the camp shall secure documentation of the child's legal custody and shall admit the child only upon written agreement signed by the person or agency representative having the legal authority to place a child.

(f) Each child shall have a medical assessment, within 60 days prior to admission, indicating the child's ability to participate in the activities and ~~the absence of communicable diseases.~~ specifying the child's current medical condition and medications prescribed and indicating the presence of any communicable disease which may pose a significant risk of transmission in the facility.

(g) The camp shall not accept a child for care until an intake study has been made by the assigned staff person and it has been determined that the needs and the best interests of the child and his family or custodian can be met through the camping program.

(h) The camp shall establish clearly written admission policies and procedures which shall be available, upon request, to the public.

(i) Admission to the camp must be limited to the number of children for whom the camp is licensed and types of children for whom a camp setting is imperative. Only those children who need care, individual attention and supervision apart from their families and for whom the camp is qualified by staff, program, facility, and services shall be admitted.

(j) Prior to the admission date, the camp shall document the following in writing for each child:

- (1) who has legal custody;
- (2) who will be financially responsible for the support and medical and dental care

- of the child;
- (3) how the family and legal custodian will participate in the program;
- (4) how phone calls, letters, and visits will be arranged;
- (5) how clothing, allowances, and gifts for the child will be handled;
- (6) written consent from the child's legal custodian for the child to participate in activities that the camp will be planning for the child away from the camp area; and
- (7) a written agreement, signed prior to the day of admission by the camp staff, the child, parent and legal custodian, which specifies who will be responsible for planning and implementing goals while the child is in the camping program.

(k) The camp shall establish written discharge policies and procedures which will include at least the following:

- (1) giving prior notice to the parent or custodian when a child is scheduled for discharge;
- (2) planning with the child and his parent or legal custodian for his discharge, giving the opportunity for discussion and after-care planning;
- (3) discharging children under 18 who have not been legally emancipated only to the person or agency having legal custody of the child;
- (4) notifying the legal custodian promptly in the event a child leaves the camp for any non-scheduled purpose such as medical emergency or runaway. Procedures shall be developed for handling such non-scheduled departures and for determining how the child will return to the program; and
- (5) documenting in the case record the circumstances leading to discharge, the reason for discharge, who requested the discharge, the progress that had been made toward realizing the goals, and to whom the child was discharged.

(l) Written intervention goals and plans for implementing services to each child in care will be developed within 30 days of admission for each child and documented in the child's case file, including:

- (1) goals stated in specific, realistic, and measurable terms;
- (2) plans that are action oriented, including who on the staff is responsible for the

child to reach specific goals, and how the staff will act in order for the goals to be met; and

- (3) goals and plans written in cooperation with the child and his family and his legal custodian.

(m) The child's service plan shall be based upon the assessment of the child and the family's needs and the reasons that the child's foster care needs can best be accommodated in the camping environment.

(n) The plan shall be reviewed at least every three months to determine the child's and family's progress or lack of progress towards meeting the goals and objectives, and to determine changes that need to be made in the plan.

(o) Children's camps shall maintain complete, accurate, and current case records on each child receiving service.

(p) The case record shall include at least the following:

- (1) a complete application for service, signed by the person or agency having legal custody, which includes at least the following:
 - (A) the name, address, race, sex, religion, birth date, and place of birth of the child;
 - (B) the name, address, telephone number, and marital status of the parent or legal custodian, siblings, grandparents, and other significant individuals to the child;
 - (C) date of admission and source referral; and
 - (D) all documents related to the referral of the child to the camp, including social, family, medical, educational, and other pertinent history that was used in making a decision to admit the child to the camping program.
- (2) copies of legal documents such as birth certificates, court dispositions, placement agreements;
- (3) a copy of the child's service plan which is kept current by the assigned staff and documentation of the efforts made by the camp designated staff person to enable the client to reach the agreed upon goals;
- (4) results of all medical examinations, psychological examinations, and other essential information; and
- (5) a summary supporting the reasons for discharge or termination from the pro-

gram.

(q) All information in the case record must be considered privileged and confidential and shall be released only when the parent or legal custodian has signed a consent to release information form.

(r) During the period of service for the child, the case record shall document service and educational experiences provided and the child's response, especially:

- (1) observations of response to individual goals and plans and individualized educational plan recorded with significant frequency to enable evaluation of their efficiency;
- (2) reports of the review, evaluation and change in the individualized service plan and individualized education plan, which are to be done at least every three months;
- (3) summaries of parent conferences;
- (4) records of services provided, especially medical and dental services;
- (5) records of significant behavior incidents;
- (6) records of time away from camp; and
- (7) updates of any change in admission data.

(s) The camp shall make every effort to enhance and expand the family's relationship with the child, and to facilitate positive communication between them in accordance with the child's service plan.

(t) The camp shall provide conditions of reasonable privacy for planned visits and telephone contacts between the child and family, friends, and significant others.

(u) There must be a minimum of 2 counselors certified in Basic Rescue and Water Safety for each 10 children participating in any on property activity involving water, such as swimming, boating, canoeing, and rafting. Off property, the ratio shall be 3 counselors for each 10 children for trips of 24 hours or more. At least one counselor shall be certified in CPR by the American Red Cross.

(v) An itinerary shall be on file at camp for any activity for more than 24 hours that is off of camp property, which shall include names of those participating, daily schedule, listing of check-in points, routes to be taken, and telephone numbers of emergency resources along each route (sheriffs, hospitals, rescue squads).

Statutory Authority G.S. 131D-10.5.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to amend rule cited as 10 NCAC 42C .2401 and adopt rule cited as 10 NCAC 42V .0806.

The proposed effective date of this action is March 1, 1993.

The public hearing will be conducted at 10:00 a.m. on December 2, 1992 at the Division of Social Services, Albemarle Bldg., Room 943-2, 325 N. Salisbury St., Raleigh, NC 27603.

Reason for Proposed Actions:

10 NCAC 42C .2401 - To bring federal regulations into compliance with the recently enacted Americans with Disabilities Act.

10 NCAC 42V .0806 - This rule is being proposed for adoption in order to protect the confidentiality of information included in the Adult Protective Services Register while allowing county departments of social services access to the information to assist them in facilitating the protection of disabled adults.

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

Editor's Note: Rule 10 NCAC 42C .2401 was filed as a temporary rule effective October 14, 1992 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

CHAPTER 42 - INDIVIDUAL AND FAMILY SUPPORT

SUBCHAPTER 42C - LICENSING OF FAMILY CARE HOMES

SECTION .2400 - ADMISSION POLICIES

.2401 ADMISSIONS

(a) Any adult (18 years of age or over) who, because of a temporary or chronic physical condition or mental disability, needs a substitute home may be admitted when, in the opinion of the resident, physician, family or social worker, and the administrator the services and accommodations of the home will meet his particular needs.

(b) Exceptions. People are not to be admitted:

- (1) for treatment of mental illness, or alcohol or drug abuse;
- (2) for maternity care;
- (3) for professional nursing care under continuous medical supervision;
- (4) for lodging, when the personal assistance and supervision offered for the aged and disabled are not needed; or
- (5) who pose a direct threat to the health or safety of others, with disease in a communicable stage or carrier state. This provision does not prohibit the admission of residents who are hepatitis B carriers to a home operated by a contract agency of an area mental health, developmental disabilities and substance abuse program if the home is in compliance with the rules codified in 10 NCAC 18H .0107 through .0115. Copies of the rules in 10 NCAC 18H .0107 through .0115 may be obtained at no cost by writing: Publications Officer, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, 325 N. Salisbury Street, Raleigh, North Carolina 27603. The Division of Facility Services may accept documentation submitted to county departments of social services by area mental health, developmental disabilities and substance abuse programs as evidence that the home is in compliance with 10 NCAC 18H .0107 through .0115. Unless the Communicable Disease Control Measures (15A NCAC 19A .0200) require restriction, this provision does not prohibit the admission of individuals with HIV infection to a home which has established through its written admission policies that it is operated solely for the benefit of residents with HIV infection and which is following infection control measures outlined in the "Guidelines for the prevention of the Transmission of Human Immunodeficiency Virus and

~~Hepatitis B Virus to Health Care and Public Safety Workers". The administrator is responsible for establishing written procedures for implementing the infection control measures. Documentation that the procedures have been reviewed and approved by a qualified health care professional in private practice or in the public health department must be on file in the home and available for inspection by the monitoring and licensing agencies. Copies of the rules in 15A NCAC 19A .0200 may be obtained at no cost by writing the Communicable Disease Control Section, P.O. Box 27687, Raleigh, N.C. 27611. Copies of the "Guidelines for the prevention of the Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Health Care and Public Safety Workers" (No. 89-107) may be obtained at no cost by writing NIOSH, Attention: Publications, 4676 Columbus Parkway, Cincinnati, Ohio, 45226.~~

Statutory Authority G.S. 131D-2; 143B-153.

SUBCHAPTER 42V - PROTECTIVE SERVICES FOR ADULTS

SECTION .0800 - CONFIDENTIALITY

.0806 ADULT PROTECTIVE SERVICES REGISTER

(a) Information submitted by county departments of social services to the Adult Protective Services Register is confidential. Non-identifying statistical information and general information about the scope, nature and extent of adult abuse, neglect and exploitation in North Carolina is not subject to this Rule of confidentiality.

(b) Access to the Adult Protective Services Register is restricted to:

- (1) the county department of social services,
 - (A) in order to identify whether an adult who is the subject of an Adult Protective Services evaluation has been previously reported and evaluated under G.S. 108A, Article 6 in any county in the state; or
 - (B) in order to share client specific information with an out-of-state protective services agency to assure that protec-

tive services will be made available to an adult previously served in North Carolina as quickly as possible for the purpose of preventing further abuse, neglect or exploitation; or

(C) in order to share client specific information with law enforcement agencies to assure that protective services will be made available to an adult as quickly as possible;

(2) the Division of Social Services staff,

(A) in order to perform duties pertinent to managing and maintaining the Register and monitoring, auditing, evaluating or facilitating the administration of other state and federal programs regarding Adult Protective Services based on information in the Register, or

(B) in order to share client specific information with an out-of-state protective services agency to assure that protective services will be made available to an adult previously served in North Carolina as quickly as possible for the purpose of preventing further abuse, neglect or exploitation; and

(3) individuals who receive approval to conduct studies of cases in the Adult Protective Services Register.

(A) Such approval must be requested in writing to the Director, Division of Social Services. The written request will specify and be approved on the basis of:

(i) an explanation of how the findings of the study have potential for expanding knowledge and improving professional practices in the area of prevention, identification and treatment of adult abuse, neglect and exploitation;

(ii) a description of how the study will be conducted and how the findings will be used;

(iii) a presentation of the individual's credentials; and

(iv) a description of how the individual will safeguard the information.

(B) Access will be denied when in the judgement of the Director the study will have minimal impact on either knowledge or practice.

143B-153.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to amend rules cited as 10 NCAC 42E .1207 and 42Z .0901.

The proposed effective date of this action is February 1, 1993.

The public hearing will be conducted at 10:00 a.m. on December 2, 1992 at the Division of Social Services, Albemarle Bldg., Room 943-2, 325 N. Salisbury Street, Raleigh, NC 27603.

Reason for Proposed Action: These Rules are being proposed for amendment to facilitate the inspection of adult day care and adult day health programs by local fire, sanitation and building inspectors.

Comment Procedures: Comments may be presented in writing anytime before or at the public hearing or orally at the hearing. Time limits for oral remarks may be imposed by the Commission Chairman. Any person may request copies of these Rules by calling or writing to Don Bowen, Division of Social Services, 325 North Salisbury St., Raleigh, NC 27603, (919) 733-3055.

SUBCHAPTER 42E - ADULT DAY CARE STANDARDS FOR CERTIFICATION

SECTION .1200 - CERTIFICATION PROCEDURE

.1207 PROCEDURE

(a) All individuals, groups or organizations operating or wishing to operate an adult day care program as defined by G.S. 131D-6 must apply for a certificate to the county department of social services in the county where the program is to be operated.

(b) A designated social worker will supply necessary forms and standards for certification and will make a study of the program.

(c) The following forms and materials make up an initial certification package and must be submitted through the county department of social services to the state Division of Social Services:

Statutory Authority G.S. 108A-80; 108A-103;

- (1) The program policy statement;
 - (2) Organizational diagram;
 - (3) Job descriptions;
 - (4) Documentation showing planned expenditures and resources available to carry out the program of service for a 12 month period;
 - (5) A floor plan of the facility showing measurements, restrooms and planned use of space;
 - (6) Form DSS-1498 (Fire Inspection Report) or the equivalent completed and signed by the local fire inspector no more than 30 days prior to submission with the certification package;
 - (7) Form DSS-1499 (Building Inspection Report for Day Care Services for Adults) or the equivalent completed and signed by the local building inspector, or fire inspector or fire marshal if a building inspector is not available, no more than 30 days prior to submission with the certification package;
 - (8) Form DSS-2386 (Sanitation Evaluation Report) or the equivalent completed and signed by a local sanitarian no more than 30 days prior to the submission with the certification package;
 - (9) Written notice and the effective date, if a variance of local zoning ordinances has been made in order for property to be utilized for an adult day care program;
 - (10) A copy of the articles of incorporation, bylaws and names and addresses of board members, for adult day care programs sponsored by a non-profit corporation;
 - (11) The name and mailing address of the owner if a proprietary program;
 - (12) A medical statement for each proposed staff member certifying to freedom from communicable disease or condition and to good health signed by a licensed physician, physician assistant or nurse practitioner no more than 30 days prior to submission with the certification package. When such certification cannot be made, the proposed staff member may be hired based on an assessment of whether the work tasks would pose a significant risk to the health of the employee, co-workers, or the public, or whether the employee is unable to perform the normally assigned job duties; and
 - (13) DSS-1500 (Adult Day Care Certification Report). This form must be submitted by the county department of social services with a copy to the program.
- (d) The following forms and materials make up a certification package for the renewal of a certification and must be submitted through the county department of social services, no more than 60 days prior to the end of the current period of certification, to the state Division of Social Services:
- (1) Form DSS-1498 (Fire Inspection Report) or the equivalent completed and signed by the local fire inspector no more than ~~30 days~~ 12 months prior to submission with the certification package;
 - (2) Form DSS-1499 (Building Inspection Report for Day Care Services for Adults) or the equivalent when structural building modifications have been made during the previous 12 months, completed and signed by the local building inspector, or fire inspector or fire marshal if a building inspector is not available, within 30 days following completion of the structural building modifications; ~~no more than 30 days prior to submission with the certification package when structural building modifications have been made during the previous 12 months~~;
 - (3) Form DSS-2386 (Sanitation Evaluation Report) or the equivalent completed and signed by a local sanitarian no more than ~~30 days~~ 12 months prior to submission with the certification package;
 - (4) A medical statement for each staff member certifying to freedom from communicable disease or condition and to good health signed by a licensed physician, physician assistant or nurse practitioner no more than 12 months prior to submission with the certification package. When such a certification cannot be made, employment may be continued, terminated, or reassigned based on an assessment of whether the employee's work tasks would pose a significant risk to the health of the employee, co-workers, or the public, or whether the employee is unable to perform normally assigned job duties;

- (5) An updated copy of the policy statement, organizational diagram, job descriptions, names and addresses of board members if applicable, and a floor plan showing measurements, restrooms, and planned use of space, if any changes have been made since the previous certification package was submitted;
- (6) Documentation showing planned expenditures and resources available to carry out the program of service for a 12 month period; and
- (7) DSS-1500 (Adult Day Care Certification Report). This form must be submitted with the certification package by the Department of Social Services to the Division of Social Services at least 30 days in advance of the expiration date of the certificate, with a copy to the program.

(e) If during the study of the program it does not appear that all standards can be met, the county department will so inform the applicant, indicating in writing the reasons, and give the applicant an opportunity to withdraw the application. Upon the applicant's request, the application will be completed and submitted to the Division of Social Services for consideration.

(f) Following review of the certification package, a pre-certification visit may be made by staff of state Division of Social Services.

(g) The Division of Social Services will promptly notify in writing to the applicant and the county department of social services of the action taken after a review of the certification package and visit, if made.

Statutory Authority G.S. 130A-148; 131D-6; 143B-153.

SUBCHAPTER 42Z - ADULT DAY HEALTH STANDARDS FOR CERTIFICATION

SECTION .0900 - CERTIFICATION INFORMATION

.0901 PROCEDURE

(a) All individuals, groups or organizations operating or wishing to operate an adult day health program as defined by G.S. 131D-6 must apply for a certificate to the county department of social services in the county where the program is to be operated.

(b) A designated social worker will supply

necessary forms and standards for certification and will make a study of the program.

(c) The following forms and materials make up an initial certification package and must be submitted through the county department of social services to the state Division of Social Services:

- (1) The program policy statement;
- (2) Organizational diagram;
- (3) Job descriptions;
- (4) Documentation showing planned expenditures and resources available to carry out the program of service for a 12 month period;
- (5) A floor plan of the facility showing measurements, restrooms and planned use of space;
- (6) Form DSS-1498 (Fire Inspection Report) or the equivalent completed and signed by the local fire inspector no more than 30 days prior to submission with the certification package;
- (7) Form DSS-1499 (Building Inspection Report for Day Care Services for Adults) or the equivalent completed and signed by the local building inspector, or fire inspector or fire marshall if a building inspector is not available, no more than 30 days prior to submission with the certification package;
- (8) Form DSS-2386 (Sanitation Evaluation Report) or the equivalent completed and signed by a local sanitarian no more than 30 days prior to the submission with the certification package;
- (9) Written notice and the effective date, if a variance of local zoning ordinances has been made in order for property to be utilized for an adult day health program;
- (10) A copy of the articles of incorporation, bylaws and names and addresses of board members, for adult day health programs sponsored by a non-profit corporation;
- (11) The name and mailing address of the owner if a proprietary program;
- (12) A medical statement of each proposed staff member certifying to freedom from communicable disease or condition and to good health signed by a licensed physician, physician assistant or nurse practitioner no more than 30 days prior to submission with the certification package. When such certification cannot be made, employment may

commence, continue, terminate, or be reassigned based on an assessment on whether the employee's work tasks would pose a significant risk to the health of the employee, co-workers or the public, or whether the employee is unable to perform the normally assigned job duties; and

- (13) DSS-6205 (Adult Day Health Certification Report). This form must be submitted by the county department of social services with a copy to the program.

(d) The following forms and materials make up a certification package for the renewal of a certification and must be submitted through the county department of social services, no more than 60 days prior to the end of the current period of certification, to the state Division of Social Services:

- (1) Form DSS-1498 (Fire Inspection Report) or the equivalent completed and signed by the local fire inspector no more than ~~30 days~~ 12 months prior to submission with the certification package;
- (2) Form DSS-1499 (Building Inspection Report for Day Care Services for Adults) or the equivalent when structural building modifications have been made during the previous 12 months, completed and signed by the local building inspector, or fire inspector or fire marshall if a building inspector is not available, within 30 days following completion of the structural building modifications; no more than 30 days prior to submission with the certification package when structural building modifications have been made during the previous 12 months;
- (3) Form DSS-2386 (Sanitation Evaluation Report) or the equivalent completed and signed by a local sanitarian no more than ~~30 days~~ 12 months prior to submission with the certification package;
- (4) A medical statement for each staff member certifying to freedom from communicable disease or condition and to good health signed by a licensed physician, physician assistant or nurse practitioner no more than 12 months prior to submission with the certification package. When such certification cannot be made, employment may

commence, continue, terminate, or be reassigned based on an assessment on whether the employee's work tasks would pose a significant risk to the health of the employee, co-workers or the public, or whether the employee is unable to perform the normally assigned job duties;

- (5) An updated copy of the policy statement, organizational diagram, job descriptions, names and addresses of board members if applicable, and a floor plan showing measurements, restrooms, and planned use of space, if any changes have been made since the previous certification package was submitted;
- (6) Documentation showing planned expenditures and resources available to carry out the program of service for a 12 month period; and
- (7) DSS-6205 (Adult Day Health Certification Report). This form must be submitted with the certification package by the Department of Social Services to the Division of Social Services at least 30 days in advance of the expiration date of the certificate, with a copy to the program.

(e) If during the study of the program it does not appear that all standards can be met, the county department will so inform the applicant, indicating in writing the reasons, and give the applicant an opportunity to withdraw the application. Upon the applicant's request, the application will be completed and submitted to the Division of Social Services for consideration.

(f) Following review of the certification package, a pre-certification visit may be made by staff of state Division of Social Services.

(g) The Division of Social Services will promptly notify in writing to the applicant and the county department of social services of the action taken after a review of the certification package and visit, if made.

Statutory Authority G.S. 130A-148; 131D-6; 143B-153.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Human Resources intends to adopt rule cited as 10 NCAC 46G

.0116.

The proposed effective date of this action is February 1, 1993.

The public hearing will be conducted at 2:00 p.m. on December 8, 1992 at the Council Building, Room 201, 701 Barbour Drive, Raleigh, NC 27603.

Reason for Proposed Actions: To apply the rules for nonregistered homes in the subsidized day care program to nonregistered homes funded through the Child Care and Development Block Grant.

Comment Procedures: Written or oral comments may be submitted at the Public Hearing. Written comments may also be submitted prior to the Public Hearing. Comments or questions should be directed to Mr. Jackie Sheppard, APA Coordinator, Division of Facility Services, P.O. Box 29530, Raleigh, NC 27626-0530, Telephone (919) 733-2342.

CHAPTER 46 - DAY CARE RULES

SUBCHAPTER 46G - NONREGISTERED DAY CARE HOME REQUIREMENTS

SECTION .0100 - GENERAL REQUIREMENTS

.0116 APPLICABILITY OF RULES

The rules of this Subchapter, including any subsequent amendments, shall also apply to non-registered home recipients of Child Care and Development Block Grant child day care services funds administered by the Department of Human Resources.

Authority 45 C.F.R. 98.11(b); 45 C.F.R. 98.40; 150B-21.6.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to adopt rules cited as 10 NCAC 46G .0109 - .0115, .0213 - .0215 and repeal rules cited as 10 NCAC 46G .0101, .0103 - .0106, .0108, and .0201.

The proposed effective date of this action is February 1, 1993.

The public hearing will be conducted at 10:00 a.m. on December 2, 1992 at the DSS 9th Floor Conference Room, Albemarle Building, 325 N. Salisbury Street, Raleigh, NC.

Reason for Proposed Action: To comply with federal regulations for subsidized child day care in homebased arrangements not subject to regulation in North Carolina.

Comment Procedures: Comments may be presented in writing before or at the public hearing or orally at the hearing. Time limits for oral remarks may be imposed by the Commission Chairman. Any person may request copies of this rule by calling or writing to Don Bowen, Division of Social Services, 325 N. Salisbury Street, Raleigh, NC 27611, 919/733-3055.

Fiscal Note: This Rule affects the expenditures or revenues of local funds. A fiscal note was submitted to the Fiscal Research Division on 10/27/92, OSBM on 10/5/92, N.C. League of Municipalities on 10/27/92, and N.C. Association of County Commissioners on 10/27/92.

CHAPTER 46 - DAY CARE RULES

SUBCHAPTER 46G - NONREGISTERED DAY CARE HOME REQUIREMENTS

SECTION .0100 - GENERAL REQUIREMENTS

.0101 DIVISION RESPONSIBILITY

~~(a) The Child Day Care Section in the Division of Facility Services is responsible for the overall management of the standards and procedures for approving individual child care arrangements in which day care funds administered by the Department of Human Resources are used to pay the day care costs for children of families eligible for assistance with day care costs. Each of the 100 county departments of social services is responsible for enforcing standards and procedures for Individual Child Care Arrangements in accordance with rules in 10 NCAC 46G.~~

~~(b) A county department of social services may contract with another public or private non profit~~

agency which is not a provider of child day care services to perform the enforcement and management functions described in Paragraph (a) of this Rule.

Statutory Authority G.S. 143B-153(2a).

.0103 DEFINITIONS

(a) "Individual child care arrangement" (ICCA) means a plan whereby day care is provided to a child or the children of one family or of one household in the home of the caregiver during a portion of the day or night when the parent is not in the home or is otherwise unable to provide care. It is permissible to use a caregiver who has children of her own in the home even though her children and the children for whom she is providing day care are unrelated. Any individual child care arrangement (ICCA) for which a vendor payment will be made must be approved in accordance with rules in this Subchapter and must meet other applicable rules in 10 NCAC 46.

(1) For the purpose of vendor payment, care in the child's home by a member of the household will be restricted to household members other than the child's parents or responsible adult.

(2) In some instances, it is a matter of judgment as to whether children are to be considered a part of one family for the purpose of making a payment for an ICCA. Children will always be considered as part of one family when one of the following relationships exist:

- (A) children who are full or half siblings;
- (B) children who are first cousins;
- (C) children who are aunts or uncles, nieces or nephews of other children in care;

(D) related or unrelated children who reside in the same household.

(b) In this Subchapter and in Subchapter 46H, the term "parent" shall apply to the responsible adult with whom the child resides and who has primary responsibility for the care and well being of the child. This includes natural and adoptive parents, guardians, custodians, or persons otherwise acting in place of the parents, including foster parents.

Statutory Authority G.S. 143B-153(2a).

.0104 COUNTY DEPARTMENT RESPONSIBILITY

(a) The county department shall work with the

parent in understanding and utilizing an individual child care arrangement to the child's benefit when an individual child care arrangement is used.

(b) The county department shall involve the parent in the identification of an individual child care arrangement caregiver.

(c) County department staff shall carefully assess the use of an approved ICCA to assure that the needs of the child and his family may be met.

(d) The county department shall be responsible for the approval and monitoring of all individual child care arrangements from which care is purchased with funds administered by the Department of Human Resources according to standards established by the Social Services Commission.

(e) The county department shall provide a copy of the individual child care arrangement standards and checklist, along with a copy of the vendor purchase agreement to the caregiver. The county department staff shall review standards and the agreement with the caregiver for the purpose of assuring the caregiver's knowledge of the program and fiscal standards applicable to the arrangement.

(f) The county department shall be responsible for documenting and recording information to show that the individual child care arrangement meets required standards. Forms to document approval and to record frequency and content of monitoring will be provided to county departments by the section.

(g) The county department shall enter a vendor purchase agreement with the provider and parent on a standard form furnished by the section.

(h) The county department may provide, to the extent funds and staff are available, technical assistance and training to the provider to assure the adequacy of the approved arrangement.

Statutory Authority G.S. 143B-153(2a).

.0105 CONSULTANTS

The section provides consultants to help county departments in the development, approval and monitoring of individual child care arrangements. County departments shall contact the section when assistance is needed.

Statutory Authority G.S. 143B-153(2a).

.0106 NEED TO MEET REQUIREMENTS

(a) Each ICCA must be evaluated for compliance annually.

(b) When an arrangement is found to be out of compliance with any requirement for participation, the county department may set a time limit for

compliance. ~~If the arrangement fails to comply within the set time limit, approval will be terminated.~~

Statutory Authority G.S. 143B-153(2a).

.0108 APPEALS

~~Any ICCA desiring to appeal a decision by the county department of social services shall follow the appeals procedures for grant-in-aid programs pursuant to G.S. 108A-79. The director of the county department shall provide the ICCA provider or applicant with appropriate information about the procedures for such an appeal.~~

Statutory Authority G.S. 108A-71; 108A-73; 108A-79; 143B-153(2a).

.0109 DEFINITION

(a) "Nonregistered" day care home means an arrangement whereby day care is provided in a home that is not subject to registration or licensure pursuant to G.S. 110-86(2) - (4) or the requirements of G.S. 110-106 or G.S. 110-106.1. Payment for care in the child's home by a member of the household shall be restricted to household members other than the child's parents or other members of the child's income unit as defined in 10 NCAC 46H .0203. Grandparents, aunts, and uncles, including step and great relationships, are exempt from meeting the requirements in Rules .0213 - .0214 of this Subchapter.

(b) The rules in this Subchapter shall apply only to those nonregistered homes as defined in this Rule which voluntarily choose to participate in the state subsidized day care program.

Statutory Authority G.S. 143B-153(2a).

.0110 DIVISION RESPONSIBILITY

(a) The section, as defined in 10 NCAC 46A .0005, is responsible for the administration of the requirements and procedures for approving non-registered day care homes in which day care funds administered by the Department are used to subsidize the day care cost for children of families eligible for assistance.

(b) The number of nonregistered day care home arrangements that shall be visited by the section for the purpose of evaluating compliance with the requirements for participation in the purchase of care program shall be included in the monitoring plan developed annually by the section.

(c) All complaints registered against nonregistered day care homes shall be investigated by the

section. The investigation may include an on-site visit by an authorized representative of the Department.

(d) Documentation of substantiated complaints shall be available for parents to examine.

Statutory Authority G.S. 143B-153(2a).

.0111 LOCAL PURCHASING AGENCY RESPONSIBILITY

(a) The local purchasing agency shall be responsible for reviewing the application and parent-provider self-check list and for determining compliance with the requirements established by the Social Services Commission for all nonregistered day care homes from which care is purchased with funds administered by the Department.

(b) The county director of social services is authorized to deny or revoke approval of an arrangement where the caregiver or an individual who resides in the home where care is provided was found by the county director to be the perpetrator of abuse or neglect in accordance with G.S. 7A-544 or G.S. 108A, Article 6, and where approval of the arrangement poses a threat to the child's health or safety. Approval may also be denied or revoked as described under the standard set forth in this Rule when an investigation of abuse or neglect is currently in process. Information regarding the fact that the prospective provider or individual in the home has been reported or investigated for alleged abuse or neglect shall not be given to the parent or any other individual unless such information is a matter of public record.

Authority G.S. 143B-153(2a); 45 C.F.R. 98.41; 45 C.F.R. 255.4(c); 45 C.F.R. 257.41.

.0112 INITIAL APPROVAL

(a) Approval indicates that all applicable requirements have been met.

(b) Temporary approval may be issued when an arrangement does not comply with all requirements but is expected to meet them within a specified period. Temporary approval for enrollment may be issued for a limited period of time not to exceed 30 days. For extenuating circumstances, the purchasing agency shall have the discretion to extend the 30 day period.

(c) When a provider fails to achieve compliance before the end of the specified time period described in Rule .0112(b) of this Section, approval may be denied.

Statutory Authority G.S. 143B-153(2a).

.0113 MAINTAINING APPROVAL

(a) When a provider is found to be out of compliance at any time with any requirement for participation, the local purchasing agency or the section shall set a specified time limit for compliance. If the provider fails to comply within the specified time limit, approval may be terminated.

(b) Each nonregistered day care home shall be evaluated for compliance annually as described in Rule .0111 in this Section.

Statutory Authority G.S. 143B-153(2a).

.0114 PAYMENT REQUIREMENTS

(a) Any nonregistered day care home that wishes to participate in the state purchase of care program, as defined in 10 NCAC 46A .0005, must comply with the requirements for nonregistered child care homes codified in Section .0200 of this Subchapter, except as specified in Rule .0109 of this Section.

(b) In order to receive payment for subsidized child care, any nonregistered child day care home arrangement must be enrolled and be in compliance with all applicable requirements of this Subchapter.

Statutory Authority G.S. 143B-153(2a).

.0115 APPEALS

Any nonregistered day care home desiring to appeal a decision by the local purchasing agency shall follow the appeals procedures for grant-in-aid programs pursuant to G.S. 108A-79 and any subsequent amendments. The local purchasing agency shall provide the nonregistered day care home provider or applicant with appropriate information about the procedures for such an appeal.

Statutory Authority G.S. 143B-153(2a).

SECTION .0200 - REQUIREMENTS FOR NONREGISTERED DAY CARE HOMES

.0201 APPROVAL AND REGISTRATION

(a) To obtain full approval status, an individual child care arrangement (ICCA) caregiver must comply with all standards for registration of child day care homes. These standards and the specific measures by which compliance with these standards is documented are published in the Manual called Standards for Registration of Child Day

Care Homes and the Self-Check List which are available from the Child Day Care Section, Division of Facility Services.

(b) Each individual child care arrangement must also meet applicable state requirements for registration of child day care homes as specified in 10 NCAC 3U .1700, with applicable regulations in 10 NCAC 3U and Article 7 of Chapter 110, and with any other state and local regulations for the operation of day care as specified by state and local authorities.

Statutory Authority G.S. 143B-153(2a).

.0213 PARENT-PROVIDER CHECKLIST

Prior to approval, each provider must submit a check list that indicates satisfactory compliance with all applicable requirements. The checklist must be completed and signed by the provider and the parent.

Statutory Authority G.S. 143B-153(2a).

.0214 HEALTH AND SAFETY STANDARDS

Each nonregistered day care home shall comply with the following requirements in order to maintain a safe, healthy and sanitary environment for children:

(1) A health and emergency information form completed and signed by the child's parents or guardian shall be on file for each child who attends. The completed form must be on file on the first day the child attends with the exception of the child's immunization record which must be completed within 30 days after the first day the child attends. A recommended form is available from the section. However, the provider may use another form provided that form includes the following information:

- (a) the child's name, address, and date of birth;
- (b) the names of individuals to whom the child may be released;
- (c) the general status of the child's health;
- (d) any allergies and/or restrictions on the child's participation in activities with specific instructions from the child's parent or health professional;
- (e) the names and phone numbers of persons to be contacted in an emergency situation;
- (f) the name and phone number of the

- child's health provider and preferred hospital;
- (g) authorization for the provider to administer specified medication according to the parent's instructions, if the parent so desires;
- (h) authorization for the provider to seek emergency medical care in the parent's absence;
- (i) a record of the child's immunizations as required pursuant to G.S. 130A-152.
- (2) The parent and provider must discuss and agree upon the methods of discipline to be used with each child. Corporal punishment shall be administered only with the written consent of the parent.
- (3) All areas used by the children, indoors and outdoors, shall be kept clean and orderly and free of items which are hazardous to children.
- (4) First-aid supplies shall be kept in a place easily accessible to the provider but out of the reach of children.
- (5) A working telephone shall be within close proximity of the day care home arrangement. A written plan shall be developed that describes how the provider will access emergency assistance. Emergency phone numbers shall be readily available.
- (6) To assure the safety of children whenever they are transported, the provider, or any other transportation provider, shall comply with all applicable state and federal laws concerning the transportation of passengers. All children regardless of age or location in the vehicle shall be restrained by individual seat belts or child restraint devices.
- (7) Garbage shall be stored in waterproof containers with tight fitting covers.
- (8) The provider shall have sanitary toileting facilities, and sanitary diaper changing and handwashing facilities.
- (9) Soiled diapers shall be placed in a covered leak-proof container which is emptied and cleaned frequently.
- (10) The provider shall wash her hands after toileting and after diapering each child.
- (11) The provider shall complete and keep on file a health self-questionnaire which attests to the operator's physical and emotional ability to care for children.
- (12) Each provider shall obtain written proof that she is free of active tuberculosis

- prior to initial approval and every two years thereafter.
- (13) The provider shall serve nutritious meals and snacks appropriate in amount and type of foods served for the ages of children in care.
- (14) The provider shall provide daily opportunities for supervised outdoor play or fresh air, weather permitting.
- (15) The provider shall assure that the structure in which the day care arrangement is located is fit for human habitation (i.e. has clean drinking water, an approved sanitary disposal system, and weather-tight construction).
- (16) Fuel burning heaters used when the children are in care shall be properly vented to the outside. Fuel burning heaters, fireplaces, stoves, and portable electric heaters, when in use, shall have a securely attached guard.
- (17) A battery-operated smoke detector shall be installed in the primary caregiving area of each nonregistered day care home.

Statutory Authority G.S. 143B-153(2a).

.0215 PROVIDER REQUIREMENTS

(a) Each provider shall ensure that the parent or adult legally responsible for the child has unlimited access to their child and to the provider during the hours care is provided.

(b) No person shall be permitted to participate as a child care provider in the purchase of care program who has been convicted of a crime involving child abuse, child neglect, or moral turpitude, or who is an habitually excessive user of alcohol or who illegally uses narcotics or other impairing drugs, or who is mentally or emotionally impaired to an extent that may be injurious to children.

(c) The provider shall be at least 18 years of age.

Statutory Authority G.S. 143B-153(2a).

TITLE 12 - DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Alarm Systems Licensing Board intends to amend rule cited as 12 NCAC 11 .0302.

The proposed effective date of this action is February 1, 1993.

The public hearing will be conducted at 11:00 a.m. on November 17, 1992 at the Conference Room, State Bureau of Investigations, 3320 Old Garner Road, Raleigh, N. C.

Reason for Proposed Action: Amendment increases the registration fee from \$15.00 to \$20.00 and increases the registration period from one (1) to two (2) years.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments until December 2, 1992. Written comment must be delivered to or mailed to: James F. Kirk, Alarm Systems Licensing Board, 3320 Old Garner Road, Raleigh, N. C. 27626-0500.

Editor's Note: This Rule has been filed as a temporary amendment effective on October 6, 1992 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

CHAPTER 11 - N. C. ALARM SYSTEMS LICENSING BOARD

SECTION .0300 - PROVISION FOR REGISTRANTS

.0302 FEES FOR REGISTRATION

(a) Registration fees are as follows:

- (1) ~~Fifteen dollars (\$15.00)~~ Twenty dollars (\$20.00) non-refundable ~~annual~~ biannual registration fee;
- (2) Ten dollar (\$10.00) non-refundable re-issue fee for lost cards or for registration of an employee who changes employment to another licensee;
- (3) Ten dollar (\$10.00) non-refundable annual multiple registration fee.

(b) Fees shall be paid in the form of a check or money order made payable to the Alarm Systems Licensing Board.

Statutory Authority G.S. 74D-7.

TITLE 15A - DEPARTMENT OF
ENVIRONMENT, HEALTH, AND

NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt rules cited as 15A NCAC 2D .0947 - .0952 and amend rules cited as 15A NCAC 2D .0518, .0531 - .0532, .0901 - .0903, .0907 - .0912, .0936, .1004; 2H .0603.

The proposed effective date of this action is February 1, 1993.

The public hearing will be conducted at 7:00 p.m. on November 19, 1992 at the Charlotte/Mecklenburg Government Center, Conference Center, Room 267, 600 East 4th Street, Charlotte, NC 28202.

Reason for Proposed Actions: Extend Rules to new nonattainment areas and to minor sources to satisfy Federal Regulations.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Any person desiring to comment for more than three minutes is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The hearing officer may limit oral presentation lengths to five minutes if many people want to speak. The record of proceedings will remain open for 30 days following the hearings to receive additional written statements. To be included, the statement must be received by the Department within 30 days after the hearing date. Comments should be sent to and additional information concerning the hearing or the proposals may be obtained by contacting:

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

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2D - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .0500 - EMISSION CONTROL STANDARDS

**.0518 MISCELLANEOUS VOLATILE
ORGANIC COMPOUND
EMISSIONS**

(a) This ~~Regulation Rule~~ shall be applicable to all sources of volatile organic compound emissions for which no other volatile organic compound emission control standards are applicable, including those standards found in Section .0900 of this Subchapter as well as ~~Regulations Rules~~ .0524 and .0525 of this Section.

(b) A person shall not place, store or hold in any stationary tank, reservoir, or other container with a capacity greater than 50,000 gallons, any liquid compound containing carbon and hydrogen or containing carbon and hydrogen in combination with any other element which has a vapor pressure of 1.5 pounds per square inch absolute or greater under actual storage conditions unless such tank, reservoir, or other container:

- (1) is a pressure tank, capable of maintaining working pressures sufficient at all times to prevent vapor gas loss into the atmosphere; or
- (2) is designed and equipped with one of the following vapor loss control devices:

(A) a floating pontoon, double deck type floating roof or internal pan type floating roof equipped with closure seals to enclose any space between the cover's edge and compartment wall; this control-equipment shall not be permitted if the compound is a photochemically reactive material having a vapor pressure of 11.0 pounds per square inch absolute or greater under actual storage conditions; all tank gauging or sampling devices shall be gas-tight except when tank gauging or sampling is taking place;

(B) a vapor recovery system or other equipment or means of air pollution control as approved by the Director which reduces the emission of organic materials into the atmosphere by at least 90 percent by weight; all tank gauging or sampling devices shall be gas-tight except when tank gauging or sampling is taking place.

(c) A person shall not load in any one day more than 20,000 gallons of any volatile organic compound into any tank-truck, trailer, or railroad tank car from any loading facility unless the loading uses submerged loading through boom loaders that extend down into the compartment being

loaded or by other methods approved by the Director.

(d) A person shall not discharge from all sources at any one plant site more than a total of 40 pounds of photochemically reactive solvent into the atmosphere in any one day, from any article, machine, equipment or other contrivance used for employing, applying, evaporating or drying any photochemically reactive solvent or substance containing such solvent unless the discharge has been reduced by at least 85 percent by weight. Photochemically reactive solvents include any solvent with an aggregate of more than 20 percent of its total volume composed of the chemical compounds classified in this Paragraph, or which exceed any of the following percentage composition limitations, referred to the total volume of the solvent:

- (1) a combination of hydrocarbons, alcohols, aldehydes, esters, ethers, or ketones having an olefinic or cyclo-olefinic type of unsaturation except perchloroethylene--five percent;
- (2) a combination of aromatic hydrocarbons with eight or more carbon atoms to the molecule except ethylbenzene--eight percent;
- (3) a combination of ethylbenzene, ketones having branched hydrocarbon structure, trichloroethylene, or toluene--20 percent.

Whenever any photochemically reactive solvent, or any constituent of any photochemically reactive solvent may be classified from its chemical structure into more than one of the groups of chemical compounds in this Paragraph ~~or chemical compounds~~, it shall be considered as a member of the most reactive chemical compound group, that is, that group having the least allowable percent of the total volume of solvents.

(e) A source need not comply with Paragraphs (b), (c), or (d) of this ~~Regulation Rule~~ if it complies with otherwise applicable ~~regulations rules~~ in Section .0900 of this Subchapter ~~including Regulation .0902, APPLICABILITY, of this Subchapter, notwithstanding, among other things, size and location exemptions found in Paragraph (b) of Regulation .0902 of this Subchapter except Rules .0902, .0950, .0951(a), and .0952 of this Subchapter.~~ However, the source shall not have to comply with ~~Regulations Rules~~ .0903 through .0911 of this Subchapter. This Paragraph shall not apply to sources located in an area identified in Rule .0902(a) of this Subchapter.

(f) Any source to which this ~~Regulation Rule~~

applies shall be exempted from the requirements of Paragraphs (b), (c), or (d) if control equipment is installed and operated which meets the requirements of best available control technology as defined in and determined by procedures of Regulation Rule .0530 of this Section. A new best available control technology determination and procedure need not be performed if in the judgment of the Director a previous best available control technology determination is applicable.

(g) Sources at a plant site with emission limits established by Paragraphs (e) or (f) of this Regulation Rule shall be excluded from consideration when determining the compliance of any remaining sources with Paragraph (d) of this Regulation Rule.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0531 SOURCES IN NONATTAINMENT AREAS

(a) This Rule applies to certain new major stationary sources and major modifications of sources of volatile organic compounds or nitrogen oxides which are located in one of the following areas: an area which is designated by the U.S. Environmental Protection Agency (EPA) to be a nonattainment area as of May 1, 1982.

- (1) Davidson County,
- (2) Durham County,
- (3) Forsyth County,
- (4) Gaston County,
- (5) Guilford County,
- (6) Mecklenburg County,
- (7) Wake County,
- (8) Dutchville Township in Granville County, and
- (9) that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River.

This Rule applies to certain new major stationary sources and major modifications of sources of carbon monoxide which are located in Durham County, Forsyth County, Mecklenburg County, and Wake County.

(b) For the purpose of this Rule the definitions contained in 40 CFR 51.165(a)(1) and 40 CFR 51.301 shall apply. The reasonable period specified in 40 CFR 51.165(a)(1)(vi)(C)(1) shall be seven years.

(c) This Rule is not applicable to:

- (1) complex sources of air pollution that are regulated only under Section .0800

- (2) of this Subchapter and not under any other ~~regulation rule~~ in this Subchapter; emission of pollutants at the new major stationary source or major modification located in the nonattainment area which are pollutants other than the pollutant or pollutants for which the area is nonattainment (A major stationary source or major modification that is major for volatile organic compounds or nitrogen oxides is also major for ozone.);
- (3) emission of pollutants for which the source or modification is not major;
- (4) a new source or modification which qualifies for exemption under the provision of 40 CFR 51.165(a)(4); and
- (5) emission of the following volatile organic compounds:
 - (A) carbon monoxide,
 - (B) carbon dioxide,
 - (C) carbonic acid,
 - (D) metallic carbides or carbonates,
 - (E) ammonium carbonate,
 - ~~(A)~~ (F) methane,
 - ~~(B)~~ (G) ethane,
 - ~~(C)~~ (H) trichlorofluoromethane (chlorofluorocarbon 11),
 - ~~(D)~~ (I) dichlorodifluoromethane (chlorofluorocarbon 12),
 - ~~(E)~~ (J) chlorodifluoromethane (chlorofluorocarbon 22),
 - ~~(F)~~ (K) trifluoromethane (fluorocarbon 23),
 - ~~(G)~~ (L) trichlorotrifluoroethane (chlorofluorocarbon 113),
 - ~~(H)~~ (M) dichlorotetrafluoroethane (chlorofluorocarbon 114),
 - ~~(I)~~ (N) chloropentafluoroethane (chlorofluorocarbon 115),
 - ~~(J)~~ (O) 1,1,1-trichloroethane (methyl chloroform),
 - ~~(K)~~ (P) dichloromethane (methylene chloride),
 - ~~(L)~~ (Q) dichlorotrifluoroethane (hydrochlorofluorocarbon 123),
 - ~~(M)~~ (R) tetrafluoroethane (hydrofluorocarbon 134a),
 - ~~(N)~~ (S) dichlorofluoroethane (hydrochlorofluorocarbon 141b), and
 - ~~(O)~~ (T) chlorodifluoroethane (hydrochlorofluorocarbon 142b),
 - (U) 2-chloro-1,1,1,2-tetrafluoroethane (hydrochlorofluorocarbon 124),
 - (V) pentafluoroethane (hydrofluorocarbon

125).

(W) 1,1,2,2-tetrafluoroethane (hydrofluorocarbon 134),

(X) 1,1,1-trifluoroethane (hydrofluorocarbon 143a),

(Y) 1,1-difluorocarbon(hydrofluorocarbon 152a), and

(Z) perfluorocarbon compounds that fall into these classes:

(i) cyclic, branched, or linear completely fluorinated alkanes;

(ii) cyclic, branched, or linear completely fluorinated ethers with no unsaturations;

(iii) cyclic, branched, or linear completely fluorinated tertiary amines with no unsaturations; and

(iv) sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(d) Paragraphs (a) and (b) of Rule 15 NCAC 2H .0601 are not applicable to any source to which this Rule applies. The source shall apply for and receive a permit as required in Paragraph (c) of Rule 15 NCAC 2H .0601.

(e) To issue a permit to a source to which this Rule applies, the Director ~~director~~ shall determine that the source will meet the following requirements:

(1) The source will emit the nonattainment pollutant at a rate no more than the lowest achievable emission rate.

(2) The owner or operator of the proposed new or modified source has demonstrated that all major stationary sources in the State which are owned or operated by this person (or any entity controlling, controlled by, or under common control with this person) are subject to emission limitations and are in compliance, or on a schedule for compliance which is federally enforceable or contained in a court decree, with all applicable emission limitations and standards of this Subchapter which EPA has authority to approve as elements of the North Carolina State Implementation Plan for Air Quality.

(3) The source will obtain sufficient emission reductions of the nonattainment pollutant from other sources in the nonattainment area so that the emissions from the new major source and associated new minor sources will be less

than the emissions reductions by a ratio of at least 1.00 to 1.15 for volatile organic compounds and nitrogen oxides and by a ratio of greater than one for carbon monoxide. The baseline for this emission offset shall be the actual emissions of the source from which offset credit is obtained. Emission reductions must not include any reductions resulting from compliance (or scheduled compliance) with applicable regulations rules in effect prior to the application. The difference between the emissions from the new major source and associated new minor sources of carbon monoxide and the emission reductions must be sufficient to represent reasonable further progress toward attaining the Ambient Air Quality Standards. The emissions reduction credits must also conform to the provisions of 40 CFR 51.165(a)(3)(ii)(A) through (G).

(4) The North Carolina State Implementation Plan for Air Quality is being carried out for the nonattainment area in which the proposed source is located.

(f) When a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

(g) To issue a permit to a source of a nonattainment pollutant ~~for which the state has demonstrated to the satisfaction of the Administrator of EPA that attainment is not possible in the area within the period prior to December 31, 1982, despite the implementation of all reasonably available measures,~~ the Director shall determine, in addition to the other requirements of this Rule, that an analysis (produced by the permit applicant) of alternative sites, sizes, production processes, and environmental control techniques for source demonstrates that the benefits of the source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(h) Approval of an application with regard to the requirements of this Rule shall not relieve the owner or operator of the responsibility to comply fully with applicable provisions of other regula-

tions rules of this Chapter and any other requirements under local, state, or federal law.

(i) When a source or modification subject to this Rule may affect the visibility of a Class I area named in Paragraph (c) of Rule .0530 of this Section, the following procedures shall be followed:

- (1) The owner or operator of the source shall provide an analysis of the impairment to visibility that would occur as a result of the source or modification and general commercial, industrial and other growth associated with the source or modification.
- (2) The Director shall provide written notification to all affected Federal Land Managers within 30 days of receiving the permit application or within 30 days of receiving advance notification of an application. The notification shall be at least 30 days prior to the publication of the notice for public comment on the application. The notification shall include a copy of all information relevant to the permit application including an analysis provided by the source of the potential impact of the proposed source on visibility.
- (3) The Director shall consider any analysis concerning visibility impairment performed by the Federal Land Manager if the analysis is received within 30 days of notification. If the Director finds that the analysis of the Federal Land Manager fails to demonstrate to his satisfaction that an adverse impact on visibility will result in the Class I area, the Director shall provide in the notice of public hearing on the application, an explanation of his decision or notice as to where the explanation can be obtained.
- (4) The Director shall only issue permits to those sources whose emissions will be consistent with making reasonable progress towards the national goal of preventing any future, and remedying any existing, impairment of visibility in mandatory Class I areas when the impairment results from man-made air pollution. In making the decision to issue a permit, the Director shall consider the cost of compliance, the time necessary for compliance, the energy and nonair quality environmental im-

pacts of compliance, and the useful life of the source.

- (5) The Director may require monitoring of visibility in or around any Class I area by the proposed new source or modification when the visibility impact analysis indicates possible visibility impairment. The requirements of this Paragraph shall not apply to nonprofit health or nonprofit educational institutions.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.108(b).

.0532 SOURCES CONTRIBUTING TO AN AMBIENT VIOLATION

(a) This ~~Regulation Rule~~ applies to certain new major stationary sources and major modifications to which Rule .0531 of this Section does not apply ~~which are located in an area which is designated by the U.S. Environmental Protection Agency (EPA) to be an attainment or unclassifiable area as of May 1, 1983, and which would contribute to a violation of a national ambient air quality standard but which would not cause a new violation.~~

(b) For the purpose of this ~~Regulation Rule~~ the definitions contained in Section II.A. of Appendix S of 40 CFR Part 51 shall apply.

(c) The ~~Regulation Rule~~ is not applicable to:

- (1) complex sources of air pollution that are regulated only under Section .0800 of this Subchapter and not under any other regulation rule of this Subchapter;
- (2) emission of pollutants for which the area in which the new or modified source is located is designated as nonattainment;
- (3) emission of pollutants for which the source or modification is not major;
- (4) emission of pollutants other than sulfur dioxide, total suspended particulates, nitrogen oxides, and carbon monoxide;
- (5) a new or modified source whose impact will increase not more than:
 - (A) 1.0 ug/m³ of SO₂ on an annual basis,
 - (B) 5 ug/m³ of SO₂ on a 24-hour basis,
 - (C) 25 ug/m³ of SO₂ on a 3-hour basis,
 - (D) 1.0 ug/m³ of total suspended particulates on an annual basis,
 - (E) 5 ug/m³ of total suspended particulates on a 24-hour basis,
 - (F) 1.0 ug/m³ of NO₂ on an annual basis,

- (G) 0.5 mg/m³ of carbon monoxide on an 8-hour basis₂
 - (H) 2 mg/m³ of carbon monoxide on a one-hour basis₂
 - (I) 1.0 ug/m³ of PM10 on an annual basis₂ or
 - (J) 5 ug/m³ of PM10 on a 24-hour basis₂
- at any locality that does not meet a national ambient air quality standard₂
- (6) sources which are not major unless secondary emissions are included in calculating the potential to emit;
 - (7) sources which are exempted by the provision in Section II.F. of Appendix S of 40 CFR Part 51;
 - (8) temporary emission sources which will be relocated within two years; and
 - (9) emissions resulting from the construction phase of the source.
- (d) Paragraphs (a) and (b) of ~~Rule~~ 15A NCAC 2H .0601 are not applicable to any source to which this Rule applies. The source shall apply for and receive a permit as required in Paragraph (c) of ~~Rule~~ 15A NCAC 2H .0601.
- (e) To issue a permit to a new or modified source to which this ~~Regulation~~ Rule applies, the Director shall determine that the source will meet the following conditions:
- (1) The sources will emit the nonattainment pollutant at a rate no more than the lowest achievable emission rate.
 - (2) The owner or operator of the proposed new or modified source has demonstrated that all major stationary sources in the State which are owned or operated by this person (or any entity controlling, controlled by, or under common control with this person) are subject to emission limitations and are in compliance, or on a schedule for compliance which is federally enforceable or contained in a court decree, with all applicable emission limitations and standards of this Subchapter which EPA has authority to approve as elements of the North Carolina State Implementation Plan for Air Quality.
 - (3) The source will satisfy one of the following conditions:
 - (A) The source will comply with Part (e) (3) (A) of ~~Regulation~~ Rule .0531 of this Section when the source is evaluated as if it were in the nonattainment area; or

- (B) The source will have an air quality offset, i.e., the applicant will have caused an air quality improvement in the locality where the national ambient air quality standard is not met by causing reductions in impacts of other sources greater than any additional impact caused by the source for which the application is being made. The emissions reductions creating the air quality offset shall be placed as a condition in the permit for the source reducing emissions. The requirements of this Part may be partially waived if the source is a resource recovery facility burning municipal solid waste, the source must switch fuels due to lack of adequate fuel supplies, or the source is required to be modified as a result of EPA regulations and no exemption from such regulations is available and if:

- (i) the permit applicant demonstrates that it made its best efforts to obtain sufficient air quality offsets to comply with this Part;
- (ii) the applicant has secured all available air quality offsets; and
- (iii) the applicant will continue to seek the necessary air quality offsets and apply them when they become available.

- (f) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this ~~Regulation~~ Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.108(b).

SECTION .0900 - VOLATILE ORGANIC COMPOUNDS

.0901 DEFINITIONS

For the purpose of this Section, the following definitions apply:

- (1) "Coating" means a functional, protective, or decorative film applied in a thin layer to a surface.

- (2) "Coating applicator" means an apparatus used to apply a surface coating.
- (3) "Coating line" means one or more apparatus or operations in a single line wherein a surface coating is applied, dried, ~~and/or~~ or cured and which include a coating applicator and flashoff area and may include an oven or associated control devices.
- (4) "Continuous vapor control system" means a vapor control system which treats vapors displaced from tanks during filling on a demand basis without intermediate accumulation.
- (5) "Delivered to the applicator" means the condition of coating after dilution by the user just before application to the substrate.
- (6) "Flashoff area" means the space between the application area and the oven.
- (7) "High solids coating" means a coating which contains a higher percentage of solids and a lower percentage of volatile organic compounds and water thereby potentially lowering volatile organic compound emissions; usually paints with greater than 60 percent solids by volume are considered high solids coatings although the term is often applied to any coating that meets the Environmental Protection Agency Control Technology Guidelines.
- (8) "Hydrocarbon" means any organic compound of carbon and hydrogen only.
- (9) "Incinerator" means a combustion apparatus designed for high temperature operation in which solid, semisolid, liquid, or gaseous combustible wastes are ignited and burned efficiently and from which the solid and gaseous residues contain little or no combustible material.
- (10) "Intermittent vapor control system" means a vapor control system which employs an intermediate vapor holder to accumulate vapors displaced from tanks during filling. The control device treats the accumulated vapors only during automatically controlled cycles.
- (11) "Loading rack" means an aggregation or combination of loading equipment arranged so that all loading outlets in the combination can be connected to a tank truck or trailer parked in a specified loading space.
- (12) "Low solvent coating" means a coating which contains a substantially lower amount of volatile organic compound than conventional organic solvent borne coatings; it usually falls into one of three major groups of high solids, waterborne, or powder coatings.
- (13) "Organic material" means a chemical compound of carbon excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate.
- (14) "Oven" means a chamber within which heat is used to bake, cure, polymerize, ~~and/or~~ or dry a surface coating.
- (15) "Potential emissions" means the quantity of a pollutant which would be emitted at the maximum capacity of a stationary source to emit the pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is described or contained as a condition in the federally enforceable permit. Secondary emissions do not count in determining potential emissions of a stationary source. Fugitive emissions count, to the extent quantifiable, in determining the potential emissions only in these cases:
 - (a) petroleum refineries;
 - (b) chemical process plants; and
 - (c) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.
- (16) "Prime coat" means the first film of coating applied to a surface to protect it or to prepare it to receive subsequent coatings.
- (17) "Reasonably available control technology" (also denoted as RACT) means the lowest emission limit which a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. It may require technology which has been applied to similar, but not necessarily identical, source categories.
- (18) "Reid vapor pressure" means the absolute

- vapor pressure of volatile crude oil and volatile nonviscous petroleum liquids except liquefied petroleum gases as determined by American Society for Testing and Materials, Part 17, 1973, D-323-72 (reapproved 1977).
- (19) "Shutdown" means the cessation of operation of a source or a part thereof or emission control equipment.
- (20) "Solvent" means organic materials which are liquid at standard conditions and which are used as dissolvers, viscosity reducers, or cleaning agents.
- (21) "Standard conditions" means a temperature of 68°F and pressure of 29.92 inches of mercury.
- (22) "Startup" means the setting in operation of a source or emission control equipment.
- (23) "Substrate" means the surface to which a coating is applied.
- (24) "Topcoat" means the final films of coating applied in a multiple or single coat operation.
- (25) "True vapor pressure" means the equilibrium partial pressure exerted by a petroleum liquid as determined in accordance with methods described in American Petroleum Institute Bulletin 2517, "Evaporation Loss from Floating Roof Tanks," 1962.
- (26) "Vapor collection system" means a vapor transport system which uses direct displacement by the liquid loaded to force vapors from the tank into a vapor control system.
- (27) "Vapor control system" means a system which prevents release to the atmosphere of at least 90 percent by weight of organic compounds in the vapors displaced from a tank during the transfer of gasoline.
- (28) "Volatile organic compound" (also denoted as VOC) means any compound of carbon whose volatile content can be determined by the procedure described in Regulations Rules .0913 or .0939 of this Section excluding:
- (a) carbon monoxide,
 - (b) carbon dioxide,
 - (c) carbonic acid,
 - (d) metallic carbides or carbonates,
 - (e) ammonium carbonate,
 - (f) methane,
 - (g) ethane,

- (h) trichlorofluoromethane (chlorofluorocarbon 11),
- (i) dichlorodifluoromethane (chlorofluorocarbon 12),
- (j) chlorodifluoromethane (chlorofluorocarbon 22),
- (k) trifluoromethane (fluorocarbon 23),
- (l) trichlorotrifluoroethane (chlorofluorocarbon 113),
- (m) dichlorotetrafluoroethane (chlorofluorocarbon 114),
- (n) chloropentafluoroethane (chlorofluorocarbon 115),
- (o) 1,1,1-trichlorethane (methyl chloroform),
- (p) dichloromethane (methylene chloride),
- (q) dichlorotrifluoroethane (hydrochlorofluorocarbon 123),
- (r) tetrafluoroethane (hydrofluorocarbon 134a),
- (s) dichlorofluoroethane (hydrochlorofluorocarbon 141b), ~~and~~
- (t) chlorodifluoroethane (hydrochlorofluorocarbon 142b)-₂,
- (u) 2-chloro-1,1,1,2-tetrafluoroethane (hydrochlorofluorocarbon 124),
- (v) pentafluoroethane (hydrofluorocarbon 125),
- (w) 1,1,2,2-tetrafluoroethane (hydrofluorocarbon 134),
- (x) 1,1,1-trifluoroethane (hydrofluorocarbon 143a),
- (y) 1,1-difluorocarbon (hydrofluorocarbon 152a), and
- (z) perfluorocarbon compounds that fall into these classes:
 - (i) cyclic, branched, or linear completely fluorinated alkanes;
 - (ii) cyclic, branched, or linear completely fluorinated ethers with no unsaturations;
 - (iii) cyclic, branched, or linear completely fluorinated tertiary amines with no unsaturations; and
 - (iv) sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

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

.0902 APPLICABILITY

- (a) With the exceptions stated in Paragraph ~~(b)~~ (c) of this ~~Regulation Rule~~, this Section applies, in accordance with Rules .0907 and .0946 of this Section, throughout the entire State of North

Carolina, to all sources of volatile organic compounds: in the following counties and parts of counties:

- (1) Davidson.
- (2) Durham.
- (3) Forsyth.
- (4) Gaston.
- (5) Guilford.
- (6) Mecklenburg.
- (7) Wake.
- (8) Dutchville Township in Granville County, and
- (9) that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River.

(b) Rules .0925, .0926, .0927, .0928, .0932, and .0933 of this Section apply, in accordance with Rule .0946 of this Section, to all sources of volatile organic compounds located in areas not named in Paragraph (a) of this Rule.

~~(b)~~ (c) This Section does not apply to:

- (1) sources whose emissions of volatile organic compounds are not more than 15 pounds per day (This Subparagraph does not apply to the manufacture and use of cutback asphalt.);
 - ~~(2) sources at a facility where the total of potential emissions of volatile organic compounds from all stationary sources at the facility is less than 100 tons per year (This Subparagraph does not apply to the manufacture and use of cutback asphalt or to Rules .0925, .0926, .0927, .0928, .0932, and .0933 of this Section.);~~
 - ~~(3) facilities located in an area which is not designated by the U.S. Environmental Protection Agency to be a nonattainment area for photochemical oxidants or ozone as of April 30, 1979 (This Subparagraph does not apply Rules .0925, .0926, .0927, .0928, .0932, and .0933 of this Section.);~~
 - ~~(4) to the manufacture and use of cutback asphalts in an area which is not designated by the U.S. Environmental Protection Agency to be a nonattainment area for photochemical oxidants or ozone as of April 30, 1979;~~
 - (5) (2) sources used exclusively for chemical or physical analysis or determination of product quality and commercial acceptance provided:
- (A) The operation of the source is not an

integral part of the production process; and

- (B) The emissions from the source do not exceed 800 pounds per calendar month; and
- (C) The exemption is approved in writing by the director; or
- ~~(6) emissions of volatile organic compounds which are subject to limitation under Regulations .0524 or .0525 of this Subchapter; or~~
- ~~(7) (3) emissions of volatile organic compounds during startup or shutdown operations from sources which use incineration or other types of combustion to control emissions of volatile organic compounds whenever the off-gas contains an explosive mixture during the startup or shutdown operation if the exemption is approved by the Director.~~

~~(e) (d) Sources whose emissions of volatile organic compounds are not subject to limitation under this Section may still be subject to emission limits on volatile organic compounds in Regulation .0518, Rule .0524, or .0525 of this Subchapter.~~

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0903 RECORDKEEPING: REPORTING: MONITORING

(a) This Regulation Rule applies to sources subject to ~~Regulations~~ Rules in this Section.

(b) The owner or operator of any volatile organic compound emission source or control equipment shall maintain:

- (1) records detailing all activities relating to any compliance schedule in this Section;
- (2) records detailing all malfunctions under Regulation Rule .0535 of this Subchapter;
- (3) records of all testing conducted under Regulations Rules in this Section;
- (4) records of all monitoring conducted under Paragraph (d) of this Regulation Rule; and
- (5) records necessary to determine compliance as required by Paragraph (d) of this Regulation Rule.

(c) When requested by the Director ~~director~~, the owner or operator of any volatile organic compound emission source or control equipment shall submit reports detailing the following:

- (1) General information.
 - (A) Type of source and process description.
 - (B) Schedule of operation.
 - (C) Quantity of volatile organic compounds emitted per day from each source.
 - (D) Quantity and type of wash and clean-up solvents used each day for each source.
- (2) Coating line information.
 - (A) Method of application.
 - (B) Drying method used and minimum temperature.
 - (C) Substrate type.
 - (D) Substrate form.
 - (E) Type of coatings applied, number of each coating type applied, and quantity of each type of coating applied per day.
 - (F) Percent by weight of volatile organic compounds content of each coating applied.
 - (G) Percent by volume of solids content of each coating applied.
 - (H) Method used to determine volume percent solids content of coatings.
 - (I) Type and quantity of diluents added to each coating and percent by weight of volatile organic content of each diluent.
- (3) Control equipment.
 - (A) Thermal incinerator:
 - (i) Combustion temperature.
 - (ii) Residence time.
 - (B) Catalytic incinerator:
 - (i) Exhaust gas temperature.
 - (ii) Change in temperature across catalyst bed.
 - (iii) Residence time.
 - (iv) Date of last change of catalyst bed.
 - (v) Date of last catalyst test and results of test.
 - (C) Condenser:
 - (i) Inlet temperature of cooling medium.
 - (ii) Outlet temperature of cooling medium.
 - (D) Emission test results:
 - (i) Inlet volatile organic compound concentration.
 - (ii) Outlet volatile organic compound concentration.
 - (iii) Explanation of how inlet and

outlet concentrations have been determined.

- (iv) Date when these concentrations were last determined.

(E) Capture system:

- (i) Type of capture system.
- (ii) Efficiency of capture system.
- (iii) Explanation of how capture efficiency has been determined.

The owner or operator of the source shall also provide any other pertinent information to the director when requested.

(d) The owner or operator of any volatile organic compound emission source or control equipment shall:

- (1) install, operate, and maintain process ~~and/or~~ and control equipment monitoring instruments or procedures as necessary to comply with ~~Paragraph~~ Paragraphs (b) and (c) of this ~~Regulation~~ Rule; and
- (2) maintain, in writing, data ~~and/or~~ and reports relating to monitoring instruments or procedures which will, upon review, document the compliance status of the volatile organic compound emission source or control equipment to the satisfaction of the Director; such data and reports shall, as a minimum, be maintained daily.

(e) Copies of all records and reports under Paragraphs (b), (c), and (d) of this ~~Regulation~~ Rule shall be retained by the owner or operator for a minimum of two years after the date on which the record was made or the report submitted. However, the Director may extend the retention period in particular instances.

(f) Copies of all records and reports under this Section shall be made available within a reasonable time to the Director upon written request.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0907 COMPLIANCE SCHEDULES FOR SOURCES IN NONATTAINMENT AREAS

~~(a) With the exception stated in Regulation .0910 or .0911 of this Section, the owner or operator of an existing (as of June 30, 1979) volatile organic compound emission source proposing to install and operate volatile organic compound emission control equipment and/or replace process equipment to comply with Regulations .0917 through .0931 of this Section shall~~

achieve final compliance, determined in accordance with Regulations .0912 through .0916 and .0939 through .0942 of this Section, before August 1, 1981.

(b) With the exception stated in Regulations .0910 or .0911 of this Section, the owner or operator of an existing (as of June 30, 1980) volatile organic compound emission source proposing to install and operate volatile organic compound emission control equipment and/or to replace process equipment to comply with Regulations .0932 through .0938 of this Section shall achieve final compliance, determined in accordance with Regulations .0912 through .0916 and .0939 through .0942 of this Section, before August 1, 1982.

(c) With the exception stated in Regulation .0910 of this Section, the owner or operator of a new volatile organic compound source not in existence as of June 30, 1979, or June 30, 1980, shall comply with Regulations .0917 through .0931 or Regulations .0932 through .0938, respectively, of this Section upon source start-up.

(a) With the exceptions in Paragraph (b) of this Rule, this Rule applies to all sources covered by Paragraph (a) of Rule .0902 of this Section.

(b) This Rule does not apply to:

- (1) sources in Mecklenburg County to which Rules .0917 through .0938 apply and which are located at a facility where the total potential emissions of volatile organic compounds from all stationary sources at the facility is 100 tons per year or more, or
- (2) sources covered under Rule .0946 of this Section.

(c) The owner or operator of any source subject to this Rule who proposes to comply with a rule in this Section by installing emission control equipment, replacing process equipment, or modifying existing process equipment, shall adhere to the following increments of progress and schedules:

- (1) A permit application and a compliance schedule shall be submitted before August 1, 1993;
- (2) The compliance schedule shall contain the following increments of progress:
 - (A) a date by which contracts for the emission control system and process equipment shall be awarded or orders shall be issued for purchase of component parts;
 - (B) a date by which on-site construction or installation of the emission control and process equipment shall begin;

and

(C) a date by which on-site construction or installation of the emission control and process equipment shall be completed.

(3) Final compliance shall be achieved by:

- (A) December 1, 1994, where compliance is achieved by installing control equipment or replacing process equipment, or
- (B) August 1, 1994, where compliance is achieved by modifying existing process equipment.

The owner or operator shall certify to the Director within five days after the deadline, for each increment of progress, whether the required increment of progress has been met.

(d) The owner or operator of any source subject to this Rule who proposes to comply with a rule in this Section by using low solvent content coating technology shall adhere to the following increments of progress and schedules:

- (1) The permit application and a compliance schedule shall be submitted before August 1, 1993.
- (2) The compliance schedule shall contain the following increments of progress:
 - (A) a date by which research and development of low solvent content coating shall be completed if the Director determines that low solvent content coating technology has not been sufficiently researched and developed;
 - (B) a date by which evaluation of product quality and commercial acceptance shall be completed;
 - (C) a date by which purchase orders shall be issued for low solvent content coatings and process modifications;
 - (D) a date by which process modifications shall be initiated; and
 - (E) a date by which process modifications shall be completed and use of low solvent content coatings shall begin.
- (3) Final compliance shall be achieved by:
 - (A) July 1, 1995, where compliance is achieved by using low solvent content coating where the Director determines that low solvent content coating technology has not been sufficiently researched and developed; or
 - (B) January 1, 1995, where compliance is achieved by using low solvent content coating where the Director determines that low solvent content coating tech-

nology has been sufficiently researched and developed.

The owner or operator shall certify to the Director within five days after the deadline, for each increment of progress, whether the required increment of progress has been met.

(e) The owner or operator of sources subject to this Rule shall, if the Director requires a test to demonstrate that compliance has been achieved, conducted a test and submit a final test report within six months after the stated date of final compliance.

(f) With such exception as the Director may allow, the owner or operator of any source subject to this Rule shall continue to comply with 15A NCAC 2D .0518 until such time as the source complies with applicable rules in this Section or until the final compliance date set forth in this Rule, whichever comes first. The Director may allow the following exceptions:

- (1) testing coating materials;
- (2) making or testing equipment or process modifications; or
- (3) adding or testing control devices.

(g) The owner or operator of any new source of volatile organic compounds not in existence or under construction as of January 30, 1993, shall comply with all applicable rules in this Section upon start-up of the source.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.68; 143-215.107(a)(5).

.0910 ALTERNATIVE COMPLIANCE SCHEDULES

(a) If the Director finds that the application of a compliance schedule in ~~Regulations .0907 through .0909~~ Rule .0907 of this Section would be technologically or economically infeasible for a source, he may promulgate a different schedule for that source.

(b) The owner or operator of a volatile organic compound source affected by ~~Regulations .0917 through .0931~~ of a rule in this Section may submit to the Director a proposed alternative compliance schedule if:

- (1) The proposed alternative compliance schedule is submitted before ~~January 1, 1980~~ August 1, 1993; and
- (2) The final control plans for achieving compliance are submitted simultaneously; and
- (3) The alternative compliance schedule contains the same increments of progress as the schedule for which it is

proposed as an alternative; and

- (4) Sufficient documentation and certification from appropriate suppliers, contractors, manufacturers, or fabricators are submitted to justify the dates proposed for the increments of progress.

(c) The owner or operator of a volatile organic compound source affected by a rule in this Section may submit to the Director an alternative compliance schedule for the phase-out or shut-down of a volatile organic compound source, if:

- (1) The proposed alternative compliance schedule is submitted before August 1, 1993; and
- (2) The final control plans for achieving compliance with rules of this Section are submitted simultaneously.

(d) All alternative compliance schedules proposed or promulgated under this Rule shall provide for compliance with the applicable rules as expeditiously as practicable but not later than August 1, 1995.

(e) Any schedule approved under this Regulation Rule may be revoked at any time if the source does not meet the increment of progress stipulated.

(f) When an alternate compliance schedule is promulgated under this Regulation Rule, the permit shall contain a condition stating the compliance schedule.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0911 EXCEPTION FROM COMPLIANCE SCHEDULES

~~Regulations Rule .0907 through .0910~~ of this Section will not apply to sources which that are in compliance with applicable Rules ~~Regulations .0917 through .0931~~ of this Section before July 1, 1979 February 1, 1993, and that have determined and certified compliance to the satisfaction of the Director before ~~October 1, 1979, May 1, 1993,~~ or in compliance with Regulation .0932 through .0938 of this Section before July 1, 1980 and have determined and certified compliance to the satisfaction of the Director before October 1, 1980.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.68; 143-215.107(a)(5).

.0912 GENERAL PROVISIONS ON TEST METHODS AND PROCEDURES

(a) The owner or operator of any volatile organic compound source required to comply with

~~regulations~~ rules in this Section shall, at his own expense, demonstrate compliance by the methods described in ~~Regulations~~ Rules .0912 through .0916 and .0939 through .0942 of this Section. The owner or operator of a volatile organic compound source shall demonstrate compliance when the Director requests such demonstration. The Director shall explain to the owner or operator the basis for requesting a demonstration of compliance and shall allow reasonable time for testing to be performed. All tests shall be made by, or under the direction of, a person qualified by training or experience in the field of air pollution testing.

(b) Volatile organic compound emissions compliance testing shall be allowed and the results shall be accepted, only if the Director has been notified as required by Paragraph (c) of this Regulation Rule and if the Director has granted approval.

(c) Any person proposing to conduct a volatile organic compound emissions test shall notify the Director at least 21 days before beginning the test so that the Director may at his option observe the test. Any person notifying the Director of a proposed volatile organic compound emissions test shall include as part of notification the following minimum information:

- (1) a statement indicating the purpose of the proposed test; ~~and~~
- (2) a detailed description of the facility to be tested; ~~and~~
- (3) a detailed description of the test procedures, equipment, and sampling sites; and
- (4) a timetable, setting forth the dates on which:
 - (A) The testing will be conducted; ~~and~~
 - (B) Preliminary test results will be reported (not later than 30 days after sample collection); and
 - (C) The final test report will be submitted (not later than 60 days after completion of on-site sampling).

(d) If the volatile organic compound emissions test shows noncompliance, the owner or operator of the volatile organic source shall submit along with the final test report proposed corrective action.

(e) For compliance determination, the owner or operator of any volatile organic compound emissions source shall be responsible for providing:

- (1) sampling ports, pipes, lines, or appurtenances for the collection of samples and data required by the test procedure; ~~and~~
- (2) safe access to the sample and data

collection locations; and

- (3) light, electricity, and other utilities required for sample and data collection.

(f) Compliance shall be determined on a line-by-line basis using the more stringent of the following two:

- (1) Compliance shall be determined on a daily basis for each coating line using a weighted average, that is, dividing the sum of the mass (pounds) of volatile organic compounds in coatings consumed on that coating line, as received, and the mass (pounds) of volatile organic compound solvents added to the coatings on that coating line by the volume (gallons) of coating solids consumed during that day on that coating line; or
- (2) Compliance shall be determined as follows:
 - (A) When low solvent or high solids coatings are used to reduce emissions of volatile organic compounds, compliance shall be determined instantaneously.
 - (B) When add on control devices, e.g., solvent recovery systems or incinerators, are used to reduce emissions of volatile organic compounds, compliance shall be determined by averaging emissions over a one-hour period.

(g) The Director ~~director~~ may authorize the Division of Environmental Management to conduct independent tests of any source subject to a ~~regulation~~ rule in this Section to determine the compliance status of that source or to verify any test data submitted about that source. Any test conducted by the Division of Environmental Management using the appropriate testing procedures described in this Section shall have precedence over all other tests. The United States Environmental Protection Agency (EPA) may verify any test submitted by the owner or operator of a source, and any test conducted by EPA using the appropriate testing procedures described in this Section shall have precedence over tests conducted by the owner or operator of the source.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0936 GRAPHIC ARTS

(a) For the purpose of this Regulation Rule, the following definitions apply:

- (1) "Flexographic printing" means the

application of words, designs and pictures to a substrate by means of a roll printing technique in which both the pattern to be applied is raised above the printing roll and the image carrier is made of rubber or other elastometric materials.

- (2) "Packaging rotogravure printing" means printing with a gravure press upon paper, paper board, metal foil, plastic film, and other substrates, which are, in subsequent operation, formed into containers and labels for articles to be sold.
- (3) "Printing" means the formation of words, designs and pictures, usually by a series of application rolls each with only partial coverage.
- (4) "Publication rotogravure printing" means printing upon paper which is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper supplements, and other types of printed materials.
- (5) "Roll printing" means the application of words, designs and pictures to a substrate by means of hard rubber or steel rolls.

(b) This Regulation Rule applies to:

- (1) flexographic printing, packaging rotogravure printing and publication rotogravure printing operations; and
- (2) machines that have both coating units and printing units.

(c) This Rule does not apply to facilities where the potential emissions of volatile organic compounds is less than 100 tons per year.

(d) ~~(e)~~ Emissions of volatile organic compounds from any printing press unit or drying oven of a printing operation subject to this Regulation Rule shall not be discharged into the atmosphere unless:

- (1) The captured volatile organic compound emissions are reduced by at least 90 percent by an incineration system or 95 percent by a carbon adsorption system or any other control system; and:
 - (A) For packaging rotogravure printing operations, at least 65 percent overall reduction of the volatile organic compound emissions is achieved;
 - (B) For publication rotogravure printing operations at least 75 percent overall reduction of the volatile organic compound emissions is achieved; and
 - (C) For flexographic printing operations,

at least 60 percent overall reduction of the volatile organic compound emissions is achieved;

- (2) The solvent portion of the ink, as it is applied on the substrate, consists of at least 75 percent water by volume and no more than 25 percent organic solvent by volume;
- (3) The ink contains by volume at least 60 percent nonvolatile material;
- (4) The printing system uses a combination of solvent-borne and water-borne ink such that at least a 70 percent by volume overall reduction in solvent usage is achieved when compared to all solvent-borne ink usage, or
- (5) The ink, including any solvents that may be added to it, contains no more than 0.5 pounds of volatile organic compounds per pound of solids in the ink; only flexographic printing and packaging rotogravure printing may use this option.

(e) ~~(d)~~ When a facility complies with this Regulation Rule using the provision of Subparagraph (e) (d) (4) of this Regulation Rule, the permit shall contain a condition stating the maximum quantity of solvent-borne ink that each printing unit may use or that the facility as a whole may use.

(f) Equivalency calculations for emissions trading, cross-line averaging, or determining compliance with add-on control equipment shall be performed in units of pounds of volatile organic compounds per gallon of solids.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0947 MANUFACTURE OF SYNTHESIZED PHARMACEUTICAL PRODUCTS

(a) For the purposes of this Rule, the following definitions apply:

- (1) "Production equipment exhaust system" means a device for collecting and directing out of the work area fugitive emissions of volatile organic compounds from reactor openings, centrifuge openings, and other vessel openings for the purpose of protecting workers from excessive exposure to volatile organic compounds.
- (2) "Synthesized pharmaceutical manufacturing" means manufacture of pharmaceutical products by chemical synthesis.

(b) This Rule applies to synthesized pharmaceu-

tical products manufacturing facilities.

(c) The owner or operator of a synthesized pharmaceutical products manufacturing facility shall control the emissions of volatile organic compounds from:

- (1) reactors, distillation operations, crystallizers, centrifuges, and vacuum dryers that have the potential to emit 15 pounds per day or more of volatile organic compounds with surface condensers that meet the requirements of Paragraph (e) of this Rule or equivalent controls;
 - (2) air dryers and production equipment exhaust system by reducing emissions of volatile organic compounds:
 - (A) by 90 percent if they are 330 pounds per day or more; or
 - (B) to 33 pounds per day if they are less than 330 pounds per day;
 - (3) storage tanks by:
 - (A) providing a vapor balance system or equivalent control that is at least 90 percent effective in reducing emissions from truck or railcar deliveries to storage tanks with capacities greater than 2,000 gallons that store volatile organic compounds with a vapor pressure greater than 4.1 pounds per square inch at 68° F; and
 - (B) installing pressure/vacuum conservation vents, which shall be set \pm 0.8 inches of water unless a more effective control system is used, on all storage tanks that store volatile organic compounds with a vapor pressure greater than 1.5 pounds per square inch at 68° F;
 - (4) centrifuges containing volatile organic compounds, rotary vacuum filters processing liquid containing volatile organic compounds, and other filters having an exposed liquid surface where the liquid contains volatile organic compounds by enclosing those centrifuges and filters that contain or process volatile organic compounds with a vapor pressure of 0.5 pounds per square inch or more at 68° F; and
 - (5) in-process tanks by installing covers, which shall remain closed except when production, sampling, maintenance, or inspection procedures require operator access;
- (d) The owner or operator of a synthesized

pharmaceutical products manufacturing facility shall repair as expeditiously as possible all leaks from which liquid volatile organic compounds can be seen running or dripping.

(e) If surface condensers are used to comply with Subparagraph (c)(1) of this Rule, the condenser outlet temperature shall not exceed:

- (1) -13° F when condensing volatile organic compounds of vapor pressure greater than 5.8 psi;
- (2) 5° F when condensing volatile organic compounds of vapor pressure greater than 2.9 psi;
- (3) 32° F when condensing volatile organic compounds of vapor pressure greater than 1.5 psi;
- (4) 50° F when condensing volatile organic compounds of vapor pressure greater than 1.0 psi; or
- (5) 77° F when condensing volatile organic compounds of vapor pressure greater than 0.5 psi.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0948 VOC EMISSIONS FROM TRANSFER OPERATIONS

(a) This Rule applies to operations that transfer volatile organic compounds from a storage tank to tank-trucks, trailers, or railroad tank car that are not covered by Rule .0926, .0927, or .0928 of this Section.

(b) The owner or operator of a source to which this Rule applies shall not load in any one day more than 20,000 gallons of any volatile organic compound with a vapor pressure of 1.5 pounds per square inch or greater under actual conditions into any tank-truck, trailer, or railroad tank car from any loading facility unless the loading uses submerged loading through boom loaders that extend down into the compartment being loaded or by other methods approved by the Director.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0949 STORAGE OF MISCELLANEOUS VOLATILE ORGANIC COMPOUNDS

(a) This Rule applies to the storage of volatile organic compounds in stationary tanks, reservoirs, or other containers with a capacity greater than 50,000 gallons that are not covered by Rule .0925 or .0933.

(b) The owner or operator of any source to

which this Rule applies shall not place, store, or hold in any stationary tank, reservoir, or other container with a capacity greater than 50,000 gallons, any liquid volatile organic compound that has a vapor pressure of 1.5 pounds per square inch absolute or greater under actual storage conditions unless such tank, reservoir, or other container:

- (1) is a pressure tank capable of maintaining working pressures sufficient at all times to prevent vapor gas loss into the atmosphere; or
- (2) is designed and equipped with one of the following vapor loss control devices:

(A) a floating pontoon, double deck type floating roof or internal pan type floating roof equipped with closure seals to enclose any space between the cover's edge and compartment wall; this control equipment shall not be permitted for volatile organic compounds with a vapor pressure of 11.0 pounds per square inch absolute or greater under actual storage conditions; all tank gauging or sampling devices shall be gas-tight except when tank gauging or sampling is taking place;

(B) a vapor recovery system or other equipment or means of air pollution control as approved by the Director which reduces the emission of organic materials into the atmosphere by at least 90 percent by weight; all tank gauging or sampling devices shall be gas-tight except when tank gauging or sampling is taking place.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0950 INTERIM STANDARDS FOR CERTAIN SOURCE CATEGORIES

(a) This Rule applies to the following types of sources:

- (1) tobacco processing,
- (2) textile dyeing,
- (3) textile coating,
- (4) bakeries,
- (5) Christmas ornament manufacturing,
- (6) wastewater treatment operations at beer brewers,
- (7) fiberglass yacht manufacturing,
- (8) soybean processing,
- (9) paint and coating manufacturing,

- (10) synthetic organic chemical manufacturing industry distillation and reactors,
- (11) synthetic organic chemical manufacturing industry batch operations,
- (12) petroleum and industrial wastewater treatment plants,
- (13) wood furniture finishing,
- (14) plastic parts coating operations,
- (15) web offset lithography,
- (16) autobody refinishing,
- (17) industrial cleanup solvents,
- (18) aerospace, and
- (19) marine coatings.

(b) The owner or operator of a source to which this Rule applies shall not emit volatile organic compounds into the atmosphere in any one day from all sources at the plant site at which the source is located more than a total of 40 pounds of photochemically reactive solvent from any article, machine, equipment or other contrivance used for employing, applying, evaporating or drying any photochemically reactive solvent or substance containing such solvent unless the discharge has been reduced by at least 85 percent by weight. Photochemically reactive solvents include any solvent with an aggregate of more than 20 percent of its total volume composed of the chemical compounds classified in this Paragraph, or which exceed any of the following percentage composition limitations, referred to the total volume of the solvent:

- (1) a combination of hydrocarbons, alcohols, aldehydes, esters, ethers, or ketones having an olefinic or cyclo-olefinic type of unsaturation except perchloroethylene--five percent;
- (2) a combination of aromatic hydrocarbons with eight or more carbon atoms to the molecule except ethylbenzene--eight percent;
- (3) a combination of ethylbenzene, ketones having branched hydrocarbon structure, trichloroethylene, or toluene--20 percent.

Whenever any photochemically reactive solvent, or any constituent of any photochemically reactive may be classified from its chemical structure into more than one of the groups in this Paragraph of chemical compounds, it shall be considered as a member of the most reactive chemical compound group, that is, that group having the least allowable percent of the total volume of solvents.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0951 MISCELLANEOUS VOLATILE ORGANIC COMPOUND EMISSIONS

(a) This Rule applies to all facilities that use volatile organic compounds as solvents, carriers, material processing media, or industrial chemical reactants, or in other similar uses or that mix, blend, or manufacture volatile organic compounds for which there is no other applicable rule in this Section.

(b) This Rule does not apply to architectural or maintenance coating.

(c) Facilities with potential emissions of volatile organic compounds less than 100 tons per year shall comply with 15A NCAC 2D .0518.

(d) With the exception of Paragraph (b) of this Rule, the owner or operator of any facility with the potential to emit 100 tons per year or more of volatile organic compounds shall:

- (1) install and operate control equipment which meets the requirements of best available control technology as defined in and determined by procedures of Rule .0530 of this Section (A new best available control technology determination and procedure need not be performed if in the judgement of the Director a previous best available control technology determination is applicable.);
- (2) limit emissions of volatile organic compounds from coating lines not covered by Rules .0917 through .0924, .0934, or .0935 to no more than 6.7 pounds per gallon of solids delivered to the coating applicator; or
- (3) reduce the emissions of volatile organic compounds from all sources at the plant site that are not covered by Subparagraphs (d)(1) or (2) of this Paragraph or another rule in this Section by at least 85 percent by weight or down to 40 pounds per day by destruction or by capture of volatile organic compounds in the emission stream. (Calculation of capture efficiency shall be adjusted to reflect eventual emission to the atmosphere as volatile organic compounds except for material reused, burned, or reprocessed for reuse.)

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0952 PETITION FOR ALTERNATIVE

CONTROLS

(a) With the exceptions in Paragraph (b) of this Rule, this Rule applies to all sources covered by Paragraph (a) of Rule .0902 of this Section:

(b) This Rule does not apply to:

- (1) sources in Mecklenburg County to which Rules .0917 through .0938 of this Section apply and which are located at a facility where the total potential emissions of volatile organic compounds from all stationary sources at the facility is 100 tons per year or more; or
- (2) sources covered under Rule .0946 of this Section.

(c) If the owner or operator of any source of volatile organic compounds can demonstrate that compliance with rules in this Section would be technologically or economically infeasible, he may petition the Director to allow the use of alternative operational or equipment controls for the reduction of volatile organic compound emissions. Petition shall be made for each source to the Director before August 1, 1993. The petition can be made only for sources in existence or under construction on January 30, 1993.

(d) The petition shall contain:

- (1) the name and address of the company and the name and telephone number of a company officer over whose signature the petition is submitted;
- (2) a description of all operations conducted at the location to which the petition applies and the purpose that the volatile organic compound emitting equipment serves within the operations;
- (3) reference to the specific operational and equipment controls under the rules of this Section for which alternative operational or equipment controls are proposed;
- (4) a detailed description of the proposed alternative operational or equipment controls, the magnitude of volatile organic compound emission reduction which will be achieved, and the quantity and composition of volatile organic compounds which will be emitted if the alternative operational or equipment controls are instituted;
- (5) a plan, which will be instituted in addition to the proposed alternative operational or equipment controls, to reduce, where technologically and economically feasible, volatile organic compound

emissions from other source operations at the facility, further than that required under the rules of this Section, if these sources exist at the facility, such that aggregate volatile organic compound emissions from the facility will in no case be greater through application of the alternative control than would be allowed through conformance with the rules of this Section;

- (6) a schedule for the installation or institution of the alternative operational or equipment controls in conformance with Rule .0907 or .0909 of this Section, as applicable; and
- (7) certification that emissions of all other air contaminants from the subject source are in compliance with all applicable local, state and federal laws and regulations.

The petition may include a copy of the permit application and need not duplicate information in the permit application.

(e) The Director shall approve a petition for alternative control if:

- (1) The petition is submitted in accordance with Paragraph (d) of this Rule;
- (2) The Director determines that the petitioner cannot comply with the rules in question because of technological or economical infeasibility;
- (3) All other air contaminant emissions from the facility are in compliance with, or under a schedule for compliance as expeditiously as practicable with, all applicable local, state, and federal regulations;
- (4) The petition contains a schedule for achieving and maintaining reduction of volatile organic compound emissions to the maximum extent feasible and as expeditiously as practicable; and
- (5) A nuisance condition will not result from operation of the source as proposed in the petition.

(f) When controls different from those specified in the appropriate emission standards in this Section are approved by the Director, the permit shall contain a condition stating such controls.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.68; 143-215.107(a)(5).

SECTION .1000 - MOTOR VEHICLE EMISSION CONTROL STANDARDS

.1004 EMISSION STANDARDS

(a) The following standards specify the maximum carbon monoxide (CO) and hydrocarbon (HC) concentrations permitted to be exhausted from motor vehicles subject to these ~~Regulations~~ Rules:

Vehicle Class	Model Year	CO Standard At Idle(%)	HC Standard At Idle(PPM)
Light-duty Vehicle	1975-1977	4.5	450
	1978-1979	3.5	350
	1980	2.0	250
	1981 and later	1.2	220
Heavy-duty Vehicle	1975-1978	5.0	500
	1979 and later	4.0	400

(b) Exceptions or variances to the standards in Paragraph (a) of this ~~Regulation~~ Rule, other than those specified in ~~Regulation Rule~~ .1002 of this Section, are permitted only in accordance with the provisions of the Emissions Test Procedures Section of the "Safety, Emissions, Windshield Procedures Manual" as set forth by the North Carolina Division of Motor Vehicles. The ~~documents adopted~~ document incorporated by reference in this ~~Section~~ Rule shall ~~automatically~~ include any later amendments or editions ~~thereto as allowed~~ by G.S. 150B-14(e). This document can be inspected at or obtained from the Division of Motor Vehicles, 1100 New Bern Avenue, Raleigh, North Carolina 27697 at no cost.

Statutory Authority G.S. 20-128.2(a); 143-215.3(a)(1); 143-215.107(a)(3); 143-215.107(a)(6); 143-215.107(a)(7); 150B-21.6.

**SUBCHAPTER 2H - PROCEDURES FOR
PERMITS: APPROVALS**

**SECTION .0600 - AIR QUALITY
PERMITS**

.0603 APPLICATIONS

(a) Permit ~~application~~ applications shall be made in duplicate on official forms of the Director and shall include plans and specifications giving all necessary data and information as required by the application form. These application forms shall be used: air contaminant sources--Form AQ-22, and complex sources--Form AQ-81. These forms may be obtained by writing to the address in Paragraph (b) of this Rule. Whenever the information provided on these forms does not adequately describe the source and its air pollution abatement equipment, the Director may request that the applicant provide any other information that the Director considers necessary to evaluate the source and its air pollution abatement equipment.

(b) A permit or permit renewal application shall be filed in writing with the Director, Division of Environmental Management, Department of Natural Resources and Community Development,

P.O. Box 27687, Raleigh, N.C. 27611. Application for permit renewal or ownership transfer may be by letter to the Director, if no alteration or modification has been made to the originally permitted source. A non-refundable permit application processing fee shall accompany each application. The permit application processing ~~fee rates~~ fees are in ~~Regulation Rule~~ .0609 of this Section. Each permit or renewal application is incomplete until the permit application processing fee is received.

(c) Before acting on any permit application, the Director may request any information from an applicant and conduct any inquiry or investigation that he considers necessary and require the submission of plans and specifications.

(d) Before issuing any permit for:

- (1) a source to which ~~Rule~~ 15A NCAC 2D .0530 or .0531 applies,
- (2) a source whose emission limitation is based on a good engineering practice stack height that exceeds the height defined in 15A NCAC 2D .0533(a)(4)(A), (B), or (C),
- (3) a requirement for controls more stringent than the applicable emission standards in ~~Section~~ 15A NCAC 2D .0500

in accordance with ~~Rule~~ 15A NCAC 2D .0501, or

- (4) any other source that may be designated by the Director,

the information submitted by the owner or operator, as well as the agency's analysis of the effect on ambient air quality, shall be made available for public inspection in at least one location in the region affected. This shall be accomplished by publishing in the region affected a notice by prominent advertisement which shall provide a 30-day period for submittal of public comment and an opportunity for a public hearing request. Confidential material will be handled in accordance with G.S. 143-215.3(a)(2).

(e) A public hearing shall be held before the issuance of any permit containing any one of these conditions:

- (1) any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, when such limitations are necessary to assure that ~~regulations~~ rules in ~~Section~~ 15A NCAC 2D .0900 do not apply in accordance with ~~Regulations~~ 15A NCAC 2D .0901 and .0902;
- (2) an allowance of controls different than the applicable emission standards in ~~Section~~ 15A NCAC 2D .0900 in accordance with ~~Regulation~~ 15A NCAC 2D ~~.0905~~ .0952;
- (3) an alternate compliance schedule promulgated in accordance with ~~Regulation~~ 15A NCAC 2D .0910;
- (4) the quantity of solvent-borne ink that may be used by a printing unit or printing systems in accordance with ~~Regulation~~ 15A NCAC 2D .0936; or
- (5) an allowance of a particulate emission rate of 0.08 grains per dry standard cubic foot for incinerators constructed before July 1, 1987, in accordance with 15A NCAC 2D .1205(b)(2).

The public hearing shall be preceded by a 30-day period of public notice during which the agency's analysis and draft permit shall be available for public inspection in the appropriate regional office. If and when a permit containing these conditions is issued, it will become a part of the North Carolina State Implementation Plan for Air Quality (SIP) as an appendix available for inspection at Department of Environment, Health, and Natural Resources

regional offices. The permit will be submitted to the U.S. Environmental Protection Agency for inclusion as part of the federally approved state implementation plan.

(f) In a permit application for an alternative mix of controls under 15A NCAC 2D .0501 (f), the owner or operator of the facility shall demonstrate to the satisfaction of the Director that the proposal is equivalent to the existing requirements of the SIP in total allowed emissions, enforceability, reliability, and environmental impact.

- (1) With the exception stated in Subparagraph (2) of this Paragraph, a public hearing shall be held before any permit containing alternative emission limitations is issued. The public hearing shall be preceded by a 30-day period of public notice during which the agency's analysis and draft permit shall be available for public inspection and comment in the appropriate regional office. If and when a permit containing these conditions is issued, it will become a part of the SIP as an appendix available for inspection at the department's regional offices. Until the U.S. Environmental Protection Agency (EPA) approves the SIP revision embodying the permit containing an alternative mix of controls, the facility shall continue to meet the otherwise applicable existing SIP requirements. The revision will be approved by EPA on the basis of the revision's consistency with EPA's "Policy for Alternative Emission Reduction Options Within State Implementation Plans" as promulgated in the Federal Register of December 11, 1979, pages 71780-71788, and subsequent rulings.

- (2) The permit applicant(s) may choose to provide a written acknowledgment that the emission rate limitations or control techniques allowed under an alternative mix of controls involving only volatile organic compounds are fully enforceable by EPA as a part of the SIP and may be enforced pursuant to Section 304(a) of the federal Clean Air Act. The acknowledgment shall also bind the source owner's successors. If the acknowledgment is provided to the Director, the Director will promptly transmit to EPA a copy of the permit application. Before the Director issues

the permit, there shall be a 30-day period of public notice during which the agency's analysis and draft permit shall be available for public inspection and comment in the appropriate regional office. If and when such permit is issued, the Director will promptly transmit a copy to EPA. The owner or operator of a source located in a nonattainment area for ozone as designated by the Environmental Protection Agency may not initiate the use of this option after November 30, 1989; he shall follow the procedures set out in Subparagraph (1) of this Paragraph.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that EHNR - Division of Coastal Management intends to amend rule cited as 15A NCAC 7H .0208, .1205.

The proposed effective date of this action is April 1, 1993.

The public hearing will be conducted at 4:00 p.m. on November 19, 1992 at the Ramada Inn, 1701 South Virginia Dare Trail, Kill Devil Hills, N.C.

Reason for Proposed Action: These amendments are intended to clarify existing rules and improve consistency among the rules that govern exemptions, general permits and major permits for pier construction. These changes are considered "non-substantive" in that they do not change restrictions on where or how long piers can be permitted.

Comment Procedures: All persons interested in this matter are invited to attend the public hearing. The Coastal Resources Commission will receive mailed written comments postmarked no later than December 2, 1992. Any person desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. Additional information concerning the hearing or the proposals may be

obtained by contacting Dedra Blackwell, Division of Coastal Management, P.O. Box 27687, Raleigh, NC 27611-7687, (919) 733-2293.

Editor's Note: Text shown in Bold Italics was adopted by agency on July 24, 1992. These changes are pending review by the Rules Review Commission for an effective date of December 1, 1992. A public hearing was held September 24, 1992, for text shown in Italics and will be adopted by the CRC at the November meeting for an effective date of February 1, 1993.

CHAPTER 7 - COASTAL MANAGEMENT

SUBCHAPTER 7H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0200 - THE ESTUARINE SYSTEM

.0208 USE STANDARDS

(a) General Use Standards

- (1) Uses which are not water dependent will not be permitted in coastal wetlands, estuarine waters, and public trust areas. Restaurants, residences, apartments, motels, hotels, trailer parks, private roads, factories, and parking lots are examples of uses that are not water dependent. Uses that are water dependent may include: utility easements; docks; wharfs; boat ramps; dredging; bridges and bridge approaches; revetments, bulkheads; culverts; groins; navigational aids; mooring pilings; navigational channels; simple access channels and drainage ditches.
- (2) Before being granted a permit by the CRC or local permitting authority, there shall be a finding that the applicant has complied with the following standards:
 - (A) The location, design, and need for development, as well as the construction activities involved must be consistent with the stated management objective.
 - (B) Before receiving approval for location of a use or development within these AECs, the permit-letting authority shall find that no suitable alternative site or location outside of the AEC

exists for the use or development and, further, that the applicant has selected a combination of sites and design that will have a minimum adverse impact upon the productivity and biologic integrity of coastal marshland, shellfish beds, ~~submerged grass beds~~, ~~beds of submerged aquatic vegetation~~, spawning and nursery areas, important nesting and wintering sites for waterfowl and wildlife, and important natural erosion barriers (cypress fringes, marshes, clay soils).

- (C) Development shall not violate water and air quality standards.
- (D) Development shall not cause major or irreversible damage to valuable documented archaeological or historic resources.
- (E) Development shall not measurably increase siltation.
- (F) Development shall not create stagnant water bodies.
- (G) Development shall be timed to have minimum adverse significant affect on life cycles of estuarine resources.
- (H) Development shall not impede navigation or create undue interference with access to, or use of, public trust areas or estuarine waters.
- ~~(I) Development proposed in estuarine waters must also be consistent with applicable standards for the ocean hazard system AECs set forth in Section .0300 of this Subchapter.~~
- (3) When the proposed development is in conflict with the general or specific use standards set forth in this Rule, the CRC may approve the development if the applicant can demonstrate that the activity associated with the proposed project will have public benefits as identified in the findings and goals of the Coastal Area Management Act, that the public benefits clearly outweigh the long range adverse effects of the project, that there is no reasonable and prudent alternate site available for the project, and that all reasonable means and measures to mitigate adverse impacts of the project have been incorporated into the project design and will be implemented at the applicant's expense. These measures taken to mitigate or minimize adverse impacts may include

actions that will:

- (A) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;
- (B) restore the affected environment; or
- (C) compensate for the adverse impacts by replacing or providing substitute resources.
- (4) Primary nursery areas are those areas in the estuarine system where initial post larval development of finfish and crustaceans takes place. They are usually located in the uppermost sections of a system where populations are uniformly early juvenile stages. They are officially designated and described by the N.C. Marine Fisheries Commission in 15A NCAC 3B .1405 and by the N.C. Wildlife Resources Commission in 15A NCAC 10C .0110.
- (5) Outstanding Resource Waters are those estuarine waters and public trust areas classified by the N.C. Environmental Management Commission pursuant to Title 15A, Subchapter 2B .0216 of the N.C. Administrative Code as Outstanding Resource Waters (ORW) upon finding that such waters are of exceptional state or national recreational or ecological significance. In those estuarine waters and public trust areas classified as ORW by the Environmental Management Commission (EMC), no permit required by the Coastal Area Management Act will be approved for any project which would be inconsistent with applicable use standards adopted by the CRC, EMC, or Marine Fisheries Commission (MFC) for estuarine waters, public trust areas, or coastal wetlands. For development activities not covered by specific use standards, no permit will be issued if the activity would, based on site specific information, materially degrade the water quality or outstanding resource values unless such degradation is temporary.
- (6) Beds of submerged aquatic vegetation (SAV) are those habitats in public trust and estuarine waters vegetated with one or more species of submergent vegetation. These vegetation beds occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In either case, the bed

is defined by the presence of above-ground leaves or the below-ground rhizomes and propagules.

(b) Specific Use Standards

- (1) Navigation channels, canals, and boat basins must be aligned or located so as to avoid primary nursery areas highly productive shellfish beds, ~~beds of submerged vegetation~~, beds of submerged aquatic vegetation, or significant areas of regularly or irregularly flooded coastal wetlands.

- (A) Navigation channels and canals ~~can be allowed~~ may be allowed through narrow fringes of regularly and irregularly flooded coastal wetlands if the loss of wetlands will have no significant adverse impacts on fishery resources, water quality or adjacent wetlands, and, if there is no reasonable alternative that would avoid the wetland losses.
- (B) All spoil material from new construction shall be confined landward of regularly and irregularly flooded coastal wetlands and stabilized to prevent entry of sediments into the adjacent water bodies or marsh.
- (C) Spoil from maintenance of channels and canals through irregularly flooded wetlands shall be placed on non-wetland areas, remnant spoil piles, or disposed of by an acceptable method having no significant, long term wetland impacts. Under no circumstances shall spoil be placed on regularly flooded wetlands.
- (D) Widths of the canals and channels shall be the minimum required to meet the applicant's needs and provide adequate water circulation.
- (E) Boat basin design shall maximize water exchange by having the widest possible opening and the shortest practical entrance canal. Depths of boat basins shall decrease from the waterward end inland.
- (F) Any canal or boat basin shall be excavated no deeper than the depth of the connecting channels.
- (G) Canals for the purpose of multiple residential development shall have:
- (i) no septic tanks unless they meet the standards set by the Division of Environmental Management

and the Division of Environmental Health;

- (ii) no untreated or treated point source discharge;
- (iii) storm water routing and retention areas such as settling basins and grassed swales.
- (H) Construction of finger canal systems will not be allowed. Canals shall be either straight or meandering with no right angle corners.
- (I) Canals shall be designed so as not to create an erosion hazard to adjoining property. Design may include bulkheading, vegetative stabilization, or adequate setbacks based on soil characteristics.
- (J) Maintenance excavation in canals, channels and boat basins within primary nursery areas and beds of submerged aquatic vegetation should be avoided. However, when essential to maintain a traditional and established use, maintenance excavation may be approved if the applicant meets all of the following criteria as shown by clear and convincing evidence accompanying the permit application. This Rule does not affect restrictions placed on permits issued after March 1, 1991.
- (i) The applicant ~~can demonstrate and document~~ demonstrates and documents that a water-dependent need exists for the excavation; and
- (ii) There exists a previously permitted channel which was constructed or maintained under permits issued by the State ~~and/or~~ or Federal government. If a natural channel was in use, or if a human-made channel was constructed before permitting was necessary, there must be clear evidence that the channel was continuously used for a specific purpose; and
- (iii) Excavated material can be removed and placed in an approved disposal area without significantly impacting adjacent nursery areas and beds of submerged aquatic vegetation; and
- (iv) The original depth and width of a

human-made or natural channel will not be increased to allow a new or expanded use of the channel.

(2) Hydraulic Dredging

- (A) The terminal end of the dredge pipeline ~~should~~ shall be positioned at a distance sufficient to preclude erosion of the containment dike and a maximum distance from spillways to allow adequate settlement of suspended solids.
 - (B) Dredge spoil must be either confined on high ground by adequate retaining structures or if the material is suitable, deposited on beaches for purposes of renourishment, with the exception of (G) of this Subsection (b)(2).
 - (C) Confinement of excavated materials shall be on high ground landward of regularly and irregularly flooded marshland and with adequate soil stabilization measures to prevent entry of sediments into the adjacent water bodies or marsh.
 - (D) Effluent from diked areas receiving disposal from hydraulic dredging operations must be contained by pipe, trough, or similar device to a point waterward of emergent vegetation or, where local conditions require, below mean low water.
 - (E) When possible, effluent from diked disposal areas shall be returned to the area being dredged.
 - (F) A water control structure must be installed at the intake end of the effluent pipe.
 - (G) Publicly funded projects will be considered by review agencies on a case-by-case basis with respect to dredging methods and spoil disposal.
 - (H) Dredge spoil from closed shellfish waters and effluent from diked disposal areas used when dredging in closed shellfish waters shall be returned to the closed shellfish waters.
- (3) Drainage Ditches
- (A) Drainage ditches located through any marshland shall not exceed six feet wide by four feet deep (from ground surface) unless the applicant ~~can show~~ shows that larger ditches are necessary for adequate drainage.
 - (B) Spoil derived from the construction or

maintenance of drainage ditches through regularly flooded marsh ~~must~~ be shall be placed landward of these marsh areas in a manner that will insure that entry of sediment into the water or marsh will not occur. Spoil derived from the construction or maintenance of drainage ditches through irregularly flooded marshes shall be placed on nonwetlands wherever feasible. Non-wetland areas include relic disposal sites.

- (C) Excavation of new ditches through high ground shall take place landward of a temporary earthen plug or other methods to minimize siltation to adjacent water bodies.
 - (D) Drainage ditches shall not have a significant adverse effect on primary nursery areas, productive shellfish beds, ~~submerged grass beds,~~ beds of submerged aquatic vegetation, or other documented important estuarine habitat. Particular attention ~~should~~ shall be placed on the effects of freshwater inflows, sediment, and nutrient introduction. Settling basins, water gates, retention structures are examples of design alternatives that may be used to minimize sediment introduction.
- (4) Nonagricultural Drainage
- (A) Drainage ditches ~~must be~~ shall be designed so that restrictions in the volume or diversions of flow are minimized to both surface and ground water.
 - (B) Drainage ditches shall provide for the passage of migratory organisms by allowing free passage of water of sufficient depth.
 - (C) Drainage ditches shall not create stagnant water pools or significant changes in the velocity of flow.
 - (D) Drainage ditches shall not divert or restrict water flow to important wetlands or marine habitats.
- (5) Marinas. Marinas are defined as any publicly or privately owned dock, basin or wet boat storage facility constructed to accommodate more than 10 boats and providing any of the following services: permanent or transient docking spaces, dry storage, fueling facilities, haulout facilities and repair ser-

vice. Excluded from this definition are boat ramp facilities allowing access only, temporary docking and none of the preceding services. Expansion of existing facilities shall also comply with these standards for all development other than maintenance and repair necessary to maintain previous service levels.

- (A) Marinas shall be sited in non-wetland areas or in deep waters (areas not requiring dredging) and shall not disturb valuable shallow water, submerged aquatic vegetation, and wetland habitats, except for dredging necessary for access to high-ground sites. The following four alternatives for siting marinas are listed in order of preference for the least damaging alternative; marina projects shall be designed to have the highest of these four priorities that is deemed feasible by the permit letting agency:
 - (i) an upland basin site requiring no alteration of wetland or estuarine habitat and providing adequate flushing by tidal or wind generated water circulation;
 - (ii) an upland basin site requiring dredging for access when the necessary dredging and operation of the marina will not result in the significant degradation of existing fishery, shellfish, or wetland resources and the basin design shall provide adequate flushing by tidal or wind generated water circulation;
 - (iii) an open water site located outside a primary nursery area which utilizes piers or docks rather than channels or canals to reach deeper water; and
 - (iv) an open water marina requiring excavation of no intertidal habitat, and no dredging greater than the depth of the connecting channel.
- (B) Marinas which require dredging shall not be located in primary nursery areas nor in areas which require dredging through primary nursery areas for access. Maintenance dredging in primary nursery areas for existing marinas will be considered on a case-by-case basis.

- (C) To minimize coverage of public trust areas by docks and moored vessels, dry storage marinas shall be used where feasible.
- (D) Marinas to be developed in waters subject to public trust rights (other than those created by dredging upland basins or canals) for the purpose of providing docking for residential developments shall be allowed no more than 27 sq. ft. of public trust areas for every one lin. ft. of shoreline adjacent to these public trust areas for construction of docks and mooring facilities. The 27 sq. ft. allocation shall not apply to fairway areas between parallel piers or any portion of the pier used only for access from land to the docking spaces.
- (E) To protect water quality of shellfishing areas, marinas shall not be located within areas where shellfish harvesting for human consumption is a significant existing use or adjacent to such areas if shellfish harvest closure is anticipated to result from the location of the marina. In compliance with Section 101(a)(2) of the Clean Water Act and North Carolina Water Quality Standards adopted pursuant to that section, shellfish harvesting is a significant existing use if it can be established that shellfish have been regularly harvested for human consumption since November 28, 1975 or that shellfish apparently are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human consumption. The Division of Marine Fisheries shall be consulted regarding the significance of shellfish harvest as an existing use and the magnitude of the quantities of shellfish which have been harvested or are available for harvest in the area where harvest will be affected by the development.
- (F) Marinas shall not be located without written consent from the controlling parties in areas of submerged lands which have been leased from the state or deeded by the state.
- (G) Marina basins shall be designed to

- promote flushing through the following design criteria:
- (i) the basin and channel depths shall gradually increase toward open water and shall never be deeper than the waters to which they connect; and
 - (ii) when possible, an opening shall be provided at opposite ends of the basin to establish flow-through circulation.
- (H) Marinas shall be designed to minimize adverse effects on navigation and public use of public trust areas while allowing the applicant adequate access to deep waters.
 - (I) Marinas shall be located and constructed so as to avoid adverse impacts on navigation throughout all federally maintained channels and their immediate boundaries. This includes mooring sites (permanent or temporary), speed or traffic reductions, or any other device, either physical or regulatory, that may cause a federally maintained channel to be restricted.
 - (J) Open water marinas shall not be enclosed within breakwaters that preclude circulation sufficient to maintain water quality.
 - (K) Marinas which require dredging shall provide acceptable areas to accommodate disposal needs for future maintenance dredging. Proof of the ability to truck the spoil material from the marina site to an acceptable disposal area will be acceptable.
 - (L) Marina design shall comply with all applicable requirements for management of stormwater runoff.
 - (M) Marinas shall post a notice prohibiting the discharge of any waste from boat toilets and explaining the availability of information on local pump-out services.
 - (N) Boat maintenance areas must be designed so that all scraping, sandblasting, and painting will be done over dry land with adequate containment devices to prevent entry of waste materials into adjacent waters.
 - (O) All marinas shall comply with all applicable standards for docks and piers, bulkheading, dredging and spoil disposal.
 - (P) All applications for marinas shall be reviewed to determine their potential impact and compliance with applicable standards. Such review shall consider the cumulative impacts of marina development.
 - (Q) Replacement of existing marinas to maintain previous service levels shall be allowed provided that the preceding rules are complied with to the maximum extent possible, with due consideration being given to replacement costs, service needs, etc.
- (6) Docks and Piers
 - (A) Docks and piers shall not significantly interfere with water flows.
 - (B) To preclude the adverse effects of shading coastal wetlands vegetation, docks and piers built over coastal wetlands shall not exceed six feet in width. "T"s and platforms associated with residential piers must be at the waterward end, and must not exceed a total area of 500 sq. ft. with no more than six feet of the dimension perpendicular to the marsh edge extending over coastal wetlands. Water dependent projects requiring piers or wharfs of dimensions greater than those stated in this Rule shall be considered on a case-by-case basis.
 - (C) Piers shall be designed to minimize adverse effects on navigation and public use of waters while allowing the applicant adequate access to deep waters by:
 - (i) not extending beyond the established pier length along the same shoreline for similar use; (This restriction shall not apply to piers 200 feet or less in length unless necessary to avoid unreasonable interference with navigation or other uses of the waters by the public);
 - (ii) not extending into the channel portion of the water body; and
 - (iii) not extending more than one-third the width of a natural water body or man-made canal or basin. Measurements to determine widths of the channels, canals or basins shall be made from the waterward edge of any coastal

wetland vegetation which borders the water body. The one-third length limitation will not apply in areas where the U.S. Army Corps of Engineers, or a local government in consultation with the Corps of Engineers, has established an official pier-head line.

- (D) Pier alignments along federally maintained channels must meet Corps of Engineers District guidelines.
- (E) Piers shall not interfere with the access to any riparian property and shall have a minimum setback of 15 feet between any part of the pier and the adjacent property owner's areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the pier commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the pier. Application of this rule may be aided by reference to an approved diagram illustrating the rule as applied to various shoreline configurations. Copies of the diagram may be obtained from the Division of Coastal Management. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier shall be aligned to meet the intent of this rule to the maximum extent practicable.
- (F) Docks and piers shall not significantly interfere with shellfish franchises or leases. Applicants for authorization to construct a dock or pier shall provide notice of the permit application or exemption request to the owner of any part of a shellfish franchise or lease

over which the proposed dock or pier would extend.

- (7) Bulkheads and Shore Stabilization Measures
 - (A) Bulkhead alignment, for the purpose of shoreline stabilization, ~~must~~ shall approximate mean high water or normal water level.
 - (B) Bulkheads shall be constructed landward of significant marshland or marshgrass fringes.
 - (C) Bulkhead fill material shall be obtained from an approved upland source, or if the bulkhead is a part of a permitted project involving excavation from a non-upland source, the material so obtained may be contained behind the bulkhead.
 - (D) Bulkheads or other structures employed for shoreline stabilization shall be permitted below approximate mean high water or normal water level only when the following standards are met:
 - (i) the property to be bulkheaded has an identifiable erosion problem, whether it results from natural causes or adjacent bulkheads, or it has unusual geographic or geologic features, e.g. steep grade bank, which will cause the applicant unreasonable hardship under the other provisions of this ~~Regulation~~ Rule;
 - (ii) the bulkhead alignment extends no further below approximate mean high water or normal water level than necessary to allow recovery of the area eroded in the year prior to the date of application, to align with adjacent bulkheads, or to mitigate the unreasonable hardship resulting from the unusual geographic or geologic features;
 - (iii) the bulkhead alignment will not result in significant adverse impacts to public trust rights or to the property of adjacent riparian owners;
 - (iv) the need for a bulkhead below approximate mean high water or normal water level is documented in the Field Investigation Report or other reports prepared by the Division of Coastal Management; and

- (v) the property to be bulkheaded is in a nonoceanfront area.
- (E) Where possible, sloping rip-rap, gabions, or vegetation ~~may~~ shall be used rather than vertical seawalls.
- (8) Beach Nourishment
 - (A) Beach creation ~~and/or~~ or maintenance may be allowed to enhance water related recreational facilities for public, commercial, and private use.
 - (B) Beaches ~~can~~ may be created ~~and/or~~ or maintained in areas where they have historically been found due to natural processes. They will not be allowed in areas of high erosion rates where frequent maintenance will be necessary.
 - (C) Placing unconfined sand material in the water and along the shoreline will not be allowed as a method of shoreline erosion control.
 - (D) Material placed in the water and along the shoreline shall be clean sand free from pollutants and highly erodible finger material. Grain size shall be equal to or larger than that found naturally at the site.
 - (E) Material from dredging projects can be used for beach nourishment if:
 - (i) it is first handled in a manner consistent with ~~regulations~~ rules governing spoil disposal;
 - (ii) it is allowed to dry for a suitable period; and
 - (iii) only that material of acceptable grain size is removed from the disposal site for placement on the beach. Material shall not be placed directly on the beach by dredge or dragline during maintenance excavation.
 - (F) Beach creation shall not be allowed in any primary nursery areas, nor in any areas where siltation from the site would pose a threat to shellfish beds.
 - (G) Material shall not be placed on any coastal wetlands or beds of submerged aquatic vegetation.
 - (H) Material shall not be placed on any submerged bottom with significant shellfish resources.
 - (I) Beach construction shall not create the potential for filling adjacent or nearby navigation channels, canals, or boat basins.
 - (J) Beach construction shall not violate water quality standards.
 - (K) Permit renewal of these projects shall require an evaluation of any adverse impacts of the original work.
 - (L) Permits issued for this development shall be limited to authorizing beach nourishment only one time during the life of the permit. Permits may be renewed for maintenance work or repeated need for nourishment.
- (9) Wooden and Riprap Groins
 - (A) Groins shall not extend more than 25 ft. waterward of the mean high water or normal water level unless a longer structure ~~can be~~ is justified by site specific conditions, sound engineering and design principals.
 - (B) Groins shall be set back a minimum of 15 ft. from the adjoining property lines. This setback may be waived by written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the groin commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the groin.
 - (C) Groins shall pose no threat to navigation.
 - (D) The height of groins shall not exceed 1 ft. above mean high water or the normal water level.
 - (E) No more than two structures shall be allowed per 100 ft. of shoreline unless the applicant ~~can provide~~ provides evidence that more structures are needed for shoreline stabilization.
 - (F) "L" and "T" sections shall not be allowed at the end of groins.
 - (G) Riprap material used for groin construction shall be free from loose dirt or any other pollutant in other than non-harmful quantities and of a size sufficient to prevent its movement from the site by wave and current action.

Statutory Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124.

**SECTION .1200 - GENERAL PERMIT FOR
CONSTRUCTION OF PIERS, DOCKS, AND
BOAT HOUSES IN ESTUARINE AND
PUBLIC TRUST WATERS**

.1205 SPECIFIC CONDITIONS

(a) Piers, docks, and boat houses may extend or be located up to a maximum of 400 feet from the mean high water contour line, or the normal water level, whichever is applicable.

(b) Piers, docks, and boat houses shall not extend beyond the established pier length along the same shoreline for similar use. This restriction shall not apply to piers 200 feet or less in length unless necessary to avoid unreasonable interference with navigation or other uses of the waters by the public.

(c) Piers and docks shall be elevated over coastal wetlands and shall not exceed 6 feet in width.

(d) Boat houses shall have open sides and have a floor area not to exceed 500 square feet.

~~(e) Piers, docks, and boat houses shall be constructed no closer than 85 feet to the near bottom edge of any federally maintained navigation channel.~~

(e) Pier alignments along federally maintained channels must meet Corps of Engineers guidelines.

(f) Piers, docks, and boat houses shall in no case extend more than 1/3 the width of a natural water body or man-made canal or basin.

(g) Piers, docks and boat houses shall not interfere with the access to any riparian property, and shall have a minimum setback of 15 feet between any part of the pier and the adjacent property lines extended into the water at the points that they intersect the shoreline. The minimum setbacks provided in the rule may be waived by the written agreement of the adjacent riparian owner(s), or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the pier commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any development of the pier, dock, or boat house. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the property, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge.

(h) Piers and docks may have "T" heads or platforms not exceeding 500 square feet built at

their waterward end and not covering any vegetated wetland areas.

(i) For all new or replacement floating facilities, flotation units shall be constructed of material which will not become waterlogged or sink when punctured.

(j) This general permit is not applicable on ocean beaches.

(k) Piers, and mooring facilities shall be designed to provide docking space for no more than 4 boats.

(l) Docks and piers shall not significantly interfere with shellfish franchises or leases. Applicants for authorization to construct a dock or pier shall provide notice of the permit application to the owner of any part of a shellfish franchise or lease over which the proposed dock or pier would extend.

Statutory Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124.

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that EHNHR - Division of Coastal Management intends to amend rule cited as 15A NCAC 7H .0308.

The proposed effective date of this action is February 1, 1993.

The public hearing will be conducted at 4:00 p.m. on November 19, 1992 at the Ramada Inn, 1701 South Virginia Dare Trail, Kill Devil Hills, N.C.

Reason for Proposed Action: These amendments are intended to address special needs for shoreline stabilization along the barrier islands that could allow the use of erosion-control structures to protect historic sites of national significance and commercial navigation channels.

Comment Procedures: All persons interested in this matter are invited to attend the public hearing. The Coastal Resources Commission will receive mailed written comments postmarked no later than December 2, 1992. Any person desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. Additional information

concerning the hearing or the proposals may be obtained by contacting Dedra Blackwell, Division of Coastal Management, P. O. Box 27687, Raleigh, NC 27611-7687, (919) 733-2293.

Editor's Note: *Text shown in Italics was adopted by the CRC on September 25, 1992. These changes are pending review by the Rules Review Commission for an effective date of December 1, 1992.*

CHAPTER 7 - COASTAL MANAGEMENT

SUBCHAPTER 7H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0300 - OCEAN HAZARD AREAS

.0308 SPECIFIC USE STANDARDS FOR OCEAN HAZARD AREAS

(a) Ocean Shoreline Erosion Control Activities: (1) Use Standards Applicable to all Erosion Control Activities:

- (A) Preferred erosion control measures shall be beach nourishment projects and relocation. Alternative approaches will be allowed where the applicant can show that such measures are necessary to provide adequate protection. Comprehensive shoreline management shall be preferred over small scale methods.
- (B) Erosion control structures which cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach are prohibited. Such structures include, but are not limited to, wooden bulkheads, seawalls, rock or rubble revetments, wooden, metal, concrete or rock jetties, groins and breakwaters; concrete-filled sandbags and tire structures.
- (C) Rules concerning the use of oceanfront erosion control measures apply to all oceanfront properties without regard to the size of the structure on the property or the date of its construction.
- (D) Erosion control measures which will interfere with public access to and use of the ocean beaches are prohibited.

~~(E) Erosion control measures which significantly increase erosion on adjacent properties are prohibited.~~

~~(F)~~ (E) All oceanfront erosion control activities, other than beach bulldozing, placement of sandbag structures or artificial seaweed shall demonstrate sound engineering for their planned purpose and shall be certified by a licensed engineer prior to being permitted.

~~(G)~~ (F) Shoreline erosion control projects shall not be constructed in beach or estuarine areas that sustain substantial habitat for important wildlife species unless adequate mitigation measures are incorporated into project design, as set forth in Rule .0306(i) of this Section.

~~(H)~~ (G) Project construction shall be timed to have minimum significant adverse effect on biological activity.

~~(I)~~ (H) The applicant shall notify all littoral property owners within 100' of the boundaries of the project site and no permit shall be issued until the property owner(s) has signed the notice form or until a reasonable effort has been made to serve notice on the owner(s) by registered or certified mail.

~~(J)~~ (I) All oceanfront erosion control projects shall be consistent with the general policy statements in 15A NCAC 7M .0200.

~~(K)~~ (J) Prior to beginning any beach nourishment or structural erosion control project, all exposed remnants of or debris from failed erosion control structures must be removed by the permittee.

~~(L)~~ (K) All permitted erosion control devices shall be marked so as to allow identification for monitoring and potential cleanup purposes.

~~(M)~~ (L) Erosion control structures that would otherwise be prohibited by these standards may be permitted on finding that:

- (i) the erosion control structure is necessary to protect a bridge which provides the only existing road access to a substantial population on a barrier island; that is vital to public safety; and is immi-

- nently threatened by erosion;
 - (ii) the preferred erosion control measures of relocation, beach nourishment or temporary stabilization are not adequate to protect public health and safety; and
 - (iii) the proposed erosion control measure will have no adverse impacts on adjacent properties in private ownership and will have minimal impacts on public use of the beach.
- (M) Erosion control structures that would otherwise be prohibited by these standards may also be permitted on finding that:
 - (i) the erosion control structure is necessary to protect an historic site of national significance, which is imminently threatened by shoreline erosion; and
 - (ii) the preferred erosion control methods of relocation, beach nourishment or temporary stabilization are not adequate and practicable to protect the site; and
 - (iii) the erosion control structure is limited in extent and scope to that necessary to protect the site; and
 - (iv) a responsible public agency enters into binding agreements to provide adequate mitigation for all adverse impacts caused by the permitted structure.
- (N) Erosion control structures that would otherwise be prohibited by these standards may also be permitted on finding that:
 - (i) the erosion control structure is necessary to maintain an existing commercial navigation channel; and
 - (ii) dredging alone is not adequate to maintain safe access to the effected channel; and
 - (iii) the erosion control structure is limited in extent and scope to that necessary to maintain the channel, and
 - (iv) the erosion control structure will not result in substantial adverse impacts to fisheries or other public trust resources; and
 - (v) a responsible public agency enters
 - into binding agreements to provide adequate mitigation for all adverse impacts caused by the permitted structure.
- (2) Temporary Erosion Control Structures
 - (A) Permittable temporary erosion control structures include only the following:
 - (i) Bulkheads or similar structures made of sandbags or comparable materials;
 - (ii) Low sandbag groins or sandbag sediment trapping structures above mean high water provided they are continuously buried by suitable sand from an outside source.
 - (B) Temporary erosion control structures as defined in (A) of this Paragraph may be used only to protect imminently threatened structures. Normally, a structure will be considered to be imminently threatened if its foundation is less than 20 feet away from the erosion scarp.
 - (C) Shore-parallel temporary erosion control structures must not extend more than 20 feet past the end of the structure to be protected. The erosion control structure also must not come closer than 15 feet to the applicant's side property lines unless the application is part of a joint project with neighbors trying to protect similarly threatened structures or unless the applicant has written permission from the affected property owner. The landward side of such temporary erosion control structures shall not be located more than 20 feet seaward of the property to be protected.
 - (D) If a temporary erosion control structure interferes with public access and use of the ocean beach, or if it requires burial but remains continuously exposed for more than six months it must be removed by the permittee within 30 days of notification by the Coastal Resources Commission or its representatives. In addition, the permittee shall be responsible for the removal of remnants of all or portions of the temporary erosion control structure damaged by storms or continued erosion.
 - (E) Once the temporary erosion control structure is determined to be unneces-

sary due to a natural reversal of the eroding condition, relocation of the threatened structure, or adoption of an alternate erosion control method, any remnants of the temporary erosion control structure exposed seaward of or on the beach must be removed by the permittee within 30 days of notification by the Coastal Resources Commission or its representatives.

- (F) Temporary sandbag bulkheads permissible by this Rule shall be of a size and configuration consistent with their allowed purpose. Such structures may be appropriately anchored and shall not exceed a width at their base of three sandbags or a maximum of fifteen feet. In no case shall the structure extend below the mean high water line.
- (3) Sand-Trapping Devices: Low intensity off-shore passive sand-trapping devices may be permitted provided:
 - (A) A minimum of two signs no smaller than 12 inches x 18 inches will be placed and maintained on poles on the ocean beach at least 6' above ground level that will indicate to fishermen, surfers and bathers that the structures or devices are present offshore.
 - (B) The structures or devices will be removed at the expense of the applicant should they be documented as a nuisance to private property or to the public well being. "Nuisance" will be defined as any interference with reasonable use of public trust areas or other lands within the ocean hazard system AECs that are subject to public trust use.
 - (C) The structures or devices will be aligned no closer than 450 feet seaward of the first line of stable natural vegetation or 300 feet from the mean high water line, whichever is further seaward.
- (4) Beach Nourishment. Sand used for beach nourishment should be compatible with existing grain size and type. Sand to be used for beach nourishment shall be taken only from those areas where the resulting environmental impacts will be minimal.
- (5) Beach Bulldozing. Beach bulldozing (defined as the process of moving natu-

ral beach material from any point seaward of the first line of stable vegetation to create a protective sand dike or to obtain material for any other purpose) is development and may be permitted as an erosion control measure if the following conditions are met:

- (A) The area on which this activity is being performed must maintain a slope of adequate grade so as to not endanger the public or the public's use of the beach and should follow the preemergency slope as closely as possible. The movement of material utilizing a bulldozer, front end loader, backhoe, scraper, or any type of earth moving or construction equipment should not exceed one foot in depth measured from the pre-activity surface elevation;
 - (B) The activity must not exceed the lateral bounds of the applicant's property unless he has permission of the adjoining land owner(s);
 - (C) Movement of material from seaward of the low water line will require a CAMA Major Development and State Dredge and Fill Permit;
 - (D) The activity must not significantly increase erosion on neighboring properties and must not have a significant adverse effect on important natural or cultural resources;
 - (E) The activity may be undertaken to protect threatened on-site waste disposal systems as well as the threatened structure's foundations.
- (b) Dune Establishment and Stabilization. Activities to establish dunes shall be allowed so long as the following conditions are met:
- (1) Any new dunes established shall be aligned to the greatest extent possible with existing adjacent dune ridges and shall be of the same general configuration as adjacent natural dunes.
 - (2) Existing primary and frontal dunes shall not, except for beach nourishment and emergency situations, be broadened or extended in an oceanward direction.
 - (3) Adding to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized. The filled areas will be immediately replanted or temporarily stabilized until planting can be successfully completed.

- (4) Sand used to establish or strengthen dunes must be ~~brought in from a source outside the ocean hazard area and must be of the same nature as the sand in the area in which it is to be placed~~ of the same general characteristics as the sand in the area in which it is to be placed.
 - (5) No new dunes shall be created in inlet hazard areas.
 - (6) ~~That sand held in storage in any dune other than frontal or primary dunes may be moved laterally in order to strengthen existing primary or frontal dunes if the work would enhance the protection to the proposed development activity. Sand held in storage in any dune, other than the frontal or primary dune, may be redistributed within the AEC provided that it is not placed any farther oceanward than the crest of a primary dune or landward toe of a frontal dune.~~
 - (7) No disturbance of a dune area will be allowed when other techniques of construction can be utilized and alternative site locations exist to avoid unnecessary dune impacts.
- (c) Structural Accessways
- (1) Structural accessways shall be permitted across primary dunes so long as they are designed and constructed in a manner which entails negligible alteration on the primary dune. Structural accessways may not be considered threatened structures for the purpose of Paragraph (a) of this Rule.
 - (2) An accessway shall be conclusively presumed to entail negligible alteration of a primary dune
 - (A) The accessway is exclusively for pedestrian use;
 - (B) The accessway is less than six feet in width; and
 - (C) The accessway is raised on posts or pilings of five feet or less depth, so that wherever possible only the posts or pilings touch the frontal dune. Where this is deemed impossible, the structure shall touch the dune only to the extent absolutely necessary. In no case shall an accessway be permitted if it will diminish the dune's capacity as a protective barrier against flooding and erosion; and
- (D) Any areas of vegetation that are disturbed are revegetated as soon as feasible.
- (3) An accessway which does not meet (2)(A) and (B) of this Paragraph shall be permitted only if it meets a public purpose or need which cannot otherwise be met and it meets (2)(C) of this Paragraph. Public fishing piers shall not be deemed to be prohibited by this Rule, provided all other applicable standards are met.
 - (4) In order to avoid weakening the protective nature of primary and frontal dunes a structural accessway (such as a "Hatteras ramp") should be provided for any off-road vehicle (ORV) or emergency vehicle access. Such accessways should be no greater than ten feet in width and should be constructed of wooden sections fastened together over the length of the affected dune area.
 - (d) Construction Standards. New construction and substantial improvements (increases of 50 percent or more in value on square footage) to existing construction shall comply with the following standards:
 - (1) In order to avoid unreasonable danger to life and property, all development shall be designed and placed so as to minimize damage due to fluctuations in ground elevation and wave action in a 100 year storm. Any building constructed within the ocean hazard area shall comply with the North Carolina Building Code including the Coastal and Flood Plain Construction Standards, Chapter 34, Volume I or Section 39, Volume I-B and the local flood damage prevention ordinance as required by the National Flood Insurance Program. If any provision of the building code or a flood damage prevention ordinance is inconsistent with any of the following AEC standards, the more restrictive provision shall control.
 - (2) All structures in the ocean hazard area shall be on pilings not less than eight inches in diameter if round or eight inches to a side if square.
 - (3) All pilings shall have a tip penetration greater than eight feet below the lowest ground elevation under the structure. For those structures so located on the

primary dune or nearer to the ocean, the pilings must extend to five feet below mean sea level.

- (4) All foundations shall be adequately designed to be stable during applicable fluctuations in ground elevation and wave forces during a 100 year storm. Cantilevered decks and walkways shall meet this standard or shall be designed to break-away without structural damage to the main structure.

Statutory Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a., b., d.; 113A-124.

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environment, Health, and Natural Resources - Radiation Protection Commission intends to adopt rules cited as 15A NCAC 11 .1501 - .1517.

The proposed effective date of this action is May 1, 1993.

The public hearings will be conducted at 1:00 p.m. and 7:00 p.m. on November 17, 1992 at the Division of Radiation Protection, 3825 Barrett Drive, Room 101, Raleigh, NC 27609.

Reason for Proposed Actions: These Rules are necessary to meet the requirements in G.S. 104E-10.3 and 104E-27. These Rules provide for the licensing of radioactive waste generators' access to any low-level radioactive waste disposal facility located in the state. These Rules also require generators of low-level radioactive waste to implement best management practices and reduce waste volume to the extent technologically and economically feasible.

Comment Procedures: Written comments should be submitted to the Division of Radiation Protection, P.O. Box 27687, Raleigh, NC 27611-7687. Written comments will be accepted until December 17, 1992. Any person requiring information concerning the proposed rules should contact Richard M. Fry, Deputy Director, at 919/571-4141. Persons wishing to speak at the hearing are encouraged to notify Mr. Fry at least three days prior to the hearing.

CHAPTER 11 - RADIATION PROTECTION

SECTION .1500 - LICENSES FOR DISPOSAL SITE ACCESS

.1501 PURPOSE AND SCOPE

(a) This Section establishes the procedures, criteria, and terms and conditions upon which the agency issues licenses authorizing access to a low-level radioactive waste disposal facility for the purpose of low-level radioactive waste disposal.

(b) No person shall transfer waste to a disposal facility located in North Carolina unless such person holds a valid site access license issued by the agency pursuant to the rules in this Section.

(c) The agency shall issue a site access license to an applicant only after the agency determines that the applicant:

(1) has implemented best management practices, including prevention, minimization, reduction, segregation and hold-for-decay storage as required by the rules in this Section; and

(2) is reducing waste volume to the extent technologically and economically feasible.

(d) Site access licenses issued pursuant to the rules in this Section shall authorize access only to disposal facilities operated pursuant to the provisions of G.S. 104G and licensed pursuant to the rules in Section .1200 of this Chapter. Upon issuance of a site access license pursuant to the rules in this Section, the agency shall certify to the North Carolina Low-Level Radioactive Waste Management Authority that a generator is reducing waste volume to the extent technologically and economically feasible.

(e) Nothing in this Section or in site access licenses issued pursuant to this Section shall relieve any person from responsibility for complying with any applicable requirements in the other sections of this Chapter or in state and federal laws and regulations, including, but not limited to, those of the U.S. Department of Transportation, the U.S. Nuclear Regulatory Commission, and the North Carolina Department of Transportation.

(f) The rules in this Section are applicable to generators, collectors and processors of low-level radioactive waste which will be transferred to a low-level radioactive waste disposal facility located within the State of North Carolina for disposal.

(g) The rules in this Section are applicable to those waste forms deemed acceptable according to

the North Carolina low-level radioactive disposal facility license as issued by the agency. The rules in this Section shall not be construed to authorize the disposal of any waste that is not authorized for disposal under Section .1200 of this Chapter.

Statutory Authority: G.S. 104E-10.3; 104E-27.

.1502 DEFINITIONS

(a) As used in this Section, the following definitions shall apply.

- (1) "Carrier" means any person transporting radioactive waste in North Carolina for the purpose of disposal at a low-level radioactive waste disposal facility located in North Carolina.
- (2) "Collector" means any person who collects or consolidates prepared packages of low-level radioactive waste from another site access licensee and arranges for the transportation of such waste to a disposal facility located in North Carolina.
- (3) "Generator" means any person who produces low-level radioactive waste which will be transferred for disposal at a low-level radioactive waste disposal facility located in North Carolina, including indirect transfer through collectors or processors.
- (4) "Low-level radioactive waste" means low-level radioactive waste as defined in Rule .1202 of this Chapter.
- (5) "Low-Level radioactive waste disposal facility" means any facility operated pursuant to G.S. 104G for the purpose of low-level radioactive waste disposal and licensed pursuant to Section .1200 of this Chapter.
- (6) "Manifest" means the document used for identifying the quantity, composition, origin and destination of low-level radioactive waste during its transport to a disposal facility.
- (7) "Processor" means any person who receives low-level radioactive waste or radioactively contaminated material from another site access licensee for the purpose of repackaging or treatment, including, but not limited to, compaction, incineration, decontamination or resource recovery, prior to transfer to a disposal facility located in North Carolina.
- (8) "Radioactive material license" means

any license issued by the agency, an agreement state or the U. S. Nuclear Regulatory Commission which authorizes activities which may generate waste.

- (9) "Shipment" means the total low-level radioactive waste transported in a single conveyance as defined in 49 CFR § 173.403.
 - (10) "Shipper" means any person who holds a valid site access license and prepares low-level radioactive waste for transport to a low-level radioactive waste disposal facility located in North Carolina.
 - (11) "Site access license" means a license issued pursuant to the rules in this Section authorizing the licensee to have access for the purpose of disposal to a low-level radioactive waste disposal facility located in North Carolina.
 - (12) "Solidifying" means that process by which liquid wastes or wastes containing liquids are converted into an acceptable stable form as defined in Rule .0426 of this Chapter.
 - (13) "Southeast Compact" means the Southeast Interstate Low-Level Radioactive Waste Management Compact as set out in G.S. 104F.
 - (14) "Stabilizing" means that process by which radioactive wastes are prepared to meet the stability requirements as defined in Rule .0426 of this Chapter.
 - (15) "Transport" means the movement of low-level radioactive waste in North Carolina for the purpose of disposal at a low-level radioactive waste disposal facility located in North Carolina.
 - (16) "Waste" means "low-level radioactive waste".
- (b) Definitions of certain other words and phrases used in this Section are set forth in other sections of this Chapter.

Statutory Authority: G.S. 104E-5; 104E-7; 104E-10.3; 104E-27.

.1503 LICENSE REQUIRED

(a) No person shall ship or transfer waste to a low-level radioactive waste disposal facility located in North Carolina, except as authorized by a valid site access license issued, prior to shipment or transfer, pursuant to the rules in this Section.

(b) A separate site access license is required for each generator, collector and processor facility

from which waste, which will be transferred to a low-level radioactive waste disposal facility located in North Carolina, is shipped.

(c) The agency shall not issue any site access license authorizing disposal of waste generated outside the Southeast Compact region unless:

- (1) the U.S. Nuclear Regulatory Commission has granted emergency access as authorized under the Low-Level Radioactive Waste Policy Amendments Act of 1985, provided that access shall be limited to that granted by the U.S. Nuclear Regulatory Commission and complies with Rule .1517 of this Section; or
- (2) access has been granted by the Southeast Compact Commission in accordance with provisions of G.S. 104F and complies with all requirements of this Section.

Statutory Authority G.S. 104E-10.3; 104E-27.

.1504 APPLICATION FOR SITE ACCESS LICENSE: GENERAL REQUIREMENTS

(a) Each applicant for a site access license shall file a completed agency application form. The completed application shall include the following information and other information required by the agency:

- (1) name, address, telephone number, and description of the business of the applicant;
- (2) a list of radioactive material licenses issued to the applicant along with the name of the regulatory agency that issued each license;
- (3) name, address and telephone number of the facility for which a site access license is requested;
- (4) name and telephone number of the person who is responsible for the applicant's waste management plan;
- (5) organization chart which depicts the relationship among senior level management, managers of waste generating and waste management activities, and the person identified in Subparagraph (a)(4) of this Rule;
- (6) general transportation routing information, within the State of North Carolina, of waste shipments, including but not limited to waste transported for processing and waste transported for

disposal at the North Carolina disposal facility; and

- (7) certifications and additional information required by other applicable rules in this Section.

(b) The agency may at any time after the filing of the application, and before the expiration of a site access license, require further statements and information to enable the agency to determine whether a site access license should be granted, denied, modified, suspended or revoked.

(c) Each application for a site access license shall be signed by the manager of the facility for which the site access license is requested or by his designee, provided that such designation shall be confirmed to the agency, in writing, by the manager.

(d) Except as provided in Paragraph (e) of this Rule, applications and documents submitted to the agency are public documents and may be made available for public inspection.

(e) Notwithstanding Paragraph (d) of this Rule, the applicant may request that specific parts of the application and supporting documents which contain proprietary information be withheld from public inspection. Such request shall include a detailed justification for each part which is proposed to be withheld. The agency may approve such requests in whole or in part, if the agency determines that public disclosure is not required in the public interest and would adversely affect the interest of the applicant. All agency approvals shall be made in writing and shall be available for public inspection.

(f) The applicant shall submit the application for a site access license required by this Section to the agency at the address in Rule .0111 of this Chapter.

(g) If the facility is not located in North Carolina, the applicant shall also submit a copy of the application to the state radiation protection regulatory agency in, or if none, to such other state agency designated by the state in which the facility is located.

(h) If the facility is licensed by the U.S. Nuclear Regulatory Commission, the applicant shall also submit a copy of the application to the U.S. Nuclear Regulatory Commission.

Statutory Authority G.S. 104E-10.3; 104E-27; 104E-29.

.1505 APPLICATION FOR SITE ACCESS LICENSE - WASTE GENERATORS

If the applicant for a site access license is a waste

generator, the application required in Rule .1504 of this Section shall include the following additional information:

- (1) general description of the activities which involve the production of waste along with the radioactive material license numbers under which such activities are conducted;
- (2) general description of existing on-site waste management, to include facilities, equipment, procedures and programs for:
 - (a) limiting the production of contaminated material and contained radioactivity which must be managed, and the estimated annual impact on the amount of material and radioactivity;
 - (b) reducing the volume and contained radioactivity of waste which will be shipped, or transferred to collectors for shipment, to off-site disposal facilities, and the estimated annual impact on the volume and contained radioactivity shipped or transferred;
 - (c) classifying, stabilizing, solidifying liquids, packaging and monitoring waste prior to shipment or transfer to a collector for shipment to a disposal facility located in North Carolina; and
 - (d) quality assurance and quality control;
- (3) description of existing off-site waste management, to include:
 - (a) name, address, telephone number, type of processing and radioactive material license number of each off-site processor to which waste referenced in Sub-Item (2)(b) of this Rule will be shipped; and
 - (b) estimated annual impact on the volume and contained radioactivity which will ultimately be shipped to a disposal facility located in North Carolina;
- (4) description of planned changes in on-site and off-site management described in Items (2) and (3) of this Rule, to include anticipated date for implementation and estimated annual impact on the volume and contained radioactivity of waste which will be disposed at a disposal facility located in North Carolina;
- (5) history of off-site waste disposal for the past five years, to include:
 - (a) identification of all disposal facilities which received waste for disposal; and
 - (b) the total volume and contained radioactivity of waste disposed each year;

- (6) description of the projected waste which will be disposed at a disposal facility located in North Carolina for each of the next five years, to include the projected volume and contained radioactivity for Class A, Class B and Class C waste;
- (7) any regulatory notices of violation and corrective actions related to on-site and off-site management described in Items (2) and (3) of this Rule during the past five years; and
- (8) description of the applicant's notification and emergency response program in the event of accidents during transportation. This description shall include the qualifications and responsibilities of the driver.

Statutory Authority G.S. 104E-10.3; 104E-27.

.1506 CONTENT OF APPLICATION FOR WASTE COLLECTORS

If the applicant for a site access license is a waste collector, the application required in Rule .1504 of this Section shall include the following additional information:

- (1) radioactive material license numbers under which waste collection activities are conducted;
- (2) complete description of the applicant's current waste collection and handling program, to include:
 - (a) a list of the states in which waste collection services will be provided;
 - (b) a list of the waste processors and waste disposal facilities to which collected waste may be shipped;
 - (c) procedures for:
 - (i) waste collection at customer facilities;
 - (ii) handling, identifying, accounting for, and segregating the waste shipped to waste processors and waste disposal facilities;
 - (iii) ensuring that waste shipped to a waste disposal facility located in North Carolina is collected only from persons who hold a currently valid site access license issued pursuant to the rules in this Section;
 - (iv) ensuring that packages, labels, vehicles, placards, and radiation and contamination levels comply with applicable state and federal regulations;
 - (v) quality assurance and quality control;
 - (vi) notifications and emergency response

- in the event of accidents during transportation, including the qualifications and responsibilities of the driver;
- (3) a list of the waste processing and disposal facilities to which collected waste was shipped during the past five years; and
- (4) any regulatory notices of violation and corrective actions related to on-site and off-site management described in Items (2) and (3) of this Rule during the past five years.

Statutory Authority G.S. 104E-10.3; 104E-27.

.1507 CONTENT OF APPLICATION FOR WASTE PROCESSORS

If the applicant for a site access license is a waste processor, the application required in Rule .1504 of this Section shall include the following additional information:

- (1) the applicable information required by Rule .1505 of this Section, if the waste processor is located within the Southeast Compact and generates waste which will be disposed at a disposal facility located in North Carolina;
- (2) a list of the states from which waste may be received for processing;
- (3) description of waste processing services and management, to include:
 - (a) the radioactive material license numbers under which such activities are conducted;
 - (b) the types of waste processing services, description of the wastes which may be processed and the estimated impact of the processing on:
 - (i) volume and contained radioactivity of processed waste which will be shipped to off-site disposal facilities; and
 - (ii) suitability of processed waste for disposal;
- (c) procedures and program for:
 - (i) handling, identifying, accounting for, and segregating waste attendant to processing and shipment to off-site waste disposal facilities;
 - (ii) ensuring that processed waste shipped to a waste disposal facility located in North Carolina is waste generated by persons who hold a currently valid site access license issued pursuant to the rules in this Section;
 - (iii) classifying, stabilizing, solidifying

- liquids, packaging and monitoring waste prior to shipment, or transfer to a collector or the generator for shipment, to a disposal facility located in North Carolina;
- (iv) preparing manifests and correlating manifests with the original manifests prepared by the waste generators for processed waste which will be disposed at a disposal facility located in North Carolina;
- (v) ensuring that packages, labels, and radiation and contamination levels comply with applicable state and federal regulations; and
- (vi) quality assurance and quality control;
- (4) a list of the waste disposal facilities to which processed waste was shipped during the past five years;
- (5) for each of the past five years, a summary of the volumes and types of waste processed and the resulting volumes of processed waste shipped off-site;
- (6) description of the applicant's notification and emergency response program in the event of accidents during transportation. This description shall include the qualifications and responsibilities of the driver; and
- (7) any regulatory notices of violation and corrective actions related to on-site and off-site management described in Items (2) and (3) of this Rule during the past five years.

Statutory Authority G.S. 104E-10.3; 104E-27.

.1508 CERTIFICATION OF COMPLIANCE WITH APPLICABLE REQUIREMENTS

(a) Each shipper who prepares packages of waste for shipment to a disposal facility located in North Carolina shall certify that:

- (1) the packages and contained waste comply fully with all disposal site restrictions and acceptance criteria and with all applicable state and federal laws and regulations including, but not limited to, those governing manifests, labeling, radiation and contamination levels and package design and performance; and
 - (2) the prior notification required by Rule .1509 of this Section will be made for each shipment of waste.
- (b) Each shipper who transports packages of

waste, using shipper-controlled drivers or vehicles, to a disposal facility located in North Carolina shall certify that such transportation, transport vehicles, placarding, and driver training will comply fully with all applicable disposal facility license conditions and acceptance criteria, and state and federal laws and regulations.

(c) The certification requirements specified in this Rule shall be in written form and shall accompany each separate shipment of waste shipped to the North Carolina disposal facility.

(d) The disposal facility operator shall provide to the agency for each shipment of accepted waste at the North Carolina disposal facility a copy of the written certification that accompanied each shipment of waste.

Statutory Authority G.S. 104E-10.3; 104E-27.

1509 PRIOR NOTIFICATION FOR WASTE SHIPMENTS

(a) Prior to each shipment of waste to a disposal facility located in North Carolina, both the agency and the facility operator shall receive written notice from the shipper no less than 72 hours and no earlier than 30 days before the expected date of arrival of the shipment at the disposal facility.

(b) The prior notification required in Paragraph (a) of this Rule shall be filed on a "Radioactive Waste Shipment Prior Notification Form", or appropriate form(s) approved by the agency and which shall include the following:

- (1) name and address of shipper;
- (2) person responsible for waste shipment, including:
 - (A) name
 - (B) title; and
 - (C) telephone number;
- (3) site access license number of the shipper and the site access license number of any other generator, processor, or collector involved with the waste;
- (4) shipment identification number originated by and obtained from the disposal facility operator;
- (5) location from which waste will be shipped;
- (6) name and address of consignee;
- (7) scheduled date of departure of shipment;
- (8) estimated date of arrival of shipment;
- (9) carrier;
- (10) trailer number and owner, if available;
- (11) type of transport vehicle;
- (12) transportation route;

- (13) type of package or cask model number;
- (14) type of container in cask;
- (15) package or cask specification;
- (16) complete waste description;
- (17) physical and chemical form;
- (18) total number of packages;
- (19) prominent radionuclides;
- (20) total curies;
- (21) waste class and stability;
- (22) total cubic feet;
- (23) U.S. Department of Transportation Sub Type, such as Low Specific Activity;
- (24) U.S. Department of Transportation Identification Number;
- (25) indication of highway route controlled quantity;
- (26) such other information as the agency may require;
- (27) signature block certifying validity of information provided; and
- (28) signature block for consignee.

(c) The shipper shall immediately notify the agency and the facility operator of any cancellations or changes in the prior notification form which may occur immediately prior to the shipment departing from the facility enroute to the disposal facility; including, but not limited to the date of arrival, total number of packages, curie content, volume, or waste classification. This notification may be transmitted via documented telephone conversation, or the use of telecopy or facsimile machine.

(d) No shipment of waste to a disposal facility in North Carolina shall commence until the shipper has received and documented confirmation from the operator of the disposal facility that the information provided on the prior notification form and any changes, as identified by the requirements in Paragraph (c) of this Rule, comply with the conditions of the facility operator's license.

(e) With each separate shipment of waste to the North Carolina disposal facility the shipper shall provide to the carrier a copy of the prior notification form required by Paragraph (a) of this Rule for delivery to the disposal facility operator. This copy shall reflect any changes made pursuant to Paragraph (c) of this Rule.

(f) Following the acceptance of each shipment of waste at the North Carolina disposal facility, the disposal facility operator shall sign the prior notification form and submit signed copies to the agency and to the shipper within one week after acceptance.

(g) The prior notification form required in this Rule is in addition to the manifest requirements in

Rule .1510 of this Section.

Statutory Authority G.S. 104E-10.3; 104E-27.

.1510 RADIOACTIVE SHIPMENT MANIFEST

(a) A manifest completed by the shipper, on forms supplied by the disposal facility operator, shall accompany each shipment of waste to a disposal facility located in North Carolina and shall include all information and certifications required by the rules in this Chapter and the disposal facility operator's license conditions.

(b) If the shipper is a waste processor, the manifest required in Paragraph (a) of this Rule shall reflect consolidation of the original waste generator manifests related to the waste shipment except that such copies are not required and also, if included with the shipment, for waste generated by the waste processor; provided however, that the manifest shall be accompanied by a certification that the waste generated by the waste processor is appropriate for disposal at a disposal facility located in North Carolina.

Statutory Authority G.S. 104E-10.3; 104E-27.

.1511 FINANCIAL QUALIFICATIONS AND REQUIREMENTS

(a) The purpose of this Rule is to defray expenses incurred by the State of North Carolina for any project or activity for emergency response to and decontamination of radioactive waste transportation accidents involving the possible or actual release of radioactive materials and to defray the costs to the State for performing or supervising decontamination and to otherwise protect the public health and safety.

(b) The agency shall not issue a site access license until the applicant has satisfied the surety bond or insurance requirements in this Rule.

(c) The applicant must deposit and maintain with the agency a minimum cash or corporate surety bond in the amount of five hundred thousand dollars (\$500,000), or provide the agency satisfactory evidence of liability insurance or provide a certificate of insurance as an added insured on a policy held by a site access licensee that satisfies the insurance requirements of this Rule.

(1) For purposes of the rules in this Section, liability insurance shall mean coverage of one million (\$1,000,000) per occurrence and five million (\$5,000,000) aggregate;

(2) Any insurance carried pursuant to

Section .2210 of Title 42 of the United States Code and 10 CFR 140 shall be sufficient to meet the requirements of this Rule; and

(3) Liability insurance shall be specific to the packaging, transportation, storage and delivery of radioactive waste.

(d) An applicant maintaining liability insurance for the purpose of this Rule shall provide to the agency a certificate of insurance from their insurer indicating the policy number, limits of liability, policy date and specific coverage for packaging, transportation, storage and delivery of radioactive waste.

(e) A cash or corporate surety bond previously posted for the purposes of this Rule shall be returned to the site access licensee upon written notification to the agency of his intention to cease shipments of radioactive waste to the North Carolina disposal facility, provided such bond shall be returned only after the last such shipment has been accepted safely at the disposal facility.

(f) Agencies of the State of North Carolina shall not be subject to the requirements of this Rule.

(g) The agency may require a greater amount of surety bond or liability insurance than stated in Paragraph (c) of this Rule.

(h) The indemnitor on such a bond or an insurance company for any purpose of this Rule shall be licensed to do business in the State of North Carolina.

Statutory Authority G.S. 104E-10.3; 104E-27.

.1512 WASTE MANAGEMENT AND REDUCTION REQUIREMENTS

(a) The purpose of this Rule is to define those elements which may constitute a sound waste management program and to require each applicant for a site access license or renewal of an existing site access license to explain how each element is implemented or, if not implemented, why its omission is justified.

(b) Those elements and sub-elements which constitute sound waste management practices include, but are not limited to, the following:

(1) waste avoidance

(A) process controls

(B) training

(C) material selection

(D) leak prevention

(E) segregation

(F) recycling

(G) reduction in size of facility contaminated areas

- (H) radionuclide selection
- (2) volume or activity reduction
 - (A) storage for decay
 - (i) waste containing no radionuclides with a radioactive half-life exceeding 90 days
 - (I) hold for decay of contained radioactivity and subsequent disposal as non low-level radioactive waste
 - (II) hold for partial decay
 - (ii) waste containing radionuclides with a radioactive half-life exceeding 90 days - hold for partial decay
 - (B) decontamination of equipment, materials or other items
 - (i) on-site
 - (ii) off-site
 - (C) sorting
 - (i) on-site
 - (ii) off-site
 - (D) compaction
 - (i) on-site
 - (I) super compaction
 - (II) other compaction
 - (ii) off-site super compaction
 - (E) incineration
 - (i) on-site
 - (ii) off-site.

(c) The applicant shall indicate the extent to which each of the elements and sub-elements listed in Paragraph (b) of this Rule and any other waste management practices are being employed in the applicant's waste management program.

(d) For each element and sub-element listed in Paragraph (b) that is not employed in the applicant's waste management program, the applicant shall provide a justification for its omission which shall include a schedule for implementation, if future implementation is planned. The justification shall include an explanation of whether or not waste appropriate for such element or sub-element is generated by the applicant.

Statutory Authority G.S. 104E-10.3; 104E-27.

.1513 ISSUANCE AND EXPIRATION OF SITE ACCESS LICENSES

(a) The agency will issue a site access license only after the following determinations are made and upon agency certification to the North Carolina Low-Level Radioactive Waste Management Authority that the generator is reducing waste volume to the extent technologically and economi-

cally feasible:

- (1) The applicant has submitted a license application which adequately demonstrates the applicant's ability to satisfy all requirements in the rules of this Section;
- (2) The applicant has a waste management program which incorporates best management practices, including prevention, minimization, reduction, segregation, and hold for decay storage, as provided in Rule .1512 of this Section;
- (3) The applicant is reducing waste volume and contained radioactivity to the extent technologically and economically feasible, including off-site processing, before waste is disposed at a disposal facility located in North Carolina, or has made a commitment to institute such methods in accordance with a timetable specifically approved by the agency;
- (4) The applicant has filed the bonds, insurance or other security with the agency as required in Rule .1511 of this Section; and
- (5) The applicant will ship waste to a disposal facility located in North Carolina only when such waste is generated in the Southeast Compact region, except as provided otherwise for waste generated by waste processors and authorized pursuant to Item (1) of Rule .1507 of this Section or as provided in Rule .1503(c) of this Section.

(b) Except as provided in Rules .1513 and .1517 of this Section, a site access license shall be effective for a period of five years subject to payment of applicable fees imposed by the Rules in Section .1100 of this Chapter.

(c) Notwithstanding the provisions of Paragraph (b) of this Rule, any site access license is subject to modification, revocation or suspension in accordance with provisions of Rule .1516 of this Section.

(d) The licensee shall apply for amendment of the site access license in accordance with Rule .1515 of this Section prior to making changes in the waste management program described in the license application which would diminish the effectiveness of the waste management program, for example, a change resulting in an increase of waste volume and radiation exposure.

(e) Should any information required by Paragraph (a) of Rule .1504 change, the licensee shall

notify the agency of such changes in writing no later than 60 days after the change and file an application for amendment, if so directed by the agency.

Statutory Authority G.S. 104E-10.3; 104E-27.

.1514 SITE ACCESS LICENSE RENEWAL

(a) An application for renewal of a site access license shall be filed in accordance with Rule .1504 of this Section.

(b) When a site access licensee has filed an application in proper form for renewal not less than 30 days prior to expiration of his existing license, the existing site access license shall not expire until the agency has taken final action on the application.

(c) When a site access licensee files an application for renewal less than 30 days prior to expiration of his existing site access license, the licensee shall not have access to a disposal facility located in North Carolina after the expiration date until the agency has issued final approval of the application.

(d) As a precondition for renewal of a site access license, the applicant shall satisfy the provisions of Rule .1512 of this Section.

Statutory Authority G.S. 104E-10.3; 104E-27.

.1515 SITE ACCESS LICENSE AMENDMENT

(a) An application for amendment of a site access license shall be filed in accordance with Rule .1504 of this Section and shall specify the manner in which the licensee desires the site access license to be amended and the grounds for such amendment, along with any other supporting information which may be required by the agency.

(b) In determining whether an amendment to a site access license will be approved, the agency shall apply the criteria set forth in Rule .1513 of this Section.

Statutory Authority G.S. 104E-10.3; 104E-27.

.1516 MODIFICATION, REVOCATION, AND TERMINATION OF LICENSES

Site access licenses are subject to modification, suspension, revocation and termination in accordance with the provisions of Rule .0344 of this Chapter.

Statutory Authority G.S. 104E-10.3; 104E-27.

.1517 TEMPORARY OR EMERGENCY

ACCESS

(a) The agency may grant temporary or emergency access to a disposal facility located in North Carolina to a generator in the Southeast Compact region, only if:

- (1) access is necessary in order to eliminate an immediate and serious threat to the public health and safety;
- (2) the determination is made that the threat cannot be mitigated by any other alternative consistent with the public health and safety, including ceasing the activities that generate the waste; and
- (3) the waste form and content of the waste to be disposed, meets all acceptability requirements as stated in the facility operator's license.

(b) The agency may grant temporary or emergency access to a disposal facility located in North Carolina to a generator outside the Southeast Compact region, only after:

- (1) Such access has been granted by the U.S. Nuclear Regulatory Commission in accordance with applicable provisions of federal regulations and of the Low-Level Radioactive Waste Policy Amendments Act of 1985; and
- (2) The agency has reviewed and concurs with the U.S. Nuclear Regulatory Commission's decision to grant temporary or emergency access.

(c) Temporary or emergency access to a disposal facility located in North Carolina is subject to the applicable site access licensing requirements in this Section and to the fee requirements in Section .1100 of this Chapter.

(d) Notwithstanding the provisions of Rule .1513 of this Section, a site access license, authorizing temporary or emergency access, shall be effective only for the period of time and the specific waste for which temporary or emergency access was granted.

Statutory Authority G.S. 104E-10.3; 104E-27.

TITLE 21 - OCCUPATIONAL LICENSING BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Nursing intends to amend rule cited as 21 NCAC 36 .0220.

The proposed effective date of this action is February 1, 1993.

The public hearing will be conducted at 1:00 p.m. on December 10, 1992 at the North Carolina Board of Nursing Office, 3724 National Drive, Suite 201, Raleigh, North Carolina 27612.

Reason for Proposed Action: To clarify, strengthen and update in order to be consistent with the current policies and procedures.

Comment Procedures: Any person wishing to present oral testimony relevant to proposed rules may register at the door before the hearing begins and present hearing officer with a written copy of testimony. Written statements may be submitted directed five days prior to the hearing date to the North Carolina Board of Nursing, P. O. Box 2129, Raleigh, NC 27602-2129.

CHAPTER 36 - BOARD OF NURSING

SECTION .0200 - LICENSURE

.0220 REFRESHER COURSE

(a) ~~The curriculum for a~~ A refresher course ~~must shall~~ be designed for those persons, previously licensed, who are ~~ineligible~~ are not eligible for re-entry into nursing practice because they have ~~not been engaged in the legal practice of nursing allowed their license to lapse~~ for five or more years.

(b) Satisfactory completion of a Board-approved refresher course is required of the person who:

- (1) requests reactivation of an inactive license and who has not held an active license for five or more years;
- (2) requests reinstatement of a lapsed license and who has not held an active license for five or more years; ~~or~~
- (3) requests reinstatement of a lapsed license and who has not held an active license for five or more years; or
- ~~(4)~~ (3) is directed by the Board to complete such a course when the Board takes action as authorized in G.S. 90-171.37.

(c) Application for approval of a refresher course ~~must shall~~ be completed and ~~presented~~ submitted by the provider at least 90 days prior to the expected date of enrollment and ~~must shall~~

include evidence of complying with the rules for refresher courses. Board approval ~~must shall~~ be secured prior to the enrollment of students. Provider approval will be granted for a period of time not to exceed ~~three~~ five years. However, any changes in faculty, curriculum, or clinical facilities ~~must shall~~ be approved by the Board prior to implementation.

(d) The Board will make site visits if necessary. A decision on an application to offer a refresher course will be given within 30 days following receipt of the application.

(e) The provider of a Board-approved refresher course ~~must shall~~ be a Board-approved, post-secondary educational institution, ~~or~~ a Board-approved health care institution, or other agency acceptable to the Board.

(f) Administrative responsibility for developing and implementing the course ~~must shall~~ be vested in a registered nurse director.

(g) Instructors in the course ~~must shall~~ be directly accountable to the nursing director. The director shall have had at least one year prior teaching experience preparing individuals for LPN or RN licensure at the post-secondary level or in a nursing staff development position. The director and each instructor ~~must shall~~:

- (1) hold a current North Carolina license to practice nursing as a registered nurse;
- (2) hold a baccalaureate or higher degree; and
- (3) have had at least two years experience in direct patient nursing practice as an RN; ~~and~~
- ~~(4) demonstrate an up-to-date knowledge of clinical nursing.~~

(h) Proximity of the instructor to students is the major factor in determining faculty-student ratio for clinical learning experiences. In no case shall this ratio exceed 1:10.

(i) Course objectives must be stated which:

- (1) show relationships between theory and practice; and
- (2) indicate behaviors consistent with the ~~competent~~ ability to safely practice ~~of~~ nursing.

(j) The curriculum for the R.N. Refresher Course ~~must shall~~ incorporate:

- (1) common medical-surgical conditions and management of common nursing problems associated with these conditions, including mental health principles associated with management of nursing problems;
- ~~(2) major changes in patterns of health care~~

~~delivery and current trends in nursing education;~~

(2)(3) functions of the registered nurse in ~~assessing clients' needs and planning individualized nursing care;~~ as defined in G.S. 90-171.20 and 21 NCAC 36.0221, .0224, .0225 and .0401; and

(3)(4) instruction in and opportunities to demonstrate ~~with confidence and safety ability to safely practice~~ nursing skills and knowledge in caring for clients with common medical-surgical problems.

(k) The curriculum for the L.P.N. Refresher Course ~~must~~ shall incorporate:

(1) common medical-surgical conditions and common nursing approaches to their management, including mental health principles;

(2) ~~major changes in patterns of health care delivery;~~

(2)(3) functions of the licensed practical nurse, ~~including the nurse's relationship to the health care team;~~ as defined in G.S. 90-171.20 and 21 NCAC 36.0221, .0225, and .0401; and

(3)(4) instruction in and opportunity to demonstrate ~~with confidence and safety ability to safely practice~~ nursing skills and knowledge in caring for clients with common medical-surgical problems.

(l) The course ~~must~~ shall include both theory and clinical instruction:

(1) The R.N. Refresher Course ~~must~~ shall include at least 240 hours of instruction, at least 120 of which ~~must~~ shall consist of clinical learning experiences.

(2) The L.P.N. Refresher Course ~~must~~ shall include at least 180 hours of instruction, at least 90 of which ~~must~~ shall consists of clinical learning experiences.

(m) Evaluation processes ~~must~~ shall be implemented which effectively measure:

(1) knowledge and understanding of curriculum content; and

(2) clarify individuals ability to administer provide safe nursing care ~~with confidence and safety~~ to clients with common medical-surgical conditions.

(n) Clinical resources ~~must~~ shall:

(1) ~~be willing and able to indicate in written contract their support and availability to provide~~ the necessary clinical

experiences; and

(2) be approved by the Board of Nursing.

(o) The application for approval of a refresher course ~~must~~ shall include:

(1) course objectives, content outline and time allocation;

(2) didactic and clinical learning experiences including teaching methodologies, and evaluation plans for measuring the registrant's abilities to practice nursing;

(3) plan for evaluation of student competencies and ability to practice safe nursing;

(4)(3) a faculty list which includes the director and all instructors and identifies their qualifications and their functions in teaching roles; and

(5)(4) ~~clinical resources to be used and the projected clinical schedule.~~

(p) A course or combination of courses within a basic nursing curriculum may be considered a refresher course for re-entry into practice if:

(1) such course or combination of courses equals or exceeds requirements for refresher courses;

(2) such course or combination of courses is taught on a level commensurate with level of relicensure sought; and

(3) the Board designee approves such course or combination of courses as a substitute for a refresher course.

(q) Individuals, previously licensed in North Carolina, presently residing outside of North Carolina, may meet these requirements by successfully completing a North Carolina approved refresher course completed in another state or country. Agencies desiring approval for conducting refresher courses shall submit applications per Paragraphs (c) through (p) of this Rule. Clinical experiences shall be in agencies approved by the comparable state/country agency to the Board of Nursing. The agency applying for refresher course approval shall submit evidence of the agency approval.

(r) Individuals enrolled in refresher courses shall identify themselves as R.N. Refresher Student (RN RS) or LPN Refresher Student (LPN RS) consistent with the course level, after signatures on records or on name pins.

(s) ~~(q)~~ Upon completion of a Board-approved refresher course, the course provider ~~will~~ shall furnish the Board with the names and North Carolina certificate numbers of those persons who have satisfactorily completed the course and are deemed ~~competent~~ safe to practice nursing at the

appropriate level of licensure on the Board supplied form.

(t)(†) Upon request, the ~~The~~ Board shall ~~publish~~ provide:

- (1) a list of approved providers;
- (2) ~~and shall provide~~ forms for applications for program approval; and
- (3) forms for verification of successful completion to all approved programs.

Statutory Authority G.S. 90-171.23(b)(3); 90-171.35; 90-171.36; 90-171.37.

TITLE 23 - DEPARTMENT OF COMMUNITY COLLEGES

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Community Colleges intends to adopt rules cited as 23 NCAC 1A .0001 - .0005, 1B .0101 - .0108.

The proposed effective date of this action is July 1, 1993.

The public hearing will be conducted at 10:30 a.m. on November 18, 1992 at the Auditorium of the Highway Building, 11 South Wilmington Street, Raleigh, NC 27601-1494.

Reason for Proposed Action: To standardize terms used throughout Title 23, to clarify the mission of the department, to update and consolidate similar rules, and to describe the department's rulemaking procedure.

Comment Procedures: Interested persons may present statements either orally or in writing at the public hearing, or in writing delivered or mailed, addressed to: Clay Tee Hines or Bill Cole, Department of Community Colleges, 200 West Jones Street, Raleigh, NC 27603. Written comments must be received by 5:00 p.m. on December 2, 1992.

CHAPTER 1 - GENERAL PROVISIONS

SUBCHAPTER 1A - ORGANIZATION

.0001 DEFINITIONS

The following terms shall have the following meanings throughout this Title unless the context of a specific rule requires a different interpreta-

tion:

(1) Credit Hours:

- (a) Credit of one quarter hour is awarded for each 11 hours of "class work". Class work is lecture and other classroom instruction. Class work is under the supervision of an instructor.
- (b) Credit of one quarter hour is awarded for each 22 hours of "laboratory" work. Laboratory involves demonstration by instructor, experimentation, and practice by students. Laboratory is under the supervision of an instructor.
- (c) Credit of one quarter hour is awarded for each 33 hours of "manipulative laboratory or shop" or "clinical practice". Manipulative laboratory, shop or clinical practice involve development of manual skills and job proficiency. Manipulative laboratory or shop or clinical practice is under the supervision of an instructor.
- (d) Credit of one quarter hour is awarded for 110 hours of "work experience" such as cooperative education, practicums, and internships. Work experience involves the development of job skills by providing the student with an employment situation that is directly related to, and coordinated with, the educational program. Student activity in work experience is planned and coordinated by a college representative, and the employer is responsible for the control and supervision of the student on the job.
- (2) Non-Credit Hours. Practice hours are non-credit hours, involve the student in a practice session to develop skills, and are under the supervision of an instructor.
- (3) Full-time Student means a student enrolled in 12 or more credit hours.
- (4) Part-time Student means a student enrolled in less than 12 credit hours.
- (5) FTE means one full-time equivalent (FTE) student and represents one student enrolled in 16 student membership hours per week for 11 weeks or 176 student membership hours per quarter.
- (6) Average Annual FTE means that the average of the summer, fall, winter, and spring quarter FTE may be referred to as "four-quarter average" FTE.
- (7) Budget Full-time Equivalent B/FTE. The B/FTE is used to prepare the operating

budget and to provide for an equitable distribution of the operating funds allocated by the State Board of Community Colleges, hereafter referred to as the State Board, to colleges.

- (8) Equipment Full-time Equivalent (E/FTE). The E/FTE is used to prepare the equipment budget and to provide for an equitable distribution of the equipment funds allocated by the State Board to the colleges.
- (9) Library Full-time Equivalent (L/FTE). The L/FTE is used to prepare the library budget to provide for an equitable distribution of library funds that are allocated for the purchase of library books and audiovisual materials.
- (10) College means any institution established pursuant to Chapter 115D of the General Statutes except for Applied Technology Centers.

Note: Substance of 23 NCAC 2D .0317 and 2E .0104 was incorporated into this Rule.

Statutory Authority G.S. 115D-5; 115D-54.

.0002 MISSION OF THE DEPARTMENT OF COMMUNITY COLLEGES

The mission of the North Carolina Department of Community Colleges, hereafter referred to as the department, is to provide state level leadership and administration for the community college system through the System President as directed by the State Board. The department:

- (1) Provides to the State Board data and information for planning and policy development;
- (2) Recommends to the State Board policies and strategies for carrying out policies;
- (3) Administers policies and procedures adopted by the State Board and state statutes enacted by the General Assembly which affect the community college system;
- (4) Represents the positions of the State Board to the General Assembly, the colleges of the community college system and other relevant publics;
- (5) Provides technical and support services to community colleges to enhance their ability to deliver high quality educational services to the people of North Carolina; and
- (6) Coordinates with other educational systems and state and federal agencies in

developing, implementing, and administering educational programs, policies, and procedures.

Statutory Authority G.S. 115D-1; 115D-5.

.0003 AUTHORITY

(a) The State Board derives its authority for the community college system from Chapter 115D of the General Statutes and within that authority is granted power to organize and operate a department to provide state-level administration of the community college system.

(b) Each college within the system operates under the direction of a board of trustees, a corporate body, which derives its authority from the law and rules of the State Board.

(c) The System President is directed to carry out the rules of the State Board with respect to the department and colleges.

(d) The System President is authorized by the State Board to issue administrative memoranda specifying the manner in which community colleges, as well as staff members of the department, are required to carry out policies of the State Board.

(e) All power and authority vested by law in the State Board which relates to the internal administration, regulation, and governance of any individual college of the community college system are hereby delegated to the board of trustees of such college with the following exceptions and reservations:

- (1) Power or authority that is non-delegable as a matter of law or because of the nature of its exercise is not delegated;
- (2) Power or authority in matters of systemwide or inter-college importance is reserved for determination by the State Board;
- (3) The State Board reserves the right to rescind any power or authority as it deems necessary; and
- (4) More specifically, the governing authority of the State Board, which supersedes local authority, pertains to the assurance of:
 - (A) fiscal accountability,
 - (B) program accountability, and
 - (C) satisfaction of state priorities.

Note: Substance of 23 NCAC 2A .0003 and 2B .0303 was incorporated into this Rule.

Statutory Authority G.S. 115D-3; 115D-5; 115D-12; 115D-25.

.0004 ORGANIZATION

The department fulfills its administrative responsibilities through an organizational structure as determined by the System President. The System President may modify the organizational structure as needed. Copies of the organizational structure are available in the:

Office of the System President
Department of Community Colleges
200 West Jones Street
Raleigh, NC 27603-1337

Note: Substance of 23 NCAC 2A .0002 was incorporated into this Rule.

Statutory Authority G.S. 115D-3.

.0005 STATE PLANNING

The State Board shall review the priorities of the system and adopt a system-level plan on at least a biennial basis, coordinated with the budget cycle. The plan shall take into account the current and future needs of the system and clarify the priorities essential to carrying out the mission of the system.

Note: Substance of 23 NCAC 2B .0204 was incorporated into this Rule.

Statutory Authority G.S. 115D-5.

SUBCHAPTER 1B - PROCEDURE

SECTION .0100 - RULEMAKING

.0101 PETITIONS

(a) Any person wishing to request the adoption, amendment, or repeal of a rule made by the State Board, department, shall make a request in a petition addressed to:

System President
Department of Community Colleges
200 West Jones Street
Raleigh, NC 27603-1337.

(b) The petition shall contain the following information:

- (1) either a draft of the proposed rule or a summary of its contents;
- (2) the statutory authority for the agency to promulgate the rule;
- (3) the reasons for the proposal;
- (4) the effect of the proposed rule on existing rules;
- (5) any data supporting the proposal;

(6) the effect of the proposed rule on existing practices in the area involved, including cost factors; and

(7) the name and address of the petitioner.

(c) The System President or designee shall determine, based on a study of the facts stated in the petition, whether the public interest will be served by granting the petition. The System President or designee shall consider all the contents of the submitted petition and any additional information deemed relevant.

(d) Within 120 days of submission of the petition, the State Board or designee shall render a decision. If the decision is to deny the petition, the System President or designee shall notify the petitioner in writing, stating the reason(s) for the denial. If the decision is to approve the petition, the State Board shall initiate a rulemaking proceeding by issuing a rulemaking notice, as provided in these Rules.

Statutory Authority G.S. 143B-10(j)(2); 150B-20.

.0102 NOTICE

(a) Upon a determination to hold a rulemaking proceeding, either in response to a petition or otherwise, the System President or designee shall give notice to all interested parties in accordance with G.S. 150B-12.

(b) Any person desiring information in addition to that provided in a particular rulemaking notice may contact:

System President
Department of Community Colleges
200 West Jones Street
Raleigh, NC 27603-1337.

Statutory Authority G.S. 143B-10; 150B-12.2.

.0103 HEARING OFFICER

The System President, or one or more hearing officers designated by the System President, shall be hearing officer(s) in a rulemaking hearing.

Statutory Authority G.S. 150B-2(2b).

.0104 HEARINGS

(a) Any person desiring to make an oral presentation at a public hearing is encouraged to submit a written copy of the presentation to the hearing officer prior to or at the public hearing.

(b) Presentations may not exceed 10 minutes unless, upon request made either before or at the hearing, the hearing officer grants an extension of

time.

(c) Any person may file written comments after publication of a rulemaking notice up to and including the day of the hearing. The comments must clearly state the rule or proposed rule to which the comments are addressed and must also include the name and address of the person submitting them. Written comments must be sent to:

System President
Department of Community Colleges
200 West Jones Street
Raleigh, NC 27603-1337.

(d) The hearing officer shall have control over the rulemaking hearing, including:

- (1) the responsibility of having a record made of the hearing;
 - (2) extension of any time allotments;
 - (3) recognition of speakers;
 - (4) prevention of repetitious presentations, and
 - (5) general management of the hearing.
- The hearing officer shall ensure that each person attending the hearing is given a fair opportunity to present views, data, and comments.

Statutory Authority G.S. 143B-10; 150B-21.2.

.0105 STATEMENT OF REASONS FOR AND AGAINST RULEMAKING DECISION

(a) Any person who desires from the System President a concise written statement of the principal reasons for or against the decision by the State Board to adopt or reject a rule may, within 30 days after adoption of a rule, submit a request to:

System President
Department of Community Colleges
200 West Jones Street
Raleigh, NC 27603-1337.

(b) The request must be made in writing and must identify the rule or proposed rule involved.

(c) The System President shall issue the statement of reason(s) against the State Board's decision within 45 days after receipt of the request.

Statutory Authority G.S. 150B-21.2.

.0106 RECORD OF RULEMAKING PROCEEDINGS

A record of all rulemaking proceedings conducted by the State Board, including responses to

petitions for rulemaking, shall be maintained in the office of the System President and shall be available for public inspection during regular office hours. This record shall include:

- (1) the original petition, if any;
- (2) the notice;
- (3) written presentation or submission;
- (4) any written minutes or audio tape of the oral hearing; and
- (5) a final draft of the adopted rule.

Statutory Authority G.S. 150B-21.2.

.0107 FEES

A fee may be charged by the office of System President to persons requesting materials from hearing records. The fee will cover the cost of meeting the request.

Statutory Authority G.S. 132-6.

.0108 DECLARATORY RULINGS

(a) The State Board shall have the power to make declaratory rulings. A declaratory ruling means the State Board's determination of the validity of a specific rule or whether a specific statute, rule or order applies to a given set of facts. All requests for declaratory rulings shall be by written petition and shall be submitted to:

System President
Department of Community Colleges
200 West Jones Street
Raleigh, NC 27603-1337.

(b) Every request for a declaratory ruling must include the following information:

- (1) the name and address of the petitioner;
- (2) the statute or rule to which the question relates;
- (3) a concise statement of the manner in which the petitioner is aggrieved by the rule or statute or its potential application to him; and
- (4) the consequences of a failure to issue a declaratory ruling.

(c) Whenever the State Board believes for good cause that the issuance of a declaratory ruling is undesirable, it shall refuse to issue one. Where a declaratory ruling is deemed inappropriate, the System President or designee shall notify in writing the petitioner, stating reasons for the denial of a declaratory ruling. The State Board may refuse to consider the validity of a rule:

- (1) unless the petitioner shows that the

circumstances are so changed since adoption of the rule that such a ruling would be warranted;

(2) unless the rulemaking record evidences a failure by the agency to consider specified relevant factors;

(3) unless circumstances stated in the request or otherwise known to the agency show that a contested case hearing would presently be appropriate.

(d) Where a declaratory ruling is deemed appropriate, the State Board shall issue the ruling within 60 days of the receipt of the petition.

(e) A declaratory ruling procedure may consist of written submissions, oral hearings, or such other procedure as may be deemed appropriate, in the discretion of the State Board or its designee in the particular case.

(f) The System President or his designee may issue notice to persons who might be affected by the ruling that written comments may be submitted or oral presentations received at a scheduled hearing.

(g) A record of all declaratory ruling proceedings shall be maintained by the System President and shall be available for public inspection during regular business hours. This record shall contain:

- (1) the original request;
- (2) the reason(s) for refusing to issue a ruling when the request is denied;
- (3) all written memoranda and information submitted;
- (4) any written minutes or audio tape or other record of the oral hearing; and
- (5) a statement of the ruling when the request is granted.

Statutory Authority G.S. 150B-4.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Community Colleges intends to adopt rules cited as 23 NCAC 2B .0104; 2C .0209 - .0210; amend rules cited as 23 NCAC 2B .0205, .0301 - .0302; 2C .0101 - .0102, .0105 - .0107, .0202, .0204, .0207 - .0208, .0301, .0304 - .0305, .0403, .0501 - .0502, .0603 - .0604, .0701 - .0703; 2D .0101, .0103 - .0104, .0109, .0201 - .0205, .0301, .0303 - .0305, .0307, .0309 - .0314, .0318 - .0321, .0323 - .0326, .0601 - .0602; 2E .0101 - .0102, .0104, .0201, .0203, .0305, .0401 - .0403, .0501, .0602; and repeal rules cited as 23 NCAC 2A

.0001 - .0005; 2B .0101 - .0103, .0204, .0303; 2C .0103, .0205 - .0206, .0302 - .0303, .0401 - .0402, .0704 - .0705; 2D .0105, .0302, .0306, .0317, .0328, .0603 - .0604; 2E .0103, .0202, .0301 - .0304, .0502, .0603.

The proposed effective date of this action is July 1, 1993.

The public hearing will be conducted at 10:30 a.m. on November 18, 1992 at the Auditorium of the Highway Building, 11 South Wilmington Street, Raleigh, NC 27601 - 1494.

Reason for Proposed Action:

23 NCAC 2A .0001 - .0005; 2B .0101 - .0103, .0204, .0303; 2C .0103, .0205 - .0206, .0302 - .0303, .0401 - .0402, .0704 - .0705; 2D .0105, .0302, .0306, .0317, .0328, .0603 - .0604; 2E .0103, .0202, .0301 - .0304, .0502, .0603 - To eliminate rules that are no longer relevant to administration of the Community College System.

23 NCAC 2B .0104 - To set forth the mission of the Community College System and how the mission is carried out.

23 NCAC 2B .0205, .0301 - .0302 - To clarify the Colleges' planning process and to standardize and update language.

23 NCAC 2C .0101 - .0102, .0105 - .0107, .0202, .0204, .0207 - .0208, .0301, .0304 - .0305, .0403, .0501 - .0502, .0603 - .0604, .0701 - .0703 - To standardize and update language, to eliminate obsolete provisions, and to incorporate the cooperative agreement provision in the rule.

23 NCAC 2C .0209 - .0210 - To require each board of trustees to evaluate the college president and to adopt and publish designated personnel policies.

23 NCAC 2D .0101, .0103 - .0104, .0109 - To clarify the pay schedule for college presidents, to standardize and update language, and to make military leave benefits for community college system personnel consistent with benefits available to state employees.

23 NCAC 2D .0201 - .0205 - To standardize and update language, to clarify tuition and fee costs,

and to clarify the refund policy.

23 NCAC 2D .0301, .0303 - .0305, .0307, .0309 - .0314, .0318 - .0321, .0323 - .0324 - To standardize and update language, to clarify budget requests and distribution of funds by the colleges, to regulate expenditure of state funds for designated items by the colleges, to regulate acquisition of automate data processing resources, to regulate voluntary payroll deductions by colleges, and to clarify reporting of student hours.

23 NCAC 2D .0325 - .0326 - To incorporate requirements mandated by the General Assembly with respect to in-plant training programs, courses taught in sheltered workshops and ADAP Centers.

23 NCAC 2D .0601 - .0602 - To set forth the funding requests and funding allocation process for Community Colleges and the process for approving college sites and building plans by the State Board of Community Colleges.

23 NCAC 2E .0101 - .0102, .0104, .0201, .0203, .0305, .0401, .0403, .0501 - To clarify the classification system and approval process for programs, to regulate awarding of credentials, and to update and standardize the language, provision of training to industry, captive or co-opted groups, and military bases and articulation with the other educational systems.

23 NCAC 2E .0402, .0502 - To incorporate requirements mandated by the General Assembly with respect to in-plant training programs and Huskins Bill programs.

Comment Procedures: Interested persons may present statements either orally or in writing at the public hearing, or in writing delivered or mailed, addressed to: Clay Tee Hines or Bill Cole, Department of Community Colleges, 200 West Jones Street, Raleigh, NC 27603. Written comments must be received by 5:00 p.m. on December 2, 1992.

Editor's Note: The following rules have been filed as a temporary amendments effective October 15, 1992 for a period of 180 days to expire on April 15, 1993: 23 NCAC 2D .0325 - .0326; 2E .0402 and .0602.

CHAPTER 2 - COMMUNITY COLLEGES

SUBCHAPTER 2A - RULES OF ORGANIZATION

.0001 RESPONSIBILITIES OF THE DEPARTMENT OF COMMUNITY COLLEGES

The Department of Community Colleges' responsibilities include but are not limited to the following:

- (1) ~~state level administration and leadership of the Community College System;~~
- (2) ~~coordination of statewide planning for the Community College System with other public and private educational sectors;~~
- (3) ~~provision of assistance for institutional planning;~~
- (4) ~~development of recommended changes in and additions to state board policies for the Community College System, with assistance from institutions;~~
- (5) ~~consulting with the Community College Advisory Council in regard to advising the state board on matters relating to personnel, curricula, finance, and articulation, among others;~~
- (6) ~~development of budget requests based on assessments of local and state needs;~~
- (7) ~~assistance to local institutions in developing curriculum guidelines and instructional materials;~~
- (8) ~~provision of information about the Community College System to the public;~~
- (9) ~~assistance to institutions in dealing with federal, state and other agencies and organizations;~~
- (10) ~~assistance to institutions in the development, revision, and termination of curriculum and extension and other educational programs to make available comprehensive postsecondary education to adult citizens;~~
- (11) ~~assistance to institutions in capital improvement and equipment and media processing and inventory;~~
- (12) ~~assistance to local institutions in the development of appropriate student services;~~
- (13) ~~provision of other assistance as requested by local institutions.~~

Statutory Authority G.S. 115D-1; 115D-3; 115D-4; 115D-5.

.0002 ORGANIZATION

The Department of Community Colleges fulfills

~~its administrative responsibilities through the following organizational structure: Office of the State President, an Executive Vice President with Assistants for Board Affairs, Policy Affairs, Governmental Affairs, Legal Affairs, and Public Affairs, and four Divisions—Finance, Research and Planning, Programs, Adult and Continuing Education—each headed by a Vice President.~~

Statutory Authority G.S. 115D-3; 115D-14; 115D-15; 115D-20.

.0003 AUTHORITY

(a) ~~The State Board derives its authority for the Community College System from G.S. 115D and within that authority is granted power to organize and operate a department to provide state-level administration of the Community College System.~~

(b) ~~Each institution within the system operates under the direction of a board of trustees, a corporate body, which derives its authority from G.S. 115D-12 through 115D-25 and rules of the State Board.~~

(c) ~~The state president is directed to carry out the rules of the State Board as affecting the departments and institutions.~~

(d) ~~All power and authority vested by law in the State Board which relates to the internal administration, regulation, and governance of any individual institution of the Community College System are hereby delegated to the board of trustees of such institution with the following exceptions and reservations:~~

- ~~(1) Power or authority that is non-delegable as a matter of law or because of the nature of its exercise is not delegated;~~
- ~~(2) Power or authority in matters of systemwide or inter-institutional importance are reserved for determination by the State Board if the state board chooses to make such determination;~~
- ~~(3) The State Board reserves the right to rescind any power or authority as it deems necessary; and~~
- ~~(4) More specifically, the governing authority of the State Board, which supersedes local authority, pertains to the assurance of:
 - ~~(A) fiscal accountability;~~
 - ~~(B) program accountability; and~~
 - ~~(C) satisfaction of state priorities.~~~~

Statutory Authority G.S. 115D-3; 115D-5.

.0004 STATE PRESIDENT: FISCAL

DIRECTION AND BUDGET MANAGEMENT

~~The State President of the Department of Community Colleges, subject to approval of the State Board shall have responsibility for fiscal direction and budgetary management as follows:~~

- ~~(1) administration of funds appropriated for state-level operation and maintenance of the Department of Community Colleges;~~
- ~~(2) development of biennial budget requests for both state and institution-level operations based on the assessment of needs for presentation to the State Board;~~
- ~~(3) represent the State Board in justifying and explaining the biennial budget to the Department of Administration and the General Assembly;~~
- ~~(4) keep all other agencies, institutions, and the general public, including the press, informed about any matters that may be of interest to them which relate to or affect the Community College System and its institutions;~~
- ~~(5) review and recommend the approval or disapproval in whole or in part to the State Board the annual budgets submitted by the respective boards of trustees of the institutions in compliance with G.S. 115D-54 to assure that a proper balance is maintained between the various programs, instructional services, and administration;~~
- ~~(6) approval of transfers, which may be requested by the institutions, within the annual budgets based on study and determination that such transfers will improve the operation of the institutions and are not restricted by General Assembly or state board policy;~~
- ~~(7) periodically review budgets with institutional presidents to consider budget adjustments and to recommend funds which may be reverted for reallocation to other institutions found to have a greater need;~~
- ~~(8) review, on a continuing basis, the annual budgets with the respective institutions for determining program offerings in compliance with policies and regulations of the State Board;~~
- ~~(9) recommend to the board the allotment of funds for the operation of the Community College and Technical Institute System such as but not restricted to the following:
 - ~~(a) Regular funding of formulas adopted;~~~~

- (b) ~~Formula funding reserve (current operations);~~
- (c) ~~Formula funding reserve (equipment);~~
- (d) ~~New industry;~~
- (e) ~~Human resources development;~~
- (f) ~~Visiting artist program;~~
- (g) ~~Comprehensive Employment Training Act (CETA);~~
- (h) ~~Additional allotments for institutional dues and repairs to equipment and other items having standing approval of the State Board;~~
- (i) ~~Construction allotment;~~
- (j) ~~Various federal grants;~~
- (k) ~~Adult basic education;~~
- (l) ~~Vocational education:~~
 - (i) ~~handicapped;~~
 - (ii) ~~disadvantaged;~~
 - (iii) ~~special needs;~~
 - (iv) ~~research;~~
- (10) ~~recommend to the state board changes or modifications in formulas as needed.~~

Statutory Authority G.S. 115D-3; 115D-4; 115D-5.

.0005 RULEMAKING

(a) ~~Prior to recommending rulemaking, the State President shall cause a consultative process to take place involving, as a minimum, the executive committees of the Trustees' Association and the Presidents' Association or an advisory group nominated by these Associations in order to assure reliable, equitable, auditable, fair and effective proposals.~~

(b) ~~The State President shall recommend proposed changes at a regular or special meeting of the State Board as information.~~

(c) ~~The State President shall circulate such proposed changes to the Board Chairmen and Presidents of the institutions, allowing a minimum of 30 days for comment. He may, at his discretion, schedule conferences or workshops or hearings to receive comment, in addition to such circulation.~~

(d) ~~The State President shall then recommend the proposed rule changes to the State Board, with full information as to comments received from the institutions, at a regular or special meeting.~~

(e) ~~The State Board may approve, disapprove, revise or postpone the proposed rule.~~

(f) ~~The State Board may take immediate action in an emergency situation, such emergency shall be certified by two thirds of the members present and voting, provided, however, that the process of involvement (b) through (e) of this Rule is initiated~~

~~within sixty days after adoption of the emergency rule.~~

(g) ~~Nothing in this rule revision process shall supersede the requirements of the Administrative Procedure Act, as revised.~~

Statutory Authority G.S. 115D-3; 115D-5.

SUBCHAPTER 2B - THE COMMUNITY COLLEGE SYSTEM

SECTION .0100 - GENERAL PROVISIONS

.0101 POLICY CONCEPT

(a) ~~The fundamental concept of the Community College System of North Carolina is based on the policy that all institutions shall have an "open door."~~

(b) ~~The institutions of the Community College System shall as needed provide comprehensive learning opportunities for the people of their communities. This education takes place in the normal environment of people living in their communities and throughout the different ages and conditions of life of the people of the community.~~

(c) ~~The Community College System in North Carolina shall serve primarily those persons beyond the normal high school age, 18 years old or older, whether they are high school graduates or not, by offering appropriate, economical and convenient learning opportunities.~~

(d) ~~These opportunities range, depending on individual needs and previous educational achievement, from the first grade level through the second year of college, including occupational, and general adult training to all of suitable age who wish to learn and can profit from the instruction provided.~~

Statutory Authority G.S. 115D-1.

.0102 OBJECTIVES

~~The purpose of the Community College System is to extend universal educational opportunities beyond the public school system. The objectives of this stated purpose are:~~

- (1) ~~to provide expanded educational opportunities from the first grade through high school and beyond high school for young people and adults who would not otherwise continue their education;~~
- (2) ~~to provide relatively inexpensive, nearby educational opportunities for high school graduates, non-high school graduates, and adults;~~
- (3) ~~to provide college transfer programs;~~

- consisting of the first two years of regular college studies;
- (4) ~~to provide technician programs, preparing students for jobs in industry, agriculture, business, government, and service occupations;~~
 - (5) ~~to provide vocational programs preparing students for jobs requiring varying levels of ability and skill;~~
 - (6) ~~to provide occupational education programs for employed adults who need training or re-training, or who can otherwise profit from the program;~~
 - (7) ~~to provide courses that will meet the general adult and community service needs of the people of the community.~~

Statutory Authority G.S. 115D-1; 115D-2.

.0103 LEGAL BASIS AND AUTHORITY

~~North Carolina General Statutes, Chapter 115D, as amended, provides the legal framework for the establishment, organization, and operation of community colleges and technical institutes.~~

Statutory Authority G.S. 115D-1 through 115D-81.

.0104 MISSION OF THE COMMUNITY COLLEGE SYSTEM

The North Carolina Community College System is a statewide organization of public two-year postsecondary educational colleges with an open-door admissions policy. Its mission is to provide adults in North Carolina with quality and convenient learning opportunities consistent with identified student and community needs. These opportunities are accessible to all adults regardless of age, sex, socio-economic status, ethnic origin, race, religion, or disability. Educational and training programs are designed to enhance the personal, social, and economic potential of the individual and to produce measurable benefits to the state. The system fulfills this mission by providing:

- (1) Vocational programs and courses for students desiring to prepare for skilled trades or to upgrade their job skills;
- (2) Technical programs and courses that meet the career needs of individuals;
- (3) Transferable programs and courses for students desiring to attend a senior college or university;
- (4) Special occupational training and upgrading programs and services for businesses, industries, and agencies;

- (5) Programs and courses in adult basic education, high school completion, and continuing education;
- (6) Counseling, career guidance, job placement services, and other programs essential to developing the potential of individual students;
- (7) Programs and services to enrich the quality of community life;
- (8) Effective and cooperative relationships with the schools, colleges, universities, government agencies, and employers across the state; and
- (9) Sound management practices and systematic planning to allocate the resources required to achieve the stated objectives of the North Carolina Community College System.

Statutory Authority G.S. 115D-1; 115D-4.1; 115D-5; 115D-8.

SECTION .0200 - THE NORTH CAROLINA COMMUNITY COLLEGE SYSTEM

.0204 STATE PLANNING

~~The Department shall develop a long range plan. The plan shall take into account the current and future needs of the system, and clarify priorities essential to carrying out the purposes of the system. The plan shall be reviewed periodically to assure its continued validity.~~

Statutory Authority G.S. 115D-1; 115D-3; 115D-5.

.0205 COLLEGE PLANNING

Each member institution college of the Community College System shall operate in accordance with a long range plan, maintain an ongoing planning process which provides for development of a college plan. As a minimum, the plan college plans shall address program and facility needs; shall include the college's mission, goals and objectives, consistent with the mission of the System and with the State Board's priorities; and shall provide for evaluation of results, and Plans shall be submitted to the Department in accordance with its procedures. The plan shall be reviewed periodically for the purpose of making revisions to assure its continued validity.

Statutory Authority G.S. 115D-1; 115D-3; 115D-5.

SECTION .0300 - STATE PRESIDENT: AUTHORIZATIONS

**.0301 PROVISION OF INFORMATION
TO THE DEPT OF COMMUNITY
COLLEGES**

The trustees and the president of each institution college are responsible for seeing that scheduled periodic official reports about the institution college and any special reports are timely submitted ~~and in the a~~ timely manner and in the format prescribed by the State System President.

Statutory Authority G.S. 115D-5.

**.0302 NO-COST EXTENSION OF
CONTRACTS**

The State System President is authorized to extend the completion date, at no additional cost, of any contract which has received prior approval of the State Board when circumstances warrant, provided that no applicable laws or regulations prohibit such an extension. Such an extension shall not exceed six months beyond the completion date approved by the State Board.

Statutory Authority G.S. 115D-5.

.0303 ADMINISTRATIVE MEMORANDA

~~The State President is authorized by the State Board to issue administrative memoranda specifying the manner in which technical institutes and community colleges, as well as staff members of the Department of Community Colleges, are required to carry out policies of the state board.~~

Statutory Authority G.S. 115D-3; 115D-5.

**SUBCHAPTER 2C - INSTITUTIONS:
ORGANIZATION AND OPERATIONS**

**SECTION .0100 - TRUSTEES AND
INSTITUTIONS**

.0101 AUTHORIZATION

The boards of trustees of community colleges ~~and technical institutes~~ as bodies corporate are authorized to do all things necessary and proper to organize and operate institutions colleges consistent with G.S. 115D and policies of the State Board.

Statutory Authority G.S. 115D-5; 115D-14.

.0102 NAME

Trustees of all institutions colleges hereafter named or renamed as defined under ~~115D-2(7)~~

G.S. 115D shall use the appropriate full term, "Community College," "Technical Institute" or "Technical College" Community College, in the name given the institution college. "Technical Institute" and "Technical College" are considered synonymous terms. ~~Local Boards of Trustees, with concurrence of the respective county commissioners, may elect to use "Technical College" in lieu of "Technical Institute."~~ Other than the three terms term mentioned in this Rule, the Trustees have full authority. Changes in existing names shall be forwarded to the State Board specifying the specific date of the change prior to the effective date. Conformity shall be required before any state funds are authorized.

Statutory Authority G.S. 115D-2; 115D-5.

.0103 ROLE

~~(a) The Community College System was established to provide additional educational opportunities to the citizens of North Carolina, aiming primarily at the post-high school level, and to fill an educational opportunity gap between the high schools and the four-year colleges and the university system. The filling of this gap requires open door admission of both high school graduates and of others who may not be high school graduates. The provision of educational opportunity for this broad range of student ability and needs requires a broad range of curriculum and continuing education offerings.~~

~~(b) The carrying out of this responsibility assigns a unique role to the institutions in the Community College System, which role is fundamentally different from the selective role traditionally assigned to four-year colleges and universities. Because of this, for a community college to aspire to become a four-year college would not represent normal growth, but would destroy the community college role and replace it with an entirely different type of institution.~~

~~(c) No community college or technical institute shall attempt to become a four-year institution.~~

Statutory Authority G.S. 115D-1; 115D-5.

.0105 ESTABLISHING COLLEGES

(a) General Policy. In authorizing the establishment of a new institution college in a county in which no institution college of the Community College System community college system is currently located, an institution a college will be approved initially as a community college.

(b) New Institutions. An application for a new

area to be served must come from the county or city board(s) of education or the county commissioners in the proposed administrative area. The application shall be sent to the State Board which may direct the Department to cooperate with the applicants in making a survey to determine the following: need for the establishment of a new college.

- (1) ~~Do the educational needs of the area justify the educational services proposed?~~
- (2) ~~Can the existing public and private post secondary institutions in the area meet the needs demonstrated?~~
- (3) ~~If unmet educational needs exist that could be met by the proposed institution, will the projected student enrollment justify the proposed institution? As a standard, the projected enrollment should be a minimum of 400 full-time equivalent students in curriculum programs within three years after establishment.~~
- (4) ~~Can adequate local current and capital expense funds be supplied? As a standard, the level of local current operating fund support should be equal to the existing median support for the institutions in the community college system.~~
- (5) ~~Will the local public school tax support be affected adversely by the local support required for the proposed institution?~~
- (6) ~~Do the boards of commissioners and boards of education in the area support the application?~~
- (7) ~~Are the facilities proposed to house the new institution adequate?~~
- (8) ~~Does the application fit the policy of reasonable geographic distribution in order to meet statewide needs? As a standard, no new institution shall be established within 25 miles of an existing institution within the community college system, except where urban population density or natural barriers become overriding considerations.~~
- (9) ~~Will adequate state funds become available to support the proposed new institution?~~
- (10) ~~Can the immediate needs of an area best be served by an extension unit operating under contract with an existing institution?~~
- (11) ~~A statement of anticipated desegregation impact will be required.~~

- (12) When the survey is completed, the Department will report to the State Board and make its ~~recommendations,~~ recommendation(s). A local delegation may appear if desired. The State Board shall make its ~~recommendation~~ recommendation(s) for the establishment of a new institution college to the General Assembly, including a request for additional funds if needed.

Statutory Authority G.S. 115D-4; 115D-5; 115D-31 through 115D-36.

.0106 ESTABLISHING MILITARY SERVICE AREAS

Educational programs offered by institutions colleges of the community college system of North Carolina on all military installations will be conducted by the home institution, college. The home institution college is defined as that institution college located in the administrative area in which the military installation is based. The home institutions college by written contractual agreement may contract with other institutions another college within the Community College System for assistance in providing community college system to provide any additional educational services which may be required by the military installation located in the home institution's college's area. Priority will be given to adjacent institutions colleges of the military installation to be served.

Statutory Authority G.S. 115D-5.

.0107 ESTABLISHING SERVICE AREAS FOR COLLEGES

The State Board shall assign service areas to institutions colleges for providing education and training services. The initial assignment of service areas to institutions colleges shall take into account the past and present patterns of providing services, including existing agreements between institutions, colleges. The State Board may reassign a service area upon the recommendation of the State System President. The recommendation shall be based upon an analysis of the service areas involved, including consultation with the presidents of the institutions colleges and the county commissioners of the county(ies) that are affected.

An institution A college may offer education and training in an area assigned to another institution college only by written agreement between the institutions, colleges. This written agreement is

to be filed with the System President. A board of trustees may delegate to its president the authority to enter into short-term written agreements. Agreements beyond one year in length shall be approved by the boards of trustees of the institutions colleges involved and filed with the State System President.

Statutory Authority G.S. 115D-5.

SECTION .0200 - PERSONNEL

.0202 FACULTY

(a) General

(1) ~~In order to give guidance to higher education institutions preparing teachers for the institutions, the State Board adopts the following general policies:~~

(A) ~~Formal certification of teachers by the Department will not be required.~~

(B) ~~Each higher education institution will develop the professional and academic education requirements it finds necessary in order to assure desired faculty characteristics without any specific credit hour requirements prescribed by the State Board.~~

(1) (2) ~~Institutions Colleges~~ shall employ faculty members so as to meet Southern Association of Colleges and Schools' standards.

(2) (3) ~~Institutions Colleges~~ shall determine appropriate teaching and non-teaching loads for faculty and for technical assistants to the faculty so as to meet Southern Association of Colleges and Schools' standards.

(b) Instructors for ~~Fire Service Training (Extension)~~. Extension Emergency Services Training. It is the policy of the State Board that All instructors in the fire service area of Emergency Services Training program must be trained to teach adults and must meet qualifications be qualified as established by the Department in consultation with the Fire Service Training State Advisory Committee. Procedures for meeting recommended qualifications shall be instituted and regulated by the Department Fire Service Training Division. Procedures shall include directions to fire service instructors, instructor candidates, state director of fire service training, fire service area coordinators, and local institutions. respective emergency services state-level certifying agency. Emergency services training means training delivered to personnel in law enforcement, fire and rescue

services, and emergency medical services agencies.

Statutory Authority G.S. 115D-1; 115D-5.

.0204 EMPLOYMENT OF RELATIVES

~~It is the policy of the State Board that present and prospective employees shall be evaluated on the basis of individual merit, without respect to race, sex, religion, national origin, or any other factors not involving professional qualifications and performance. In accordance with the policy principle, the following restrictions are adopted. To avoid the possibility of favoritism based on family relationships, for all employees in the system:~~

(1) ~~An institution~~ A college shall not employ two or more persons concurrently who are closely related by blood or marriage in positions which would result in one person of such family relationship supervising another closely related person or having a substantial influence over employment, salary or wages, or other management or personnel actions pertaining to the close relative.

(2) "Closely related" is defined to mean mother, father, brother, sister, son, daughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, sister-in-law, brother-in-law, grandmother, grandfather, grandson, granddaughter, uncle, aunt, nephew, niece, husband, wife, ~~first cousin~~, step-parent, step-child, step-brother, step-sister, guardian or ward.

(3) With respect to the concurrent service of closely related persons within the same academic department or other comparable ~~institutional~~ college subdivision of employment, neither relative shall be permitted, either individually or as a member of a committee, to participate in the evaluation of the other relative.

(4) ~~The provisions of this policy shall be prospective only, with reference to appointments made after the adoption date of this policy.~~

Statutory Authority G.S. 115D-5; 115D-20.

.0205 EMPLOYMENT AND DISMISSAL POLICIES

~~The respective boards of trustees of the technical institutes and community colleges shall adopt employment and dismissal policies and procedures.~~

~~These employment and dismissal policies and procedures will comply with existing state and federal laws and will be filed with the state president by April 1, 1978.~~

Statutory Authority G.S. 115D-5; 115D-20.

.0206 STAFF DEVELOPMENT POLICY

~~Each board of trustees shall adopt a policy on staff development for all employees of the institution.~~

Statutory Authority G.S. 115D-5; 115D-20.

.0207 PURCHASE/COMPUTER HARDWARE: SYSTEM SOFTWARE/STATE CONTRACT

(a) The State Board of Community Colleges authorizes ~~the following~~ certain classes of full-time employees to purchase microcomputers, related peripheral equipment, and system software under state contract at state contract prices in accordance with procedures set forth in the Department's Accounting Procedures Manual.

- ~~(1) classroom instructors;~~
- ~~(2) other professional personnel in the department and institutions, including supervisors and administrators, engaged in delivering or supervising classroom instruction, or engaged in curriculum development;~~
- ~~(3) other personnel in the department and the local institutions engaged in delivering services through computer-related equipment.~~

(b) ~~In addition to any procedures or requirements of the Department of Administration or the State Budget Office, an institutional employee included within a class defined in Paragraph (a) of this Rule who desires to purchase computer equipment or system software under state contract at state contract prices shall submit a request to his president. This request shall contain a certification by the employee that:~~

- ~~(1) he is a member of one of the classes of employees defined in Paragraph (a) of this Rule;~~
- ~~(2) he intends to continue employment with the community college system;~~
- ~~(3) the computer equipment or system software to be purchased by the employee will assist the employee in performing his assigned duties or will enable the employee to improve the performance of his assigned duties;~~

- ~~(4) the computer equipment or system software to be purchased will not be resold for at least three years from the date of purchase; and~~
- ~~(5) the computer equipment to be purchased will not be used primarily for the employee's private benefit.~~

(c) ~~Upon receipt of a request from an employee the president shall determine whether the information provided therein by the employee is accurate. If the president is satisfied that the information contained in the request is accurate the president, in accordance with any procedures or requirements established by the Department of Administration or State Budget Office, shall initiate the process for the purchase of the requested computer equipment or system software. A request which is incomplete or which contains inaccurate information may not be approved by the employee's president.~~

(d) ~~Each employee shall be limited to one approved purchase order under the application of this Rule per three year period from the date of first purchase.~~

(e) ~~All requests for the purchase of computer equipment or system software shall be submitted on a form prepared by the Department of Community Colleges which incorporates the requirements of Subparagraph (b) (2) of this Rule.~~

(f) ~~In addition to any procedures or requirements of the Department of Administration or the State Budget Office, professional personnel in the department included in Subparagraph (a) (2) and (3) of this Rule who desire to purchase computer equipment or system software under state contract at state contract prices, shall follow the procedures prescribed by the department.~~

Statutory Authority G.S. 115D-5; 143-58.1(b).

.0208 POLITICAL ACTIVITIES OF EMPLOYEES

(a) As an individual, each employee of the community college system retains all rights and obligations of citizenship provided in the Constitution and laws of North Carolina and the Constitution and laws of the United States. Therefore, the State Board of Community Colleges encourages employees of the system to exercise their rights and obligations of citizenship.

(b) ~~(1)~~ Each local board of trustees shall develop a policy on the political activities of its employees, except for the president, that meets the following criteria and submit that policy to the Department of Community Colleges System President to determine if the policy meets these criteria:

- (1) ~~(a)~~ Any ~~employee~~ Employees who ~~decides~~ decide to run for a public ~~office~~ offices shall notify the board of trustees through the president of ~~his intention~~ their intentions to run and certify that ~~he~~ they will not campaign or otherwise engage in political activities during ~~his~~ their regular work hours or involve the college in ~~his~~ their political activities.
- (2) ~~(b)~~ Any employee, who is elected to a part-time public office, shall certify through the president to the board of trustees that ~~his~~ the office will not interfere with ~~his~~ carrying out the duties of ~~his~~ the position with the college, or request leave.
- (3) ~~(c)~~ Any employee, who is elected or appointed to a full-time public office or the General Assembly, shall be required to take a leave of absence without pay upon assuming that office. The length of the leave of absence shall be determined by the local board of trustees.
- (4) ~~(d)~~ Any employee who becomes a candidate for public office shall be prohibited from soliciting support during ~~his~~ regular work hours. The employee in question is prohibited from soliciting support on college property unless otherwise authorized by the local board of trustees.
- (c) (2) Political activities of college presidents.
 - (1) ~~(a)~~ Any college president, who decides to run for public office, shall notify the local board of trustees of ~~his~~ the intention to run and certify that ~~he will not campaign or otherwise engage in no campaigning or~~ political activities will be engaged in during ~~his~~ regular work hours ~~or involve and that~~ the college will not be involved in ~~his~~ the president's political activities.
 - (2) ~~(b)~~ Any college president, who is elected to a part-time public office, shall certify to the local board of trustees that ~~his~~ the office will not interfere with ~~his~~ carrying out the duties of ~~his~~ position with the college presidency, or request leave.
 - (3) ~~(c)~~ Any college president, who is elected or appointed to a full-time public office or to the General Assembly, shall be required to take a leave of absence without pay upon assuming that office. The length of the leave of

absence shall be determined by the local board of trustees.

- (4) ~~(d)~~ Any college president, who is a candidate for public office, is prohibited from soliciting support during ~~his~~ regular work hours. The president in question is prohibited from soliciting support on college property unless otherwise authorized by the local board of trustees. The authorization must be on a case-by-case basis.
- (5) ~~(e)~~ The local board of trustees shall notify the state board if the college president should become a candidate for public office or if the college president is elected or appointed to a public office.
- (d) (3) Definitions as used in this Rule.
 - (1) ~~(a)~~ Public office means any national, state or local governmental position of public trust and responsibility, whether elective or appointive, which is created or prescribed or recognized by constitution, statute, or ordinance.
 - (2) ~~(b)~~ Membership in the General Assembly is a full-time public office under this Rule.
 - (4) ~~Application of this Rule.~~ The requirements of this Rule shall apply prospectively only. No change in the employment status of an employee who was an incumbent in public office on the effective date of this Rule shall be required under this Rule for the remainder of that term of office; provided, however, this Rule shall not apply to any employee in the system who was a full-time public officer on the effective date of this Rule.

Statutory Authority G.S. 115D-5; 115D-20.

.0209 EVALUATION OF PRESIDENTS

Each local board of trustees shall evaluate its president annually and notify the State Board in writing that the evaluation has been completed by July 1 of each year. The evaluation instrument and method shall be selected by the local board.

Statutory Authority G.S. 115D-5; 115D-20.

.0210 LOCAL COLLEGE PERSONNEL POLICIES

(a) Each local board of trustees shall adopt and publish personnel policies addressing the following issues:

- (1) Adverse weather;
- (2) Annual leave (vacation);
- (3) Drug and alcohol use;
- (4) Civil leave;
- (5) Communicable disease;
- (6) Compensatory leave;
- (7) Definitions of the employment categories and benefits for each:
 - (A) Full-time permanent;
 - (B) Part-time permanent;
 - (C) Full-time temporary, and
 - (D) Part-time temporary;
- (8) Disciplinary action addressing suspension and dismissal;
- (9) Educational leave (reference 23 NCAC 2D .0103);
- (10) Employee evaluation process;
- (11) Employee grievance procedures;
- (12) Employee personnel file;
- (13) Hiring procedures (written and describing procedures used for employment of both full- and part-time employees);
- (14) Leave transfer;
- (15) Leave without pay;
- (16) Longevity pay plan (reference 23 NCAC 2D .0109);
- (17) Military leave (reference 23 NCAC 2D .0104);
- (18) Nepotism (reference 23 NCAC 2C .0204);
- (19) Non-reappointment;
- (20) Other employee benefits;
- (21) Political activities of employees (reference 23 NCAC 2C .0208);
- (22) Professional development;
- (23) Reduction in force;
- (24) Salary determination methods for full- and part-time employees;
- (25) Sexual harassment; and
- (26) Tuition exemption (reference 23 NCAC 2D .0202).

(b) Each local board of trustees shall adopt and publish sick leave policies consistent with provisions of the State Retirement System.

(c) Each local board of trustees shall submit copies of these policies, including amendments, to the System President's Office upon adoption.

Statutory Authority G.S. 115D-5; 115D-20.

SECTION .0300 - STUDENTS

.0301 ADMISSION TO COLLEGES

Each institution college shall maintain an open-door admission policy to all applicants who

are high school graduates or who are at least 18 years of age. Student admission and placement shall be determined by the officials of each institution college. Admission requirements for an emancipated minor shall be the same as for an applicant 18 years old or older.

Statutory Authority G.S. 115D-1; 115D-5; 115D-20; 7A-717; 7A-726.

.0302 LOW STUDENT TUITION AND FEES

The State Board has since 1957 supported an open door admission policy for students attending the technical institutes and community colleges. This includes freedom from fixed requirements on previous educational achievement levels and also from tuition and fee charges that would turn away students because they cannot afford to pay. In following this policy, tuition and fee charges for students are kept to a minimum so that educational opportunity can be open for all citizens of North Carolina 18 years or older who need this opportunity. This includes opportunity for adults to make up educational deficiencies and to secure job training so that they can make a better living.

Authority G.S. 115D-1; 115D-5; N. C. Constitution, Article IX.

.0303 WORK-STUDY PROGRAM UNDER THE VOCATIONAL EDUCATION ACT

The State Board approves the use of Part A, Subpart 2 (basic grant) Vocational Education Funds to support work study programs as described in the State Plan for Vocational Education. Each institution shall determine that portion of their subpart 2 funds which will be used for work study programs.

Statutory Authority G.S. 115D-5; P.L. 81-874; P.L. 94-482.

.0304 STUDENT LOAN FUNDS FOR VOCATIONAL AND TECHNICAL EDUCATION

(a) The loan fund shall be held by the State Board and released by the State President of the Department of Community Colleges to meet loan commitments made by the various institutions.

(b) The Department of Community Colleges shall disseminate information concerning the Student Loan Fund to all chief administrative officers of technical institutes and community colleges, hereinafter referred to as institutions.

The Department of Community Colleges shall prepare news releases, brochures, and other publications interpreting the student loan program.

(e) Applicants for the loans shall be furnished copies of the governing rules and regulations adopted by this board. Recipients of loans, by virtue of having complied with all the requirements for receiving aid, shall thereby be acknowledging their agreement to abide by the purpose of the fund and the rules and regulations prescribed by the board. Each institution is responsible for administering the fund and for making and collecting the loans. Periodically, as determined by the State President of the Department of Community Colleges and the State Board, collections on the loans shall be transmitted to the State Board. The institution, through a student loan committee, shall be responsible for the selection of those candidates to be recipients of student loans.

(d) The State President of the Department of Community Colleges shall request institutions to furnish his office with appropriate enrollment verification that recipients of student loans are full-time students, and other necessary reports and information for proper records and control of total program.

(e) The State Board shall have authority to revoke any loan if and when it should be determined that:

(1) The information submitted in support of the application was willfully reported erroneously or incompletely; or

(2) The student is not pursuing his work satisfactorily.

(f) It shall be the responsibility of the loan recipients to keep the chief administrative officers of institutions informed of any change in address, status, or employment.

(g) Recipients of student loans may be granted financial assistance of not more than three hundred dollars (\$300.00) per academic school year. The number of loans will be determined by the demand and the availability of funds.

(h) Recipients of student loans shall execute promissory notes on forms approved by the Attorney General. All student loans shall be evidenced by said notes, approved by and made payable to the institution granting the loan, which shall bear interest at the rate of three and one-half percent per annum. Repayment of such principal together with accrued interest thereon, shall be made over a minimum of five-year repayment period, commencing one year after the maker of the note ceases to be a full-time student in an institution and ending six years after such date. Interest shall

accrue from the beginning of such repayment period. In the event of the loan recipient's total and permanent disability or death, the unpaid indebtedness shall be cancelled. In the event of unsatisfactory progress or permanent withdrawal from the institution, the entire indebtedness shall become due payable, with interest commencing on that date.

(i) Each candidate for a loan must:

(1) be a resident of North Carolina and be or expect to be a full-time student of the approved institution as defined by the State Department of Community Colleges;

(2) declare that he is in need of financial aid to continue his studies as evidenced by information on furnished forms;

(3) apply on forms provided by the State Department of Community Colleges at the appropriate time;

(4) be approved by the institution student loan committee;

(5) use the proceeds of the loan only for the payment of tuition and required fees, institutional equipment, materials, and books, board and room, and similar living expenses.

(j) Applications shall be submitted to the chief administrative officers of institutions on forms prescribed and supplied by the State President of the Department of Community Colleges. Additional forms essential to the operation of the Student Loan Fund may be developed in the discretion of the State President of the Department of Community Colleges. Additional regulations essential to the administration of the Student Loan Fund may be developed in the discretion of the State President of the Department of Community Colleges and the approval of the State Board.

The Student Loan Fund was established by the State Board to meet loan commitments by the various colleges. Administration of this program shall follow the procedures set forth in the Department's Accounting Procedures Manual.

Statutory Authority G.S. 115D-1; 115D-5.

.0305 EDUCATION SERVICES FOR MINORS

(a) The state board shall encourage individuals to complete high school before seeking admission to an institution: a college.

(b) A minor, 16 years old or older, may be considered a student with special needs and may be admitted to an appropriate program at an institu-

~~tion a college~~ if the local public or private educational agency determines that admission to the program is the best educational option for the student and the admission of such student to the program is approved by the ~~institution~~ college. This requirement may be waived if the student has been out of school at least six months and ~~his~~ the application is supported by a notarized petition of ~~his~~ the student's parent, legal guardian, or other person or agency having legal custody and control. The petition shall certify the student's residence, date of birth, date of leaving school, and the petitioner's legal relationship to the student.

(c) A high school student, 16 years old or older, based upon policies approved by the local public or private board of education and board of trustees, may be admitted to appropriate courses, except adult high school, concurrently under the following conditions:

- (1) Upon recommendation of the chief administrative school officer and ~~the~~ approval of the president of the ~~institution~~ college;
- (2) Upon approval of the student's program by the principal of the school and the president of the ~~institution~~ college; and
- (3) Upon certification by the principal that the student is taking at least three high school courses and is making appropriate progress toward graduation.

(d) High school students, taking courses pursuant to Paragraphs (b) and (c) of this Rule, shall not displace adults but may be admitted any quarter on a space-available basis to any curriculum or continuing education course. Once admitted, they shall be treated the same as all other students.

(e) Local boards of trustees and local school boards may establish cooperative programs in areas they serve in order to provide college courses to qualified high school students with college credits to be awarded to those high school students on successful completion of the courses, subject to approval by the State Board. Instructions for the implementation of this Rule are set forth in the "Manual on Cooperative Programs in North Carolina High Schools and Community Colleges."

(f) ~~(e)~~ Unless specifically authorized by state law, ~~institutions~~ colleges shall not start classes, offer summer school courses, or offer regular high school courses for high school students.

(g) ~~(f)~~ ~~An institution~~ A college may make available to persons of any age non-credit, non-remedial, enrichment courses during the summer quarter. These courses shall be self-supporting and shall not earn credit toward a

diploma, certificate, or degree at the ~~institution~~ college or high school.

(h) ~~(g)~~ At the request of the director of a training school having custody of juveniles committed to the Division of Youth Services, Department of Human Resources, ~~an institution~~ a college may make available to such juveniles any course offered by that ~~institution~~ college if they meet the course admission requirements. The Director's request shall include ~~his~~ the Director's approval for each juvenile to enroll in the course. Courses made available to such juveniles shall follow the approval process for immured groups as set forth in 23 NCAC 2E .0403.

Statutory Authority G.S. 115D-1; 115D-5; 115D-20.

SECTION .0400 - LIBRARIES AND LEARNING RESOURCES CENTERS

.0401 STANDARDS

~~Library and learning resources standards for books, furniture, etc., are included in the equipment standards approved by the state board.~~

Statutory Authority G.S. 115D-5.

.0402 CLASSIFICATION SYSTEM

~~The local board of trustees of each institution is authorized to adopt for the institution's library either the Dewey Decimal Classification System or the Library of Congress Classification System; provided, however, that an institution changing from one classification system to the other shall not receive extra state funds to facilitate the changeover.~~

Statutory Authority G.S. 115D-5; 115D-20.

.0403 SURPLUS AND IRREPARABLE BOOKS AND BOOK-LIKE MEDIA

~~Books and book like media originally purchased from state or federal funds, when they are no longer desired by an institution shall be de-accessioned at the institution. These materials may be disposed of by the institution through a local sale; through donations to non-profit, tax-exempt organizations or tax-supported agencies or institutions; through public bid sale by the State Surplus Property Agency; or by using other procedures prescribed by the department. Records and receipts of each sale shall be maintained for auditing purposes. The disposal of surplus and irreparable books and book-like media by colleges~~

shall follow procedures set forth in the Department's Accounting Procedures Manual.

Statutory Authority G.S. 115D-5; 115D-31.

SECTION .0500 - EQUIPMENT

.0501 EQUIPMENT PURCHASES

In order to make the best use of available state appropriations for the acquisition of equipment, to assure each institution college of its fair share of equipment funds, to achieve full utilization of all idle equipment in the system before similar equipment is purchased for any institution, college, and to arrange for the most effective administration of the equipment program, the following ~~polices~~ criteria are adopted:

- (1) Equipment (other than purchases from capital improvement funds), library books, and book-like materials provided each institution college are purchased by funds from the appropriate Budget Code, ~~16800.~~
- (2) Equipment and library collections for each institution college will be provided by ~~their~~ its annual equipment and library book budgets. ~~which will have funds identified for equipment and funds identified for library collections.~~ The funds allocated each institution college for equipment and for library collections will be determined by the Department of Community Colleges using the "equipment budgeting formula" and the "library book formula" and will be submitted to the State Board for approval.
- (3) The board of trustees and the president are responsible for managing and administering the funds provided for equipment and library collections to ensure that the institution college has the proper equipment and the library collection needed to support the authorized curricula and courses, ~~that have been authorized for an institution to offer.~~
- (4) ~~Equipment Fiscal Management~~
 - (a) ~~Equipment fiscal management standards have been established for five program areas to provide a fiscal management system to guide institutions in the requisitioning of equipment.~~
 - (b) ~~The cumulative total amount of equipment funds that will be allocated to an institution will be determined by its E/FTE size. That amount is the stan-~~

~~dard and is shown on the equipment fund phasing chart. For example, an institution in the size classification of zero to 163 E/FTE will be allocated a total of two hundred forty six thousand dollars (\$246,000) for equipment over a period of time. Twenty percent of this total amount, or forty nine thousand two hundred dollars (\$49,200), may be expended in the general area; and this amount is the suggested standard for the general area at the zero to 163 E/FTE size level. Suggested expenditure for the functional areas are: 20 percent for general area, two percent for adult education area, 15 percent for college transfer and general education area, 60 percent for occupational education area and three percent for special education area.~~

- (4) ~~(5) Title to administrative and instructional equipment purchased with state-allocated funds is held by the State Board and will become a part of the Community College System community college system equipment inventory, and such Such equipment will be eligible for transfer to other institutions, colleges.~~
- (6) ~~New curriculum program requests to the General Assembly shall also include, as well as current expense funds needed, that detailed statements of equipment funds required are available to support the new educational programs.~~

Statutory Authority G.S. 115D-5; 115D-31; 115D-54.

.0502 SURPLUS PROPERTY

The State Board hereby delegates to the local governing boards of the respective institutions colleges the power to dispose of personal property to which the governing ~~board~~ boards of the institutions colleges hold the legal title, titles as prescribed by law.

Statutory Authority G.S. 115D-5; 115D-14; 115D-54.

SECTION .0600 - INSTITUTIONAL EVALUATION

.0603 ACCREDITATION BY THE SOUTHERN ASSOCIATION

The State Board requires all ~~institutions~~ colleges to seek obtain and maintain regional accreditation by the Southern Association of Colleges and Schools, ~~and to follow the necessary procedures involved in the reaffirmation of this accreditation.~~ The State System President, when requested, will provide assistance to ~~institutions~~ colleges seeking regional accreditation.

Statutory Authority G.S. 115D-1; 115D-3; 115D-5.

.0604 CURRICULUM PROGRAM REVIEW

Each college shall monitor the quality and viability of each of its curriculum programs. Each program shall be reviewed at least once every five years with regard to the achievement of its stated purpose, quality of instruction, curriculum design, cost, student outcomes, and contribution to the overall mission of the college. Summary reports of these reviews shall be transmitted to the System President, ~~of the Community College System.~~

Statutory Authority G.S. 115D-5.

SECTION .0700 - CIVIL RIGHTS

.0701 CIVIL RIGHTS

(a) ~~The state board~~ State Board requires that the Department and the ~~institutions~~ colleges comply with the provisions of the Civil Rights Act of 1964 and other acts banning discrimination because of race, national origin, color, religion, sex, ~~handicap~~, disability, age or political affiliation.

(b) Compliance Forms. State Board policy requires that all ~~institutions~~ colleges maintain up-to-date compliance forms for the 1964 Civil Rights Act, Section 504 of the Rehabilitation Act of 1973, and Title IX of the Education Amendments of 1972, ~~and that a copy of each institution's current compliance form be filed with the office of the State President.~~

Authority G.S. 115D-5; P.L. 88-352; 45 C.F.R. 676.52.

.0702 EQUAL EMPLOYMENT OPPORTUNITY

The ~~state board~~ State Board is committed to a policy of employment and assignment of personnel solely on the basis of qualifications and without regard to race, national origin, color, religion, sex, ~~handicap~~, disability, age, or political affiliation.

Authority G.S. 115D-5; 45 C.F.R. 676.52.

.0703 EMPLOYMENT OF WOMEN/ MINORITIES IN ADMINISTRATIVE POSITIONS

The ~~state board~~ State Board encourages an expanding employment of women ~~and minorities~~ in administrative positions, ~~in those instances where qualified female applicants are available for such positions.~~

Statutory Authority G.S. 115D-5; P.L. 88-352.

.0704 ADOPTION OF DESEGREGATION PLAN

~~The State Board has approved "The Revised North Carolina State Plan for the Further Elimination of Racial Duality in Public Higher Education Systems, Phase II: 1978-1983 Community Colleges and Technical Institutes (State Plan: Phase II)" and preliminary timetables and estimates of annual costs to implement "State Plan: Phase II," dated February 2, 1978. State board approval is contingent upon approval by the U.S. Department of Education and, in instances for which additional funds are required, upon appropriation of the required funds by the North Carolina General Assembly.~~

Statutory Authority G.S. 115D-5; P.L. 88-352.

.0705 PROCEDURES FOR PROVIDING DESEGREGATION IMPACT INFORMATION

(a) ~~The state board approved those aspects of "The Revised North Carolina State Plan for the Further Elimination of Racial Duality in the Public Higher Education Systems, Phase A: 1978-83" (the Plan) that pertain to the state board, the department, and the institutions. The department is committed in the plan to report to the Department of Education, Office for Civil Rights, the impact the proposed actions listed below will have upon the further elimination of racial duality of public post-secondary institutions. Institutions are responsible for completing the desegregation impact statement when requesting state board approval for any of the following actions:~~

- (1) ~~approval and funding of new construction or major expansion or renovation of facilities;~~
- (2) ~~approval of new curriculum programs;~~
- (3) ~~approval of any contract to which any institution proposes to be a party in contracted relationships with any other institution or agency, whether public or~~

~~private, for services to students or to staff of an institution;~~

- (4) ~~approval to establish a new institution, including the legal addition of a private institution to the Community College System.~~

~~(b) The department is responsible for reviewing the desegregation impact statement and making recommendations to the state board based upon such review. Implementation of the requested action is contingent upon state board approval. In the event that a proposed action is not recommended for approval by the department the initiating institution may request a meeting to review the desegregation impact statement. For such review, additional information may be submitted. The Department will make reports to the Department of Education, Office for Civil Rights, concerning its commitments in the plan.~~

Statutory Authority G.S. 115D-5; P.L. 88-352.

SUBCHAPTER 2D - COMMUNITY COLLEGES: FISCAL AFFAIRS

SECTION .0100 - SALARIES

.0101 ESTABLISHING PAY RATES

(a) The monthly and annual salaries or hourly rates of pay from state funds for full-time and part-time personnel in community colleges shall be established by the president of the college with the approval of the board of trustees of the college within the ~~line item~~ budget approved for the college by the State Board and in accordance with the regulations approved by the State Board, except that the state-funded portion of the salary of the president of a college shall be approved by the ~~President of the Community College System~~ President in accordance with the state salary schedule for presidents. Salary increases shall be granted annually or upon promotion to a higher position. Legislative increases shall be granted according to requirements set forth by the General Assembly. The State Board shall adopt a minimum and maximum amount of state funds which may be paid to any individual working in a college. In lieu of a salary table, the minimum and maximum amounts shall be based on the lowest and highest amounts used in the 1980-81 fiscal year and will be increased in subsequent years based on actions of the General Assembly. Individuals shall be paid between the minimum and maximum amounts at a level determined by the salary approving authority at the college.

(b) All hourly, monthly, and annual salaries for full-time or part-time personnel shall be certified by the president of the college and reported to the ~~Department.~~ department.

~~(c) Administrative procedures, forms, and regulations for the implementation of the above policies shall be developed by the Department.~~

~~(c) (d) The State Board shall adopt a state salary schedule for presidents in the system. The President of the Community College System~~ President shall determine the proper placement of a newly-hired president on the state salary schedule based on the size of the college and the individual's years of experience as a college president. The total salary compensation for any president shall not exceed the maximum amount for the salary grade.

- (1) College size as determined by the total FTE served and reported in the enrollment reports furnished the department.
- (2) Number of years of experience as a college president:
 - (A) Initial placement will allow credit for only 10 years of experience.
 - (B) Progression from the minimum or "0" step to the midpoint or step "10" shall be based on additional years of experience.
 - (C) Advancement toward grade maximum after attaining the midpoint of the grade shall be based on merit increases as recommended by the local boards and within state allocations available.
 - (D) Newly-hired presidents will not receive salary increments for any years in which a salary freeze was in effect for community college presidents.
- (3) Changes in grade levels:
 - (A) President with 0 to 10 years of presidential experience moving to another grade shall be placed in the new grade's range at the current experience level.
 - (B) Presidents with greater than 10 years of experience moving to another grade will receive a salary adjustment only if the current salary exceeds the new salary grade's maximum salary limit, in which case, the salary will be adjusted to the maximum of the new grade.
- (4) Total salary compensation from all sources shall not exceed the maximum for the salary grade as determined by

the college's size. Salary compensation is defined as those monies paid from whatever source for which no documentation or expense is required, or which is treated as salary for retirement benefit purposes.

(5) An interim president's salary will be set at the step of the salary grade for the respective college. Years of presidential experience will be awarded up to 10 years for placement on the appropriate step.

(6) Presidential salary grades shall reflect the following:

<u>FTE</u>	<u>Minimum</u>
<u>Midpoint</u>	<u>Maximum</u>
<u>These data shall be increased annually based on legislative action and reviewed no less than every three years to assure their continued national competitiveness.</u>	

(d) Forms and instructions for the implementation of this Rule shall be developed by the department and set forth in the department's Accounting Procedures Manual.

Statutory Authority G.S. 115D-5; 115D-54.

.0103 EDUCATIONAL LEAVE WITH PAY

(a) The term "educational leave" ~~as defined in this Regulation~~ refers to the release from duties or time normally required of a full-time employee in carrying out his the full load of responsibilities assigned.

(b) Each local board of trustees shall adopt an educational leave policy for employees. State funds may be used to pay employee salaries while they are on educational leave if the following criteria are incorporated in the local board of ~~trustees~~ trustees' policy:

- (1) The employee is employed full-time on a 9-, 10-, 11-, or 12-month ~~9-, 10-, 11-, or 12-month~~ basis.
- (2) The employee must be under contract to the institution college for the next academic year.
- (3) Educational leave will not exceed a period of 60 work days one university semester a calendar year.
- (4) An employee who fails to honor the contract stipulated in Subparagraph (b)(2) of this Rule shall be required to repay the amount expended for the educational leave. If the employee fulfills a portion of the contract before

failing to honor the contract, repayment shall be based on a pro-rata portion (e.g., if an employee works 4 months of a 12-month contract, a repayment of 66.7 percent of the educational leave would be required).

Statutory Authority G.S. 115D-3; 115D-5; 115D-54.

.0104 MILITARY LEAVE

~~Leave with pay shall be granted to members of reserve components of the U.S. Armed Forces for certain periods of active duty training and for state military duty. Reserve components of the U.S. Forces are the National Guard, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air Force Reserve and the Coast Guard Reserve. The Civil Air Patrol is not a reserve component; it is an Air Force Auxiliary and its members are not subject to obligatory service. The National Guard is unique among the reserve components in that it has a dual role, serving both as a federal reserve component and as the State Militia. In its role as the State Militia, the North Carolina Army National Guard and the North Carolina Air National Guard respond to the Governor who is their Commander in Chief and serve as the military arm of the state government. Therefore, the National Guard is subject to active state duty upon order of the Governor:~~

- (1) ~~Periods of Entitlement for All Reserve Components. Military leave with pay shall be granted to full-time or part-time permanent (prorated for part-time employees), provisional trainee and probationary employees for 96 working hours annually for any type of active military duty of a member not on extended active duty as defined below. On rare occasions due to annual training (summer camp) being scheduled on a federal fiscal year basis, an employee may be required to attend two periods of training in one calendar year. For instance, the employee may be required to attend annual training for federal fiscal year 1980 in March and for federal fiscal year 1981 in November. For this purpose only, an employee shall be granted an additional 96 hours military leave during the same calendar year as required.~~
- (2) ~~Additional Periods of Entitlement for National Guard Members~~

- ~~(a) Infrequent special activities in the interest of the state, usually not exceeding one day, when so ordered by the Governor or his authorized representative;~~
- ~~(b) Active state duty (domestic disturbances, disasters, search and rescue, etc.) for periods not exceeding 30 consecutive calendar days; For periods in excess of 30 days, employees shall be entitled to military leave with differential pay between military pay and regular state pay if military pay is the lesser. Military leave for active state duty is to be considered separate from and in addition to military leave which may be granted for other purposes.~~
- ~~(3) Periods of Entitlement for Civil Air Patrol. When performing missions or encampments authorized and requested by the U.S. Air Force or emergency missions for the State at the request of the Governor or the Secretary of Crime Control and Public Safety, a member of the Civil Air Patrol is entitled to military leave not to exceed a combined total of 96 hours (pro-rated for part-time employees) in any calendar year unless otherwise authorized by the Governor. Such service may be verified by the Secretary of Crime Control and Public Safety upon request of the employing agency.~~
- ~~(4) Unacceptable Periods. Employees shall not be entitled to military leave for the following periods:~~
 - ~~(a) Regularly scheduled unit assemblies usually occurring on weekends and referred to as "drills." Although these periods are unacceptable for military leave with pay, the employing agency is required by federal law to excuse an employee for regularly scheduled military training duty. If necessary, the employee's work schedule shall be appropriately rearranged to enable the employee to attend these assemblies. To determine the dates of these regularly scheduled unit assemblies, the employing agency may require the employee to provide a unit training schedule which lists training dates for a month or more in advance. Employing agencies are not required to excuse an employee for military service performed under the circumstances defined in (b), (c), and (d) of this Item;~~
 - ~~(b) duties resulting from disciplinary actions imposed by military authorities;~~
 - ~~(c) for unscheduled or incidental military activities, such as volunteer work at military facilities, unofficial military activities, etc.;~~
 - ~~(d) for inactive duty training (drills) performed for the convenience of the member, such as equivalent training split unit assemblies, make up drills, etc.~~
- ~~(5) Administrative Responsibilities. The president of the institution may require the employee to submit a copy of his orders or other appropriate documentation evidencing performance of required military duty.~~
- ~~(6) Retention and Continuation of Benefits. During the period of military leave with pay, no employee shall incur any loss of state service or suffer any adverse service rating. The employee shall continue to earn and accumulate sick and annual leave, aggregate service credit, and receive any promotion or salary increase for which otherwise eligible.~~
- ~~(7) Leave for Physical Examination for Military Service. An employee shall be granted necessary time off when required to undergo a physical examination relating to military service.~~
- ~~(8) Military Leave With Differential Pay. Military leave with differential pay between military pay and regular state pay, if military pay is the lesser, shall be granted for active state duty for periods in excess of thirty consecutive days.~~
- ~~(9) Military Leave Without Pay. Military leave without pay shall be granted for certain periods of active duty or for attendance at service schools. Except for extended active duty use of all or any portion of an employee's 96 hours annual military leave (prorated for part-time employees) with pay or regular annual (vacation) leave may be used in lieu of or in conjunction with military leave without pay.~~
- ~~(10) If additional information is required, reference should be made to the North Carolina Office of State Personnel Manual.~~
 - (a) The rules concerning military leave, codified as Title 25, Subchapter 1E, Section .0800, are hereby adopted by reference including any subse-

quent amendments and editions of these Rules to apply to community college system employees.

(b) Copies of 25 NCAC, Subchapter 1E, Section .0800 may be inspected in or obtained from the Office of the System President, Department of Community Colleges, 200 West Jones Street, Raleigh, North Carolina, 27603-1337.

Statutory Authority G.S. 115D-5; 127A-116.

.0105 ANNUAL: SICK: MATERNITY: AND FUNERAL LEAVE AND HOLIDAYS

~~Annual leave, sick leave, maternity leave, funeral leave, civil leave and holiday leave policies shall be established by each local board of trustees and a copy filed with the State President. Sick leave qualifying for sick pay exclusion of social security benefits must conform to the guidelines developed by the Federal Government which defines qualifying sick leave. (See Accounting Procedures Manual).~~

Statutory Authority G.S. 115D-5.

.0109 LONGEVITY PAY PLAN FOR COLLEGE PERSONNEL

(a) Employees of ~~institutions~~ colleges in the community college system assigned to permanent full-time or permanent part-time positions shall receive longevity pay if the employees meet the requirements of total qualifying service set forth in this Rule.

(b) Total service for the longevity pay plan is based on a month-for-month computation of permanent full-time and permanent part-time (20 hours or more, but less than full-time) employment with:

- (1) ~~an institution~~ a college in the community college system or a school administrative unit regardless of the source of salary and including state, local or other paid employment.
- (A) Employment for a school year is equivalent to one full calendar year (credit for a partial year is given on a month-for-month basis).
- (B) In no event will an employee earn more than a year of total service credit in a 12-month period.
- (C) If an employee is in pay status (working, exhausting vacation or sick leave, or when on workers' compensation leave or is on authorized military leave) for one-half or more of the regularly scheduled workdays in a

month, credit shall be given for the entire month.

- (2) departments, agencies, and institutions of the State of North Carolina, (e.g., State Department of Administration, State Revenue Department, University of North Carolina, State Department of Community Colleges, State Department of Public Instruction).
- (3) other governmental units which are now agencies of the State of North Carolina (e.g., county highway maintenance forces, War Manpower Commission, judicial system).
- (4) county agricultural extension service.
- (5) local mental health, public health, social services or civil preparedness agencies in North Carolina, if such employment is subject to the State Personnel Act.
- (6) authorized military leave.
 - (A) Credit for military leave is granted only for persons who were employees of the State of North Carolina or other agencies listed in Paragraph (b) of this Rule who were granted leave without pay:
 - (i) for a period of involuntary service plus 90 days or for a period of voluntary enlistment for up to four years, plus 90 days, so long as they returned to employment in a covered agency within the 90 days; or
 - (ii) for a period of active duty for service, alerts, or required annual training while in the National Guard or in a military reserve program.
 - (B) Employees who enlist for more than four years or who re-enlist shall not be eligible for military leave.
 - (C) Employees hospitalized for a service-connected disability or injury shall be granted additional leave without pay for the period of hospitalization plus 90 days or for 12 months, whichever is shorter. The hospitalization must commence before reinstatement into qualifying service for the provisions of this part to apply.
- (c) Total service for the longevity pay plan does not include:
 - (1) Temporary service, that is, service by an employee who works in a temporary

position, or who is working temporarily in the absence of a permanent employee on leave of absence, except that temporary service of employees of the General Assembly will be counted and the full legislative terms of the members. Service of legislative interns and pages will not be counted.

- (2) Periods of out-of-state employment with other states, schools, colleges or universities.
- (3) Periods of employment with agencies of the federal government.
- (4) Periods of military service other than those categories described in Subparagraph (b)(6) of this Rule.
- (5) Periods of employment for employers other than the State of North Carolina even though credit in the North Carolina retirement system has been purchased for such employment.

(d) An employee assigned to a permanent full-time or permanent part-time position is eligible for longevity pay only after the date the employee has completed ten years of total service with a community college, a school administrative unit or a agency.

(e) Annual longevity pay amounts are based on the length of total service to agencies, community colleges, and school administrative units as designated in Paragraph (b) of this Rule and a percentage of the employee's annual rate of pay on the date of eligibility.

- (1) Longevity pay amounts are computed by multiplying the employee's annual base or contract salary rate as of the eligibility date by the appropriate percentage, rounded to the nearest dollar, in accordance with the following table:

Years of Total State Service	Longevity Pay Rate
10 but less than 15 years	1.50%
15 but less than 20 years	2.25%
20 but less than 25 years	3.25%
25 or more years	4.50%

- (2) Longevity pay is not considered a part of annual base or contract pay nor is it to be represented in personnel and payroll records as a part of annual base or contract salary. (Salary increases effective on the same date as the longevity eligibility date shall be incorpo-

rated in the base pay before computing longevity).

(f) The payment of longevity pay to eligible employees is automatic. Payment shall be made in a lump sum, subject to all statutory deductions, during the monthly pay period in which the employee has satisfied all eligibility requirements.

- (1) Eligible employees on worker's compensation leave shall receive longevity payment in the same manner as if they were working.
- (2) If an employee retires, resigns, dies, or is otherwise separated on or after the date of becoming eligible for a longevity payment, the full payment shall be made to the employee or to the estate of the employee in case of death.
- (3) If, on the effective date of this policy, an employee has completed the qualifying length of service but is between eligibility dates, longevity payment will be made on the next longevity anniversary date.
- (4) If the employee has worked part but not all of one year since qualifying for longevity payment, the employee shall receive a pro-rata payment in the event of:
 - (A) separation from the institution;
 - (B) change in employment status to temporary part-time, or to a position not covered in this policy.
- (5) If an employee separates from a community college and receives a partial longevity payment and is employed by another community college, school administrative unit, or state agency, the balance of the longevity payment shall be made upon completion of additional service totaling 12 months for an employee having a 12-month period of employment, or upon completion of a lesser term for an eligible employee on less than a 12-month period of employment. The balance due is computed on the annual or contract salary being paid at the completion of the requirement.
- (6) If an eligible employee at the time of separation has a fraction of a year toward the next higher percentage rate, payment shall be based on the higher rate; however, the basic eligibility for longevity requirement must have been satisfied before this provision can apply.

- (7) Leave without pay in excess of one-half the work days in a month (with the exception of authorized military leave and worker's compensation leave) will delay the longevity anniversary date on a month-for-month basis.

(g) Longevity pay shall be made from the same source of funds and in the same pro-rata amounts from which the employee's regular annual salary is paid (e.g. state, federal, local funds).

- (1) Local trustees may provide longevity payments to employees from other than state allotted funds.
- (2) Only personnel employed in positions allotted by the formula in Rule 2D .0301(d) of this Subchapter shall receive longevity pay from the longevity reserve. An additional allocation will be made for this purpose.
- (3) Employees in state-allotted positions paid with state-allotted funds other than regular formula allotments shall receive longevity pay from the same source of funds as their salary payment.
- (4) Employees paid with the following specified funds shall receive longevity pay from these respective sources:
 - (A) Adult ~~basic education~~ Basic Education funds.
 - (B) Human ~~resource development~~ Resource Development funds.
 - (C) New ~~industry~~ Industry funds.
 - (D) JTPA funds.
 - (E) Special allotment funds.
 - (F) Federal ~~vocational educational~~ Vocational Educational funds, and
 - (G) Local funds.

(h) The president of each community college shall:

- (1) Determine the quantity of qualifying service and the longevity anniversary date for each eligible employee.
- (2) Furnish to the state board, on forms prescribed by the ~~Department~~, department, data necessary for a determination of the cost of the longevity pay plan from state funds.

(i) The System President ~~of the Community College System~~ shall determine the total cost of the longevity pay plan from data submitted by each ~~community college~~. If funds are not adequate to pay longevity rates established under this Rule, the System President ~~of the Community College System~~ shall submit a budget revision to the State

Budget Officer requesting additional funds from other available sources within State Aid.

Statutory Authority G.S. 115D-5; S.L. 1979, ch. 1137, s. 21.

SECTION .0200 - STANDARD STUDENT FEES

.0201 AUTHORITY TO ESTABLISH TUITION AND FEES

(a) Authority to Charge. All tuition and fees charged to students for applying to or attending any ~~institution~~ college of the system must be approved by the State Board. No tuition rate or fee schedule shall be charged without appropriate resolution of the State Board specifying the purpose for which the fee is charged.

(b) Time Due and Deferred Payment. Tuition and required academic fees are due and payable at the time of the student's registration. The ~~institution~~ college shall, with the approval of the local governing board, prescribe written procedures to permit short-term deferred payment or payment in installments; provided, however, that no student shall be permitted to graduate or to register for a new quarter unless payment of such outstanding balance has been guaranteed in writing by a financially responsible person or organization. ~~Institutions~~ Colleges are authorized to withhold transcripts of grades pending resolution of the outstanding obligations. This statement shall not be construed to prohibit ~~an institution's~~ a college's local governing board from adding more stringent provisions, if deemed advisable.

(c) Establishing Additional Fees

- (1) In the event that the president and the governing board of ~~an institution~~ a college believe that the ~~institution~~ college needs to charge a student fee other than the fees already authorized by state statute or State Board regulation, the president of the ~~institution~~ college shall file with the State Board through the State System President, a request for authorization which shall include the following documentation:

- (A) a resolution of the local governing board requesting authorization of the fee, stating the exact rate of payment proposed; and
 - (B) a brief explanation and justification stating the purpose of the ~~levy~~, fee.
- (2) Any additional fee established by ~~an institution~~ a college which is approved

by the State Board is considered a separate charge to curriculum students and shall not be credited as part payment of tuition.

- (3) Receipts collected from ~~the levy of~~ any special student fee shall be deposited as State Board regulation, consistent with state law, shall direct. The State Board may provide for special allocations to the ~~institution, college,~~ within the amount collected from the special student fee, in order to pay expenditures for the ~~institutional college~~ purposes approved by the State Board incident to authorizing the fee to be charged.

- (4) Nothing in any rule shall be construed to condone or to authorize any practice of depositing receipts from any student tuition and/or student fees in a special fund account at ~~an institution, a college,~~ except the student activity fee receipts authorized by G.S. 115D-39.

(d) Additional Student Charges. The Board of Trustees may determine additional student charges for items such as tools, supplies, equipment, insurance, uniforms, and travel. Such charges should be kept to a minimum so as to be consistent with the State Board philosophy to keep student costs as low as possible. Students shall be informed of all approximate charges for a course at the time they enroll. ~~Institutions~~ Colleges shall inform the ~~State Department~~ department regarding all such charges and modifications.

Authority G.S. 115D-5; 115D-39; 115D-54; 116-143.1; N. C. Constitution, Article IX.

.0202 CURRICULUM

(a) Tuition.

- (1) Student Residence Classification. ~~Reference should be made pursuant to the provisions of "A Manual to Assist the Public Higher Education Institutions of North Carolina in the Matter of Student Residence Classification for Tuition Purposes."~~ The classification of students for tuition purposes shall be made pursuant to the provisions of "A Manual to Assist the Public Higher Education Institutions of North Carolina in the Matter of Student Residence Classification for Tuition Purposes." ~~authorized by the State Board for use in this area.~~

(2) Tuition Rates In-State.

- (A) A general and uniform tuition rate is established by the State Board for full-time curriculum students of ~~thirty-nine dollars (\$39.00)~~ per quarter for North Carolina residents.

- (B) A North Carolina resident who is a part-time student shall pay ~~three dollars and twenty-five cents (\$3.25)~~ a per credit hour rate for curriculum instruction, ~~but not to exceed total payments of thirty-nine dollars (\$39.00) as established by the State Board,~~ for such tuition in any quarter. ~~The formula for computation of credit-hour equivalency and credit hours into tuition charges for part-time curriculum instruction shall be as follows:~~

- (i) ~~1 class hour = 1 credit hour,~~
- (ii) ~~2 laboratory hours = 1 credit hour,~~
- (iii) ~~3 shop hours = 1 credit hour,~~
- (iv) ~~1 quarter credit hour X \$3.25 = tuition per quarter but not to exceed \$39.00 total per quarter.~~

- (3) Learning Laboratory. No tuition fees charged.

- (4) Tuition Creditable Upon Transfer of Student. When a student has paid the required tuition at ~~an institution~~ a college and is given permission to transfer to another ~~institution~~ college within the system during the academic quarter for which the ~~fees were~~ tuition was paid, the ~~institution~~ college from which the student transfers shall issue to him a statement certifying the amounts of tuition that have been paid, and the ~~institution~~ college to which he is transferring shall accept such certificate in lieu of requiring payment ~~of the same~~ again.

- (5) Tuition Student Enrolled in More Than One ~~Institution~~ College. Where a student desires to enroll for the same quarter at two or more ~~institutions~~ colleges of the system, the total amount of tuition and fees may be paid to the student's "home" ~~institution~~ college. The home ~~institution~~ college shall, in that case, assume responsibility for arranging with the other ~~institution~~ college or ~~institutions~~ colleges for enrolling the student in appropriate classes without further charge. Such arrangement shall be made by exchange of letters between the ~~institutions~~ colleges involved. Student membership hours for instruction received shall, in any event, be reported by the ~~institution~~

- college in which the respective instruction occurred.
- (6) Tuition Rates Out-of-State.
- (A) Any full-time curriculum student who is an out-of-state resident shall pay tuition fees as follows: ~~seven hundred ninety two dollars (\$792.00) for the year, or one hundred ninety eight dollars (\$198.00) established by the State Board for each quarter.~~
- (B) An out-of-state resident who is a part-time student ~~(registered for less than 12 credit hours in a given quarter)~~ shall pay ~~sixteen dollars and fifty cents (\$16.50) a per credit hour rate for curriculum instruction as established by the State Board.~~
- (7) Tuition Exemptions.
- (A) Senior Citizens. North Carolina residents, 65 years of age and older, shall be ~~exempted~~ exempt from the payment of curriculum tuition, and ~~extension registration fees in accordance with Chapter 981 of the 1977 Session Laws.~~ FTE credit shall be given for the enrollment of these students on the same basis as students who pay tuition.
- (B) Prison Inmates. No tuition ~~or fees of any kind~~ shall be charged curriculum ~~or extension~~ students who are prison inmates.
- (C) ~~Institutional~~ College Staff Members. Full-time college ~~Institutional~~ staff members may enroll in one curriculum or extension course per quarter in the system without payment of tuition, or registration fee charges. ~~(This exemption applies to full time staff members only.)~~
- (D) High School Students. High school students taking courses at community colleges pursuant to 23 NCAC 2C .0305 of this Chapter are exempt from tuition and registration fees.
- (E) Basic Law Enforcement Training Program (BLET) for law enforcement officers. All law enforcement officers employed by a municipal, county, state, or federal law enforcement agency when taking courses in a state-mandated BLET training program, are eligible for the tuition waiver.

(b) Pre-Enrollment Deposit. When a prospective student has made application for admission and has been accepted, registers in advance of the opening of the regular registration period of a quarter, the student may be required to pay an enrollment advance deposit as established by the State Board, for the classes for which registered up to a maximum of fifteen dollars (\$15.00). This advance payment is not refundable unless covered by the refund policy stated in Subparagraph (f e) (1) of this Rule. This advance payment shall be deposited to the State Treasurer and credited against the full tuition ~~charges~~ due from the student during the regular registration period.

(c) Enrollment Fee (Late). A late enrollment fee ~~of set by the State Board up to five dollars (\$5.00)~~ may be charged curriculum students registering after the specific closing date of registrations, with such fees becoming state funds.

~~(d) Uniforms. Student uniforms or other special wearing apparel shall not be paid for from state budgeted funds except in the case of those educational programs (e.g. LPN) where it is found necessary by the State Board that the wearing of uniforms be required.~~

~~(d) (e) Student Activity Fee. Institutions Colleges~~ may establish a student local activity fees fee which may include a parking fee or a scheduled vehicle registration fee. However, students shall not be assessed a parking fee, a vehicle registration fee, or a similar fee in addition to the established student activity fee. The maximum amount charged for the student activity fee shall be determined by the State Board, not to exceed twenty eight dollars (\$28.00) per student per fiscal year. (This maximum is intended to include any scheduled parking fee.) Funds derived from collection of a student activity fee ~~will~~ shall be accounted for and expended under standing procedures and regulations adopted by the local governing board of the ~~institution: college.~~ Any expenditure from the fund must ~~be related~~ directly to benefit students, student activities.

~~(e) (f) Tuition Refunds.~~

(1) A refund shall not be made except under the following circumstances:

(A) A full refund may be made upon request of the student if the student officially withdraws from the class(es) within 10 calendar days after the first day of class as published in the college calendar.

(B) A letter of credit may be issued at the discretion of the college president or designee upon the written request of

the student at any time after the 10th calendar day. If the letter of credit is issued, the student shall not be reported for budget/FTE purposes. The letter of credit must be used by the student to whom it was issued within one year from the date of issuance. The letter may be used at any college in the system.

(C) For classes beginning at times other than at the beginning of the quarter, apply the same provisions set forth in Part (1)(A) and (B) of this Paragraph except use 10 calendar days from the first day of the class(es) as the determination date.

(1) ~~Tuition refunds for students shall not be made unless the student is, in the judgment of the institution, compelled to withdraw for unavoidable reasons. In such cases, two thirds of the student's tuition may be refunded if the student withdraws within 10 calendar days after the first day of classes as published in the school calendar. Tuition refunds will not be considered after that time. Tuition refunds will not be considered for tuition of five dollars (\$5.00) or less, except if a course or curriculum fails to materialize, all the students' tuitions shall be refunded.~~

(2) ~~In order to comply with federal regulations in institutions not regionally accredited, the State Board authorized modification of the tuition refund policy so that veterans or war orphans receiving benefits under U.S. Code, Title 38, Chapters 33 and 35, can be refunded the pro-rata portion of the tuition fee not used up at the time of withdrawal of such students.~~

(3) ~~Where a student, having paid the required tuition and fees for a quarter, withdraws from the institution before the end of the quarter and the reasons for the withdrawal are found excusable by the institution's administration, the student may be allowed credit for unrefunded tuition and fees if he applies for readmission during any of the next four calendar quarters and petitions in writing to be allowed such credit.~~

(2) To comply with applicable federal regulations regarding refunds to individuals or groups, federal regulations

will supersede the state refund regulations stated in this policy.

(3) ~~(4)~~ Where a student, having paid the required tuition and fees for a quarter, dies during that quarter (prior to or on the last day of examinations of the ~~institution~~ college the student was attending), all tuition and fees for that quarter may be refunded to the estate of the deceased.

Authority G.S. 115D-5; 115D-54; 116-143.1; N. C. Constitution, Article IX; P.L. 93-508.

.0203 EXTENSION PROGRAMS

(a) Registration fees for Non-Curriculum Extension Instruction. For purposes of administration of this Rule, non-curriculum extension instruction means all instruction organized, supervised, or delivered by an instructor or instructors assigned responsibility for the teaching of any defined category of subject matter or special skills to be presented and developed through a single course, or through any discrete training program or training project organized and offered outside the regular curriculums curriculum programs offered by the institution: college.

(1) A registration fee, as established by the State Board, ~~of eight dollars (\$8.00)~~ shall be charged for each occupational extension class, ~~or academic course~~ and ~~fifteen dollars (\$15.00)~~ shall be charged for each practical skills or avocational course when such course is supported primarily by state funds except as otherwise specifically provided for in the following Subparagraphs.

(2) ~~A registration fee shall be charged for each extension class of 17 weeks or less. A registration fee shall be charged each 13 weeks for extension classes lasting longer than 17 weeks. Each local board is delegated the responsibility to establish registration fees for Community Service Programs (academic, practical skills, avocational, and cultural/civic activities).~~

(3) All recreational courses are must be self-supporting.

(A) Institutions Colleges are required to collect and deposit to a local account fees and other contributions in ~~sufficient amounts~~ to support entirely the costs of all recreational extension courses taught during the school year.

(B) Also, note Paragraph (e) (b) of Rule .0323 .0325 of this Subchapter regarding the reporting of student membership hours for this area.

(4) A registration fee shall be charged for each extension class of 17 weeks or less. A registration fee shall be charged each 13 weeks for extension classes lasting longer than 17 weeks.

(5) ~~(4) Extension Registration Fee Exemptions:~~

(A) Special Extension Training Programs. No fees of any kind shall be charged students enrolling for special extension training programs set forth in G.S. 115D-5(b).

(B) Senior Citizens. No extension registration fee shall be charged senior citizens attending ~~institutions; colleges.~~ "Senior Citizens" are defined to mean persons age 65 or older who are North Carolina residents.

(C) ~~Institutional~~ College Staff Members. Full-time ~~institutional~~ college staff members may enroll in one extension or curriculum course per quarter in the system without registration fee or tuition charges.

(b) Self-Supported Courses. ~~An institution A college shall have the authority to sponsor self-supporting courses, recreational courses [see 23 NCAC 2E .0101(e)(2)], and community service courses [see 23 NCAC 2E .0101(e)(1)], deposit income (if any) to a local account, and pay all expenses from such local account. However, student membership hours produced from such activities shall not be counted for inclusion when computing FTE for use in budget funding formulas at the state level.~~

(c) Driver Education. ~~Institutions Colleges are required to collect a student fee as established by the local board of trustees of eight dollars (\$8.00) for the 54 hour adult driver education training course offered through the community service program. extension program, such fee shall be deposited as state funds. The institutions may also charge each student a fee to pay non-personnel costs (car operation, administrative fee on loan cars, and instructional materials) at rates in keeping with the actual cost as determined by the state board. Such fees shall be deposited to state funds and shall be available for reallocation to the institutions based upon written justification. The administrative fee on loan cars shall be compatible with the rate established by the State Board of Educa-~~

~~tion for the comparable high school program. These funds may be used to purchase gasoline, oil, and car insurance, and to pay car loan administrative fees, and other essential expenditures.~~

~~(d) Refunds for extension courses. Registration fee refunds shall not be made unless a class fails to develop.~~

(d) Registration Fee Refunds. A refund shall not be made except under the following circumstances:

(1) A full refund may be made upon request of the student if the student officially withdraws from the class(es) prior to or on the first day of the class(es).

(2) A letter of credit may be made at the discretion of the college president or designee after the first day of class(es) upon written request of the student at any time during the quarter. Under this circumstance, the student shall not be reported for budget/FTE purposes. The letter of credit may be used at any college in the system, but it must be used by the student to whom it was issued within one year from the date of issuance.

(3) For classes beginning at times other than at the beginning of the quarter, also apply the same provisions as set forth in this Paragraph.

Statutory Authority G.S. 115D-1; 115D-5; 115D-54.

.0204 OTHER FEES

(a) Equipment Fees. A local equipment fee may be established, not to exceed the fee charged high school students, in cases where high school buildings and equipment are being used; such fees shall be deposited in the college's local account and paid to the local school unit.

(b) Damage or Breakage Fees. Colleges shall charge no breakage fees, property-damage fee, or laboratory fee to students, but except in the case of breakage or damage due to gross negligence or maliciousness, a student shall be expected to remunerate the college. His Credit may be withheld until proper payment is made.

(c) Library Fines. All library fines, except book-replacement fines, shall become local funds and be used for improvement of the library.

(d) General Educational Development (GED) Fee. All applicants who take the GED test at official GED Testing Centers in the system are

required to pay a fee established by the State Board. This fee shall not be required from individuals incarcerated or receiving treatment in institutions operated by the Department of Correction and the Department of Human Resources.

Statutory Authority G.S. 115D-5; 115D-54; S.L. 1979, ch. 1300.

.0205 DEPOSIT OF FEES

All registration, tuition, and instructional fees and book replacement fines shall become state funds when collected and must be deposited to the credit of the State Treasurer, ~~as provided in Chapter 115D, General Statutes of North Carolina.~~

Statutory Authority G.S. 115D-5; 115D-54; 115D-58.3.

SECTION .0300 - BUDGETING: ACCOUNTING: FISCAL MANAGEMENT

.0301 OPERATING BUDGET REQUESTS: DISTRIBUTION OF FUNDS

~~(a) General:~~

~~(1) — One full time equivalent (FTE) student represents sixteen student membership hours per week for 11 weeks or 176 student membership hours for each quarter enrolled.~~

~~(2) — Rule 23 NCAC 2D .0328 sets forth the specific categories for which FTE shall be calculated.~~

~~(a) (3)~~ Projections of full-time equivalent (FTE) students will be based on the following:

~~(1) (A)~~ Curriculum FTE projections will be based on the three-quarter academic year (fall, winter, spring).

~~(2) (B)~~ Continuing education FTE projections will be based on the full latest spring, summer, fall, and winter four-quarter fiscal year (summer, fall, winter, spring) average.

~~(3) (C)~~ Projections will be made, program by program, utilizing actual FTE for the most recent five-year period, as stated in Subparagraph (a)(1) and (2) of this Rule. If the actual FTE for the quarters needed are not available, the latest actual quarter will be multiplied by the latest five-year retention ratio to determine the appropriate estimates.

~~(4) (D)~~ The State Board may adjust the projections based on additional factors brought to its attention.

~~(5) (E)~~ The State Board will adopt an official projection of FTE.

(b) Appropriation Requests:

(1) Continuation Budget Requests. The continuation budget request will be based on the number of FTE and amount per FTE currently appropriated and increases in the continuation budget as directed by the Office of State Budget and Management. Also included in the continuation budget requests will be continuing categorized programs. ~~that are funded apart from the formula budget such as new industry, human resources development, etc.~~

(2) Expansion Budget Requests. The expansion budget requests may consist of, but is not limited to, the following items:

(A) an adjustment in the number of FTEs in existing programs based on the difference between the official FTE projections of the State Board and the existing level of FTEs requested in the continuation budget,

(B) an adjustment in expenditure per FTE,

(C) additional funding for new and special programs of instruction.

(c) ~~Allotment~~ State Board Reserve. A reserve will be requested from the General Assembly and shall be retained by the State Board for the purpose of making later allocations for enrollment growth, innovative programs, new concepts, etc.

(d) Formula distribution of funds for the current operation budget. Funds appropriated to the State Board ~~of Community Colleges~~ for current operation shall be allocated to the system colleges in accordance with formulas and procedures established by the State Board, ~~of Community Colleges~~, or as directed by the General Assembly. Formulas and procedures to allocate funds shall be published in the department's Accounting Procedures Manual. North Carolina Department of Community Colleges.

(e) JTPA Administrative Allotment. Student class hours for class size projects funded by the Job Training Partnership Act (JTPA) may not be included in the full-time equivalent (FTE) formula for earning budget/FTE. Administrative funds for operating these class size projects shall be allocated on the same basis as all other administrative formula funds.

Statutory Authority G.S. 115D-3; 115D-5;
115D-54.

.0302 GENERAL PROVISIONS: FORMULA ALLOTMENT OF OPERATING FUNDS

(a) A lump sum amount, based on the application of the formula, will be made to each institution as soon as possible after the Appropriations Act has been adopted by the General Assembly. At the same time, each institution will be notified of any restrictions that have been imposed upon the use of these funds.

(b) Institutional Budget Preparation

(1) Each institution shall prepare and submit for approval, on forms supplied by the Department, a line item budget in accordance with G.S. 115D-54.

(2) In years in which the General Assembly is in session, the following method of budget preparation shall be used:

(A) Budgets shall be submitted in accordance with G.S. 115D-54, with initial budgets for state funds based on the same levels as the current year.

(B) After the institutions have been notified of the actual allotment of state funds and the restrictions that may be imposed upon the expenditure of these funds, a revised budget shall be prepared and submitted in accordance with G.S. 115D-54.

(3) Institutional budgets submitted for approval in accordance with G.S. 115D-54 shall be reviewed by the department to assure compliance with allotments and budget restrictions.

(c) Monthly Report. Actual expenditures, by line item, and requests for certification of funds shall be submitted monthly in a manner specified by the Department.

(d) Transfers Between Budget Items

(1) The following line items as they relate to state funds cannot have transfers made into them without prior approval of the State Board:

(A) college transfer;

(B) recreational programs;

(C) plant operations and maintenance;

(D) capital outlay.

(2) The following line items as they relate to state funds cannot have transfers made out of them without prior approval of the State Board:

(A) adult high school;

(B) plant operations and maintenance;

(C) capital outlay.

(3) The following line items as they relate to state funds cannot have transfers made out of them except with the approval of the Department:

(A) new industry training;

(B) employee benefits.

(e) Institutions are encouraged to determine as soon as possible the amount of funds, if any, which they can release for reallocation to other institutions.

(f) The State Board may, from funds available to it from the one percent FTE reserve, voluntarily reverted funds and other funds which may be available to the State Board, consider making special allotments to individual institutions on the basis of documented emergency or special needs.

(g) The Department may make supplemental allotments during the fiscal year when properly justified, subject to the availability of funds. All such supplemental allotments shall be reported to the State Board.

Statutory Authority G.S. 115D-5; 115D-54.

.0303 DISBURSEMENT OF STATE FUNDS

G.S. 115D-58.3 requires that state State funds expended by the institutions colleges shall be disbursed through a disbursing account established for each institution college with the State Treasurer. The signature of persons authorized to sign vouchers issued on state funds shall be maintained on file with the State Treasurer and the State Board. The State Treasurer will furnish signature cards for this purpose.

Statutory Authority G.S. 115D-54; 115D-55; 115D-58.3.

.0304 EXPENDITURES OF STATE FUNDS: ACCREDITATION EXPENSES & DUES

Expenditures of state funds for accreditation expenses and dues shall be in accordance with procedures set forth in the department's Accounting Procedures Manual.

(a) Accreditation expenses relative to Southern Association of Colleges and Schools may be paid from state funds within the institution's current allotment. These expenses shall be limited to payment of travel, subsistence, lodging, and honorarium incurred by members of visiting committees, other bona fide representatives, and members of the staff of accrediting organizations.

This Rule permits payment of only those expenses for which an institution is customarily invoiced by an accrediting organization following a visit.

(b) The institution may pay from state funds the required annual dues of the Southern Association of Colleges and Schools, and such institutional association membership dues as the board of trustees deems to benefit the institution. Regarding membership dues in the Southern Association, this Rule applies to annual dues of correspondents and candidates for membership, as well as accredited members.

(c) The institution may also pay from state funds the fees for accrediting individual programs offered by the institution where such an accreditation is an official prerequisite for the licensing of graduates of such programs by legally designated professional or occupational licensing boards or agencies in the State of North Carolina. State funds may not be used to pay the accreditation costs of any other organizations or agencies.

Statutory Authority G.S. 115D-5; 115D-55.

.0305 EXPENDITURE OF STATE FUNDS: POSTAGE MACHINES

State funds may be used to rent postage machines in accordance with the procedures set forth in the department's Accounting Procedures Manual.

If the volume of mail justifies the rental of a postage machine, the cost of the rental fee for the machine may be paid from state funds and charged to budget subhead 7120, postage.

Statutory Authority G.S. 115D-5; 115D-54.

.0306 EXPENDITURE OF STATE FUNDS: GREETING CARDS

~~The purchase of greeting cards and also the postage to mail them are not proper expenditures from state funds.~~

Statutory Authority G.S. 115D-5; 115D-54.

.0307 EXPENDITURE OF STATE FUNDS: CERTIFICATE COSTS

State funds may be used to obtain certificates, diplomas, or degree forms in accordance with procedures set forth in the department's Accounting Procedures Manual.

~~Printed certificates, diplomas, or degrees produced through printshops at the institution may be paid from state funds available for Supplies and Materials. If these certificates, diplomas, or degrees are ordered from a commercial printshop,~~

~~the cost can be a part of the graduation fee charged to the student.~~

Statutory Authority G.S. 115D-5; 115D-39.

.0309 EXPENDITURE OF STATE FUNDS: TRAVEL AND ALLOWANCES

Travel regulations governing travel for institutional college personnel are published in section number five of the department's Accounting Procedures Manual. ~~published by the State Board. These Regulations can be obtained from the Department of Community Colleges, Raleigh, North Carolina.~~

Statutory Authority G.S. 115D-5; 115D-54.

.0310 LIVE PROJECTS

(a) Live projects are defined as:

- (1) educational programs in which students, as part of their educational experiences, repair or remodel equipment not owned by the institution college; or
- (2) educational programs that produce goods that are sold or services for which charges are made, such goods or services being the normal and necessary product of learning activities of students.

(b) In the case of (a)(1) of this Rule, the owner of the equipment must supply or pay for all parts required. In the case of (a)(2) of this Rule, the following regulations apply:

- (1) Where federal programs ~~such as CETA~~ are involved, ~~federal~~ regulations do not permit goods to be sold. In such programs, goods produced may be used for the benefit of the institution college or donated to another non-profit charitable or educational agency or institution.
- (2) For live projects that involve the purchase of equipment from the state or federal surplus property agency, the repair of this equipment and its sale as surplus under the regulations of the State Division of Purchase and Contract, the proceeds of such sales shall be deposited with the State Board and credited to the equipment budget of the institution college.
- (3) In other programs that fall under the above definition of live projects:
 - (A) The local board of trustees shall approve regulations, consistent with state laws and regulations, covering

the disposal of goods and services, charges made, etc.

- (B) The local board of trustees shall provide that the receipts be deposited to the State Treasurer (unless a "special local" fund account arrangement has been worked out in keeping with regulations of the department). Receipts deposited to the State Treasurer under this provision shall be allotted back to the ~~institution~~ college for expenditures during the same fiscal year.

- (C) Where a "special local" fund arrangement is set up as provided in (b)(3)(B) of this Rule, all costs made necessary because goods ~~and~~ or services are produced and then sold shall be paid from the "special local" account that receives the income. This includes materials used in producing the goods and services, extra personnel required to serve customers, specialized equipment that would not otherwise be required for instruction alone, and other costs directly related to a live project as distinguished from an instructional program that does not produce income. Detailed records must be maintained on the special local fund account in order that periodic financial statements may be prepared and a complete audit of the account made after the close of the fiscal year.

- (D) Where a "special local" fund arrangement is set up as provided in (b)(3)(B) of this Rule, the local board of trustees shall adopt regulations, consistent with procedures established by the ~~Department of Community College~~ department's Accounting Procedures Manual, which set forth the purposes for which funds from the special local fund [in excess of those required under part (b)(3)(C) of this Rule] may be used. Such funds shall not be used to supplement regular salaries of permanent employees whose base salaries are paid from state or local appropriations.

(c) The clientele served in providing clinical experience for students by carrying on live projects shall be limited to students and employees in the system so far as possible. Where, however,

outside clients become necessary in order to provide enough experience to carry out educational programs, clients should be selected from the general public on the basis of standing criteria adopted and published by the ~~institution~~ college, not inconsistent with State Board policies.

(d) The above regulations, except those under (b)(2) of this Rule, do not apply to the disposal of any state owned equipment, which must be declared surplus and sold by the State Board.

Statutory Authority G.S. 115D-4; 115D-54; P.L. 97-300.

.0311 HANDLING OVERHEAD RECEIPTS AND ALLOWANCES

Funds accruing to ~~an institution~~ a college as federal allowances, including overhead allowances on federal grant projects, veteran student processing per capita allowances, work study processing allowances, and similar items and similar allowances derived from private grant projects, shall be deposited in a special local fund to be used by the ~~institution~~ college to fund special projects proposed by the ~~institution~~ college and approved by the State System President consistent with provisions set forth in the department's Accounting Procedures Manual.

Statutory Authority G.S. 115D-5; 115D-54.

.0312 BOOKSTORE: VENDING MACHINE

(a) The rules governing the expenditure of funds derived from bookstore sales by community colleges shall be consistent with the mission and purpose of the community college system. The guidelines for budgeting, accounting, and expenditure of funds generated through the bookstore shall be published in the department's Accounting Procedures Manual.

(b) The board of trustees of each ~~institution~~ college shall adopt local policies consistent with ~~G.S. 115D-58.13~~ these guidelines for the budgeting, accounting and expenditure of funds generated through ~~bookstore operating profits and~~ vending machines and other convenience concession activities.

Statutory Authority G.S. 115D-58.13.

.0313 ACQUISITION OF AUTOMATED DATA PROCESSING (ADP) RESOURCES

All requests to purchase, lease, or rent automated data processing resources (hardware, software, or

services) from any public funds shall be submitted to the department for approval. Forms and instructions for the implementation of this Rule shall be developed by the department and set forth in the department's Accounting Procedures Manual.

- (1) ~~In submitting a request, the institution shall:~~
 - (a) ~~anticipate and document through planning the need for ADP resources;~~
 - (b) ~~prepare specification and an evaluation plan for procurement selection; and~~
 - (c) ~~evaluate proposals and bids.~~
- (2) ~~During the initial phase of the approval process, the institution shall contact the department and arrange a conference in order to obtain detailed instructions which must be followed through the acquisition process.~~
- (3) ~~In addition the conference may also include representatives of the MIS Division of the Department of Administration, the Division of Purchase and Contract, and the State Auditor. In some cases, when the acquisition cost is relatively low and/or replacements are being requested the conference may be waived at the department's option.~~

Statutory Authority G.S. 115D-5; 143-49.

.0314 DISTRIBUTION OF FEDERAL VOCATIONAL EDUCATION FUNDS

~~State Board of Community Colleges and State Board of Education policies for distributing Federal funds allocated to the state from the Carl D. Perkins Vocational and Applied Technology Education Act shall~~ Vocational Education Acts are as follows:

- (1) ~~The following funds to be distributed one-third to the community college system and two-thirds to the public school system and in accordance with the approved State Plan.~~
 - (a) ~~part A: disadvantaged;~~
 - (b) ~~part A: handicapped;~~
 - (c) ~~part A: subpart 2;~~
 - (d) ~~part A: subpart 3;~~
 - (e) ~~part A: subpart 4;~~
- (2) ~~Part A. Consumer and homemaking funds, 100 percent to be used in the public school system;~~
- (3) ~~Part A. Post secondary set aside, 100 percent to Community College System;~~
- (4) ~~In the event that the community college system or the public school system is~~

unable to use the federal funds as provided for in this Rule as determined by the State System President and the State Superintendent, the excess funds may be used by the other system as needed.

Statutory Authority G.S. 115D-5; 115D-31; P.L. 90-576.

.0317 CATEGORIES OF FULL-TIME EQUIVALENTS

(a) ~~The term "FTE" means the actual FTE developed from student membership hours reported on an appropriate form for a given quarter. "Average annual FTE" means the average of the summer, fall, winter, and spring FTE or the average FTE developed over an entire school year. The average annual FTE is published yearly in the Annual Enrollment Report. "Four quarter average FTE" is the average of the FTE developed in any consecutive four quarter period. The FTE system provides the basic information used to calculate the management FTE listed in the following paragraphs.~~

(b) ~~The budget full-time equivalent (B/FTE) is used to prepare the operating budget and to provide for an equitable distribution of the operating funds allocated by the State Board to institutions.~~

(c) ~~The equipment full-time equivalent (E/FTE) is used to prepare the equipment budget and to provide for an equitable distribution of the equipment funds allocated by the State Board to the institutions.~~

(d) ~~The library full-time equivalent (L/FTE) is used to prepare the library budget to provide for an equitable distribution of library funds that are allocated for the purchase of library books and audiovisual materials.~~

(e) ~~The credit hour full-time equivalent (H/FTE) is used in furnishing data to the North Carolina Commission on Higher Education Facilities and the University of North Carolina.~~

(f) ~~The construction full-time equivalent (C/FTE) is used to determine construction priorities and institutional eligibility for federal and state construction funds for the institutions.~~

Note: Substance of this Rule is contained in 23 NCAC 1A .0001.

Statutory Authority G.S. 115D-5; 115D-54.

.0318 EQUIPMENT BUDGET REQUESTS: DISTRIBUTION OF FUNDS

(a) The State Board shall approve budget requests and the allotment of funds to ~~institutions~~ colleges for equipment upon recommendation by the ~~Department~~ department.

(b) ~~The budget requests and fund distributions to institutions shall be based on the following factors:~~

(1) ~~Determine an equipment full-time equivalent (E/FTE) for each institution by applying the following ratios to the average full-time equivalents for the preceding calendar year, and adding the products to obtain a sum for each institution:~~

(A) college transfer	0.35
(B) general education	0.35
(C) technical	1.00
(D) vocational	0.75
(E) occupational extension	0.25
(F) other regular budget extension	0.05

(2) ~~Determine the gross equipment funding entitlement for each institution by applying the E/FTE to the following funding table:~~

Institution's E/FTE Size			
0 to	163	\$246,000.00	
164 to	250	\$246,000.00 plus	\$1,500.00 per E/FTE above 163
251 to	350	\$375,000.00 plus	\$1,820.00 per E/FTE above 250
351 to	500	\$557,000.00 plus	\$2,180.00 per E/FTE above 350
501 to	1,000	\$884,000.00 plus	\$1,820.00 per E/FTE above 500
1,001 to	1,500	\$1,794,000.00 plus	\$1,220.00 per E/FTE above 1,000
1,501 to	2,000	\$2,404,000.00 plus	\$920.00 per E/FTE above 1,500
2,001 and	above	\$2,864,000.00 plus	\$620.00 per E/FTE above 2,000

(3) ~~The budget requests and allotment of funds by institution shall be based on the following:~~

(A) ~~Allot to each institution a base allotment of twenty thousand dollars (\$20,000) plus thirty dollars (\$30.00) per E/FTE in excess of 163 E/FTE.~~

(B) ~~Allot to each institution the net entitlement amount which is determined by:~~

(i) ~~Subtracting from the gross entitlement for each institution the sum of the latest June 30 major equipment inventory, the unexpended equipment allotment from the prior year June 30 Form 112 report, except funds allotted for accumulated depreciation in the prior year, and the current year entitlement allotment;~~

(ii) ~~Make adjustments for previous loans to other institutions, transfers between book and equipment budgets, and for special allotments made prior to June 30, 1980.~~

(C) ~~Allot to each institution the accumulated depreciation amount which is determined by ascertaining the accumulated major equipment inventory depreciation amount on June 30, 1983; subtracting each allotment for depreciation thereafter and adding each fiscal year's annual depreciation amount.~~

(D) ~~In the event that appropriations are not sufficient to fully fund Parts (A), (B), and (C) of this Subparagraph, Part (A) shall be funded first. The remaining funds would be used to fund Parts (B) and (C) with each institution receiving its pro rata share of funds set aside for allotment for entitlement and accumulated depreciation. These remaining funds after the base allotments have been made will be allotted for net entitlement and for accumulated depreciation as determined by adding the total net entitlement needs and the total accumulated depreciation needs and percenting each to the grand total.~~

(b) Funds appropriated to the State Board for equipment shall be allocated to the colleges in accordance with formulas and procedures established by the State Board. Formulas and procedures to allocate funds shall be published in the department's Accounting Procedures Manual.

Statutory Authority G.S. 115D-5; 115D-55.

.0319 ALLOTMENT PROCEDURES FOR HUMAN RESOURCES DEVELOPMENT

(a) The appropriation provided by the General Assembly for the support of the HRD program shall be divided into three separate and equal funds, allocated in accordance with formulas and procedures established by the State Board. Formulas and procedures shall be published in the department's Accounting Procedures Manual.

- (1) One third of the appropriation shall be designated the "Program Maintenance Fund." Each continuing HRD program shall receive annually one equal share of the Program Maintenance Fund.
 - (2) One third of the appropriation shall be designated the "FTE Fund." Each continuing HRD program shall receive annually from this fund an amount proportionate to its share of the total HRD FTE accumulated by all participating institutions.
 - (3) One third of the appropriation shall be designated the "Performance Fund." Each continuing HRD program shall receive annually from this fund an amount proportionate to its share of the sum of all positive earnback indexes accumulated by all participating institutions. Programs generating a negative earnback index shall receive no portion of the performance funds.
- (b) An earnback index for each HRD program shall be computed in accordance with the following formula:

$$\frac{\begin{array}{l} \text{[Aggregate} \\ \text{[Post Training 3X} \\ \text{[Income} \\ \text{[} \end{array} \begin{array}{l} \text{Aggregate} \\ \text{Post Training} \\ \text{Public} \\ \text{Assistance} \end{array}]}{\begin{array}{l} \text{Aggregate} \\ \text{Training Costs} \end{array}} = \frac{\begin{array}{l} \text{[Aggregate} \\ \text{[Pre Training 3X} \\ \text{[Income} \\ \text{[} \end{array} \begin{array}{l} \text{Aggregate} \\ \text{Pre Training} \\ \text{Public} \\ \text{Assistance} \end{array}]}{\begin{array}{l} \text{Aggregate} \\ \text{Training Costs} \end{array}}$$

(c) No continuing HRD program shall receive a funding increase or decrease of more than twenty thousand dollars (\$20,000) from one year to the next. Any funds which might be earned by a program in excess of the permissible increase shall be reverted to the Performance Fund for redistribution; sufficient funds shall be added to the allotment of any program from the Performance Fund to prevent an impermissible decrease in funding.

(d) No HRD program which generates a negative earnback index for two consecutive fiscal years shall receive funding for the next year without special approval of the State Board (Refer to the HRD Program Procedures Manual available after August, 1981 for additional specific information regarding earnback and other pertinent areas).

Statutory Authority G.S. 115D-5.

.0320 LIBRARY BOOK FUNDING SYSTEM AND BUDGETARY APPLICATION

(a) The state board shall approve budget requests and the provide allotment of funds to institutions colleges for library books and non-equipment learning resources upon recommendation of the department.

(b) The budget requests and fund allotments to institutions colleges shall be based on the following factors:

- (1) Determine the library full-time equivalent (L/FTE) for each institution college by applying the following ratios to the average budget full-time equivalents for the preceding calendar current budget year and adding the products to obtain a sum for each institution college:

(A) college transfer curriculum	2.00	1.00
(B) general education occupational	1.00	.50
(C) technical literacy	1.00	.50
(D) vocational	1.00	
(E) regular budget extension	0.25	

- (2) Determine each institution's college's standard book entitlement by computing the following:

- (A) 45 20 volumes per L/FTE up to 1,000 L/FTE with a minimum of 5,000 volumes per institution; and
- (B) 40 14 volumes per L/FTE over 1,000 L/FTE.

(c) Determine the equivalent book inventory for each institution college by:

- (1) adding the unexpended library book allotment from the prior year June 30 Form ~~112-Report 2-12~~ and the current year library book allotment except Subparagraph (1) of Paragraph (d) of this Rule (funds for maintenance of existing collections);
 - (2) dividing this sum by the latest national average cost per book; and
 - (3) adding the equivalent acquisitions and availabilities of Part (2) of Paragraph (a) of this Rule to the latest June 30 library book inventory.
- (d) Allotments will be made to ~~institutions~~ colleges based on the following:
- (1) Maintenance of Existing Collections. The greater of ten thousand dollars (\$10,000) or 10 percent of the latest equivalent book inventory times the latest national average cost per volume; Expenditure of the maintenance fund shall not increase the equivalent inventory of any ~~institution~~ college;
 - (2) Expansion of Existing Collection. The expansion allotment for each ~~institution~~ college shall be the product of the difference between the book entitlement and the equivalent book inventory, and the latest national average cost per volume;
 - (3) If appropriations are not sufficient to make full allotments, each ~~institution~~ college shall receive a pro rata portion of 50 percent of the maintenance allotment and a pro rata portion of 50 percent of the expansion allotment.
- (e) These factors will be used as a basis for appropriation requests to the General Assembly.

Statutory Authority G.S. 115D-5; 115D-31.

.0321 PAYROLL DEDUCTIONS

~~Institutions~~ Colleges are authorized to establish voluntary payroll deduction plans for ~~the following: college employees.~~ Allowable deductions are outlined in the department's Accounting Procedures Manual.

- (1) ~~premiums for any type of group insurance established and authorized by the laws of the state;~~
- (2) ~~amounts authorized by members of the State Employee's Credit Union and local teacher's credit union to be deposited with such organizations;~~
- (3) ~~loans made to employees by credit unions;~~
- (4) ~~charitable organizations as defined in Section 501(c) (3) of the Internal Revenue Code approved by the local board of trustees subject to rules and regulations adopted by the director of budget; and~~
- (5) ~~Payroll Savings Plan for United States Savings Bonds as authorized in G.S. 143-304.~~

~~The institution's finance officer is also authorized to enter into annual contracts, with employees of the institution, which authorize the reduction of salaries to provide for the purchase of annuity or retirement income contracts provided that such action has been approved by the board of trustees and otherwise conforms to the provisions of G.S. 115D-25.~~

Statutory Authority G.S. 115D-5; 115D-22; 115D-25; 143-3.3; 143-304.

.0323 REPORTING OF STUDENT HOURS IN MEMBERSHIP/CURRICULUM CLASSES

(a) Academic Quarter. The academic quarter for all credit courses shall normally be not less than 11 school weeks or 55 class days, whichever is greater. The academic quarter should be designed so that all classes may be scheduled to include the number of instructional hours shown in the college catalog and reported for FTE purposes. Instructional hours include scheduled class and laboratory sessions as well as examination sessions. Alternate lengths for quarters or courses may be used as long as credit hours are assigned consistent with Rule 23 NCAC 2E .0104 and as long as membership hours are reported consistent with the other provisions of this Rule.

(b) Regularly-Scheduled Classes.

- (1) A class is regularly scheduled if it meets all of the following criteria:
 - (A) assigned definite beginning and ending time;
 - (B) specific days the class meets is predetermined;
 - (C) specific schedule included on the Institution Master Schedule or other official college documents;
 - (D) class hours assigned consistent with college catalog and ~~for~~ curriculum standard requirements;

- (E) identified class time and dates the same for all students registered for the class (excluding clinical/cooperative);
 - (i) Classes which have a regularly scheduled lecture section and a non-regularly scheduled laboratory section will satisfy this criteria. The census date (20 percent point) must be determined from the regularly scheduled portion of the class. Verification of student participation in the laboratory section of the class must be available for review.
 - (ii) a student is considered absent if that student ~~he~~ did not attend during the specified times or days the class was scheduled to meet.
- (2) A student is considered to be in class membership when the student meets all the following criteria:
 - (A) enrolled as evidenced by payment of the applicable tuition and fees, or obtained a waiver as defined in G.S. 115D-5(b); ~~Paragraph (a) of Rule .0202 of this Subchapter;~~
 - (B) attended one or more classes prior to or on the 20 percent point in the class;
 - (C) has not withdrawn or dropped the class prior to or on the 20 percent point.
- (3) Student Membership Hour. A student membership hour is one hour of scheduled class, shop or laboratory for which the student is enrolled. A college shall provide a minimum of 50 minutes of instruction for each scheduled class hour. A college may not report more hours per student than the number of class hours scheduled in the college catalog or other official college documents.
- (4) Calculation of Student Membership Hours for Regularly Scheduled Classes. Student membership hours are obtained by multiplying the number of students in membership at the 20 percent point in the class by the total number of hours the class is scheduled to meet for the quarter as stated in the catalog or other official college documents.
- (5) Maintenance of Records of Student Membership Hours. Accurate attendance records must be maintained for

each class through the 20 percent point of the class. Colleges are encouraged to maintain attendance records for the duration of all classes. Attendance records are to be signed by the instructor or lead instructor, verifying their accuracy, and are to be maintained by the college until released from all audits (see the Public Records Retention and Disposition Schedule for Institutions in the Community College System). Student membership hours shall be summarized in the institution's Class Report and certified by the president or ~~his~~ designee. For classes identified as non-traditional delivery (see Subparagraph (e)(1) of this Rule for additional information), documentation of student contact prior to the 20 percent point must be maintained in the same manner as the attendance records mentioned in this Rule.

(c) Non-Regularly Scheduled Classes.

- (1) A non-regularly scheduled class may include any or all of the following:
 - (A) a class where a definitive beginning and ending time is not determined;
 - (B) a class offered in a learning laboratory type setting (see Subparagraph (b)(6) of Rule .0324 of this Subchapter for definition of learning laboratory);
 - (C) a class self-paced in that the student progresses through the instructional materials at his/her own pace, and can complete the courses as soon as he/she has successfully met the educational objectives. Classes offered as independent study are generally offered in this manner;
 - (D) a class in which a student may enroll during the initial college registration period or in which the student may be permitted to enroll at any time during the quarter;
 - (E) any class not meeting all criteria for a regularly scheduled class, as shown in Subparagraph (b)(1) of this Rule, is considered to be a non-regularly scheduled class for reporting purposes. Note classes defined as non-traditional (see Paragraph (e) of this Rule) which are identified as a separate student hour reporting cate-

gory and are not subject to the provisions in Paragraph (c).

- (2) Definition of Student Membership. A student is considered to be in class membership when the student meets the following criteria:
 - (A) enrolled as evidenced by payment of the applicable tuition and fees, or obtained a waiver as defined in Paragraph (a) of Rule .0202 of this Subchapter; and
 - (B) attended one or more classes.
- (3) Definition of a Student Contact Hour. For non-regularly scheduled classes, student contact hours, actual hours of student attendance in a class, shop, or lab are to be reported for each student determined to be in membership. Sixty minutes shall constitute an hour.
- (4) Calculation of Student Contact Hours for Non-Regularly Scheduled Classes. For these classes, actual time of class attendance is to be reported; 60 minutes shall constitute an hour. Student contact hours for these classes are the sum of all the hours of actual student attendance in a class in a given quarter.
- (5) Maintenance of Records of Student Contact Hours. Accurate attendance records must be maintained for each class of the nature described in this Rule through the entire quarter. Attendance records are to be signed by the instructor or lead instructor, verifying their accuracy, and are to be maintained by the college until released from all audits (see the Public Records Retention and Disposition Schedule for Institutions in the Community College System). Student contact hours shall be summarized in the Institution's Class Report and certified by the president or his designee.

(d) Skills Laboratory or Computer Tutorial Laboratory. Individualized instructional laboratories are similar to learning laboratories (see Subparagraph (b)(6) of Rule .0324 of this Subchapter) except the participants are curriculum students. Skills labs or computer tutorial labs are remedial/developmental in nature and intended for students who are experiencing academic difficulty in a particular curriculum course. A skills laboratory instructor must be qualified in the single-subject area of the skills laboratory. A computer tutorial laboratory coordinator need not be qualified in any

of the subject area(s) provided in a computer tutorial laboratory. Student contact hours may be reported for budget/FTE when students are required by their instructor to attend either of the laboratories for remedial/developmental work and when the skills laboratory instructors or computer tutorial coordinators are paid with curriculum instructional funds.

- (1) Documentation of instructor referral must be maintained for auditing purposes. Maintain documentation until released by audit.
- (2) Homework assignments are not permitted to be reported for budget/FTE. [Note Rule 23 NCAC 2D .0325(a).]
- (3) Calculation of Student Contact Hours for Skills Laboratory or Computer Tutorial Laboratory. For these classes, actual time of class attendance is to be reported; 60 minutes shall constitute an hour. Student hours generated for these types of classes are the sum of all the hours of actual student attendance in a class in a given quarter.
- (e) Classes Identified as Curriculum Non-Traditional Delivery.
 - (1) Definition. Due to the methodology by which instruction is delivered, non-traditional delivery classes are not consistent with the definitions of regularly scheduled or non-regularly scheduled classes described in this Rule. Non-traditional delivery classes must be offered through media such as radio, television, and other media as well as through correspondence or newspapers. The instruction delivered is pre-structured into identifiable units. Non-traditional delivery classes do not include classes identified as independent study which are not media based or are not correspondence or newspaper based.
 - (2) For those classes identified as non-traditional delivery, student attendance in class or in an orientation session, submission of a written assignment or submission of an examination, is the basis for the determination of class membership at the 20 percent point of the class. Student membership hours earned in non-traditional delivery classes shall be calculated by multiplying the number of students in membership, as determined in the prior sen-

tence, times the number of hours assigned to the class in official college documents. For these classes, the number of hours assigned must be consistent with the credit hours assigned according to Rule 23 NCAC 2E .0104, as well as the appropriate curriculum standard.

(f) Curriculum Student Work Experience and Clinical Practice. The following criteria apply to the reporting guidelines for students enrolled in curriculum work experience and clinical practice courses, exclusive of in-plant training as specified in Rule 23 NCAC 2E .0402. Examples of student work experience include cooperative education, practicums, and internships. Clinical practice refers to work experience in health occupation programs.

- (1) Student membership hours for student work experience and clinical practice shall not generate budget/FTE without prior approval by the department of such activities through the appropriate curriculum standard.
- (2) Work Experience. Work experience for curriculum courses shall earn budget/FTE at the 100 percent rate of assigned work experience hours and shall not exceed a maximum of 220 membership hours per student per quarter.
 - (A) These classes must be coordinated by college personnel paid with college instructional funds and may be located in one or more sites.
 - (B) These classes must be specified in the approved curriculum of the college consistent with the applicable curriculum standard.
 - (C) Formal or informal apprenticeship on-the-job training activities of a cooperative skill training program funded under a special project allocation shall not earn budget/FTE. Classroom instruction funded with college regular budget instructional dollars for related or supplemental instruction as required by formal or informal apprenticeship programs shall earn budget/FTE.
- (3) Clinical Practice. Curriculum clinical practice, as defined in Rule 23 NCAC 2E .0104, refers to clinical experience in health occupation programs which shall earn budget/FTE at the 100 per-

cent rate for student membership hours. The applicable classes must be consistent with the curriculum standards policy as noted in Paragraph (a) of Rule 23 NCAC 2E .0203. The maximum membership hours in a clinical experience which can be reported per student in a given quarter is 440. These classes must be supervised by college instructors qualified to teach in the particular program and who are paid with college instructional funds. These classes may be located in one or more sites.

Statutory Authority G.S. 115D-5; 115D-31; 115D-58.5.

**.0324 REPT/STU HRS/MEMBERSHIP/
EXTENSION (NON-CREDIT)
CLASSES**

- (a) Regularly Scheduled Classes.
 - (1) Definition of Regularly Scheduled Class. A class is considered to be regularly scheduled if it meets all of the following criteria:
 - (A) assigned definite beginning and ending time;
 - (B) specific predetermined days and time the class meets;
 - (C) specific schedule included on the Institution Master Schedule or other official college documents;
 - (D) class hours assigned consistent with official college documents;
 - (E) identified class time and dates the same for all students registered for the class (excluding clinical/work experience);
 - (i) Classes which have a regularly scheduled lecture section and a non-regularly scheduled laboratory section will satisfy the criteria. The census date (~~50~~ 20 percent point) must be determined from the regularly scheduled portion of the class. Verification of student participation in the laboratory section of the class must be available for review.
 - (ii) a student considered absent if he ~~that student~~ did not attend during the specified times or days the class was scheduled to meet.
 - (2) Definition of Student Membership. A student is considered to be in class

membership when the student meets all the following criteria:

- (A) enrolled as evidenced by payment of the applicable registration fees, or obtained a waiver as defined in Paragraph (a) of Rule .0203 of this Subchapter;
 - (B) attended ~~at least 50 percent of the one~~ or more classes ~~held~~ prior to or on the 50 20 percent point in the class; and
 - (C) has not withdrawn or dropped the class prior to or on the 50 20 percent point of the class.
- (3) Student Membership Hour. A student membership hour is one hour of scheduled class, shop or laboratory for which the student is enrolled. A college shall provide a minimum of 50 minutes of instruction for each scheduled class hour. A college may not report more hours per student than the number of class hours scheduled in official college documents. Colleges may not report more hours per student, excluding non-traditional classes, than the number of hours specified in the instructor's contract.
- (4) Calculation of Student Membership Hours for Regularly Scheduled Classes. Student membership hours are obtained by multiplying the number of students in membership at the 50 20 percent point in the class by the total number of hours the class is scheduled to meet for the quarter as stated in official college documents. Due to the unique funding formula for Human Resource Development (HRD) classes, all HRD classes must be regularly scheduled and reported consistent with the calculation method noted in Subparagraph (a)(4) of this Rule.
- (5) Maintenance of Records of Student Membership Hours. Accurate attendance records must be maintained for each class throughout the entire class or quarter. Attendance records are to be signed by the instructor or lead instructor, verifying their accuracy, and are to be maintained by the college until released from all audits as provided in the Public Records Retention and Disposition Schedule for Institutions in the Community College System. Student

membership hours shall be summarized in the Institution's Class Report and certified by the president or his designee. For classes identified as non-traditional delivery, (see Paragraph (c) of this Rule) documentation of student contact prior to the 50 20 percent point must be maintained in the same manner as the attendance records mentioned in this Rule.

(b) Non-Regularly Scheduled Classes.

- (1) Definition of Non-Regularly Scheduled Class. A non-regularly scheduled class may include any or all of the following:
 - (A) a class where a definitive beginning and ending time is not determined;
 - (B) a class offered in a learning laboratory type setting (see Subparagraph (b)(6) of this Rule for definition of learning laboratory);
 - (C) a class self-paced in that the student progresses through the instructional materials at his/her own pace, and can complete the courses as soon as he/she has successfully met the educational objectives. Classes offered as independent study are generally offered in this manner;
 - (D) a class in which a student may enroll during the initial college registration period or in which a student may be permitted to enroll at any time during the quarter; or
 - (E) any class not meeting all criteria for a regularly scheduled class as shown in Subparagraph (a)(1) of Rule .0324 of this Subchapter, is considered to be a non-regularly scheduled class for reporting purposes;
 - (F) note classes defined as non-traditional (see Paragraph (c) of this Rule) which are identified as a separate student hour reporting category and are not subject to the provisions in Paragraph (b).
- (2) Definition of Student Membership. A student is considered to be in class membership when the student meets the following criteria:
 - (A) enrolled as evidenced by payment of the applicable registration fees, or obtained a waiver as defined in Paragraph (a) of Rule .0203 of this Subchapter;
 - (B) attended one or more classes.

- (3) Definition of Student Contact Hour. A student contact hour is one hour of student attendance in a class for which the student is in membership as defined in Subparagraph (b)(2) of this Rule. Sixty minutes shall constitute an hour.
- (4) Calculation of Student Contact Hours for Non-Regularly Scheduled Classes. For these classes, actual time of class attendance is to be reported; 60 minutes shall constitute an hour. Student contact hours for these classes are the sum of all the hours of actual student attendance in a class in a given quarter.
- (5) Maintenance of Records of Student Contact Hours. Accurate attendance records must be maintained for each class throughout the entire class or quarter. Attendance records shall be signed by the instructor or lead instructor, verifying their accuracy, and are to be maintained by the college until released from all audits as provided in the Public Records Retention and Disposition Schedule for Institutions in the Community College System. Student membership hours shall be summarized in the Institution's Class Report and certified by the president or his designee. For classes identified as non-traditional delivery, (see Paragraph (c) of this Rule), documentation of student contact prior to the ~~50~~ 20 percent point must be maintained in the same manner as the attendance records mentioned in this Rule.
- (6) Learning Laboratory. Learning laboratory programs consist of self-instruction using programmed text, audio-visual equipment, and other self-instructional materials. A learning laboratory coordinator has the function of bringing the instructional media and the student together on the basis of objective and subjective evaluation and of counseling, supervising, and encouraging persons working in the laboratory. Contact hours are to be calculated as noted in Subparagraph (b)(4) of this Rule.
- (c) Classes Identified as Extension Non-Traditional Delivery.
 - (1) Definition. Due to the methodology by which instruction is delivered, non-traditional delivery classes are not consistent with the definitions of regu-

larly scheduled or non-regularly scheduled classes described in this Rule. Non-traditional delivery classes may be offered through media such as radio, television and other media as well as through correspondence or newspapers. The instruction delivered is pre-structured into identifiable units. Non-traditional delivery classes do not include classes identified as independent study which are not media based or are not correspondence or newspaper based.

- (2) For those classes identified as non-traditional delivery, student attendance in class or in an orientation session, submission of a written assignment or a submission of examination is the basis for the determination of class membership at the ~~50~~ 20 percent point of the class. Student membership hours in such classes shall be calculated by multiplying the number of students enrolled in the class times the number of instructional hours delivered which is determined as follows:
 - (A) determine the number of hours of instruction delivered via non-traditional delivery; and
 - (B) add the number of hours of class meetings, review sessions, etc.,
 - (C) for those non-traditional continuing education classes which are approved by a local college staff review committee and the Director of Continuing Education Services for the department, additional hours above the level noted in Subparagraphs (c)(2)(A) and (B) in this Rule may be approved commensurate with course content.
 - (d) Extension Student Work Experience and Clinical Practice. The following criteria apply to the reporting guidelines for students enrolled in extension work experience and clinical practice courses, exclusive of in-plant training as specified in Rule 23 NCAC 2E .0402. To be eligible for approval, these work experience or clinical practice courses must be required by an external agency or accrediting body. Examples of student work experience include cooperative education, practicums, and internships.
 - (1) Student membership hours for student work experience and clinical practice shall not generate budget FTE without prior approval of such activities by the

department on forms provided for this purpose. Approval of student work experience and clinical practice approved prior to November 1, 1983 by the department must be resubmitted for reapproval on the forms provided for this purpose. When the number of approved student work experience membership hours increases by more than 20 percent per course, a new approval form must be submitted.

- (2) Work Experience. Work experience for extension courses shall earn budget/FTE at the 100 percent rate for student membership hours, as determined in Subparagraph (a)(3) of this Rule, and shall not exceed a maximum of 220 membership hours per student per quarter.
 - (A) These classes must be coordinated by college personnel paid with college instructional funds and may be located in one or more sites.
 - (B) Formal or informal apprenticeship on-the-job training activities of a cooperative skill training program funded under a special project allocation shall not earn budget/FTE. Classroom instruction funded with regular budget instructional dollars for related or supplemental instruction as required by formal or informal apprenticeship programs shall earn budget/FTE.
- (3) Clinical Practice. Clinical practice refers to clinical experience in health occupation courses which shall earn budget/FTE at the 100 percent rate for student membership hours, as determined in Subparagraph (a)(3) of this Rule, and shall not exceed a maximum of 220 membership hours per student per quarter unless North Carolina licensure or program accreditation standards require additional hours. In such cases, work activity hours shall earn budget/FTE at the 100 percent rate in accordance with licensure or program accreditation standards up to a maximum of 440 membership hours per student per quarter. These classes must be supervised by college instructors qualified to teach in the particular program and who are paid with college

instructional funds. These classes may be located in one or more sites.

Statutory Authority G.S. 115D-5; 115D-31; 115D-58.5.

.0325 LIMITATION IN REPORTING STUDENT MEMBERSHIP HOURS

(a) Student hours may not be reported for budget/FTE which result from:

- (1) Conferences or visits. General types of meetings usually of one or more day's duration, attended by a fairly large number of people. A conference or visit may have a central theme, but is loosely structured to cover a wide range of topics. The emphasis is on prepared presentations by authoritative speakers, although division into small group sessions for discussion purposes is often a related activity.
- (2) Seminars or Meetings. A small group of people meeting primarily for discussion under the direction of a leader or resource person or persons. Seminars and meetings are generally one-time offerings even though they may continue for more than one day.
- (3) Programs of a service nature rather than instructional classes.
- (4) Enrollment of high school students not in compliance with 23 NCAC 2C .0301 and 2C .0305.
- (5) Unsupervised classes.
- (6) Proficiency or challenge exams except that the actual time required to take the exam may be counted in membership; students must be registered in the class consistent with Paragraph (a) of Rules .0202 and .0203 of this Subchapter.
- (7) Homework assignments.
- (8) Inter-institutional or intramural sports activities including those of prison inmates.

(b) Self-supporting classes are not to be reported for regular budget purposes (those classes supported by student fees or a class in which instruction is provided gratis); all recreational extension classes fall in this category.

(c) ~~Student class hours for class size projects in which instructional salaries are funded by Title II of the Job Training Partnership Act (JTPA) shall not receive full FTE funding, but shall receive administrative cost reimbursement. The sixty forty rule does not apply to JTPA class size projects.~~

Occupational extension instruction may be offered in sheltered workshops and adult development activity centers (ADAP) provided:

- (1) Instruction involves the development of a job skill dependent on equipment or processes in the work environment which are not available through college facilities. The purpose of occupational extension instruction in a sheltered workshop/ADAP is to teach the fundamental skills of a particular job. The achievement of production or performance standards established by the sheltered workshop or ADAP center is not a goal of these courses. The instruction provided shall not duplicate or supplant existing training provided by the company/entity.
- (2) Content of a sheltered workshop/ADAP course is based on an analysis of the job for which training is offered. The job analysis shall designate each separate task within a job and assign a number of hours required to teach each separate task. The course outline and a fiscal plan for operating each course shall be approved by the board of trustees. If approval is not given, no budget/FTE shall be reported for that course.
- (3) Instruction offered is not repetitive or recurring to the same clients within the organization. Sheltered workshop/ADAP clients shall not be enrolled for more than 660 hours during a 12-month period. (The 12-month period will begin at the start of the initial training. The initial training period begins Fall Quarter, 1992.) Excessive student repeats of the same course are not appropriate and cannot be funded with state dollars. No course may be taken more than four times.
- (4) Instruction provided deals with content and skills which prepare students for production work. Instruction which involves production only cannot be counted for FTE purposes.
- (5) During the time the course is offered, instructors shall not engage in any administrative, supervisory, or operational functions of the organization for which the course is being offered.
- (6) The course includes schedule, course objectives, and other relevant informa-

tion approved in writing by the sheltered workshop or ADAP center in which the instruction is offered.

- (7) The earnback from instruction offered in these settings will not exceed a reasonable percentage of the direct cost of the training.

~~(d) New and Expanding Industry, human resources development, cooperative skills training, small business, apprenticeship and high priority programs are separate budget allotments and, therefore, do not earn regular budget FTE. Regular budget extension funds excluding adult high school may be used in human resources development programs when the special allocations for these purposes are obligated and, in this event, shall earn budget FTE.~~

Statutory Authority G.S. 115D-5; 115D-31; 115D-58.5.

.0326 OCCUPATIONAL EXTENSION INSTRUCTIONAL CONTRACT FUNDING

(a) All student membership hours generated by the college for a given class ~~where 60~~ when 100 percent of the instructional hours delivered are paid from college funds (funds budgeted through the college's budget including State Current, County Current, or Institutional College Funds) shall be counted for ~~budgeting~~ budget/FTE purposes. These provisions apply when a college contracts with a company or entity (instructional costs paid directly to the company or entity receiving the instructional program) or a "third-party" contract (the college contracts with a separate entity to deliver instruction to the company or entity which requested the instructional program). Following are applications of this Rule:

- (1) For a given class, if the salary ~~salaries~~ paid to an instructor(s) include both college funds and funds from ~~other~~ sources ~~60 percent of the instructional hours delivered must be paid with college funds in order to report all the which are not budgeted through the college's budget,~~ student hours in membership reported generated. ~~If the college pays for less than 60 percent of the instructional hours delivered for a given class, student hours in-membership reported for the class will be prorated in the same proportion as the college funding.~~
- (2) For a given class, if multiple instructors are utilized, 60 percent of the instruction-

at hours delivered must be paid with college funds in order to report all the student hours in membership generated. If a company or agency donates funds to a college or pays the college for the instruction delivered, these funds may, consistent with the definition of college funds, be used to support classes and generate budget/FTE.

- (3) For a given class that involves a "third party" instructional contract, the contracted instructional figure paid with college funds will be considered as fulfilling the 60 percent criteria and the college may report all the student hours in membership generated in the particular class. The "earnback" for a given contracted class will be reviewed to ensure that a college is not earning "windfall dollars". The instruction provided through contract shall not duplicate or supplant existing training.
- (4) For a given class, if instruction is provided at no cost or the instructional salaries are paid totally and directly by other agencies or companies, the class involved is considered a gratis class for student reporting purposes (note Paragraph (b) of Rule .0325 of this Subchapter concerning gratis instruction). The community college shall not contract with a company/entity to provide training to its current employees except under the following conditions: a college may contract with a company to provide the cost of replacement of an employee who is providing the actual training and is released from regular work responsibilities. Reimbursement may be provided for appropriate supplies and materials.
- (5) Special State Allotments to colleges such as Human Resources Development, Small Business, Cooperative Skills, etc., do not earn Budget/FTE and are not subject to the provisions of this Rule. The college's FTE earnings shall not exceed a reasonable percentage of the direct cost of the training.

(b) Any class for which the instructor's services are provided at no cost or for which the instructor's salary is paid totally and directly by an external agency is a "gratis" class. In this situation, the class is reported as self-supporting, and does not generate budget/FTE. If a portion of the

class is gratis, student hours shall be reported consistent with Subparagraph (a)(1) of this Rule.

(c) Categorical state allotments to colleges (except literacy) such as Human Resources Development, Small Business, Focused Industrial Training, Community Service Block Grants, etc., do not earn budget/FTE and are not subject to the provisions of this Rule. Regular budget extension funds excluding adult high school may be used in human resources development programs when the special allocations for these purposes are obligated and, in this event, shall earn budget/FTE.

(d) Student class hours for class-size projects in which instructional salaries are funded by Title II of the Job Training Partnership Act (JTPA) shall not receive full FTE funding, but shall receive administrative cost reimbursement.

Statutory Authority G.S. 115D-5; 115D-31; 115D-58.5.

.0328 THE FULL-TIME EQUIVALENT (FTE) SYSTEM

The following categories of FTE will be calculated by the Department:

- (1) college transfer education curriculum programs;
- (2) general education curriculum programs;
- (3) technical education curriculum programs;
- (4) vocational education curriculum programs;
- (5) academic extension programs;
- (6) adult high school extension programs;
- (7) avocational extension programs;
- (8) occupational extension programs;
- (9) practical skills extension programs;
- (10) adult basic education programs;
- (11) learning laboratory;
- (12) job training partnership act programs;
- (13) new and expanding industry programs;
- (14) human resources development programs;
- (15) self-supporting and recreational programs;
- (16) compensatory education programs.

Statutory Authority G.S. 115D-5; S.L. 1981, c. 859, s. 32,33; S.L. 1981, c. 1282, s. 36.

SECTION .0600 - CAPITAL CONSTRUCTION

.0601 APPROPRIATION REQUESTS AND ALLOCATION POLICY

(a) The State Board shall approve appropriation requests and the allotment of funds to institutions

colleges for capital improvements based on an adopted formula and as published in the department's Accounting Procedures Manual, need and utilization of space. These requests shall be based on the needs of the 58 institutions as documented in a five year capital improvement plan certified by each local board of trustees. This five year capital improvement plan, on forms provided by the department, shall be updated biennially to ensure that the requirements reflect the changing patterns in the institutions. These plans shall include estimates of cost for new construction, major renovations and equipment for new buildings. These requests should reflect all sources of possible funds to meet these needs such as state, local, federal, or any other available funds.

(b) Funds allocated by the State Board of Community Colleges, whether they be from state appropriations or from vocational education appropriations, shall be matched with local funds on a dollar for dollar basis. This allows local taxing authorities input and knowledge of additional buildings for which they must provide operating and maintenance funds. Local expenditures previously made in excess of required matching needs shall be allowed to be counted to generate additional state funds for that institution.

(c) The full funding of needed projects allows institutions to proceed with construction on a timely basis and ensures better planning and utilization of available funds.

(d) When circumstances warrant, provisions should be made to waive the matching requirements to allow institutions to meet educational needs which otherwise could not be met. This requires approval by the Legislature.

(e) Institutional rankings for capital improvement projects shall be based on the following criteria:

- (1) Institutions shall be ranked according to the utilization of their existing and funded facilities. Base data from the Higher Education Facilities Inventory and Utilization Reports assembled by the University of North Carolina Commission on Higher Education Facilities shall be used, plus additions and deletions based on funded projects. These data may be amended according to additional relevant information furnished by the institutions (i.e., off-campus rented space that will no longer be needed may be deleted when on-campus space becomes available.)

(A) These rankings will be determined as follows:

- (i) A category of "instructional and library" (I & L) related space shall be determined based upon the definition of such space as described in the N. C. Facilities Inventory and Utilization Study. The I & L space shall be amended by any funded additions or known deletions.
- (ii) A second category "other space" shall be derived by subtracting the defined I & L space from the net assignable square feet as reflected in the institution's utilization report as adjusted.
- (iii) I & L space, as well as "other space", defined in this Paragraph shall be modified to include the space in those facilities for which an institution currently has funding. The department shall use data from the DCC 3-1 form or the DCC 3-2 form to determine the breakdown between I & L and "other space". These forms shall also be used to determine net assignable square feet for buildings completed or under construction which are not currently reflected in the inventory. Institutions having received additional state appropriations since the last utilization report was compiled, shall have additional square footage added based on dividing state dollars available by the current cost per square foot to determine the additional gross square footage to be built. The gross square footage shall then be multiplied by the percentage of net assignable square feet to gross square feet as reflected in the N.C. Facilities Inventory and Utilization Study to determine the amount of additional net assignable square feet to be added to that institution. Funds for advance planning, land purchase, space renovation or equipment shall not increase the net assignable square feet.
- (iv) Space utilization is determined by dividing both the I & L and "oth-

er space" by the total student clock hours of instruction per week to obtain ratios of space to student clock hours. Student clock hours include both credit and noncredit courses which extend for at least eight weeks and are held in space included in the Higher Education Facilities Inventory Report. Student clock hours are found in the N. C. Facilities Inventory and Utilization Study. I & L space divided by student clock hours is also called Capacity Enrollment Ratio (C/E Ratio).

- (v) The ratios of the I & L space to student clock hours shall be doubled to add additional weight. These weighted I & L space to student clock hours ratios shall then be added to the "other space" to student clock hours ratios to provide a combined weighted ratio. The combined weighted ratios shall be ranked from low to high for all institutions. Lower ratios reflect higher utilization of space.
- (B) The state dollars requested for these costs and the type of project would be shown on the institution ranking list as determined in Subparagraph (c) (1) of this Rule. This ranking shall be sent to all institutions for review. After reviewing the combined listing, institutions which feel they have justification to request an exception to the ranking may request the State President to review their circumstances. Two examples of exceptional cases may be using substandard facilities or lacking the necessary local matching funds.
- (C) The State President shall appoint a committee consisting of five members: three institution presidents, one staff member and one other, to study exceptions and to make recommendations. If it is determined that an institution has justification for modification to the rankings, its relative position on the ranking may be changed based on committee recom-

mendation and concurrence by the State President.

- (D) The final revised ranking shall be presented to the State Board for approval and shall constitute the priority needs for appropriations until all institutions on this list have been funded. Funding shall be made to the extent appropriations are available.
- (2) Institutions that cannot utilize available funding shall be passed over for the current funding cycle, but shall not lose their rank order.

Statutory Authority G.S. 115D-1; 115D-3; 115D-5; 115D-31; 115D-33; 115D-54; 115D-58.10; P.L. 90-576.

.0602 CAPITAL PROJECT APPROVAL AND OBTAINING CAPITAL FUNDS

(a) The State Board is charged with the responsibility under G.S. 115D-5 to approve sites and building plans, among other things, for all institutions colleges, regardless of source of funds. (Procedures are located in the department's Construction Manual.) The state board is also responsible for making construction grants from State and Federal Vocational Act of 1968 funds. The Department shall coordinate grant requests under the Higher Education Facilities Act and the same will apply under other federal acts that have been or may be passed.

(b) The Division of State Construction of the State Department of Administration (hereinafter called the Division of State Construction) is charged by state law with responsibility for approving building plans for institutions and agencies using state funds in construction projects. Because federal grants are made with the expectation that they will be safeguarded in the same way that state funds are safeguarded, this division also has responsibility where federal funds are involved. Where local funds alone are used, review comments of the Division of State Construction are recommendations rather than requirements for compliance. Because it is just as important to insure the wise expenditure of local public funds as state or federal funds, it is recommended that boards of trustees accept these recommendations as requirements.

(c) In order to secure approval, funds and ultimately a completed capital project, the following procedures are established:

- (1) State Board Preliminary Approval

- (A) ~~Boards of trustees shall make application for approval of projects and funds on forms provided by the Department. The application form shall certify that the board of trustees holds a fee simple title or a long term lease acceptable to the State Board to the land on which the project is proposed; the type of construction and approximate size of each proposed facility; the purpose for which it will be used; the energy source, the local matching funds available, and will set forth clearly the need for the facility in order to enable the institution to provide for the educational programs approved for the institution by the State Board and/or planned by the administration of the institution;~~
- (B) ~~These needs may be for existing educational programs and students presently enrolled or for new educational programs approved by the State Board and/or anticipated increase in enrollment;~~
- (C) ~~It shall specifically be a requirement that such plans provide adequately for the comprehensive curriculum programs assigned to an institution, and that this be shown on the application forms;~~
- (D) ~~Include with this preliminary request an up to date site plan showing existing facilities and proposed new additions including parking areas, major streets, and roadways;~~
- (E) ~~Include preliminary schematic plans, topographical map, estimated cost of equipment and other schedules which would aid in securing approval for the proposed project;~~
- (F) ~~These applications for aid shall be examined by the Department, which shall then make recommendations to the State Board.~~
- (G) ~~The State Board approval or rejection of this preliminary planning will be reported to the president of the institution.~~
- (2) ~~Owner Architect Agreement~~
 - (A) ~~The owner architect and/or engineer contract is to be prepared by the Division of State Construction from information furnished by the institution.~~
- (B) ~~The contract should be requested by letter addressed to the Division of State Construction with a copy to the Department and should include the name and address of the architectural firm, the names and addresses of any consultants the architect proposes to employ; a listing of funds available by source; and a general description of the project.~~
- (C) ~~This agreement is between the institution and the architect; the State of North Carolina and the State Board are not parties to the contract. A signed copy is to be sent to both the Department of Community Colleges and the Division of State Construction.~~
- (3) ~~Schematic Design Phase~~
 - (A) ~~The architect shall submit one set of the schematic design to the Department and two sets of the schematic design to the Division of State Construction.~~
 - (B) ~~The Department and the Division of State Construction will conduct reviews of the submitted design. Comments will be furnished to the architect and the institution.~~
- (4) ~~Design Development Phase. The architect shall submit one set of the design development to the Department and two sets of the design development to the Division of State Construction. Review comments will be furnished to the institution and architect.~~
- (5) ~~Construction Document Phase. The architect shall submit one set of the construction document to the Department and two sets of the construction document to the Division of State Construction. Review comments will be furnished to the institution and architect.~~
- (6) ~~Federal Wage Rate Determination. A federal wage rate determination is required for all projects funded wholly or partially from federal sources. The determination must be a part of the project specifications and should be requested from the Department approximately eight weeks prior to the advertising for bids.~~
- (7) ~~Advertising for Bids. Permission to advertise the project for bids must be~~

- secured from the Department and the Division of State Construction.
- (8) ~~Receipt and Opening of Bids.~~ The institution shall insure that a member of the Department or the Division of State Construction is present at the opening of bids.
- (9) ~~Award of Contracts~~
- (A) ~~The institution's board of trustees, in formal session, should approve the awarding of contracts as recommended by the architect and the president of the institution. This formal action should be reported to the Division of State Construction by letter, with a copy to the Department, as soon as possible after the opening of bids in order that approval from that division and from the Department may be secured without undue delay.~~
- (B) ~~Contracts are not to be awarded without the approval of the Department and the Division of State Construction.~~
- (10) ~~State Board Final Approval.~~ The board of trustees shall make application for final approval of projects and funds on forms provided by the Department. The application forms will include the actual costs, scope, source of funds, and certification of source of energy for the project.
- (11) ~~Contract Authentication~~
- (A) ~~After the contracts have been signed by the contractors and the institution, they should be sent to the Division of State Construction in order that the Attorney General's Office may rule on the authenticity of the documents and the budget division of the Department of Administration may certify the availability of funds:~~
- (i) ~~furnish five copies when only local, state or vocational education funds are involved;~~
- (ii) ~~furnish seven copies when other federal funds are involved.~~
- (B) ~~The contracts will be returned for distribution. Construction should not start prior to the receipt of authenticated contracts.~~
- (12) ~~Pre-construction Conference~~
- (A) ~~Prior to the start of construction, a conference of institutional personnel and contractors should be called by the architect to review all aspects of the project and to resolve any questions.~~
- (B) ~~When vocational education funds are involved, the Department must be represented.~~
- (C) ~~When other federal funds are involved, the concerned agency or the Department must be represented.~~
- (13) ~~State Board Reimbursement of Capital Funds.~~ The procedures for reimbursement of capital funds are established by the Accounting Procedures Manual as published by the Auditing and Accounting Section of the State Board.
- (14) ~~Change Orders~~
- (A) ~~Change orders are changes to the signed contracts and are binding on both parties. They are to be approved by the contractor, institution, architect, Division of State Construction, and the Department.~~
- (B) ~~In the case where only local, state or vocational education funds are involved, five copies of the change order should be forwarded to the Division of State Construction.~~
- (C) ~~In the case where other federal funds are involved, change orders should be made in seven copies and forwarded to the Division of State Construction.~~
- (15) ~~Final Inspection~~
- (A) ~~The Division of State Construction is responsible for making the final inspection.~~
- (B) ~~After the final inspection the institution will be furnished by the Department, a Final Inspection Certification form to be signed by the president and the architect, certifying that the building project is complete. This form should be in triplicate. After approval by the Department, one copy will be returned to the institution, one retained by the Department, and one furnished to the Auditing and Accounting Section. After receipt of the signed Final Inspection Certification, the Auditing and Accounting Section will release the retainage of state and vocational education funds involved in the project when requested on the appropriate Department form.~~

~~(16) Final Report and As Built Drawings. The architect is required to furnish a final report and drawings representing the finished project. One copy of the report and one set of drawings are to be furnished to the Division of State Construction. One copy of the report is to be furnished to the Department.~~

Statutory Authority G.S. 115D-5; 115D-31; 115D-32; 115D-54; 115D-58.4; P.L. 90-576.

.0603 SITES: LOCAL ZONING PROTECTION

~~The establishment of a community college or technical institute may attract undesirable uses to the immediate vicinity of the site. The State Board strongly recommends that the appropriate local governing body pass suitable regulations for the adequate protection of each institution from such undesirable uses.~~

Statutory Authority G.S. 115D-5; 115D-14; 115D-15.

.0604 LIFE-CYCLE COST ANALYSIS

~~Unless judged by the State President to be unnecessary because of scope and proposed use of facility, plans for all projects shall include a life cycle cost and energy consumption analysis of the project. Procedures for implementation of the life cycle cost and energy consumption analysis shall be those set by the Division of State Construction.~~

Statutory Authority G.S. 133-1.1; 115D-5.

SUBCHAPTER 2E - EDUCATIONAL PROGRAMS

SECTION .0100 - PROGRAM CLASSIFICATION: DEGREES: DIPLOMAS AND CERTIFICATES

.0101 PROGRAM CLASSIFICATION

~~Each institution should offer a comprehensive program as accessible as possible to all citizens by offering courses and programs at convenient locations away from institutional campuses as well as on campus. The criteria and basis for classifying the programs offered in the institutions colleges are set out in this Rule:~~

- (1) Curriculum Programs
 - (a) College Transfer Education programs consist of planned academic curriculum

programs leading to an Associate in Arts (A.A.), Associate in Fine Arts (A.F.A.), or Associate in Science (A.S.) degree and are designed to allow for transfer to the junior year of a senior institution: college at the junior level.

- (b) General Education Curriculum programs consist of basic course work in English, literature, fine arts, philosophy, social science, science and mathematics leading to an Associate in General Education Degree (A.G.E.) or Certificate in General Education. ~~They are~~ It is designed principally for students who desire two years of general education beyond the high school level. ~~This program and~~ is not principally designed for college transfer.
- (c) Technical Education Curriculum programs are designed to prepare individuals for employment, and completion of the curriculum leads to an Associate in Applied Science (A.A.S.) degree. These programs involve the application of scientific principles in research, design, development, production, distribution, or service.
- (d) Vocational Education Curriculum programs consist of a series of courses which are designed to prepare an individual for employment in a specific occupation. These programs consist of a sequence of courses which generally can be completed in one year or less by a full-time student. Successful completion of a vocational curriculum program leads to a diploma or certificate.
- (2) Continuing Education Programs
 - (a) Occupational Extension courses consist of single courses, each complete in itself, designed for the specific purposes of training an individual for employment, upgrading the skills of persons presently employed, and retraining others for new employment in occupational fields.
 - (b) ~~Academic extension courses consist of single courses, each complete in itself, designed to serve the academic educational needs of adult citizens, including courses in humanities, mathematics and science, and social science. Community Service/Visiting Artist Program:~~

- (i) Subject to procedures established by the State Board, the Community Service/Visiting Artist Program includes academic, practical skills, avocational courses, and cultural and civic activities.
- (ii) The instructional component of this program may be comprised of courses in the fields of academic, practical skills, and avocational education. Instruction offered in this program shall consist of single courses, each complete in itself, designed to serve the specific academic, practical skill, or avocational needs of adult citizens. Academic courses are designed to serve the academic educational needs of adult citizens; practical skills courses are designed to provide training for persons pursuing additional skills which are not considered their major or primary vocation but may reasonably lead to employment; and avocational courses focus on an individual's personal or leisure needs rather than occupational or professional employment.
- (iii) The cultural and civic, and visiting artist component of this program meets community needs through lecture and concert series, art shows, the use of college facilities by community groups, providing speakers to community organizations, and providing visiting artist activities for college communities. Qualifying visiting artists are provided an opportunity to work as artists in residence to enhance local arts resources and promote the various visual, performing and literary arts in communities throughout North Carolina.
- ~~(e) Practical Skills extension courses consist of single courses, each complete in itself, designed to provide practical training for persons pursuing additional skills which are not considered their major or primary vocation but may supplement income or may reasonably lead to employment.~~
- ~~(d) Avocational extension courses consist of single courses, each complete in itself, which focus on an individual's personal or leisure needs rather than his occupation, profession, or employment.~~
- ~~(3) Preparatory or Developmental Programs~~
 - ~~(a) Developmental or Guided Studies programs include courses designed to provide students with academic skills development necessary for entering into curriculum or extension instructional programs.~~
 - (c) Self-Supporting Programs:
 - (i) A self-supporting course is not reported to the state for budget FTE since the cost of conducting the course is paid by students enrolled.
 - (ii) Recreational programs are self-supporting courses which the college may provide at the request of the community but for which the college receives no budgetary credit. Funds appropriated as operating expenses for allocation to the colleges shall not be used to support recreation courses. The financing of these courses by a college shall be on a self-supporting basis, and membership hours produced from these activities shall not be counted when computing full-time equivalent students for use in budget-funding formulas at the state level.
 - (d) Basic Skills Programs. The State Board and the community college system shall encourage persons to complete high school rather than seek testing for the High School Diploma Equivalency.
 - ~~(i)(b) Adult High School Diploma Equivalency Programs.~~
 - (i) Adult High School Diploma programs consist of classroom instruction, or learning laboratory courses, or a combination of both designed to qualify a student for an adult high school diploma under an Agreement of Affiliation with a local public school system. Approval is given to trustees of community colleges to enter into an agreement of affiliation with a local board of education to establish an adult high school diploma program subject to procedures established by the State Board.
 - (ii) General Educational Development (GED) programs consist of classroom instruction, or learning laboratory courses, or a combination of both designed to qualify a student successfully to demonstrate competency in on the General Educational Development

- (iii) (GED) Tests (GED) and to receive a High School Diploma Equivalency Certificate from the State Board. The State Board is responsible for the administration of the General Educational Development Testing program in cooperation with the Office on Educational Credit of the American Council on Education. The General Educational Development (GED) Testing program will be subject to procedures established by the State Board.
- (iii) Adult Basic Education (ABE) programs include courses at the elementary instructional level (through the eighth grade) usually with emphasis on communicative, computational, and social skills given to enable an adult or youth beyond the age of compulsory school attendance to raise his/her level of education, pursue a program of occupational training, and/or function more adequately as a citizen in a democratic society. are designed for adults who are functioning at or below the eighth grade educational level. The major objectives of the program are to enable adults to acquire the basic educational skills necessary to be fully competent in our society, to improve their ability to benefit from occupational training and to have greater opportunities for more productive and profitable employment, and to meet their own objectives for enrolling in the program. Classes are offered and focus on fundamental skills such as reading, writing, speaking, computing, critical thinking, and problem solving skills.
- (iv) English as a Second Language (ESL) Program offers classes which accommodate the varied needs of the immigrant and refugee populations. Attention is given to both the cultural and linguistic needs as instruction is focused upon the formation of accurate, appropriate communication skills and upon the student's ability to function in the adult American community. Classes are offered at the beginning through the advanced levels of ESL. The curriculum is designed to develop the basic language skills of reading, writing, speaking, and listening. Instruction integrates the English language with

topics that prepare students for everyday life, employment, and citizenship. The Compensatory Education (CED) Program is designed for adults with mental retardation. The program is highly individualized and fosters a maximum level of independent living commensurate with personal ability. Instruction is offered in math, language, social science, health, community living, consumer education and vocational education.

(5) Business and Industrial Training:

(a) The Focused Industrial Training Program addresses critical skills in existing industries. Based on assessments of need, these customized classes typically combine on-the-job training with classroom instruction to up-grade or train incumbent employees of manufacturing industries.

(b) The New and Expanding Industry Training Program offers customized, job-specific training to new or expanding companies creating new jobs in the state.

(c) The Small Business Center Program provides training, counseling and referral services especially designed in content and delivery modes for small businesses, both existing and prospective.

(6)(4) Special Instructional Programs:

(a) Human Resources Development (HRD) programs are is an intensive program and unified efforts to recruit, train, and either place in employment or optionally, vocationally train chronically unemployed or underemployed adults. The primary objective of the training component is to help the jobless trainee reorient orient himself or herself to the world of work, appreciate the effects of his or her behavior on others, and develop the basic academic and communication skills prerequisite to obtaining and maintaining employment.

(b) Job Training Partnership Act (JTPA) programs consist of occupational training and basic education for disadvantaged persons.

(7) (b) Learning Laboratory programs consist of self-instruction using programmed texts, audio visual equipment, and other self-instructional materials. A learning

laboratory coordinator has the function of bringing the instructional media and the student together on the basis of objective and subjective evaluation and of counseling, supervising, and encouraging persons working in the lab.

- (e) ~~Cooperative Skill Training programs combine on the job training with classroom instruction. This program would not require the formal indenturing procedure and would combine pre-employment training with an apprenticeship type program.~~
- (d) ~~New and Expanding Industry programs provide for the training needs of new industries which are moving into the State and also for existing industries undergoing a major expansion which result in the need for additional skilled manpower.~~
- (e) ~~Visiting Artist programs are offered cooperatively with the North Carolina Arts Council. Its purpose is to provide artistic talent of a professional level to communities which ordinarily would not have the benefit of such talent.~~
- (f) ~~Comprehensive Employment and Training Act (CETA) programs consist of occupational training and basic education for unemployed, underemployed, and disadvantaged persons.~~
- (5) ~~Self-Supporting Programs~~
 - (a) ~~Community Service programs meet community needs through lecture and concert series, art shows, the use of the institution's facilities by community groups and by providing speakers to community organizations. Community services programs demonstrate the institution's recognition of itself as an integral part of the community, with a major responsibility to be involved and to contribute to the community's overall cultural, civic, and intellectual growth.~~
 - (b) ~~Recreational programs are self-supporting courses which the institution may provide at the request of the community but for which the institution receives no budgetary credit. Athletic, game and hobby courses fall into this category. The cost of such activities are borne exclusively by the participants or some contracting agency.~~

.0102 CURRICULUM PROGRAMS: DEGREES, DIPLOMAS, CERTIFICATES

The State Board ~~is given authority under General Statute 115D-5 " . . . to regulate~~ regulates the awarding of degrees, diplomas, and certificates . . ." ~~In exercising this authority, the following policies are to be followed: as follows:~~

- (1) The approval of ~~an institution as a community~~ a college ~~constitutes authorization to the institution to award the associate in arts degree, the associate in science degree, diploma, or certificate shall be by individual program upon meeting the criteria for the program as prescribed by the State Board, and the associate in fine arts degree. This approval, however, does constitute recognition of the responsibility of the State Board to work with the trustees of the institution in order to enable the institution to meet the standards required for the State Board.~~
- (2) ~~State Board approval of vocational and technical curricula with the authority to grant degrees, diplomas, or certificates will be by individual educational program. Approval by the State Board will be granted when the institution college has demonstrated an established need and can meet the curriculum standards and provide evidence of sufficient instructional, graduation, faculty, and facility resources. facilities standards approved by the State Board for the educational program for which approval is requested by the trustees of the institution on the appropriate DCC Form.~~
- (2)(3) The State System ~~President of the Department of Community Colleges shall will recommend action on the college's curriculum programs application to the State Board, for approval.~~
- (3)(4) License to grant degrees, diplomas, and certificates may be withdrawn if the State Board finds determines ~~that the institution a college~~ is not maintaining approved program standards or graduation requirements.
- (4)(5) Degrees, diplomas, and certificates shall be awarded in approved programs by licensed institutions on the authority of the trustees of the institution and in accordance with state board approved standards. The State Board ~~Department of Community Colleges will shall establish~~

Statutory Authority: G.S. 115D-1; 115D-2; 115D-5.

standards and criteria and assign a prefix, curriculum code, and official title, credential, and minimum/maximum credit hour length as appropriate for to each curriculum.

- (a) ~~The associate degree may be awarded for the curricula when the prefix of the curriculum code number is a "C" (college transfer), "G" (general education), or a "T" (technical) and meets the approved curriculum standards. The college may award the Associate of Arts, the Associate of Science, or the Associate of Fine Arts degree to graduates of college transfer curriculums when the curriculum meets the criteria approved by the State Board. The college transfer curriculum shall be 96 quarter hour credits in length.~~
- (b) ~~The diploma may be awarded for curricula when the prefix of the curriculum code number is a "V" (vocational) or a "T" and meets the approved curriculum standards. The college may award the Associate in General Education degree to graduates of General Education curriculums when the curriculum meets the criteria approved by the State Board. The General Education curriculum shall be 96 quarter hour credits in length.~~
- (c) ~~The certificate may be awarded for curricula that are less than four quarters in length. The Associate in Applied Science Degree may be awarded to graduates of technical curriculums when the curriculums meet the State Board standard. A technical curriculum length will be set by the curriculum standard. The minimum length for a technical program shall be 96 quarter hour credits and the maximum length shall be 128 quarter hour credits but, on special approval by the State Board, may exceed 128 quarter hour credits in length.~~
- (6) ~~The State Board shall approve and furnish institutional trustees general formats for degrees, diplomas, and certificates on which the name of the institution, the program, course or courses completed, the name of the graduate, and the signature required by the trustees can be inserted.~~

- (7) ~~The community colleges in the North Carolina System of Community Colleges are authorized to award an associate in arts or associate in science degree to graduates of the pre professional college transfer program options which meet the curriculum requirements approved by the State Board.~~
- (8) ~~Curriculum requirements for the associate in arts and associate in science degree programs:~~
 - (a) ~~communications (grammar and/or composition): A.A. (9-10 qtr. hrs.); A.S. (9-10 qtr. hrs.);~~
 - (b) ~~humanities and fine arts (literature, modern language, religion, music, art, philosophy, speech): A.A. (14-18 qtr. hrs.); A.S. (6 qtr. hrs.);~~
 - (c) ~~mathematics: A.A. (5-10 qtr. hrs.); A.S. (18-20 qtr. hrs.);~~
 - (d) ~~science: A.A. (9-12 qtr. hrs. with 3 qtrs. biology or physical lab. science sequence); A.S. (24 qtr. hrs. with 2 yrs. of lab. science);~~
 - (e) ~~social science: A.A. (12-15 qtr. hrs.); A.S. (9 qtr. hrs.);~~
 - (f) ~~physical education: A.A. (3-6 qtr. hrs.); A.S. (3-6 qtr. hrs.);~~
 - (g) ~~electives (It is recommended that electives be taken in the liberal arts area and/or cognate areas to the major); A.A. (25-44 qtr. hrs.); A.S. (21-27 qtr. hrs.); (A maximum of 6 quarter hours credit of cooperative education or work experience may be included in the elective credit hours.);~~
 - (h) ~~total credit hours required for the Associate in Arts and Associate in Science Degree shall be 96 quarter credit hours.~~
- (9) ~~Associate in Fine Arts~~
 - (a) ~~The community colleges in the North Carolina System of Community Colleges are authorized to award an associate in fine arts degree to graduates of pre professional college transfer program options which meet the curriculum requirements approved by the State Board.~~
 - (b) ~~Curriculum requirements for the associate in fine arts degree program:~~
 - (i) ~~communications (grammar and/or composition): A.F.A. (9-10 qtr. hrs.);~~
 - (ii) ~~humanities (literature, modern language, religion, music, arts, philosophy, speech): A.F.A. (12 qtr. hrs.);~~

- ~~(iii) science and/or mathematics: A.F.A. (5-10 qtr. hrs.);~~
- ~~(iv) social science: A.F.A. (9 qtr. hrs.);~~
- ~~(v) physical education: A.F.A. (3 qtr. hrs.);~~
- ~~(vi) electives (It is recommended that electives be taken in the liberal arts area and/or cognate areas to the major.): A.F.A. (3-22 qtr. hrs.); (A maximum of 6 quarter hours credit of cooperative education or work experience may be included in the elective credit hours.);~~
- ~~(vii) professional program courses: A.F.A. (36-54 qtr. hrs.);~~
- ~~(viii) total credit hours required for the Associate in Fine Arts degree shall be 96 quarter credit hours.~~

Statutory Authority G.S. 115D-2; 115D-5.

.0103 FORMAT

~~Copies of formats for degrees, diplomas and certificates are available from the Department of Community Colleges.~~

Statutory Authority G.S. 115D-5.

.0104 QUARTER HOUR CREDITS DEFINED

(a) ~~Awarding of Credits.~~ Quarter hour credits are awarded to students for class work, laboratory, manipulative laboratory or shop, clinical practices, and work experiences such as cooperative education, practicums, and internships as follows:

~~(b) Definitions.~~

- (1) Credit of one quarter hour is awarded for each 11 hours of "class work." Class work is lecture and other classroom instruction. Class work is under the supervision of an instructor.
- (2) Credit of one quarter hour is awarded for each 22 hours of "laboratory" work. Laboratory involves demonstration by instructor, experimentation, and practice by students. Laboratory is under the supervision of an instructor.
- (3) Credit of one quarter hour is awarded for each 33 hours of "manipulative laboratory or shop" or "clinical practice." Manipulative laboratory, shop or clinical practice involve development of manual skills and job proficiency. Manipulative laboratory or shop or

clinical practice is under the supervision of an instructor.

- (4) Credit of one quarter hour is awarded for 110 hours of "work experience" such as cooperative education, practicums, and internships. Work experience involves the development of job skills by providing the student with an employment situation that is directly related to, and coordinated with, the educational program. Student activity in work experience is planned and coordinated by an institutional a college representative, and the employer is responsible for with control and supervision of the student on the job. being the responsibility of the employer.

~~(b)(e) Non-Credit Hours.~~ Practice hours are non-credit hours. Practice hours involve the student in a practice session to develop skills. Practice hours are under the supervision of an instructor.

Statutory Authority G.S. 115D-5.

SECTION .0200 - CURRICULUM PROGRAMS

.0201 ESTABLISHING OR TERMINATING CURRICULUMS

~~(a) Application for New Vocational or Technical Curriculum~~

- ~~(1) Under the provisions of G.S. 115D, the President will submit for State Board approval institutional applications for vocational and technical curricula to be offered by institutions. In order to provide for an orderly and equitable distribution of such curricula on the basis of demonstrated need and to further strengthen the total system of vocational and technical education programs conducted through the department, the advance approval of the State Board of all curricula is required.~~

- ~~(2) Proposal for New Curriculum. Institutions will initiate proposals for a new curriculum by collecting pertinent information and submitting resulting data on appropriate application forms. This application form must be signed by the institution's president and chairman of the board of trustees and forwarded to the department.~~

(a) All vocational and technical curriculum programs must be approved by the State Board prior to being offered by any college.

(1) State Board approval of a vocational or technical curriculum with the authority to grant a degree, a diploma, or a certificate will be by individual curriculum. Approval by the State Board will be granted when the college has demonstrated an established need, can meet the curriculum standard, and has provided evidence to the State Board of sufficient instructional faculty, facility and other resources. The System President recommends action to the State Board on a college application. The college will initiate the proposal for a new curriculum by collecting and submitting information in accordance with criteria approved by the State Board. The application must be signed by the college president and the chairman of the college's board of trustees.

(2) The college is required to terminate a vocational or technical curriculum when there has been no enrollment for two years. A college may request a one-year extension not to terminate a curriculum upon justification of the potential for employment opportunities and student enrollment. A vocational or technical curriculum shall be terminated by action of the State Board. Each college planning to terminate a curriculum shall inform the System President by submitting a termination notice on the appropriate departmental form.

(b) Termination of Vocational or Technical Curriculum

(1) Each institution planning to terminate an existing full-time vocational or technical curriculum shall notify the department of this decision.

(2) Notice of Termination. To aid the department in maintaining accurate records of curricula offered by each institution, the institutions shall inform the department of curriculum termination by submitting the information on the appropriate form. A curriculum not offered for two years by an institution shall be reported as terminated.

(b)(e) Approval of General Education Curriculum Programs. The State Board authorizes the System President to approve general education

curriculum programs for institutions in the System in accordance with criteria approved by the State Board.

(1) The cluster of general education courses should include one or more of the following disciplinary areas:

(A) English and Literature

(B) Fine Arts and Philosophy

(C) Social Sciences (A course in local history may be included.)

(D) Science and Mathematics (Courses in local flora and fauna, history of mathematics, and modern mathematics may be included.)

(2) Associate Degree: The successful completion of 96 quarter hours of general education and interest-type courses will culminate in an Associate Degree in General Education. The associate degree program should include courses from each of the disciplinary areas listed in Subparagraph (1) of this Rule.

(3) Certificate: The Successful completion of 30-45 quarter hours of general education and interest-type courses will be recognized by a Certificate in General Education. The certificate program should include courses from two or more of the disciplinary areas listed in Subparagraph (1) of this Rule.

(4) Beyond the basic core of general education course work, the students may elect specialty courses on the basis of their own interests. The program should be designed to meet the local educational needs and should also be one that appeals to an entirely new and untapped clientele.

(5) Total credit hours required for the Associate Degree in General Education shall be 96 quarter credit hours.

(d) Approval of College Transfer Program

(1) Requirements

(c)(A) The approval for an institution a college to offer a college transfer program shall be consistent with the primary mission of the institution college to provide adult vocational and technical education and basic academic education and should complement the institution's college's ability to pursue that mission.

(1)(B) The approval of a new college transfer program shall be based on a legitimate, well documented evaluation of the need, demand, cost and benefits of the

program, as well as an assessment of the institution's college's capacity to offer a quality program and the potential impact of the college transfer program on other institutions colleges in the region and other programs within the institution college.

- (2) ~~Process.~~ Procedures and guidelines for the development and consideration of a feasibility study for the addition of a college transfer program shall be developed by the System president and approved by the State Board. These may include provisions for the requirement of public hearings and/or a local referendum on the proposal.
- (3) The State Board may terminate a college transfer program upon request of the college or when enrollment is not adequate to generate the funds for the college to support the program.

Statutory Authority G.S. 115D-5; 115D-20(6).

.0202 BUSINESS EDUCATION POLICY

~~(a) Technical institutes, community colleges, and technical colleges are permitted with appropriate approval to offer two year Associate in Applied Science degree programs in business education and single business courses.~~

~~(b) Institutions located beyond a 25-mile straight-line distance of a private business college's campus are permitted to offer business education curriculum programs less than two years in length.~~

~~(c) Institutions located within a 25-mile straight-line distance of a private business college's campus are not permitted to offer business education curriculum programs less than two years in length, unless a prior written agreement with the private business college(s) is submitted by the technical institute, community college, or technical college. Job Training Partnership Act (JTPA) programs shall be exempt from this provision.~~

~~(d) Business education curriculum programs less than two years in length are defined as a sequence of courses involving secretarial and clerical skills such as typing, shorthand, office machines, book-keeping, principles of accounting, machine transcription, filing, and other courses identified as components of the normally accepted and approved nine-month certification program provided by a private business college.~~

~~(e) The provisions of this policy apply only to existing private business colleges and their present campuses.~~

~~(f) A newly established technical institute, community college, or technical college or unit of any existing institution will be covered by the provisions of this policy.~~

~~(g) If an existing private business college ceases operation, the affected technical institute(s), community college(s), or technical college(s) will be exempt from (e) of this policy, provided no other private business college exists within a 25-mile straight-line distance of the affected institutions.~~

Statutory Authority G.S. 115D-1; 115D-3; 115D-5.

.0203 STANDARDS FOR TECHNICAL-VOCATIONAL CURRICULUMS

(a) Standards. The standards for each occupational curriculum, technical or vocational, will be developed in accordance with the following guidelines. Each institution college will design its curriculum courses and requirements to comply with the standards for the curriculum. Each institution college will also follow procedures for curriculum approval as outlined in .0101, .0102, and .0104 of this Subchapter.

(b) Guidelines for Technical-Vocational Curriculums

- (1) Each curriculum should be developed to meet specific occupational objectives and occupational educational competencies. The curriculum should be designed to lead to employment. The curriculum should emphasize knowledge, skills, and attitudes appropriate to the occupational cluster for which it is designed, with the necessary information about instruments, tools, equipment, and processes included as an integral part of the curriculum.
- (2) The curriculum is defined as consisting of a course or a group of courses organized in a logical sequence to meet occupational educational goals and that meet the following criteria:
 - (A) The curriculum consists of a course or courses which total a minimum of 16 quarter hour credits.
 - (B) The curriculum covers the instruction in the designated competencies for an occupation.
- (3) Curriculums leading to the Associate in Applied Science (A.A.S.) degree should require from 96 quarter hour credits to 128 quarter hour credits for graduation. On special justification the State President may recommend a curriculum to

the State System Board with quarter hour credit requirements above the maximum of 128. Total quarter hour credits required for each curriculum will be established at a minimum with the maximum allowed being no more than 10 percent above the minimum.

- (4) Curriculums leading to the diploma should require from 64 to 128 quarter hour credits for graduation. Quarter hour credits for each curriculum will be established at a minimum with a maximum being no more than 10 percent above the minimum.
- (5) Certificates may be awarded to a graduate of a curriculum of fewer than 64 quarter hour credits in length.
- (6) Technical Curriculums
 - (A) Technical curriculums should be designed to prepare individuals for employment in fields recognized as semiprofessional or paraprofessional in status. They should be composed of collegiate-level studies (not necessarily transferable) providing a greater degree of theoretical knowledge than manipulative skills and should be oriented to a broad occupational cluster.
 - (B) Graduates from a technical curriculum should have at least 18 quarter hour credits in the areas of English, social science, and/or the humanities.
 - (C) The Associate in Applied Science degree may be awarded to the graduate of a technical curriculum with 96 quarter hour credits or more.
- (7) Technical Specialty Curriculums
 - (A) Technical specialty curriculums should be designed to prepare individuals for employment in fields recognized as semiprofessional or paraprofessional in status. They should be composed of collegiate-level studies (not necessarily transferrable) providing a greater degree of theoretical knowledge than manipulative skills.
 - (B) Technical specialty curriculums should include only those general education and related courses necessary to support the technical courses offered in the curriculum.
 - (C) Technical specialty curriculums usually are composed of selected technical courses designed to prepare for a

particular technical skill. Technical specialty curriculums may range from 16 to 95 quarter hour credits for each curriculum established at a minimum with the maximum allowed being no more than 10 percent above the minimum.

- (D) The diploma may be awarded to the graduate of a technical specialty curriculum 64 to 95 quarter hour credits in length.
- (E) The certificate may be awarded to the graduate of a technical specialty curriculum with fewer than 64 quarter hour credits in length.
- (8) Vocational Curriculums
 - (A) Vocational curriculums should be designed to prepare individuals for skilled or semiskilled employment opportunities. Study is primarily oriented to the development of manipulative skill competencies for use in a specialized occupation.
 - (B) Graduates from a vocational curriculum should have at least 6 quarter hour credits in one or more of the areas of communications skills, applied sciences, and applied social sciences.
 - (C) The diploma may be awarded to the graduate of a vocational curriculum that is 64 or more quarter hour credits in length. The certificate may be awarded to the graduate of a vocational curriculum of fewer than 64 quarter hour credits in length.
- (9) Vocational Specialty Curriculums
 - (A) Vocational specialty curriculums should be designed to prepare students for skilled or semiskilled employment opportunities. Study is primarily oriented to the development of manipulative skills for use in a specialized occupation.
 - (B) Vocational specialty curriculums usually include only those subjects necessary to support the development of the skills for the specialized occupation. Vocational specialty curriculums should be a minimum of 16 quarter hour credits in length.
 - (C) A certificate may be awarded to the graduate of a vocational specialty curriculum.

(10) Procedures for Establishing Standards for Each Curriculum

- (A) The standards for each curriculum will be established jointly by the department of ~~Community Colleges~~ and the ~~institution(s)~~ college(s) offering or proposing to offer the curriculum.
- (B) A curriculum may have subject categories established with minimum-maximum quarter hour credit ranges for the subject area. Technical curriculums will have minimum quarter hour credits established for the following subject categories: technical, related and general education. Elective quarter hour credits may also be included as a category. Vocational curriculums may have subject categories established.
- (C) A minimum percentage of quarter hour credits awarded to class work will be specified for each curriculum.
- (D) Cooperative education or work experience may be included in the curriculum up to a maximum of 12 quarter hour credits.

(11) Procedures for Changing Standards for Each Curriculum. Changes in standards for each curriculum will require the approval of the State Board. Request for changes in the standards approved by the State Board for a curriculum may be made to the Board under the following conditions:

- (A) request to the department of ~~Community Colleges~~ to change the standards;
- (B) concurrence by the majority of ~~institutions~~ colleges offering the specific curriculum; and
- (C) concurrence by the department. of ~~Community Colleges~~.

(12) Procedures for Designing Curriculums at the College Institutional Level:

- (A) The ~~institution~~ college will be responsible for the design of the curriculum at the ~~institutional~~ college level.
- (B) The curriculum will adhere to the standards as approved by the State Board for the curriculum.
- (C) When standards are to be developed for a new curriculum, the ~~institution~~ college or ~~institutions~~ colleges planning to submit applications to the State Board for curriculum approval

will jointly develop the standards with the department of ~~Community Colleges~~ for the proposed curriculum for presentation to the State Board for action.

- (D) The ~~institution~~ college will maintain on file with the department of ~~Community Colleges~~ a copy of the official curriculum approved by the ~~institution's~~ college's board of trustees. A copy of each revised curriculum will be filed with the department of ~~Community Colleges~~ prior to implementation at the ~~institution~~. college.

Statutory Authority G.S. 115D-5.

**SECTION .0300 - GENERAL ADULT:
SPECIAL EXTENSION: AND
COMMUNITY SERVICE**

.0301 ADULT HIGH SCHOOL

(a) ~~Approval is given of an agreement of affiliation for an adult high school diploma program established cooperatively between a local board of education and the trustees of an institution (for the institution and/or an extension unit) in the community college system. A copy of the agreement may be obtained from the Department of Community Colleges.~~

(b) ~~Agreement of Affiliation Amendment. The agreement of affiliation is changed under the section on General Student Eligibility Requirements, Item 2, to read as follows: For admission to the adult high school diploma program, a person must be at least 18 years of age, or as described under the general admission rule for community colleges and technical institutes.~~

Statutory Authority G.S. 115D-1; 115D-5.

.0302 ADULT VOCATIONAL PROGRAMS

(a) ~~As a general policy, the State Board will assign to the Department of Community Colleges responsibility for state level administration of all vocational programs for adults, except those programs normally carried on by distributive education, agriculture and home economics teachers as a regular part of their duties. For purposes of this policy statement, an adult is defined as a person who has completed high school, or a person who has attained age 18, or a person with special needs.~~

(b) In the discussion of the above policy, "a person with special needs" was defined as a school dropout who is not yet 18 years of age but whose educational needs cannot be met properly in the school program.

(c) It is also interpreted that programs carried on as part of their regular duties (without extra pay) by teachers other than agriculture and home economics teachers, are not prohibited by this policy.

(d) This policy assigns to the Department of Community Colleges responsibility for extension programs for adults. Selected high school students may be enrolled in extension courses in a community college, technical institute, or technical college under the provisions and procedures set forth in 23 NCAC 2C .0301(d).

Statutory Authority G.S. 115D-1; 115D-5.

.0303 GENERAL EDUCATIONAL DEVELOPMENT (GED) TESTING PROGRAM

(a) The department, under the state board is responsible for the administration of the General Educational Development Testing program in cooperation with the office on Educational Credit of the American Council on Education.

(b) The State Board and the Community College System shall encourage persons to complete high school rather than seek testing for the High School Diploma Equivalency.

(c) Title of State Credential: High School Diploma Equivalency.

(d) Minimum Requirements for Testing:

(1) Any person 16 or 17 years of age meeting one of the following conditions may be admitted to testing:

(A) Incarcerated in a correctional institution, correctional youth center, training school for adjudicated youth, or similar institution;

(B) A patient or resident of a state operated hospital or alcoholic rehabilitation center;

(C) Enrolled in or have completed a program of instruction provided by the Job Corps or other such agency; or an apprenticeship training program; or

(D) A member of the United States Armed Forces;

(2) Any person 16 or 17 years of age having officially dropped out of school and not subject to the conditions in this

Rule may be admitted to testing provided:

(A) Application is supported by a notarized petition of the individual's parent, legal guardian, or other person or agency having legal custody and control over the applicant; the petition shall certify the applicant's residence, date of birth, date applicant officially withdrew from school and the petitioner's legal relationship to the applicant; and

(B) Application for testing is made no less than six months from the date the applicant officially withdrew from school. However, all or any part of the six-month waiting period may be waived by the chief administrative school officer of the public or private school unit in which the applicant resides. This waiver may be accomplished through the endorsement of the notarized petition by the superintendent or his designee; or

(C) Applicant is an emancipated minor.

(3) All persons shall have officially dropped out of school prior to applying to take the GED tests.

(4) These requirements shall apply to both public and private school students.

(e) Requirements for Issuance of High School Diploma Equivalency:

(1) Minimum Test Scores. A standard score of 35 on each of the five tests and a total of 225 on all five tests.

(2) Minimum age: 16.

(3) Residence. Legal residents of North Carolina or armed forces personnel stationed within the geographic confines of this State (and members of their immediate families living in their households) are eligible to take the GED tests.

(f) Requirements for Retesting. Part or all of the GED test battery may be taken again after a period of at least six months from the date the tests were first taken. The procedure in applying for a retest is the same as required for the original test. In some instances a retest may be authorized in less than six months by the chief examiner of an official GED testing center or by the State GED Administrator, upon presentation of satisfactory evidence of intensive study to the chief examiner or other written justification satisfactory to the

President of the Community College System or his designee.

(g) ~~Security.~~

- (1) ~~The security of the tests, the integrity of the testing program and the validity of test scores attained shall be protected; and the President of the Community College System or his designee may resolve any doubtful case by requiring the applicant to retest.~~
- (2) ~~A person who begins testing at an official GED testing center shall complete testing at that center. If the person needs to continue testing at another center, the person shall have approval from the office of the State GED Administrator; otherwise, such testing shall be invalid. The same rule shall apply to retesting when a person completes the GED test battery and fails to achieve a passing score.~~

(h) ~~Method of Applying.~~ Civilian applications must be on a special form obtainable from the office of the State GED Administrator, the Department of Community Colleges, offices of local superintendents of schools, and colleges of the Community College System. Applications must be endorsed and approved by a president of a college of the Community College System or his designee, or by the manager of a Veterans Administration hospital having an authorized educational therapy program. Applications from military personnel must be on the appropriate Department of Community Colleges form endorsed by the military education officer.

(i) ~~Official Transcripts.~~ Test scores are accepted as official only when reported directly by:

- (1) ~~Official GED centers.~~
- (2) ~~Transcript Service of the Defense Activity for Non-Traditional Education Support (DANTES).~~
- (3) ~~Veterans Administration hospitals and centers, and~~
- (4) ~~the GED Testing Service.~~

(j) ~~Fee:~~

- (1) ~~A fee is required from each student (applicant) who takes the General Educational Development (GED) Test at official GED Testing Centers in the community college system. Two dollars and fifty cents (\$2.50) of the GED fee shall be used to pay the cost for scoring the written essay part of the test; this portion of the fee shall be deposited as state funds. The remain-~~

~~ing portion of the GED fee shall revert to the General Fund.~~

- (2) ~~Issuance of High School Diploma Equivalency; no charge.~~

(k) ~~The state board shall, upon the recommendation of the State GED Administrator, determine the establishment or disestablishment of GED testing centers.~~

(l) ~~GED testing centers shall inform the State GED Administrator of any new, alternate, or replacement chief examiners and proctors before such persons assume their duties.~~

(m) ~~Recordkeeping.~~ Official GED testing centers shall supply the State GED Administrator's office with information necessary to maintain permanent records on all examinees.

Statutory Authority G.S. 115D-1; 115D-5; S.L. 1987, Ch. 738, S. 219.

.0304 THE VISITING ARTIST PROGRAM

(a) ~~The Visiting Artist Program is a cooperative grant program of the State Board of Community Colleges (through the Department of Community Colleges) and the North Carolina Arts Council.~~

(b) ~~The State Board shall provide a special grant of funds to cover salary, travel, telephone, materials and supplies expenses for a Visiting Artist to any community college or technical institute, provided that the institution:~~

- (1) ~~submit a request for a Visiting Artist to the Department of Community Colleges each fiscal year of participation;~~
- (2) ~~agree to employ an artist from an approved candidate list provided by the North Carolina Arts Council, and~~
- (3) ~~appoint a coordinator from the institution's staff to assist the artist in his or her residency activities and promotional efforts.~~

(c) ~~It is a responsibility of the Arts Council to recruit and screen, by means of professional panels, artists of exceptional merit to become approved candidates. Each institution will conduct its own personal interviews of artists from this candidate list.~~

(d) ~~General terms of employment for an artist shall be:~~

- (1) ~~The artist may not be given regular teaching assignments in the classroom or individual student assignments;~~
- (2) ~~The artist shall be available without fee for lecture demonstrations, performances and exhibitions, workshops;~~

consultancies and special projects in the institution's administrative area;

- (3) ~~Each artist shall be employed for no more than two consecutive fiscal years at any single institution and no more than four consecutive fiscal years in the Visiting Artist Program;~~
- (4) ~~An artist who is employed in one fiscal year is automatically considered an approved candidate for the following year, provided the artist is not in his or her fourth consecutive year of participation. Artists who remain out of the program for one year or more must re-apply for candidacy through the Arts Council;~~
- (5) ~~An artist may serve only one institution, but artists may exchange performances or short term residencies with artists at other institutions participating in the Visiting Artist Program.~~

Statutory Authority G.S. 115D-5.

.0305 CONTINUING EDUCATION PROGRAM MANAGEMENT

~~The Community College System was created for the purpose of, and is committed to delivering appropriate educational services to adult citizens. Efforts shall be made to ensure that facilities where classes are held provide appropriate environments which are conducive to learning. Continuing education classes offered in private homes or private home-based businesses shall be approved by the college president or his designee prior to the classes being offered. Documentation of such approval shall be maintained at the college until released from all audits (see Public Records Retention and Disposition Schedule for Institutions in the Community College System).~~

(a) Continuing education programs shall provide lifelong learning experiences offering planned instructional responses to identified needs of targeted audiences. Instructional objectives shall specify the skills, knowledge and attitudes the learner should be able to apply upon satisfactorily completing the continuing education experience. Adequate educational facilities, instructional aids, and other instructional materials shall be provided to support continuing education courses.

(b) Facilities where classes are held must provide appropriate environments which are conducive to learning. Continuing education classes offered in special settings (such as private homes or private home-based businesses) other than

generally accepted learning environments shall be approved by the college president or designee prior to the class being offered. Documentation of such approval shall be maintained at the college until released from all audits (REF: Public Records Retention & Disposition Schedule for colleges in the community college system).

(c) Each college's local board of trustees must adopt a policy which requires the development and implementation of an internal audit plan. Each college is required to publish, maintain and utilize an internal audit plan. The college presidents shall periodically report to the board of trustees on the findings of the internal audit. The internal plan must be submitted to the department for compliance review.

Statutory Authority G.S. 115D-1; 115D-5.

SECTION .0400 - INDUSTRIAL SERVICES

.0401 TRAINING FOR NEW AND EXPANDING INDUSTRY

(a) The creation of more jobs and better paying jobs in North Carolina by promoting the expansion of existing industries and by attracting new industries to the state was a major consideration in the original establishment of the industrial education centers and later the Community College System. The ability of the educational system of the state to produce trained people to fill the new jobs created was and remains the prime factor in getting new industry to North Carolina. Customized training programs for new and expanding companies shall be provided to support the economic development of the state. The training programs for new and expanding industries shall be administered by the college, with consultation and assistance from the department's staff, in accordance with procedures approved by the State Board.

(b) The State Board has developed and approved the following policy with respect to training manpower for individual manufacturing firms or corporations:

- (1) Legitimate training programs for a new or expanding industry that creates new jobs will be developed and funded, tailor made for each industry, to meet the immediate trained manpower needs when the plant, new or expanded, is ready to go into production. In the process of providing such a program, the plant management will be helped in the development of a long range training program, of its own, to meet those

~~replacement and retraining needs that industry should and can be prepared to do for itself.~~

- ~~(2) State funds will be established in a separate budget to support the training for new and expanding industry. The new industry budget will be used to support only those legitimate training projects that create new jobs in new and expanding industry.~~
- ~~(3) The Department of Community Colleges will work closely with the institutions in preparing training programs for new and expanding industry.~~
- ~~(4) The actual training for new or expanding industries will be conducted by the institutions.~~

(b) State funds are appropriated to the department in a separate line to support the training for new and expanding industry. These funds shall be used to support only those training projects that create new jobs in new and expanding companies. They shall be allocated to and expended by the college in accordance with the approved project plan and budget.

Statutory Authority G.S. 115D-5.

.0402 PROVISION OF IN-PLANT SKILL TRAINING

(a) Chapter 115D of the General Statutes of North Carolina authorizes the ~~institution~~ college to conduct in-plant courses to assist manufacturing, service, and/or governmental organizations with in-service training of their employees. In-plant training is defined as an occupational extension course that meets the following conditions:

- (1) Training shall occur in the facilities or at the sites in which the organization normally operates.
- (2) Enrollment shall be limited to the employees of the organization in which the training occurs; trainees may be newly-hired employees who need entry level skills or existing employees who, due to documented changes in the job content, need up-grading or retraining.
- (3) Training shall be conducted at the employee's assigned work station during normal working hours.
- (4) Training shall be directly related to job skills.

(b) ~~Institutions~~ Colleges are encouraged to offer in-plant courses in those situations where the development of job skills is dependent on equip-

ment or processes in the work environment which cannot be reasonably duplicated in ~~an institutional~~ a college setting. The purpose of an in-plant course is to teach the fundamental skills of a particular job. The achievement of production or performance standards established by the employer is not a goal of in-plant courses. The instruction provided shall not duplicate or supplant existing training or training for normal job turnover.

(c) The community colleges may contract with a company to provide in-plant training to its current employees under one of the following conditions:

- (1) A college may contract with a company to provide the direct cost of replacement of an employee providing the actual training who is not hired by the company as a trainer, and who is released from regular work responsibilities during the time for which contracted to provide instruction. Replacement cost is defined as actual costs which were expended by the company to replace on a temporary basis the contracted employee from normal duties while providing instruction. In this situation the college may earn regular budget/FTE.

- (2) A college may contract with a company to provide indirect replacement cost. The cost, if this option is applied, will be the salary loss of production time to the company for the individual contracted to deliver the instruction. This individual must not be a regular trainer or have instructional responsibilities as a part of the regular job requirement. In this situation the college may earn the actual cost of the contract by determining, for the employee who is actually doing the instruction, an hourly wage rate for the instructor's normal job times the actual hours of instruction. This will be the contract cost, and the college will be reimbursed this cost plus 15 percent of the cost for delivery of in-plant instruction when contracted through a company. If the college provides the supplies and materials, these costs may be added to the instructional cost as a part of the contract. Supplies and materials are not be included in the instructional cost plus 15 percent calculation. Contracted instruction applying this option may neither

exceed 160 hours nor be provided on a repetitive basis.

(d)(e) Content of an in-plant course shall be based on an analysis of the job for which training is offered. The job analysis shall designate each separate task within a job and assign a number of hours required to teach each separate task. The course outline and a fiscal plan for operating each course shall be approved by the board of trustees. If approval is not given, no budget/FTE or contract reimbursement shall be reported for that course.

~~(d)(e)~~ An in-plant course ~~shall not exceed~~ may be offered up to 440 hours [except when applied as option noted in Subparagraph (c)(2) of this Rule which may not exceed 160 hours]. ~~in duration; no~~ No employee shall be trained for more than 440 hours ~~nor enrolled in more than two in-plant courses~~ during a 12-month period. (The 12-month period will begin at the start of the initial training. The application of this provision will begin on or after the first day of Fall Quarter, 1992.) An in-plant course shall not be offered on a repetitive or recurring basis to the same employees within the same organization. An employee may not take a course more than twice.

- (1) ~~An in-plant course not exceeding 160 hours in duration shall not require departmental approval; the institution college shall submit to the department only a report of each course and shall retain in its files records and documentation substantiating each course in this category. The college shall submit to the department a course outline and other required documentation from the employer for all in-plant classes for review.~~
- (2) ~~An in-plant course exceeding 160 hours in duration shall require departmental approval. The institution shall submit to the department an application complete with course outline and other required documentation from the employer at least one week prior to the first class meeting. The college shall retain in its files records and documentation substantiating each course.~~
- (3) The department shall furnish to the institution college forms and procedures for reporting in-plant courses. ~~of 160 hours or less and for applying for approval to operate courses of more than 160 hours.~~

- (4) A community college's FTE earnings shall not exceed a reasonable percentage of the direct cost of the training.
- (5) Instruction provided deals with content and skills which prepare students for production work. Instruction which involves production only cannot be counted for FTE purposes.

~~(e)(f)~~ An instructor of an in-plant course, whether an employee of the organization in which the course is offered or an employee of the sponsoring institution, college, shall not, during hours of instruction, be involved in any activity other than instruction. An instructor shall not engage in any administrative, supervisory, or operational functions of the organization in which a course is offered during those hours when he or she is partially or totally paid by the institution, college. An appropriate official of the organization in which the course is offered shall agree in writing to these conditions.

Statutory Authority G.S. 115D-5.

.0403 INSTRUCTION TO CAPTIVE/CO-OPTED GROUPS AND ON MILITARY BASES

~~(a) Pursuant to the requirements of G.S. 115D-5(e), the State Board defines "captive" and "co-opted" groups as meaning immured groups inclusive of the following:~~

- ~~(1) Groups in the custody of the Department of Correction (taught in these facilities);~~
- ~~(2) Clients of sheltered workshops in sheltered workshops;~~
- ~~(3) Residents of rest and nursing homes, alcoholic rehabilitation centers, mental retardation centers and in-patients of mental hospitals (taught in these facilities);~~
- ~~(4) Military personnel taught on the base.~~

~~Professional and support staff for the above agencies are not to be considered as immured groups.~~

(a) A college is required to obtain State Board approval prior to providing instruction to students who are clients or residents in a captive or co-opted setting. This includes inmates in correction facilities and clients of sheltered workshops; residents of rest homes, nursing homes, alcoholic rehabilitation centers, and mental retardation centers; and in-patients in mental hospitals when the instruction is provided in their respective facility.

(b) A college is required to obtain approval prior to providing instruction for any course on a military base.

(c)(b) Classes for adult basic education, adult high school diploma, and GED preparation, and compensatory education are given exempt from prior (blanket) approval for immured groups: requirements of this Rule.

(e) All requests for instruction of immured groups shall follow the procedures of this Rule before state funds are expended for instruction:

(1) A request shall have prior approval of the local board of trustees;

(2) A request and supportive information shall be submitted in a form and manner determined by the State President.

(d) The State President will submit the requests to the State Board for action. Initial approval may be granted by the State President prior to State Board action.

(e) Requests may be approved when it is determined by the State Board that the instruction proposed for the immured group is not a function expected normally of the requesting agency, the instruction is within the purpose of the community college system, and funds are available.

(f) Provisions of this Rule apply only to those groups defined in (a) of this Rule.

(d) The request and supportive information to offer a course shall be submitted to the State Board in a form and manner determined by the System President.

(e) Course approval for instruction to captive and co-opted groups or instruction on a military base may be approved when it is determined by the State Board that the proposed instruction for the group is not a function normally expected of the agency or the military and the instruction is within the purpose of the community college system.

Statutory Authority G.S. 115D-1; 115D-5.

SECTION .0500 - ARTICULATION: PUBLIC SCHOOL AND COMMUNITY COLLEGE SYSTEMS

.0501 ARTICULATION

(a) The State Board encourages formal and informal articulation efforts on a continuing basis between the system of elementary and secondary education and the system of technical institutes and community colleges. The State Board of Community Colleges shall meet with the State Board of Education and the Board of Governors of The

University of North Carolina to discuss educational matters of mutual interest and to recommend to the General Assembly such policies as are appropriate to encourage the improvement of public education at every level in North Carolina.

(b) Articulation programs shall be designed to meet one or more of the following purposes:

(1) provide for articulation of subject matter between the secondary and post-secondary institutions;

(2) promote innovation and coordination of both secondary and post-secondary institutions;

(3) provide for articulation between secondary and post-secondary institutions and where appropriate, business, health, agriculture, public service, industry concerns, private schools, and appointed or elected local officials;

(4) develop in all teachers and other participants an awareness of the opportunities for employment in business, health, agriculture, public service, and industry concerns;

(5) provide an opportunity for joint utilization and sharing, where possible, of physical facilities, equipment and materials available at the secondary and post-secondary levels;

(6) provide for continuous study, evaluation and improvement of articulation efforts between both systems; and

(7) improve public relations at both the secondary and post-secondary level.

(b) The State Board encourages formal and informal articulation efforts on a continuing basis between the educational systems. Articulation between the State educational systems should address programming, transferability, and other student-oriented issues which would result in better serving the educational needs of North Carolina. Where feasible, the joint utilization of physical facilities, equipment and materials should be considered.

(e) Within resources available, the Department of Public Instruction and the Department of Community Colleges will support articulation efforts by providing consultant help, when requested, to local administrative units and to community colleges and technical institutes.

Statutory Authority G.S. 115D-2.1; 115D-3; 115D-5.

.0502 FUNDING AND OTHER PROCEDURES

(a) ~~For funding purposes only, the expenditure of available funds will be based on the number of teachers, principals, and supervisors in the public schools in the institution's service area, now designated as ABE, as shown in the latest available allotment information prepared by the Division of Teacher Allotment and General Control.~~

(b) ~~Articulation programs will be financed where possible by approved budget transfers within the institution's budgets. Stipends and travel may be paid to participants not on the public school payroll at the time the programs are conducted.~~

(c) ~~The maximum amount that may be expended where funds are available for articulation programs will be two thousand dollars (\$2,000) or seven dollars (\$7.00) per professional public school employee (as defined in (a) of this Rule) in the institution's ABE service area, whichever is larger. In many cases, satisfactory programs may be conducted without transfer or special allocation of funds. Funds in excess of the above amounts will require special State Board approval.~~

(d) ~~In cases where the amount of funds per institution by budget transfer is limited, or for some other justifiable reason is not equal to two thousand dollars (\$2,000) and the institution wishes to conduct an articulation program, the difference may be allocated to the institution upon request by special allocation from state funds, subject to the availability of such funds.~~

(e) ~~Prior to implementing a program, the president will provide evidence to the State President of the Department of Community Colleges that articulation efforts will be coordinated with local school officials. A summary of the articulation program conducted, to include an evaluation report, will be submitted at the end of the program.~~

(f) ~~All programs will be conducted at community colleges and technical institutes, unless there are justifiable reasons for holding the programs elsewhere.~~

Statutory Authority G.S. 115D-1; 115D-3; 115D-5.

SECTION .0600 - VOCATIONAL CURRICULUM

.0602 CURRICULUM INSTRUCTIONAL CONTRACT PROVISIONS

(a) Each college is to assess its own need to provide instructional services by contracting with other public or private organizations or institutions. Any curriculum instructional program or

course intended to be offered by contract must be submitted to the System President of the Community College System for approval. This policy does not apply to contracts between a college and its individual instructors.

(b) Any curriculum contract entered into by the local board of trustees of a college must meet the following general criteria:

- (1) A contract document in proper legal form is necessary in all cases and shall be drawn up by the college consistent with the requirements of the local board of trustees, the public or private organizations or institutions being contracted with and the State Board's criteria.
- (2) The contract shall be limited to and not exceed the fiscal year in which it begins.
- (3) The provisions for payment under contract shall not exceed usual and customary costs associated with the contracted instruction.
- (4) The contract shall provide that the college personnel shall have the right to supervise the educational program offered by the public or private organizations or institutions to the extent necessary to ensure the quality of the instructional program.
- (5) The contract shall provide that the college, the department and the State Auditor shall have access to the records of the contractor to the extent necessary to ascertain the accuracy of such records and shall authorize the department to obtain such fiscal accounting reports as are necessary in carrying out the terms of the contract.
- (6) Curriculum courses taught under contract shall be limited to programs the college has been authorized to offer.
- (7) The contract shall stipulate that students taught under the terms of the contract shall pay the same fees charged other students in similar programs in the college, which fees shall be deposited in like manner as other fees. No tuition or fee charges shall be collected by the public or private organizations or institutions from students taught under such contracts unless specified by the contract.
- (8) The contract must be signed by the chairman of the board of trustees, president of the college and a represen-

tative of the public or private organizations or institutions.

- (9) Approval Procedure. When approved by the local board of trustees and the public or private organizations or institutions, the contract document shall be submitted to the System President who is authorized to approve the college's budget for the contracted instructional services if the requirements in Paragraphs (b), (c), (d), and (e) of this Rule have been met.

(c) ~~In addition, the~~ The following provisions shall apply specifically to curriculum contracts with a proprietary or private non-profit institution or public agency.

- (1) The proprietary or private non-profit institution with which the contract is made must be licensed as required by the General Statutes of North Carolina and must have maintained the licensure for a minimum of two years to offer the instruction desired.

- (2) If federal funds are to be used to pay for instruction provided under the conditions of the contract, the proprietary or private non-profit institution must meet the requirements of the private vocational training institution.

- ~~(d)~~(3) The chief executive officer of the proprietary or private non-profit institution, or his designated agent, must sign a certification statement that the program in question, facility, or contract for services to students will be open without regard to race, age, color, creed, sex, political affiliation, or handicapping conditions.

- ~~(e)~~(4) Public or private colleges or universities must be licensed as required by the General Statutes of North Carolina to offer the instruction desired if entering into a contract to provide instructional services with the board of trustees of a college.

(d) Instructional curriculum contracts with local school administrative units must meet the following conditions:

- (1) Shall not supplant existing funding for public school positions;
(2) Must provide through the Cooperative Agreement Program (Huskins Bill) college-level classes which could not be otherwise provided.

~~(f)(e)~~ Unless otherwise specified, colleges shall earn reimbursement on the regular formula budget for student membership hours generated by instruction under contract except that cosmetology instruction offered under contract shall be funded for instructional units at the occupational extension formula rate and for instructional support and administration at the curriculum formula rate. As per Paragraph (d) of this Rule, if a college contracts with a local school unit under the Cooperative Agreement Program (Huskins Bill), the college would recoup the direct instructional cost contained in the contract and 15 percent for administrative cost incurred.

~~(g) Approval Procedure.~~ When approved by the local board of trustees and the public or private organizations or institutions, the contract document shall be submitted to the President of the Community College System who is authorized to approve the college's budget for the contracted instructional services if the requirements in Paragraphs (b), (c), (d) and (e) of this Rule have been met.

Statutory Authority G.S. 115D-1 through 115D-5; 115D-18; 115D-20(6); P.L. 88-352; P.L. 98-524.

.0603 RURAL RENAISSANCE CONSORTIUM INSTRUCTIONAL MODULES

~~(a) The Rural Renaissance Consortium was formed by the State Board to provide services in staff development and educational module production.~~

~~(b) The director shall be appointed by the Executive Committee of the Consortium and approved by the State President.~~

~~(c) The Consortium may enter into a contract with the State Board to develop educational products and, with the approval of the State Board to contract with private firms for the sale and distribution of such materials in accordance with State and Federal laws.~~

~~(d) Proceeds from the sale of materials shall accrue to the State Board for its use subject to the approval of the Office of State Budget.~~

~~(e) The Consortium shall make available a biannual activities report to the State President.~~

~~(f) An annual report of the consortium activities shall be made to the State Board by the State President.~~

Statutory Authority G.S. 115D-1 through 115D-5; 115D-54.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Community Colleges intends to adopt rules cited as 23 NCAC 3A .0101 - .0114, .0201 - .0214.

The proposed effective date of this action is July 1, 1993.

The public hearing will be conducted at 10:30 a.m. on November 18, 1992 at the Auditorium of the Highway Building, 11 South Wilmington Street, Raleigh, N.C. 27601-1494.

Reason for Proposed Action: To inform affected owners of proprietary schools licensed by the State Board of Community Colleges and the public of the requirements for obtaining licenses and operating such schools.

Comment Procedures: Interested persons may present statements either orally or in writing at the public hearing, or in writing delivered or mailed, addressed to: Clay Tee Hines or Bill Cole, Department of Community Colleges, 200 West Jones Street, Raleigh, NC 27603. Written comments must be received by 5:00 p.m. on December 2, 1992.

CHAPTER 3 - MISCELLANEOUS PROGRAMS

SUBCHAPTER 3A - PROPRIETARY SCHOOLS

SECTION .0100 - BUSINESS, TRADE AND TECHNICAL SCHOOLS

.0101 LICENSING SCHOOLS

Application for an Original License:

- (1) Any person or persons (partnerships, associations, or corporations) operating a proprietary business, trade or technical school with an enrollment of more than five persons in the state of North Carolina shall obtain a license from the North Carolina State Board of Community Colleges.
- (2) A preliminary application shall be submitted setting forth the proposed location of the school, the qualifications of the director of the school, a description of the facilities available, courses to be

offered, and financial resources available to equip and maintain the school. The State Board may request other state occupational licensing or approving bodies to approve the adequacy of programs, equipment, and personnel during the preliminary application phase. Upon approval of the preliminary application, a final application may be submitted. This application shall be verified and accompanied by the following:

- (a) A certified check or money order in the amount of seven hundred and fifty dollars (\$750.00) made payable to the North Carolina State Treasurer; (Each license shall be an annual license which shall expire on the 30th day of June next following date of issuance.)
- (b) A copy of the school's catalogue or bulletin in published form certified as true and correct in content and policy by an authorized official of the school and shall include the following:
 - (i) Identifying date, such as volume number and date of publication;
 - (ii) Name of the institution and its governing body, officials, and faculty;
 - (iii) A calendar of the institution showing legal holidays, beginning and ending date of each quarter, term or semester, and other important dates;
 - (iv) Institution's policy and regulations relative to leave, absences, class cuts, makeup work, tardiness, and interruptions for unsatisfactory attendance;
 - (v) Institution's policy and regulations on enrollment with respect to enrollment dates and specific entrance requirements for each course;
 - (vi) Institution's policy and regulations relative to standards of progress required of the student by the institution; (This policy shall define the grading system of the institution, the minimum grades considered satisfactory, conditions for interruption for unsatisfactory grades or progress and description of the probationary period, if any, allowed by the institution, and conditions of re-entrance for those students dismissed for unsatisfactory progress. A statement will be made regarding progress records kept by the institution and furnished the student.)

- (vii) Institution's policy and regulations relating to student conduct and conditions for dismissal for unsatisfactory conduct;
- (viii) Detailed schedule for fees, charges for tuition, books, supplies, tools, student activities, laboratory fees, service charges, rentals, deposits, and all other charges; (Charges for these items may not be increased to off-set the cost of tuition.)
- (ix) Policy and regulations of the institution relative to the refund of the unused portion of tuition, fees, and other charges in the event the student does not enter the course or withdraws or is discontinued therefrom;
- (x) A description of the available space, facilities, and equipment;
- (xi) A course outline for each course for which approval is requested;
- (xii) Policy and regulations of the institution relative to granting credit for previous educational training;
- (c) A financial statement showing capital investment, assets and liabilities, and proposed operating budget;
- (d) A complete detail of ownership; (This will show stock distribution if the school is a corporation, or partnership agreement if the school will be operated as a partnership.)
- (e) Information on all administrative and instructor personnel who will be active in the operation of the school, either in full- or part-time capacity; (This information will be submitted on forms provided for this purpose.)
- (f) Enrollment application or student contract form;
- (g) School floor plan showing doors, windows, halls, and seating arrangement; also offices, rest rooms, and storage space; the size of each room and seating capacity will be clearly marked for each classroom; lighting showing kind and intensity will be indicated for each room; the type of heating and cooling system used for the space occupied shall be stated;
- (h) Photostatic copies of inspection reports or letters from proper officials to show that the building is safe and sanitary and meets all local city, county, municipal, state, and federal regulations such as fire, building, and sanitation codes;
- (i) If building is not owned by the school, a photostatic copy of the lease held by the school for the space occupied;
- (j) Letter from the clerk of superior court of the county in which the school is located stating that a guaranty bond or guaranty bond alternative is on file.
- (i) Applicants unable to secure a guaranty bond may seek a waiver of the bond from the State Board of Community Colleges and approval of one of the bond alternatives.
- (ii) Bond alternatives may be in the form of an assignment of a savings account or a certificate of deposit with a state or federal savings and loan association, a state bank, or a national bank which is licensed to do business in North Carolina and is insured by a federal depositors corporation.
- (3) A person or persons purchasing a proprietary business, trade or technical school already operating as a licensed school shall comply with all of the requirements for securing an original license. A license is not transferable to a new owner. All application forms and other data shall be submitted in full. Such terms "previously submitted" when referring to a former owner's file will not be acceptable. A separate license shall be required for each location of each school, or branch thereof. Classes conducted by the school in separate locations must be reported and approved prior to advertising and commencement of classes.
- (4) A temporary operating license, not to exceed 90 days, may be issued to a school upon its sale if the school held a valid license prior to the sale and if evidence indicates that it is likely to qualify for a license after the sale.
- (5) Changes in application information presented for licensure or relicensure relating to mission, programs, location or stock distribution require prior approval and licensure amendment by the State Board.
- (a) Program additions require curriculum reviews and program or course approvals prior to initiation. A check or money order in the amount of one hundred dollars (\$100.00) made payable to the

North Carolina State Treasurer shall accompany each additional program approval request.

(b) Single course additions or revisions may be individually approved when schools submit a request for license amendment. Course additions or revisions requiring extensive curriculum review, instructor evaluation, and equipment site assessment are subject to the curriculum review fee of one hundred dollars (\$100.00).

(c) School relocations require site visits and approvals prior to site relocations. A check or money order in the amount of two hundred dollars (\$200.00) made payable to the North Carolina State Treasurer shall accompany each site relocation approval request.

Statutory Authority G.S. 115D-89; 115D-90; 115D-91.

.0102 APPLICATION FOR RENEWAL OF LICENSE

(a) Schools shall be licensed annually, and the licensure shall extend from July 1 through June 30, inclusive.

(b) Schools desiring the renewal of their license shall submit an application on or before June 1 of each year in the form and manner prescribed by the State Board. The application shall be accompanied by the following:

- (1) All information required of schools applying for an original license that has not been previously submitted;
- (2) Copy of current catalogue containing all information required of schools applying for original license;
- (3) Any supplementary information necessary to bring information on the school up to date.

(c) A check in the amount of five hundred dollars (\$500.00) to the North Carolina State Treasurer, shall be received on or before July 1.

Statutory Authority G.S. 115D-91; 115D-92.

.0103 SCHOOL PLANT AND EQUIPMENT

(a) The school plant, premises, and facilities must be adequate, safe, and sanitary and must be in compliance with the statutory provisions and the rules and regulations of all local ordinances pertaining to fire, health, safety, and sanitation.

(b) The equipment, supplies, and instructional materials of the school must be satisfactory and adequate in type, quality, and amount, and must be suitable for satisfactory use in administering the course or courses of instruction. These must also meet all requirements of statutory provisions and local ordinances, and rules and regulations adopted thereunder in regard to fire, health, safety, and sanitation.

Statutory Authority G.S. 115D-89; 115D-90.

.0104 ADMINISTRATION

(a) One person must be designated as the director of the school or branch thereof. The director must be qualified in accordance with the requirements established by the State Board.

(b) The director or administrator is defined to be a person directly responsible for the school program, the methods of instruction, the employment of teachers, the organization of classes, the maintenance of the school plant and the equipment, the advertising used, and the maintenance of proper administrative records and all other procedures related to the administration of the school or class.

(c) The director or administrator must have the following qualifications:

- (1) Be a person of good moral character;
- (2) Be a graduate of an approved college or university;
- (3) Have experience as a teacher in one or more of the major subjects taught in the school which one is to administer;
- (4) Directors and administrators who possess qualifications which are substantially equivalent to the requirements prescribed herein for directors may individually be approved by the North Carolina State Board of Community Colleges.

Statutory Authority G.S. 115D-87; 115D-90.

.0105 ADVERTISING

(a) A licensed school shall not advertise through any media that it offers courses that the school has not been licensed to offer.

(b) Printed catalogues, bulletins, or prospectus information must be specific with respect to prerequisite training required for admission to the school courses, the curricula, the contents of courses, graduation requirements, tuition and other fees, refunds and allowances for withdrawals and unavoidable or extended absences.

(c) Schools shall not use any name, title, or other designation, by way of advertising or otherwise, that is misleading or deceptive as to character of the institution, or its influence in training employment for students. Schools shall be degree granting or accredited as a junior college of business in order to delete "business" from the name of the school.

(d) Schools shall not use a photograph, cut, engraving, or illustration in catalogues, sales literature, or otherwise in such a manner as to convey a false impression as to the size, importance, or location of the school's equipment.

(e) Schools shall not use endorsements, commendations, or recommendations by students in favor of a school unless it is with the consent of the writer and without any offer of financial compensation. Such material shall be kept on file by the school.

(f) Schools shall publish tuition rates, payment method, and refund policy in their catalogues or on separate rate sheets and shall not deviate from these rates and policies.

(g) Schools shall not make, cause, permit to be made, or publish any false, untrue, or deceptive statement or representation by way of advertising or otherwise concerning other private business schools or their activities in attempting to enroll students or concerning the character, nature, quality, value, or scope of any course of instruction or education service offered or in any other material respect.

(h) A school or class shall not solicit students to enroll by means of "blind" advertisements or advertisements in the "help wanted" or other employment columns of newspapers and publications.

(i) Schools shall not make false, untrue, or deceptive statements of representatives regarding the opportunities in any vocation or field of activity as a result of the completion of any given course of instruction or educational service.

Statutory Authority G.S. 115D-90.

.0106 ADMISSION REQUIREMENTS

(a) The admission requirements must be published and administered as written.

(b) The school shall require graduation from high school as a prerequisite to enrollment in a diploma or degree course offered by the school. Exceptions to this requirement may be made for students who hold a certificate of high school equivalency issued by the North Carolina Community College System or for non-high school gradu-

ates who are 18 years of age or older who have demonstrated the ability to benefit as determined by accepted test instruments. The school shall not permit students of high school age to attend the school during the time that high schools are in regular session, except in individual cases approved by the student's high school principal. The school shall maintain records in the student's file to show compliance with admission requirements.

(c) The school may admit students to special courses or subjects offered by the school that the school deems the student can profit from the instruction offered.

Statutory Authority G.S. 115D-90.

.0107 RECORDS

(a) The school shall maintain current, complete, and accurate records to show the following:

(1) The student's educational and personal background, age, and other personal characteristics that will be helpful to prospective employers.

(2) Progress and attendance including date entered, dates attended, subjects studied, and time; this record shall be in a form which permits easy and accurate preparation of transcripts of educational records for purpose of transfer and placement, providing reports to government services or agencies, or for such other purposes as the needs of the student might require. Such transcripts shall be in the form readily understandable by lay persons and educators alike. The grading system on such transcripts shall be fully explained on the transcript form. Subjects appearing on the transcripts shall be numbered or otherwise designated to indicate the exact subject matter covered. Skills and proficiency in subjects measured by words per minute shall be described fully by the type of test and other conditions of the test by which such skills and proficiencies were scored.

(3) All monies owed and paid by each student.

(b) Records of students shall be open for inspection by properly authorized officials of the State Board.

(c) Financial records of the school shall be open for inspection by properly authorized officials of the State Board when information is furnished the

Board of its authorized officials which tends to show the financial status of the school is unstable.

Statutory Authority G.S. 115D-90.

.0108 INSTRUCTIONAL PROGRAM

(a) The school shall limit its offering in diploma and degree courses and special subjects to the courses and subjects for which it has been licensed to offer. At the beginning of each quarter, each school shall post the schedule of subjects begin offered during the quarter. This schedule will show the time and teacher for each subject and designate the room in which the subject will be taught. Each student shall be given a written schedule of classes at the beginning of each quarter to show the student's individual schedule.

(b) Schools shall not publish in their catalogues courses which they have not been licensed to offer. When a school is licensed to offer a course and enrolls students in the course, the school shall maintain sufficient and qualified faculty to teach all subjects required for completing the course during the time stipulated in the school's bulletin as the required time to complete the course and shall schedule classes so that the students will be able to receive instruction in all subjects for the number of instructional hours as advertised in the school's bulletin under which the students enrolled. When a school previously licensed to offer a course fails to maintain the qualifications for continuing the course, the course shall be removed from the catalogue or stamped "not offered."

(c) The number of curricula offered by a school shall be realistic in relationship to faculty and student enrollment. As a general rule, the number of curricula offered shall not exceed the number of faculty employed on a full-time basis.

(d) The school shall arrange its calendar one calendar year in advance and give full information to prospective and enrolled students about holidays; beginning and ending dates of each quarter, term, or semester; and other important dates.

(e) Schools may measure instruction on a clock-hour or credit-hour basis. The catalogue shall provide a clear definition of the method used. The school catalogue must show the number of clock hours or credit hours for each subject offered and the minimum clock hours or credit hours a student must carry for full-time enrollment. Courses offered on a credit-hour basis must show class hours, laboratory hours, and credit hours.

(f) Student teacher ratio shall not exceed 30 to 1.

(g) Class period shall permit a minimum of 50 minutes net instruction.

(h) Diplomas and degrees shall be issued only upon completion of a standard diploma or degree course.

(i) Students enrolled diploma or degree programs shall not be enrolled except at the beginning of each quarter or term.

Statutory Authority G.S. 115D-90.

.0109 INSTRUCTOR PERSONNEL

(a) An application for approval to teach in a licensed proprietary business, trade, or technical school must be made on forms provided for this purpose. Such application must be filed immediately when the teacher commences teaching in a proprietary business, trade, or technical school.

(b) A teacher must be found to be qualified by education and experience background and must meet the following qualifications as minimum requirements:

- (1) Be a person of good moral character;
- (2) Be at least 21 years of age;
- (3) Be a graduate of a standard college or university and hold a baccalaureate degree or meet the requirements of other occupational licensing or approval bodies requested to approve instructor adequacy. Exceptions may be made on a case by case basis requiring prior approval by the State Board, acting by and through the System President.

Statutory Authority G.S. 115D-90.

.0110 FINANCIAL STABILITY

(a) The school shall have sufficient finances to establish and carry out a satisfactory program of education on a continuing basis.

(b) The school shall maintain a satisfactory credit rating.

Statutory Authority G.S. 115D-90.

.0111 ETHICS

(a) Schools must not offer premiums or special inducement to prospective students or enrollees. Scholarships may be offered provided terms of scholarship are published and approved by the State Board of Community Colleges.

(b) Failure to maintain tuition rates as published is grounds for suspension or revocation of the license of a school.

(c) No officer or representative of the school shall solicit any student to leave any school in which enrolled or in attendance.

(d) A school representative thereof must not guarantee positions or employment to prospective students.

Statutory Authority G.S. 115D-90; 115D-93.

.0112 REVOKING A LICENSE

The license of a proprietary business, trade, or technical school may be revoked when it is found that the school has failed to comply with the requirements of the law and the rules and regulations adopted by the State Board. A school shall be notified by registered mail when it is believed to be in violation of the law or the rules and regulations made pursuant to the law and such notice shall be addressed to the director of the school at the address of the school as shown by the records of the State Board. An opportunity to be heard shall be provided upon written request by the school or any owner or official thereof within 15 days of the mailing of said registered letter, and said request shall be addressed to the State Board of Community Colleges, Raleigh, North Carolina. If it is found and determined after a hearing that the school is in violation of the law or the rules and regulations of the State Board and it is the decision of the State Board that the license shall be revoked, a written notice of this action shall be mailed to the director of the school by registered mail and said revocation shall be effective upon the date of final action of the State Board.

Statutory Authority G.S. 115D-93.

.0113 AMENDING REGULATIONS

The State Board reserves the right to amend these Rules from time to time in accordance with the requirements of the Administrative Procedures Act.

Statutory Authority G.S. 115D-89.

.0114 BUSINESS SCHOOL; SPECIFIC REGULATIONS

(a) Associate in Applied Science Degree. Note: This degree may be awarded upon licensure by the Board of Governors of the University of North Carolina.

(b) Curricula requirements:

- (1) Accounting -- 108 credit hours or clock-hour equivalent;

- (2) Advanced secretarial -- 54 credit hours or clock-hour equivalent;
- (3) Airline secretarial -- 54 credit hours or clock-hour equivalent;
- (4) Automated accounting -- 72 credit hours or clock-hour equivalent;
- (5) Business administration -- 108 credit hours or clock-hour equivalent;
- (6) Electronic data processing -- 54 credit hours or clock-hour equivalent;
- (7) Executive secretarial -- 90 credit hours or clock-hour equivalent;
- (8) Fashion merchandising -- 54 credit hours or clock-hour equivalent;
- (9) General business -- 54 credit hours or clock-hour equivalent;
- (10) Junior accounting -- 72 credit hours or clock-hour equivalent;
- (11) Legal secretarial -- 90 credit hours or clock-hour equivalent;
- (12) Medical secretarial -- 90 credit hours or clock-hour equivalent;
- (13) Professional accounting -- 108 credit hours or clock-hour equivalent;
- (14) Professional secretarial -- 108 credit hours or clock-hour equivalent;
- (15) Secretarial -- 72 credit hours or clock-hour equivalent;
- (16) Stenographic -- 54 credit hours or clock-hour equivalent;
- (17) Transportation management -- 108 credit hours or clock-hour equivalent.

(c) Other courses may be individually approved as special courses when schools desiring to offer other courses submit a formal application for approval of such courses and are found to have met the requirements for offering the courses.

(d) Interim acceptance of the formal supplementary application for other courses may be granted at the discretion of the System President when a certified statement of intent to furnish qualified instructional personnel and necessary instructional equipment upon the commencing of the initial instruction and/or "hands-on" training is furnished by the applying institution, which institution shall have been duly licensed and in continuous operation for five or more years. The certified statement of intent shall also include a provision to return all monies paid, including any confirming or initial application fee paid by prospective enrollees in the event the course does not materialize upon the advertised beginning date.

Statutory Authority G.S. 115D-90.

SECTION .0200 - CORRESPONDENCE
SCHOOLS

.0201 LICENSING PROPRIETARY
CORRESPONDENCE SCHOOLS

(a) Basic Information Concerning Licensing
Proprietary Correspondence Schools.

- (1) After July 1, 1959, no correspondence school located in North Carolina shall solicit students or collect fees until a license has been granted by the State Board.
- (2) The receipt of a license is assurance to the officials of a correspondence school and to the students that the school meets the standards of the State Board and that it has the legal right to operate.
- (3) The issuing of a license to a correspondence school does not accredit the courses offered as valid for transfer to any other school or college in North Carolina.
- (4) An application for a license shall be filed with the State Board on a form prescribed by the State Board. Such forms will be forwarded on request.
- (5) The State Board may request that other state occupational licensing or approving bodies approve the adequacy of programs, equipment, and personnel during the preliminary application phase.
- (6) A correspondence school located in North Carolina when approved may in its advertising use the following statement: "Licensed by the North Carolina State Board of Community Colleges."
- (7) The fee for the initial issue of a license is seven hundred and fifty dollars (\$750.00) made payable to the North Carolina State Treasurer in the form of a check or a money order.
- (8) A license is renewable annually upon payment of a fee of five hundred dollars (\$500.00). Fees must be made payable to the North Carolina State Treasurer.
- (9) Any license may be revoked for a good cause after a hearing.
- (10) The school must post a guaranty bond in the maximum amount of prepaid tuition or at least ten thousand dollars (\$10,000) or a guaranty bond alternative in the manner and form prescribed,

in conformity with North Carolina General Statutes, Chapter 115D-95.

- (A) Applicants unable to secure a guaranty bond may seek a waiver of the bond from the State Board and approval of one of the bond alternatives.
- (B) Bond alternatives may be in the form of an assigned savings account or a certificate of deposit with a state or federal savings and loan association, a state bank, or a national bank which is licensed to do business in North Carolina and is insured by a federal depositors corporation.
- (11) A person or persons purchasing a correspondence school already operating as a licensed school shall comply with all of the requirements for securing an original license. A license is not transferable to a new owner. All application forms and other data will be submitted in full. Such terms "previously submitted" when referring to a former owner's file will not be acceptable.
- (12) A temporary operating license, not to exceed 90 days, may be issued to a school upon its sale if the school held a valid license prior to the sale and if evidence indicates that it is likely to qualify for a license after the sale.

Statutory Authority G.S. 115D-87; 115D-91; 115D-95; 115D-96.

.0202 STANDARDS

(a) Name of School. The name of the school shall be descriptive of its function or functions. Any word or words which suggest an official relation with a municipality or with the state shall not be used. Any change in the name of an approved school shall be registered with the State Board.

(b) Location of the School. A school is approved for a specific location. Any change in the location of the school shall have the prior approval of the State Board as to adequacy of facilities.

(c) Administration of the School.

- (1) Each correspondence school shall have an executive head. The executive head of the school shall present evidence that one has the qualifications and the experience for competent and ethical administration of a correspondence school.
- (2) The executive head of a correspondence school shall have the administrative

- assistance necessary for adequately manning the school and effectively coordinating the work of the teachers.
- (3) Each private correspondence school located in North Carolina shall furnish such information and reports from time to time as the State Board shall deem necessary and proper and in the manner and on forms prescribed by the State Board. Failure to furnish any such information or report or to conform in every particular to standards prescribed for such proprietary correspondence school shall be good and sufficient reason for the refusal or a license for such proprietary correspondence school or for the revocation of a license previously granted.
- (4) Changes in application information presented for licensure or relicensure relating to mission, program, location, or stock distribution require prior approval and amendment to licensure by the State Board.
- (5) Program additions require curriculum reviews and approvals prior to initiation. A check or money order in the amount of one hundred dollars (\$100.00) made payable to the North Carolina State Treasurer shall accompany each additional program approval request.
- (6) Single course additions or revisions may be individually approved when schools submit a request for license amendment. Course additions or revisions requiring extensive curriculum review and instructor, equipment, and/or site assessment are subject to the curriculum review fee of one hundred dollars (\$100.00).
- (7) School relocations require site visits and approvals prior to site relocations. A check or money order in the amount of two hundred dollars (\$200.00) made payable to the North Carolina State Treasurer shall accompany each site relocation approval request.

Statutory Authority G.S. 115D-87; 115D-89; 115D-90; 115D-91; 115D-92; 115D-93; 115D-96.

.0203 ORGANIZATION AND NATURE OF CORRESPONDENCE COURSES

Each course of instruction offered shall consist of the following:

- (1) A preliminary lesson or set of instructions on "how to study" by the home-study method or adequate instruction on how to study each lesson assignment.
- (2) Textual or lesson materials which are:
 - (a) Adequate in that they cover the subject as fully and as thoroughly as announced;
 - (b) Accurate in that they are well authenticated;
 - (c) Current in that they represent reliable modern information on the subject;
 - (d) Presented in a simple, clear, interesting, and logical manner so that the students can grasp the important points readily;
 - (e) Illustrated with photographs, cuts, and drawings which clarify the explanations and not simply adorn the text;
 - (f) Printed in such a manner as to contribute to ease of study.
- (3) Instructional service on each lesson or unit assignment consisting of:
 - (a) A series of examination questions or problem assignments which thoroughly stress the important phases of the subject presented and which require a demonstration of the student's ability or skill in applying the information secured;
 - (b) An individualized correctional service pointing out the errors, directing the student to sources of correct information, as well as supplying additional explanations and supplementary instructional material when necessary.

Statutory Authority G.S. 115D-89; 115D-90.

.0204 INSTRUCTION

A supervisor of correspondence instruction is a person responsible for grading the papers sent to the school by the students and for guiding the students in their study.

- (1) Each approved correspondence school in North Carolina shall maintain an adequate and competent instructional staff.
- (2) The individualized correctional service shall be assigned to a supervisor or supervisors of correspondence instruction who shall have as a minimum the following educational preparation and experience:

- (a) A high school education and a combination of at least six years of higher education, teaching, and experience closely related to the subjects to be taught. This standard shall not operate to prevent the employment of competent assistants without these qualifications to grade papers under direction of an approved supervisor of correspondence instruction; and
- (b) A knowledge of educational psychology and methods as those subjects apply to the courses to be taught.
- (3) Each supervisor of correspondence instruction shall be approved by the State Board. An approved correspondence school located in North Carolina may employ for a period not to exceed 60 days a supervisor of correspondence instruction who has not yet obtained approval by the State Board. Any supervisor of correspondence instruction so employed shall obtain approval by the State Board for the particular assignments concerned within 60 days. In applying for approval of supervisors, correspondence schools shall use a form provided by the State Board to show for each supervisor concerned the following:
 - (a) Educational background and attainments;
 - (b) Work related to the courses concerned;
 - (c) Three references who are qualified to judge the supervisor concerned.

Statutory Authority G.S. 115D-90.

.0205 FINANCIAL STABILITY

Each correspondence school located in North Carolina shall annually demonstrate to the satisfaction of the State Board that it has financial resources sufficient to carry out the program of instruction submitted for approval. Each school shall maintain detailed records. These records shall be subject to inspection by the State Board or its representatives.

Statutory Authority G.S. 115D-90.

.0206 THE OFFICIAL BULLETIN OR CATALOGUE

Each correspondence school located in North Carolina shall from time to time issue a printed bulletin which shall clearly indicate that it is an institution offering courses by correspondence. Its

statements shall set forth the obligations of both the school and the students. The bulletin shall show the following:

- (1) The name and location of the school;
- (2) The name of the executive head of the school;
- (3) A description of the lessons and the courses offered; Upon approval of the State Board, this standard may be met by publishing a description of the courses offered as a bulletin separate from the catalogue.
- (4) The fees and tuition charges; A correspondence school may meet this standard by publishing separately its list of fees and charges provided an up-to-date list of such fees and charges is kept filed with the State Board.
- (5) Requirements for graduation;
- (6) The maximum time allowed for completing each course.

Statutory Authority G.S. 115D-90.

.0207 RESPONSIBILITY FOR PERSONNEL AND AGENTS

Each school shall be accountable for the acts of its licensed solicitors and filed representatives as these acts affect the rights of students or prospective students. Each proprietary correspondence school located in North Carolina shall give its sales representatives adequate preliminary training and exercise careful supervision to guard against any misrepresentation to prospective students and to prevent the enrollment of pupils who lack qualifications for probable success in completing the course concerned.

Statutory Authority G.S. 115D-90.

.0208 CONTRACT WITH STUDENT

The contract to be approved shall enumerate the following:

- (1) The total cost to the student;
- (2) The initial payment at the time of registration;
- (3) The amounts of subsequent payments and a statement specifying when the payments are due;
- (4) A list of the books, supplies, and equipment, if any, to be furnished by the correspondence school;
- (5) A list of the books, supplies, and equipment, if any, which the student must

purchase in addition to those provided by the correspondence school;

- (6) All other charges, if any, which the school may make such as fees for a diploma or for graduation;
- (7) The terms of settlement for the student who desires to discontinue his enrollment and withdraw from the school;
- (8) The terms of settlement for the student who is dropped by the school; these terms must be found to be satisfactory by the State Board;
- (9) The particulars concerning instruction during completion periods in schools, shops, or laboratories provided such instruction is offered.

Statutory Authority G.S. 115D-90.

.0209 RESIDENT TRAINING

Resident training in shops, schools, or laboratories may be offered by correspondence schools located in North Carolina provided the shop, school, or laboratory concerned is approved by the State Board as adequate for the courses offered. If a correspondence school located in North Carolina advertises as a part of a course a completion period in a school, shop, or laboratory, then the contract shall specify:

- (1) The basis for qualifying as a student for admission to the shop, laboratory, or school for the completion period concerned;
- (2) The location of such shop, laboratory, or school;
- (3) The schedule of periods of instruction in such shop, laboratory, or school;
- (4) The number of days of instruction to which the qualified student is entitled;
- (5) A description of the facilities in the shop, laboratory, or school concerned;
- (6) The amount of additional tuition required, if any, for attendance at the shop, laboratory, or school used for the completion period;
- (7) The student's responsibility for paying the cost of transportation to and from the shop, laboratory, or school where the completion period is scheduled;
- (8) The student's responsibility for paying the cost of room and board while in attendance during the completion period;
- (9) A list of books, supplies, and tools, if any, which will be furnished by the school for use by the student while in

attendance during the completion period and the rental cost, if any, for the use of such books, tools, and supplies;

- (10) A list of any additional tools, equipment, work, clothing, books, or other items which must be purchased by the student for use during the completion period.

Statutory Authority G.S. 115D-90.

.0210 STANDARDS FOR ENROLLMENT

Each correspondence school located in North Carolina shall either:

- (1) Establish and print standards of educational achievement which students shall attain before enrolling for each course offered; or
- (2) Begin each course with simple basic reading and illustrations which lead gradually to the more advanced lessons.

Statutory Authority G.S. 115D-90.

.0211 RECORDS

A summary of the student's educational achievement shall be recorded on a form planned for that purpose. These records shall be retained by the school for a period of at least 20 years.

Statutory Authority G.S. 115D-20.

.0212 UNFAIR PRACTICES

Each correspondence school to which is awarded a North Carolina license shall comply with the procedures and practices enumerated in "Guides for Private Vocational and Home Study Schools," 16 CFR part 254 approved by the Federal Trade Commission, May 16, 1972, and as amended from time to time.

Statutory Authority G.S. 115D-90.

.0213 REVOKING A LICENSE

The license of a correspondence school located in North Carolina may be revoked if the State Board, after a hearing, finds and determines:

- (1) That the school concerned has failed to observe any of the guides set forth in the "Guides for Private Vocational and Home Study Schools," 16 CFR part 254 approved by the Federal Trade Commission, May 16, 1972, or has violated any official amendments to these rules;
- (2) That the school concerned has not complied with the requirements of the North

Carolina law or the standards which are officially approved by the State Board of Community Colleges for North Carolina correspondence schools; a school shall be notified by registered mail when it is believed to be in violation of the law or the rules and regulations made pursuant to the law and such notice shall be addressed to the director of the school at the address of the school as shown by the records of the State Board. An opportunity to be heard shall be provided upon written request by the school or any owner or official thereof made within 15 days of the mailing of said registered letter, and said request shall be addressed to the State Board of Community Colleges, Raleigh, North Carolina. If it is found and determined after a hearing that the school is in violation of the law or the rules and regulations of the State Board and it is the decision of the State Board that the license shall be revoked, a written notice of this action shall be mailed to the director of the school by registered mail and said revocation shall be effective upon the date of final action for the State Board.

Statutory Authority G.S. 115D-93.

.0214 APPLICATION FOR RENEWAL OF LICENSE

(a) Schools shall be licensed annually, and the licensure shall extend from July 1 through June 30, inclusive.

(b) Schools desiring the renewal of their license will submit an application on or before June 1 each year in the form and manner prescribed by the State Board. The application shall be accompanied by the necessary data to bring the information on the school up to date.

(c) A check in the amount of five hundred dollars (\$500.00) made payable to the North Carolina State Treasurer shall be submitted on or before July 1.

Statutory Authority G.S. 115D-91; 115D-92.

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

ADMINISTRATION

Motor Fleet Management Division

<i>1 NCAC 38 .0205 - Accident Reporting</i>	<i>RRC Objection 09/17/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 10/15/92</i>

AGRICULTURE

Structural Pest Control Division

<i>2 NCAC 34 .0406 - Spill Control</i>	<i>RRC Objection 07/16/92</i>
<i>Agency Responded</i>	<i>No Action 08/20/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 10/15/92</i>
<i>2 NCAC 34 .0603 - Waivers</i>	<i>RRC Objection 07/16/92</i>
<i>Agency Responded</i>	<i>No Action 08/20/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 10/15/92</i>
<i>2 NCAC 34 .0902 - Financial Responsibility</i>	<i>RRC Objection 07/16/92</i>
<i>Agency Responded</i>	<i>No Action 08/20/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 10/15/92</i>

ECONOMIC AND COMMUNITY DEVELOPMENT

Community Assistance

<i>4 NCAC 19S .0101 - Overview and Purpose</i>	<i>RRC Objection 10/15/92</i>
<i>4 NCAC 19S .0102 - Definition</i>	<i>RRC Objection 10/15/92</i>
<i>4 NCAC 19S .0103 - Waiver</i>	<i>RRC Objection 10/15/92</i>
<i>4 NCAC 19S .0202 - Prohibited Costs</i>	<i>RRC Objection 10/15/92</i>
<i>4 NCAC 19S .0401 - Distribution of Funds</i>	<i>RRC Objection 10/15/92</i>
<i>4 NCAC 19S .1101 - Grant Agreement</i>	<i>RRC Objection 10/15/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 10/15/92</i>

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Departmental Rules

<i>15A NCAC 1J .0204 - Loans from Emergency Revolving Loan Accounts</i>	<i>RRC Objection 06/18/92</i>
<i>15A NCAC 1J .0302 - General Provisions</i>	<i>RRC Objection 06/18/92</i>
<i>15A NCAC 1J .0701 - Public Necessity: Health: Safety and Welfare</i>	<i>RRC Objection 06/18/92</i>

Environmental Management

<i>15A NCAC 2H .0801 - Purpose</i>	<i>RRC Objection 10/15/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 10/15/92</i>
<i>15A NCAC 2H .0803 - Definitions</i>	<i>RRC Objection 10/15/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 10/15/92</i>
<i>15A NCAC 2H .0805 - Certification and Renewal of Certification</i>	<i>RRC Objection 10/15/92</i>

Agency Revised Rule
15A NCAC 2L .0107 - Compliance Boundary
Agency Revised Rule
15A NCAC 2O .0302 - Self Insurance

RRC Objection 10/15/92
RRC Objection 10/15/92
Obj. Removed 10/15/92
RRC Objection 06/18/92

Wildlife Resources and Water Safety

15A NCAC 10I .0001 - Definitions

RRC Objection 10/15/92

HUMAN RESOURCES

Facility Services

10 NCAC 3R .3001 - Certificate of Need Review Categories
Agency Revised Rule

RRC Objection 10/15/92
Obj. Removed 10/15/92

Individual and Family Support

10 NCAC 42C .3601 - Administrative Penalty Determination Process
Agency Revised Rule
10 NCAC 42T .0001 - Definitions
10 NCAC 42T .0006 - Service Delivery
Agency Revised Rule

RRC Objection 10/15/92
Obj. Removed 10/15/92
RRC Objection 10/15/92
RRC Objection 10/15/92
RRC Objection 10/15/92

Mental Health: General

10 NCAC 14C .1115 - Funding Group Homes for Mentally Retarded Adults
Agency Revised Rule
10 NCAC 14K .0216 - Waiver of Licensure Rules
Agency Revised Rule
10 NCAC 14T .0101 - Scope
Agency Revised Rule
10 NCAC 14T .0103 - Advance Care Directives
Agency Revised Rule

RRC Objection 08/20/92
Obj. Removed 10/15/92
RRC Objection 10/15/92
Obj. Removed 10/15/92
RRC Objection 10/15/92
Obj. Removed 10/15/92
RRC Objection 10/15/92
Obj. Removed 10/15/92

Mental Health: Other Programs

10 NCAC 18D .0117 - Purpose and Scope
Agency Revised Rule

RRC Objection 10/15/92
Obj. Removed 10/15/92

INDEPENDENT AGENCIES

N.C. Housing Finance Agency

24 NCAC 1M .0202 - Eligibility
24 NCAC 1M .0204 - Selection Procedures
24 NCAC 1M .0205 - Administration
24 NCAC 1M .0206 - Program Fees
24 NCAC 1M .0301 - Goal and Objectives
24 NCAC 1M .0302 - Eligibility Requirements
24 NCAC 1M .0303 - Threshold Review Criteria
24 NCAC 1M .0306 - Funding Commitment
24 NCAC 1M .0401 - Goals and Objectives
24 NCAC 1M .0402 - Eligibility Requirements
24 NCAC 1M .0403 - Threshold Review Criteria

RRC Objection 10/15/92
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RRC Objection 10/15/92

24 NCAC 1M .0404 - Ranking Criteria	RRC Objection	10/15/92
24 NCAC 1M .0405 - Agency Board Approval	RRC Objection	10/15/92
24 NCAC 1O .0101 - Purpose	RRC Objection	10/15/92
24 NCAC 1O .0102 - Eligibility	RRC Objection	10/15/92
24 NCAC 1O .0201 - Application Procedures	RRC Objection	10/15/92
24 NCAC 1O .0202 - Selection Procedures	RRC Objection	10/15/92
24 NCAC 1O .0203 - Administration	RRC Objection	10/15/92

INSURANCE

Multiple Employer Welfare Arrangements

11 NCAC 18 .0019 - Description of Forms	RRC Objection	06/18/92
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Seniors' Health Insurance Information Program

11 NCAC 17 .0005 - SHIIP Inquiries to Insurers and Agents	RRC Objection	06/18/92
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JUSTICE

General Statutes Commission

12 NCAC 8 .0506 - Declaratory Rulings	RRC Objection	10/15/92
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LABOR

Occupational Safety and Health Act

13 NCAC 7C .0108 - Building Code	RRC Objection	09/17/92
Rule Returned to Agency		10/15/92
Agency Filed Rule with OAH		Eff. 10/22/92
13 NCAC 7C .0109 - Fire Prevention Code	RRC Objection	09/17/92
Rule Returned to Agency		10/15/92
Agency Filed Rule with OAH		Eff. 10/22/92

LICENSING BOARDS AND COMMISSIONS

Professional Engineers and Land Surveyors

21 NCAC 56 .0501 - Requirement for Licensing	RRC Objection	10/15/92
Agency Revised Rule	Obj. Removed	10/15/92
21 NCAC 56 .0502 - Application Procedure: Individual	RRC Objection	10/15/92
Agency Revised Rule	Obj. Removed	10/15/92
21 NCAC 56 .0701 - Rules of Professional Conduct	RRC Objection	10/15/92
Agency Revised Rule	Obj. Removed	10/15/92
21 NCAC 56 .1603 - Classification of Surveys	RRC Objection	10/15/92
Agency Revised Rule	Obj. Removed	10/15/92
21 NCAC 56 .1604 - Mapping Requirements	RRC Objection	10/15/92
Agency Revised Rule	Obj. Removed	10/15/92
21 NCAC 56 .1605 - Classification of Topographic Surveys	RRC Objection	10/15/92
Agency Revised Rule	Obj. Removed	10/15/92

REVENUE

Individual Income, Inheritance and Gift Tax Division

17 NCAC 3B .0401 - Penalties

RRC Objection 08/20/92

17 NCAC 3B .0402 - Interest

RRC Objection 08/20/92

Individual Income Tax Division

17 NCAC 6B .0107 - Extensions

RRC Objection 08/20/92

17 NCAC 6B .0115 - Additions to Federal Taxable Income

RRC Objection 08/20/92

17 NCAC 6B .0116 - Deductions from Federal Taxable Income

RRC Objection 08/20/92

17 NCAC 6B .0117 - Transitional Adjustments

RRC Objection 08/20/92

17 NCAC 6B .3406 - Refunds

RRC Objection 08/20/92

TRANSPORTATION

Division of Highways

19A NCAC 2B .0164 - Use of Right of Way Consultants

RRC Objection 09/17/92

Agency Revised Rule

Obj. Removed 10/15/92

19A NCAC 2B .0165 - Asbestos Contracts with Private Firms

RRC Objection 08/20/92

Agency Revised Rule

Obj. Removed 10/15/92

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.

KEY TO CASE CODES

ABC	Alcoholic Beverage Control Commission	DST	Department of State Treasurer
BDA	Board of Dental Examiners	EDC	Department of Public Instruction
BME	Board of Medical Examiners	EHR	Department of Environment, Health, and Natural Resources
BMS	Board of Mortuary Science	ESC	Employment Security Commission
BOG	Board of Geologists	HAF	Hearing Aid Dealers and Fitters Board
BON	Board of Nursing	HRC	Human Relations Committee
BOO	Board of Opticians	IND	Independent Agencies
CFA	Commission for Auctioneers	INS	Department of Insurance
COM	Department of Economic and Community Development	LBC	Licensing Board for Contractors
CPS	Department of Crime Control and Public Safety	MLK	Milk Commission
CSE	Child Support Enforcement	NHA	Board of Nursing Home Administrators
DAG	Department of Agriculture	OAH	Office of Administrative Hearings
DCC	Department of Community Colleges	OSP	Office of State Personnel
DCR	Department of Cultural Resources	PHC	Board of Plumbing and Heating Contractors
DCS	Distribution Child Support	POD	Board of Podiatry Examiners
DHR	Department of Human Resources	SOS	Department of Secretary of State
DOA	Department of Administration	SPA	Board of Examiners of Speech and Language Pathologists and Audiologists
DOJ	Department of Justice	WRC	Wildlife Resources Commission
DOL	Department of Labor		
DSA	Department of State Auditor		

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Anne R. Gwaltney, Milton H. Askew, Jr. and Anna L. Askew v. EHR and Pamlico County Health Department	89 DHR 0699	Reilly	07/17/92
Eleanor R. Edgerton-Taylor v. Cumberland County Department of Social Services	89 OSP 1141	Morrison	08/18/92
Annette Carlton v. Cleveland County Department of Social Services	90 OSP 0024	Chess	08/14/92
Janice Parker Haughton v. Halifax County Mental Health, Mental Retardation, Substance Abuse Program	90 OSP 0221	West	08/18/92

CONTESTED CASE DECISIONS

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Carolina Water Service, Inc. v. EHR, Division of Environmental Management	90 EHR 0415	West	09/11/92
CSX Transportation, Inc. v. Department of Environment, Health, & Natural Resources	90 EHR 0628	Reilly	07/17/92
Bruce Keeter v. Beaufort County Health Department	90 EHR 0666	Morgan	07/28/92
R. Anthony White v. Department of Human Resources	90 CSE 0756	Morgan	10/05/92
Christine Hill v. Crime Victims Compensation Commission	90 CPS 0876	Morgan	08/24/92
Tommy D. Hunt v. Department of Correction	90 OSP 1011	Morgan	10/05/92
Leslie W. Hall v. EHR, Division of Marine Fisheries	90 EHR 1397	Gray	10/13/92
JHY Concord, Inc. v. Department of Labor	90 DOL 1421	Morgan	07/28/92
Lick Fork Hills, Inc., Marion Bagwell, President v. Department of Environment, Health, & Natural Resources	91 EHR 0023	Morgan	07/28/92
Albert J. Johnson v. N.C. Victims Compensation Commission	91 CPS 0038	Morgan	07/28/92
Frank Beal, T/A Wild Wild West v. Alcoholic Beverage Control Commission	91 ABC 0164	Morgan	09/10/92
William B. Holden v. Department of Environment, Health, & Natural Resources	91 EHR 0176	Morgan	08/18/92
Brenda P. Price v. North Carolina Central University	91 OSP 0219	Morrison	08/21/92
Century Care of Laurinburg, Inc. v. DHR, Division of Facility Services, Licensure Section	91 DHR 0257	West	06/30/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Kenneth E. Fletcher v. University of North Carolina at Greensboro	91 OSP 0315	Chess	09/15/92
Richard L. Gainey v. Department of Justice	91 OSP 0341	Becton	08/10/92
Wade Charles Brown, Jr. v. N.C. Crime Victims Compensation Commission	91 CPS 0345	Chess	07/08/92
Jackie Bruce Edwards v. DHR, Western Carolina Center	91 OSP 0354	West	08/20/92
Central Transport, Inc. v. Department of Environment, Health, & Natural Resources	91 EHR 0402	Morrison	09/25/92
Robert C. Howell v. Department of Correction	91 OSP 0407	Morgan	08/26/92
Harvey Fertilizer and Gas Company v. EHR, Division of Environmental Management	91 EHR 0446	Morgan	10/01/92
Charles E. Roe v. Department of Environment, Health, & Natural Resources	91 OSP 0520	Nesnow	07/23/92
Jerry J. Parker v. Department of Correction	91 OSP 0546	Morgan	08/26/92
Deborah Binkley v. Crime Victims Compensation Commission	91 CPS 0561	Morgan	10/02/92
Air-A-Plane Corporation v. Department of Environment, Health, & Natural Resources	91 EHR 0636	Nesnow	09/04/92
Lisa M. Reichstein v. Office of Student Financial Aid, East Carolina University	91 OSP 0662	Nesnow	06/24/92
Hudson's "The Acres" Rest Home v. DHR, Division of Facility Services, Licensure Section	91 DHR 0665	Chess	09/09/92
Bobby R. Graham v. DHR, Caswell Center	91 OSP 0695	Nesnow	09/21/92

CONTESTED CASE DECISIONS

CASE NAME	CASE NUMBER	ALJ	FILED DATE
DHR, Division of Facility Svcs, Child Day Care Section v. Mary Goodwin, Jean Dodd, D/B/A Capital City Day Care Center	91 DHR 0720	Morgan	07/30/92
Kenneth Helms v. Department of Human Resources	91 OSP 0729	Chess	07/15/92
Lloyd C. Neely v. Department of Correction	91 OSP 0756	Morgan	09/10/92
Alcoholic Beverage Control Commission v. Daniels Investments, Inc., t/a Leather & Lace - East 4205 Monroe Road, Charlotte, N.C. 28205	91 ABC 0799	Mann	07/14/92
Zelma Babson v. Brunswick County Health Department	91 OSP 0804	Gray	08/14/92
ACT-UP Triangle (AIDS Coalition to Unleash Power Triangle, Steven Harris, and John Doe v. Commission for Health Services of the State of N.C., Ron Levine, as Assistant Secretary of Health and State Health Director for EHR of the State of N.C., William Cobey, as Secretary of EHR of the State of N.C., Dr. Rebecca Meriwether, as Chief, Communicable Disease Control Section of the N.C. EHR, Wayne Bobbitt, Jr., as Chief of the HIV/STD Control Branch of the N.C.EHR	91 EHR 0818	Becton	07/08/92
Jane C. O'Malley, Melvin L. Cartwright v. EHR and District Health Department Pasquotank- Perquimans-Camden-Chowan	91 EHR 0838	Becton	07/02/92
Cheryl Veronica McNeal v. Criminal Justice Education & Training Stds Comm	91 DOJ 0861	Morgan	09/22/92
Thomas E. Vass v. James E. Long, Department of Insurance	91 INS 0876	Morrison	08/14/92
William Paul Fearington v. University of North Carolina at Chapel Hill	91 OSP 0905	Reilly	08/28/92
Olde Towne Partnership and Tryon Realty Co. v. EHR, Division of Coastal Management	91 EHR 0909	Morrison	09/16/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Gerald R. Pruitt v. Department of Correction	91 OSP 0933	Gray	09/14/92
Jones Grading & Fencing, Inc. v. EHR, Solid Waste Management	91 EHR 0956 91 EHR 0324	Nesnow	09/28/92
Grotgen Nursing Home, Inc., Britthaven, Inc. v. Certificate of Need Section, Div of Facility Svcs, DHR	91 DHR 0964 91 DHR 0966	Nesnow	07/06/92
Ralph E. Brown v. Carla O'Konek, Department of Correction	91 OSP 0970	Morgan	10/07/92
Anthony J. Carter v. DHR, Division of Social Services, CSE	91 CSE 0975	Nesnow	09/17/92
Ramona S. Smith, R.N. v. N.C. Teachers'/St Emps' Comp Major Medical Plan	91 DST 0984	Chess	06/18/92
Jarrett Dennis Swearengin v. DHR, Division of Social Services, CSE	91 CSE 0986	Becton	09/14/92
Charles H. Yates, Power of Attorney for Ruth Yates v. N.C. Teachers'/St Emps' Comp Major Medical Plan	91 INS 1008	Reilly	08/21/92
John McMillan v. DHR, Division of Social Services, CSE	91 CSE 1009	Reilly	10/01/92
Walter McGlone v. DHR, Division of Social Services, CSE	91 CSE 1030	Morrison	07/13/92
William Oscar Smith v. DHR, Division of Social Services, CSE	91 CSE 1042	Gray	07/24/92
William Watson v. DHR, Division of Social Services, CSE	91 CSE 1047	Becton	07/08/92
Robert D. Daniels Jr. v. DHR, Division of Social Services, CSE	91 CSE 1048	Morrison	08/27/92
Marie McNeill-Pridgen v. Department of Environment, Health, & Natural Resources	91 EHR 1059	Nesnow	07/17/92

CONTESTED CASE DECISIONS

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Catawba Memorial Hospital v. DHR, Div of Facility Svcs, Certificate of Need Section and Frye Regional Medical Ctr, Inc. and Amireit (Frye), Inc. and Thoms Rehabilitation Hospital Health Services Corp. and Frye Regional Medical Ctr, Inc. and Amireit (Frye), Inc. v. DHR, Div of Facility Svcs, Certificate of Need Section and Thoms Rehabilitation Hospital Health Services Corp. and Catawba Memorial Hospital	91 DHR 1061 91 DHR 1087	Reilly	07/13/92
Edward R. Peele v. Sheriffs' Education & Training Stds. Commission	91 DOJ 1092	Morrison	08/18/92
Charles Lawton Roberts v. DHR, Division of Social Services, CSE	91 CSE 1097	Becton	09/14/92
William Torres v. Dept of Justice, Lacy H. Thornburg, Attorney General	91 DOJ 1098	Morrison	08/07/92
Wade A. Burgess v. DHR, Division of Social Services, CSE	91 CSE 1114	Gray	07/01/92
Devoux A. Olliver v. Department of Human Resources, O'Berry Center	91 OSP 1151	Gray	09/30/92
Sammie L. Anderson v. DHR, Division of Social Services, CSE	91 CSE 1155	Mann	09/01/92
Harry L. King v. Department of Transportation	91 OSP 1162	Morgan	07/13/92
Bobby M. Siler v. DHR, Division of Social Services, CSE	91 CSE 1169	Morrison	10/12/92
Gilbert Lockhart v. DHR, Division of Social Services, CSE	91 CSE 1178	Morrison	07/30/92
Isaac H. Galloway v. DHR, Division of Social Services, CSE	91 CSE 1190	Reilly	06/30/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Russell A. Barclift v. DHR, Division of Social Services, CSE	91 CSE 1207 92 CSE 0275	Reilly	06/30/92
Barnabas D. Frederick v. DHR, Division of Social Services, CSE	91 CSE 1216	Nesnow	09/15/92
Herman Edward Main II v. DHR, Division of Social Services, CSE	91 CSE 1225	Nesnow	07/07/92
Albert Louis Stoner III v. DHR, Division of Social Services, CSE	91 CSE 1244	Gray	07/01/92
James E. Greene v. DHR, Division of Social Services, CSE	91 CSE 1245	Nesnow	07/14/92
Joseph W. Harris v. DHR, Division of Social Services, CSE	91 CSE 1247	Morgan	07/28/92
Celvis M. Burns v. DHR, Division of Social Services, CSE	91 CSE 1256	Mann	09/01/92
Rodney Powell v. DHR, Division of Social Services, CSE	91 CSE 1257	Morgan	07/29/92
Miles G. Griffin Jr. v. DHR, Division of Social Services, CSE	91 CSE 1270	Gray	08/27/92
Gerald E. Anthony v. DHR, Division of Social Services, CSE	91 CSE 1274	Mann	09/01/92
Floyd L. Rountree v. DHR, Division of Social Services, CSE	91 CSE 1275	Morgan	07/22/92
Ruth Smith Hensley Shondales v. ABC Commission	91 ABC 1280	Chess	08/05/92
William James Terry v. Victims Compensation Commission	91 CPS 1302	Morrison	10/02/92
Rasoul Behboudi v. DHR, Division of Social Services, CSE	91 CSE 1313	Morrison	09/15/92

CONTESTED CASE DECISIONS

CASE NAME	CASE NUMBER	ALJ	FILED DATE
John D. Gaines v. DHR, Division of Social Services, CSE	91 CSE 1321	Chess	10/05/92
City-Wide Asphalt Paving, Inc. v. Department of Environment, Health, & Natural Resources	91 EHR 1360	Chess	07/01/92
Alcoholic Beverage Control Commission v. Tre Three, Inc., T/A Crackers, Airport Rd., Rockingham, NC 28379	91 ABC 1372	Chess	07/07/92
Alcoholic Beverage Control Commission v. Rode Enterprises, Inc., T/A Jordan Dam Mini Mart	91 ABC 1388	Gray	07/30/92
Blythe M. Bragg v. University of North Carolina at Chapel Hill	91 OSP 1421	Nesnow	09/08/92
David W. Williams v. DHR, Division of Social Services, CSE	91 CSE 1423	Morrison	09/10/92
Donald R. Allison v. DHR, Caswell Center	91 OSP 1427	Reilly	06/30/92
Alfred Rees v. Department of Environment, Health, & Natural Resources	92 EHR 0004	Reilly	09/03/92
Mrs. S. v. Washington County Board of Education	92 EDC 0023	Mann	08/28/92
Rudolph Tripp v. Department of Correction	92 OSP 0024	Gray	08/27/92
Gonzalo Rodriquez T/A Gonzalo's Baile Mexicano 227 S. Scales Street, Reidsville, NC 27323 v. Alcoholic Beverage Control Commission	92 ABC 0026	Chess	10/01/92
Lavern Fesperman v. Mecklenburg County	92 OSP 0030	Chess	07/17/92
Vale B. Sims v. Winston-Salem State University	92 OSP 0031	Gray	10/13/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Paul J. Nonkes v. Halifax County Health Dept. (Jeff Dillard, Sanitarian)	92 EHR 0058	Becton	08/28/92
Carrolton of Williamston, Inc. v. DHR, Division of Facility Services, Licensure Section	92 DHR 0071	Becton	08/19/92
Mattie S. Bryant v. Department of Transportation	92 OSP 0081	Reilly	10/07/92
Fred Jennings Moody Jr. v. Sheriffs' Education & Training Stds. Commission	92 DOJ 0084	Chess	07/17/92
Ronnie Lamont Donaldson v. Sheriffs' Education & Training Standards Commission	92 DOJ 0092	Reilly	07/27/92
Vernice V. Battle v. Sheriffs' Education & Training Standards Commission	92 DOJ 0093	Becton	08/28/92
Hudson's "The Acres" Rest Home v. DHR, Division of Facility Services, Licensure Section	92 DHR 0100	Chess	09/04/92
Marvin Helton, Jean Helton v. DHR, Division of Facility Services	92 DHR 0102	Chess	08/14/92
Leo Scott Wilson v. Department of Environment, Health, & Natural Resources	92 EHR 0112	Reilly	08/26/92
Ray Charles Ramsey D/B/A Triples Night Club v. Alcoholic Beverage Control Commission	92 ABC 0116 92 ABC 0360	West	10/12/92
Peggy N. Barber v. The University of North Carolina at Chapel Hill	92 OSP 0120	Reilly	07/13/92
Luther Dawson Jr. v. DHR, Division of Facility Services	92 DHR 0121	Nesnow	10/09/92
Robert C. Thomas v. Sheriffs' Education & Training Stds. Commission	92 DOJ 0130	Chess	10/02/92
Alcoholic Beverage Control Commission v. John Wade Lewis, t/a Tasty Grill	92 ABC 0145	Nesnow	07/15/92

CONTESTED CASE DECISIONS

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Licensing Board for General Contractors v. Wright's Construction, Inc. (Lic. No. 23065)	92 LBC 0172	Gray	07/31/92
Richard L. Banks v. Pasquotank-Perquimans-Camden-Chowan District Health Department (PPCC) & Department of Environment, Health, & Natural Resources	92 EHR 0175	West	08/25/92
America's Management Group, Inc. d/b/a America's Health Care of Nashville v. DHR, Division of Facility Services, Licensure Section	92 DHR 0183	West	10/06/92
Hudson's "The Acres" Rest Home v. DHR, Division of Facility Services, Licensure Section	92 DHR 0186	Chess	09/04/92
Ray Bryant v. Department of Labor, OSHA	92 DOL 0187	Nesnow	08/07/92
Herbert Hines Jr., H & H v. Alcoholic Beverage Control Commission	92 ABC 0189	Becton	07/22/92
William Stevenson v. Department of Correction	92 OSP 0201	Chess	09/03/92
Frances B. Billingsley v. Bd. of Trustees/Teachers & St Employees Retirement Sys	92 DST 0205	Morgan	08/18/92
Glenn E. Myers v. Department of Correction	92 OSP 0217	Reilly	09/14/92
Lawrence Neal Murrill T/A Knox, 507 1st St SW, Hickory, NC 28602 v. Alcoholic Beverage Control Commission	92 ABC 0220	Chess	08/03/92
William Oats v. Elizabeth City State University	92 OSP 0226	Nesnow	10/09/92
Town of Denton v. Department of Environment, Health, & Natural Resources	92 EHR 0241	Reilly	07/30/92
Alcoholic Beverage Control Commission v. Byrum's of Park Road, Inc., T/A Byrum's Restaurant	92 ABC 0252	Gray	07/30/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Alcoholic Beverage Control Commission v. Leo's Delicatessen #2, Inc., T/A Leo's #2	92 ABC 0255	Gray	07/30/92
North Topsail Water & Sewer, Inc. v. Department of Environment, Health, & Natural Resources	92 EHR 0266	Morrison	08/12/92
Raymond O. and Rita Halle, and the Town of Boone v. EHR, Division of Land Resources	92 EHR 0267 92 EHR 0376	Gray	09/18/92
James L. Stubbs v. Department of Correction	92 OSP 0282	Chess	10/02/92
Henry Thomas Tart v. DHR, Division of Social Services, CSE	92 CSE 0283	Nesnow	09/15/92
Virginia Devenny v. The University of North Carolina at Charlotte	92 OSP 0301	Reilly	09/22/92
Henry Lane, D/B/A Emerald Health Care Acute Care Ctr v. DHR, Div of Facility Services, Certificate of Need Section and Bowman-Richardson Health Care, Inc. D/B/A Wilkes Senior Village	92 DHR 0308	Gray	08/28/92
Azmi Sider, Midtown Mini Mart v. EHR, Division of Maternal and Child Health, WIC Section	92 EHR 0317	Nesnow	09/16/92
Gerald G. Strickland v. Crime Control and Public Safety	92 CPS 0320	Chess	09/10/92
Charles Wesley McAdams v. Division of Motor Vehicles	92 OSP 0332	Gray	10/13/92
Jonathan L. Fann v. U.N.C. Physical Plant, Herb Paul, Louis Herndon, Dean Justice, Bruce Jones	92 OSP 0363	Becton	08/19/92
Douglas A. Bordeaux v. Department of Correction	92 OSP 0378	Chess	07/10/92
Clifton R. Johnson v. O'Berry Center, Department of Human Resources	92 OSP 0381	West	07/08/92

CONTESTED CASE DECISIONS

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Southeastern Machine & Tool Company, Inc. v. Department of Environment, Health, & Natural Resources	92 EHR 0386	Becton	07/20/92
Louvenia Clark v. Edgecombe County Department of Social Services	92 OSP 0402	Reilly	08/21/92
Raleigh F. LaRoche v. Child & Family Services of Wake County	92 OSP 0409	Becton	08/24/92
Matthew R. Anderson v. DHR, Division of Social Services, CSE	92 CSE 0418	Gray	10/06/92
Ellwin C. Wetherington Jr. v. DHR, Division of Social Services, CSE	92 CSE 0419	Morrison	09/28/92
Paul Reeves, Youth University Child Care v. Child Day Care Section, Division of Facility Svcs	92 DHR 0424	West	08/21/92
Mr. & Mrs. James C. Stanton v. Charlotte-Mecklenburg School System	92 EDC 0430	Nesnow	08/04/92
James Cooper Lewis v. Sheriffs' Education & Training Standards Commission	92 DOJ 0461	Reilly	09/15/92
Alcoholic Beverage Control Commission v. Roy William Teague, T/A Jamie's	92 ABC 0474	Reilly	10/15/92
Alcoholic Beverage Control Commission v. 508 Investors, Inc., t/a Johnathon's Restaurant	92 ABC 0476	Nesnow	09/24/92
Jon David Amundson v. Davidson County Mental Health	92 OSP 0503	Becton	09/10/92
Northview Mobile Home Park v. Department of Environment, Health, & Natural Resources	92 EHR 0507	Reilly	07/13/92
Yolanda Lynn Bethea v. DHR, Division of Social Services, CSE	92 DCS 0513	Becton	08/14/92
Frank Humphrey v. EHR, Division of Environmental Management	92 EHR 0514	Morrison	10/08/92

CONTESTED CASE DECISIONS

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Alice Hunt Davis v. Department of Human Resources	92 OSP 0526	West	07/16/92
Jimmy F. Bailey Sr. v. Department of State Treasurer, Retirement Systems Div	92 DST 0536	Morgan	08/18/92
Bramar, Inc., t/a Spike's v. Alcoholic Beverage Control Commission	92 ABC 0554	Mann	08/13/92
Grady Lockhart Jr. v. DHR, Division of Social Services, CSE	92 CSE 0565	Becton	09/28/92
Ralph J. Ogburn v. Private Protective Services Board	92 DOJ 0571	Nesnow	08/07/92
George M. Hagans v. DHR, (Cherry Hospital)	92 OSP 0583	Morgan	09/21/92
Gilbert Todd Sr. v. Public Water Supply Section	92 EHR 0586	Morrison	08/06/92
Candance Y. Johnson v. Division of Motor Vehicles	92 DOT 0589	Becton	08/24/92
John W. Surles v. N.C. Crime Victims Compensation Commission	92 CPS 0595	Reilly	07/13/92
Pamela Jean Gass v. DHR, Division of Social Services, CSE	92 DCS 0623	Morrison	08/14/92
J.W. Reed v. Department of Correction	92 OSP 0638	Morrison	08/11/92
Carson Davis v. Department of Correction	92 OSP 0650	Reilly	08/10/92
Luther Hall Clontz v. Western Carolina Center (NC of Human Resources)	92 OSP 0652	Becton	09/10/92
Private Protective Services Board v. Mark Andrew Perry	92 DOJ 0662	Becton	09/10/92

CONTESTED CASE DECISIONS

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Stauffer Information Systems v. Department of Community Colleges and the N.C. Department of Administration and The University of Southern California	92 DOA 0666	West	07/08/92
Dortheia B. Marley v. Department of Correction	92 OSP 0667	West	09/28/92
Nancy J. Tice v. Administrative Off of the Courts, Guardian Ad Litem Svcs	92 OSP 0674	Morrison	08/11/92
L. Stan Bailey v. Chancellor Moran and UNC-Greensboro	92 OSP 0679	West	07/10/92
Arnold McCloud T/A Club Castle v. Alcoholic Beverage Control Commission	92 ABC 0681	Morrison	07/25/92
Joyce Faircloth, T/A Showcase Lounge v. Alcoholic Beverage Control Commission	92 ABC 0713	Morrison	07/25/92
James B. Price v. Department of Transportation	92 OSP 0725	Mann	09/02/92
Edmonia Lang v. Carteret County Board of Education	92 OSP 0736	Mann	08/28/92
Larry Bruce High v. Alarms Systems Licensing Board	92 DOJ 0755 92 DOJ 0785	Nesnow	08/25/92
Wyoming Gilliam v. DHR, Division of Social Services, CSE	92 CSE 0772	Gray	09/29/92
Timothy Wylie v. Department of State Treasurer, Retirement Systems Div	92 DST 0793	Morrison	09/29/92
Rosie W. Harrell v. Administrative Office of the Courts	92 OSP 0846	West	09/17/92
Robert Aiken v. Department of Correction	92 OSP 0872	Gray	09/25/92

CONTESTED CASE DECISIONS

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Daniel N. Jones v. N.C. Victims Compensation Commission	92 CPS 0879	Chess	08/28/92
Paul Hunter v. Dorothea Dix Hospital	92 OSP 0878	Chess	09/29/92
David V. Cates v. Alarm Systems Licensing Board	92 DOJ 0892	Becton	10/05/92

STATE OF NORTH CAROLINA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
91 EHR 0446

COUNTY OF LENOIR

HARVEY FERTILIZER AND GAS COMPANY,
Petitioner,

v.

N. C. DEPARTMENT OF ENVIRONMENT,
HEALTH AND NATURAL RESOURCES,
DIVISION OF ENVIRONMENTAL MANAGEMENT
Respondent.

FINAL DECISION

This matter comes before the undersigned administrative law judge upon the filing of Respondent's Motion to Dismiss Pursuant to G.S. 1A-1, R.12(b) (1), or In the Alternative, R.12(b) (6) on July 15, 1991. The Petitioner filed its Response to Respondent's Motion to Dismiss on July 29, 1991. After each of the parties filed briefs to support their respective positions, the parties made oral presentations concerning the motion on September 19, 1991.

In its motion to dismiss, the Respondent contends that the Office of Administrative Hearings does not have the subject matter jurisdiction over this matter in light of Batten v. N.C. Dept. of Correction, 326 N.C. 338, 389 S.E.2d 35 (1990) because the Petitioner does not have a substantive right to a hearing on its claim. Alternatively, the Respondent claims that the Petitioner has failed to state a proper claim for relief based upon the doctrine of sovereign immunity. The Petitioner counters, in its response to the motion to dismiss, that the Batten case is inapplicable here and that the Office of Administrative Hearings has jurisdiction over this action. It further asserts that the Respondent is not shielded by the doctrine of sovereign immunity from a claim against it by the Petitioner.

FACTS

The record in this case indicates that the facts which gave rise to this dispute are uncontroverted. On February 7, 1991 at 5:00 PM, the Petitioner's bulk petroleum terminal in Kinston, North Carolina, where gasoline and other petroleum products were stored in above-ground tanks, was closed and secured by its employees. However, at approximately 7:30 PM, valves of the Petitioner's tanks were opened, causing gasoline to pour onto the ground. By the time that the flow of gasoline had been stopped, some 3, 000 gallons of the substance had poured from the containers.

Area emergency units responded to this gasoline spill, along with Representatives of the Petitioner and the Respondent. The Petitioner's officials stated that the gasoline spill was caused by an anonymous person scaling its perimeter fence, turning on the previously-disengaged electrical switches, pulling down the filler arms to ground level and opening the gasoline container valves. However, an official of the Respondent's regional office of its Division of Environmental Management placed responsibility for the gasoline spill upon the Petitioner, regardless of the cause of the release, and further held the Petitioner accountable for cleaning up the spill. The Respondent's official also instructed the Petitioner that the Respondent would issue a Notice of Violation to the Petitioner, assess substantial penalties against it and possibly institute criminal proceedings against it if the Petitioner refused to take immediate responsibility for the removal of the spilled gasoline. Some of the spillage flowed into Adkin's Branch and towards the Neuse River.

The Petitioner's representatives informed the Respondent's official that the Petitioner would undertake to remove the gasoline spill under protest and would reserve the right to seek reimbursement from the State of North Carolina for the Petitioner's costs of removal. The Petitioner immediately retained the services of

a business which handled the containment and removal of the gasoline spill. This business has billed the petitioner in the amount of \$31,500.00 for the costs of containment and removal of the spill. In addition, the Petitioner has incurred costs to clean up this gasoline spill at the direction of the Respondent in the amounts of \$8,302.39 for the city of Kinston's costs in responding to the spill and \$1,891.55 for supervision of the containment and removal. Other expenses of the Petitioner in this regard include the cost of its employees' work and attorneys' fees.

The Petitioner applied to the Respondent for reimbursement of the Petitioner's costs to handle the gasoline spill. The Petitioner states that the total of these costs exceeds \$41,000.00. The Respondent has denied the Petitioner's claim for any reimbursement. The Petitioner filed a Petition for a Contested Case Hearing in the North Carolina Office of Administrative Hearings, appealing the Respondent's denial of the Petitioner's reimbursement claim.

CONCLUSIONS OF LAW

The Petitioner seeks the reimbursement of its costs from the Respondent for the containment and removal of the gasoline spill under the provisions of North Carolina General Statutes Section 143-215.87, which establish the Oil or Other Hazardous Substances Pollution Protection Fund (hereafter referred to as "the Fund"). This statute states, in pertinent part:

"There is hereby established under the control and direction of the Department [of Environment, Health and Natural Resources] an Oil or Other Hazardous Substances Pollution Protection Fund...The moneys shall be used to defray the expenses of any project or program for the containment, collection, disposal or removal of oil or other hazardous substances discharged to the land or waters of this State..."

N.C.G.S. §143-215.88 addresses the matter of payments from the Fund to State agencies or State-designated local agencies and states, again in pertinent part:

"Upon the completion of any oil or other hazardous substances removal or restoration project or activity conducted pursuant to the provisions of the Part [2 of Article 21A of the North Carolina General Statutes], each agency of the State or any State-designated local agency that has participated by furnishing personnel, equipment or material shall deliver to the Department [of Environment, Health and Natural Resources] a record of the expenses incurred by the agency. The amount of incurred expenses shall be disbursed by the Secretary [of Environment, Health and Natural Resources] to each such agency from the Oil or Other Hazardous Substances Pollution Protection Fund..."

There is no statutory authority in Article 21A of the North Carolina General Statutes, where the laws governing the administration of the Fund are found, which creates or recognizes a party's right to appeal the Respondent's denial of the party's request for disbursement of moneys from the Fund for expenses which were incurred by the party for containment, collection, disposal or removal of gasoline. In its petition initiating this contested case, the Petitioner alleges that the Respondent did not have the authority to order the Petitioner to clean up the gasoline spill at issue and subsequently to refuse the Petitioner's request to reimburse these spillage-related expenses from the Fund. In the absence of a statutory provision which creates or recognizes a right to initiate such an action, the Petitioner argues in its brief that Title 15A, Chapter 1B, Section .0202 of the North Carolina Administrative Code authorizes this type of proceeding. This administrative rule states:

"Contested case hearings are available as provided in G.S. 150B, and petitions for contested case hearings shall be filed in accordance with the provisions of that Chapter."

In Batten v. N.C. Dept. of Correction, 326 N.C. 338, 389 S.E.2d 35 (1990), the Supreme Court of North Carolina provided a thoughtful analysis of the relationship between a substantive body of law and Chapter 150B of the North Carolina General Statutes in determining the existence of a party's substantive right to a contested case hearing in the Office of Administrative Hearings (OAH). In Batten, the plaintiff

challenged the defendant's downward reallocation of the plaintiff's job position under a reorganization of the defendant's personnel. In addressing the issue concerning the Office of Administrative Hearings' subject matter jurisdiction over the plaintiff's action, the Supreme Court began its analysis by observing:

"The jurisdiction of the OAH over the appeals of state employee grievances derives not from Chapter 150B, but from Chapter 126. The administrative hearing provisions of Article 3, Chapter 150B, do not establish the right of a person 'aggrieved' by agency action to OAH review of that action, but only describe the procedures for such review." (326 N.C. at 342-343, 389 S.E.2d at 38)

The high court next observed that the Office of Administrative Hearings' jurisdiction over appeals of state employees grievances is expressly granted in the State Personnel Act, which states in N.C.G.S. 126-37(a):

"Appeals involving a disciplinary action, alleged discrimination, and any other contested case arising under this Chapter [126 of the North Carolina General Statutes] shall be conducted in the Office of Administrative Hearings as provided in Article 3 of Chapter 150B [of the North Carolina General Statutes]..."

After recognizing "that Chapter 150B merely provides procedural guidelines to be followed in order to satisfy substantive rights established under Chapter 126" (326 N.C. at 344, 389 S.E.2d at 39), the Supreme Court held that the Office of Administrative Hearings had jurisdiction to determine the plaintiff's appeal because the plaintiff's pursuit of all informal procedures mandated by the State Personnel Act and by the North Carolina Administrative Code for the resolution of his grievance had caused his dispute with the defendant to become a "contested case" for purposes of review under Chapter 150B.

An application of the Supreme Court's methodical jurisdictional analysis in Batten v. N.C. Dept. of Correction, *supra* to the present case illustrates that the Office of Administrative Hearings does not have subject matter jurisdiction over the instant matter. In Batten, the substantive provisions of the State Personnel Act granted the plaintiff an express right to appeal to the Office of Administrative Hearings which was embodied in N.C.G.S. 126-37(a); however, in the present action, the substantive provisions of the Oil Pollution and Hazardous Substances Control Act do not create or recognize any right of the Petitioner to bring an action in the Office of Administrative Hearings to appeal the Respondent's denial of the Petitioner's request for reimbursement of its gasoline spillage clean-up expenses from the Fund. While the Petitioner cites 15A NCAC 1B.0202 as sufficient legal authority to place its dispute with the Respondent within the subject matter jurisdiction of the Office of Administrative Hearings in lieu of express statutory authority, the Petitioner's reliance on this administrative rule is misplaced. 15A NCAC 1B.0202 does not grant the Petitioner a substantive legal right to appeal the Respondent's denial of this request for a disbursement from the Fund, but merely codifies the Respondent's recognition that contested case hearings in which it is involved are governed by Chapter 150B of the North Carolina General Statutes. In light of the state's highest court's observation in Batten that Chapter 150B provided only procedural guidelines, and that any jurisdiction of the Office of Administrative Hearings and any substantive rights would have to be derived from Chapter 126, a consistent analysis in the case sub judice would require that Article 21A of Chapter 143 of the North Carolina General Statutes provide the substantive legal rights of the Petitioner which are necessary to invoke the jurisdiction of the Office of Administrative Hearings. Since the Oil Pollution and Hazardous Substances Control Act does not create or recognize a substantive right of the Petitioner to appeal the Respondent's denial of the Petitioner's request for disbursement of moneys from the Fund for the Petitioner's costs of and removal of the gasoline spill, with 15A NCAC 1B.0202 merely serving as a reference to Chapter 150B which operates only as a procedural mechanism in conjunction with substantive law under the principles of Batten v. N.C. Dept. of Correction, *supra* to grant subject matter jurisdiction to the Office of Administrative Hearings in a contested case, the Office of Administrative Hearings therefore does not have subject matter jurisdiction to entertain the Petitioner's appeal concerning the Respondent's denial of the Petitioner's request for the disbursement of moneys from the Oil or Other Hazardous Substances Pollution Protection Fund.

The cases upon which the Petitioner principally relies in its brief are readily distinguishable. In Orange County v. North Carolina Department of Transportation, 46 N.C. App. 350, 265 S.E.2d 890 (1980)

a set of regulations which included a provision for an appeal of an agency environmental determination was promulgated pursuant to the North Carolina Environmental Protection Act (NCEPA). The North Carolina Court of Appeals ruled that "the NCEPA and the regulations effectively broaden the definition of 'contested case' and expand the scope of procedural remedies available under the Administrative Procedure Act..." (EMPHASIS ADDED) [46 N.C. App. at 375, 265 S.E.2d at 907] In the present case, however, there is no procedural statutory provision or regulation enacted pursuant to the Oil Pollution and Hazardous Substances Control Act which operates, together with the Act, to qualify the Petitioner's action as a contested case within the subject matter jurisdiction of the Office of Administrative Hearings. The procedural regulation 15A NCAC 1B.0202 was not enacted pursuant to, and does not operate in conjunction with, the Oil Pollution and Hazardous Substances Control Act to confer subject matter jurisdiction upon the Office of Administrative Hearings in this matter. The Petitioner also cites Metropolitan Sewerage District of Buncombe County, North Carolina v. North Carolina Wildlife Resources Commission, 100 N.C. App. 171, 394 S.E.2d 668 (1990) where the North Carolina Court of Appeals identified the plaintiff's dispute with the defendant as a contested case over which the Office of Administrative Hearings had jurisdiction. The appellate court determined that the defendant's rejection of the plaintiff's site study constituted a dispute which ultimately became a contested case. In the instant case, however, the dispute between the Petitioner and the Respondent does not qualify as a contested case within the subject matter jurisdiction of the Office of Administrative Hearings because there is no recognized right to appeal here.

Due to the undersigned's dispositive consideration of the Respondent's argument in its dismissal motion documents concerning the lack of subject matter jurisdiction under the doctrine of Batten v. N.C. Dept of Correction, supra, it is unnecessary to address the Respondent's remaining arguments concerning the lack of subject matter jurisdiction based upon the doctrine of sovereign immunity.

FINAL DECISION

This contested case is DISMISSED for lack of jurisdiction under N.C.G.S. 150B-36(c).

NOTICE

In order to appeal a Final Decision, the person seeking review must file a Petition in the Superior Court of Wake County or in the superior court of the county where the person resides. The Petition for Judicial Review must be filed within thirty (30) days after the person is served with a copy of the Final Decision. G.S. 150B-46 describes the contents of the Petition and requires service of the Petition on all parties.

This is the 1st day of October, 1992.

Michael Rivers Morgan
Administrative Law Judge

STATE OF NORTH CAROLINA
COUNTY OF YANCEY

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
92 DOJ 0130

ROBERT C. THOMAS,)	
Petitioner,)	
)	
v.)	PROPOSAL FOR DECISION
)	
NORTH CAROLINA SHERIFFS' EDUCATION)	
AND TRAINING STANDARDS COMMISSION,)	
Respondent.)	

BACKGROUND

This matter was heard in Burnsville, Yancey County, North Carolina on June 30, 1992, before Administrative Law Judge Sammie Chess, Jr., pursuant to North Carolina General Statutes section 150B(40)(e). On February 11, 1992, Petitioner, Robert C. Thomas, Chief Deputy Sheriff for Yancey County, petitioned the Office of Administrative Hearings for a contested case hearing to appeal the decision of the Director of the North Carolina Sheriffs' Education and Training Standards Commission to summarily his Certification as a Deputy Sheriff.

APPEARANCES

For Petitioner:	J. Todd Bailey BAILEY and BAILEY Attorney at Law Post Office Box 217 Burnsville, North Carolina
For Respondent:	John J. Aldridge, III Associate Attorney General N. C. Department of Justice P. O. Box 629 Raleigh, North Carolina

ISSUES

Whether Respondent acted erroneously, failed to use proper procedure, acted arbitrarily and capriciously or failed to act as required by law leading up to, or during Petitioner's summary suspension from his position as Chief Deputy Sheriff for Yancey County?

STATUTES AND RULES INVOLVED

N.C.G.S. Chapter 17E
N.C.G.S. 150B-3(c)
12 N.C.A.C. 10B .0503(a)
12 N.C.A.C. 10B .0505(a)(20)
12 N.C.A.C. 10B .0505(b)

SUMMARY OF DECISION

The undersigned Administrative Law Judge finds that the Director of the North Carolina Sheriffs' Education and Training Standards Commission acted under a misinterpretation of the law when she failed to consider Petitioner's prior extensive training and experience in considering whether to authorize a waiver of the Basic Law Enforcement Training Course, and acted arbitrarily and capriciously in summarily suspending Petitioner from his duties as Chief Deputy Sheriff without a hearing and without findings of fact to support summary suspension.

The parties entered the following:

STIPULATIONS

1. Both parties received proper Notice of Hearing as required by law.
2. To the extent relevant, official notice may be taken of provisions of the North Carolina Administrative Code, including 12 N.C.A.C. 10B .0503(a), 12 N.C.A.C. 10B .0505(a)(20), and 12 N.C.A.C. 10B .0505(b).
3. That the letters identified as Exhibits (8) through (14) in the Prehearing Order were received by the respective addressees.
4. That on February 4, 1992, Petitioner requested an Administrative Hearing in this matter.

EXHIBITS

The following exhibits were admitted into evidence:

1. Respondent's Exhibits 1-19.

FINDINGS OF FACT

1. Both parties are properly before the Office of Administrative Hearings and the Administrative Law Judge, in that jurisdiction and venue are proper, and both parties received proper notice of hearing required pursuant to North Carolina General Statute section 150B-23.
2. That the North Carolina Sheriffs' Education and Training Standards Commission is granted the authority under Chapter 17E of the North Carolina Statutes and Title 12 N.C.A.C., Chapter 10, Subchapter 10B, to certify justice officers as either deputy sheriffs or jailers and to deny, revoke or suspend such certification.
3. On December 3, 1990, Petitioner was appointed Chief Deputy to the Sheriff of Yancey County by appointment of the duly elected Sheriff which continues to this date.
4. Petitioner's personal history and educational and professional qualifications are as set forth in Petitioner's exhibits 2 and 16.
5. Prior to his appointment as Chief Deputy Sheriff, Petitioner's last service in a sworn-in law enforcement position ended January 1, 1987, when he retired following 17 years and 5 months service with the State Bureau of Investigation.
6. On January 25, 1991, the Commission found and certified that Petitioner "appears to meet the MINIMUM STANDARD REQUIREMENTS for appointment as a LAW ENFORCEMENT OFFICER OF THE STATE OF NORTH CAROLINA OVER ANY OF ITS POLITICAL SUBDIVISIONS" and through its Director issued Petitioner Probationary Certification as a Deputy Sheriff through December 3, 1991.

7. Under letter of January 25, 1991, the Commission Director advised Petitioner that an evaluation of his training and experience had been conducted and that by reason of the provisions of 12 N.C.A.C. 10B .0505(a)(4), Petitioner was required to complete "a Commission-Accredited Basic Course in its entirety and successfully pass the State Comprehensive Examination" within the probationary period prescribed in 12 N.C.A.C. 10B .0503(a). (Exhibit 8 and testimony of Joan G. Neuner)

8. Under letter of May 13, 1991, Petitioner wrote the Division Director requesting a waiver of training and enclosed documentary evidence of his training in supplement to the materials submitted with his initial application (Exhibit 9). The documentary evidence furnished to the Commission was the same documents constituting Exhibit 16.

9. Under letter of May 21, 1991, the Commission Director advised Petitioner that the "Commission does not have the authority to honor your request for a Waiver of its Basic Training Requirements." (Exhibit 10)

10. In the May 21, 1991 letter the Commission Director advised Petitioner that the provisions of 12 N.C.A.C. 10B .0505(a)(20) also prohibited his eligibility for a training waiver. (Exhibit 10 and Testimony of Joan G. Neuner)

11. Petitioner has not participated in the Basic Law Enforcement Training desired by the Commission.

12. Under letter of December 3, 1991, the Commission's Director wrote Petitioner that he was no longer a Certified Deputy Sheriff, that his exercise of the authority of a Deputy Sheriff was "a danger to the public health, safety, and welfare of the citizens of this State," and advised that his failure to quit the duties of a Deputy Sheriff would be a violation of the law. (Exhibit 12)

13. Petitioner received no notice or opportunity for hearing prior to the agency action on December 3, 1991. (Testimony of the Petitioner and Joan G. Neuner)

14. On February 19, 1992, after the fact of his suspension, Petitioner appeared at a meeting of the Commission which denied a motion to waive training and adopted a motion to require that Petitioner complete training. The vote on both motions was divided. (Testimony of Joan G. Neuner)

15. Petitioner received the December 3, 1991 letter of suspension on December 9, 1991, and filed petitions for Hearing with both the Office of Administrative Hearings and the Commission. (See Petitions)

16. Upon Application of the Commission, the undersigned Administrative Law Judge was assigned to preside in this matter.

17. Witnesses familiar with the Petitioner's prior training and experience testified that "required attendance in the Basic Law Enforcement Training Course would be impractical" (Testimony of Sheriff Kermit Banks, Ray Garland, and Petitioner) and the uncontradicted evidence in that regard is accepted and approved a Finding of Fact.

18. Kermit Banks, the incumbent Sheriff of Yancey County who appointed Petitioner, and Ray Garland, retired Assistant Director of the State Bureau of Investigation, with 38 years of service, both testified to Petitioner's high qualifications to serve as Chief Deputy Sheriff and opined that Basic Law Enforcement Training would be a waste of time for Petitioner. In view of the witnesses' credibility and the prior extensive training and experience of Petitioner, the undersigned finds that Petitioner has completed training equivalent to the Commission's Basic Law Enforcement Training Course for Deputy Sheriffs and that his experience and training evince ability beyond Basic Law Enforcement Training.

19. That Commission's Director did not advise Petitioner that a Waiver of Training could be approved by the Commission upon Petition of the Sheriff under North Carolina General Statutes 17E-7, or under the provisions of 12 N.C.A.C. 10B .0504. (Testimony of Joan G. Neuner)

20. The Commission's Director did not advise Petitioner of her authority to waive training under 12 N.C.A.C. 10B .0505(b) and no consideration was given to Petitioner's eligibility for a waiver thereunder. (Testimony of Joan G. Neuner)

21. The sole basis for the statement that Petitioner's continued service as Chief Deputy Sheriff was a "danger to the public health, safety, and welfare of the citizens of this State" contained in the December 3, 1991 letter of summary suspension is the Commission's determination in 12 N.C.A.C. 12B .0206 that failure to comply with regulatory requirements affect[s] the public health, safety, or welfare. (Testimony of Joan G. Neuner)

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

CONCLUSIONS OF LAW

1. The North Carolina Sheriffs' Education and Training Standards Commission is an agency established by the Legislature pursuant to Chapter 17E of the North Carolina General Statutes.

2. The summary suspension of Petitioner's certification as a Chief Deputy Sheriff and the refusal to approve a Waiver of the Basic Law Enforcement Training Course was arbitrary and capricious and the Commission Director's indication to Petitioner that there existed no authority for a training waiver was based upon mistake or misrepresentation of the applicable statutes and regulations for the reasons that:

(a) Despite the rules set forth in 12 N.C.A.C. 10B .0505(a) for use of the Division Staff in evaluating a Deputy's eligibility for a waiver of training, the Commission has authority to waive training under 12 N.C.A.C. 10B .0504 and the Commission's authority is not bound by the guidelines for the Division Staff.

(b) The Commission's Director has authority to exercise discretion in determining the amount of training required for a Deputy Sheriff during his probationary period "where an evaluation of the applicant's prior training and experience determine that required attendance in the entire Basic Law Enforcement Training Course would be impractical."

(c) The Commission has authority to waive training upon Petition of a Sheriff under General Statutes 17E-7.

3. The suspension and refusal to waive training was arbitrary and capricious for the reason that the Commission Director failed and refused to exercise and misrepresented the existence of her authority under 12 N.C.A.C. 10B .0505(b).

4. Respondent's failure to independently and objectively consider Petitioner's extensive prior training and experience in considering whether to authorize waiver of some or all of the Basic Law Enforcement Training Course was arbitrary and capricious.

5. Because the decision to revoke Petitioner's Certification as a Deputy Sheriff was adjudicatory and therein affected his rights, and because there is no evidence to support a finding that the public health, safety, or welfare required emergency action, the agency action of December 3, 1991, in this case, without notice to Petitioner, and opportunity for Hearing prior to such agency action, was in violation of the law. Scroggs v. North Carolina Criminal Justice Standards Commission, 101 N.C. App. 699 (1991).

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

PROPOSALS FOR DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is proposed that the North Carolina Sheriffs' Education and Training Standards Commission withdraw its action set forth in the December 3, 1991 suspension letter in that said action was erroneous, arbitrary and capricious and contrary to law. Scroggs v. North Carolina Criminal Justice Standards Commission 10 N.C. App. 699 (1991), or In the Alternative, that the Commission reverse the summary suspension of Petitioner's Certification and issue a waiver of any further training of Petitioner.

ORDER

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

NOTICE

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

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

The agency that will make the final decision in this contested case is the North Carolina Sheriffs' Education and Training Standards Commission.

This is the 2nd day of October, 1992.

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

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

CUMULATIVE INDEX
(April 1992 - March 1993)

Pages	Issue
1 - 105	1 - April
106 - 173	2 - April
174 - 331	3 - May
332 - 400	4 - May
401 - 490	5 - June
491 - 625	6 - June
626 - 790	7 - July
791 - 902	8 - July
903 - 965	9 - August
966 - 1086	10 - August
1087 - 1154	11 - September
1155 - 1253	12 - September
1254 - 1350	13 - October
1351 - 1463	14 - October
1464 - 1640	15 - November

ADMINISTRATION

Auxiliary Services, 4
Motor Fleet Management Division, 794

AGRICULTURE

Gasoline and Oil Inspection Board, 336
Pesticide Board, 1276
Plant Industry, 904
Structural Pest Control Committee, 332
Veterinary Division, 342

COMMUNITY COLLEGES

Community Colleges, 1535
General Provisions, 1531
Miscellaneous Programs, 1598

CULTURAL RESOURCES

U.S.S. Battleship Commission, 911

ECONOMIC AND COMMUNITY DEVELOPMENT

Banking Commission, 629, 1467
Community Assistance, 909, 968
Departmental Rules, 801

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Adult Health, 1199
Coastal Management, 211, 655, 1098, 1507
Departmental Rules, 826
Environmental Health, 223
Environmental Management, 190, 416, 500, 644, 830, 1013, 1487
Governor's Waste Management Board, 564, 920, 1197
Health: Epidemiology, 140, 1212

Health: Personal Health, 1217
Health Services, 52, 659, 1174
Marine Fisheries, 530
NPDES Permits Notices, 1, 107
Radiation Protection, 136, 1520
Sedimentation Control, 920
Vital Records, 565
Wildlife Resources Commission, 28, 133, 408, 449, 551, 921, 1299, 1414
Wildlife Resources Commission Proclamation, 176

FINAL DECISION LETTERS

Voting Rights Act, 106, 174, 406, 493, 628, 793, 966, 1090, 1275, 1465

GENERAL STATUTES

Chapter 150B, 1254

GOVERNOR/LT. GOVERNOR

Executive Orders, 401, 491, 626, 791, 903, 1087, 1155, 1351, 1464

HUMAN RESOURCES

Aging, Division of, 121, 346
Day Care Rules, 123
Economic Opportunity, 5
Facility Services, 111, 177, 496, 634, 980, 1352
Medical Assistance, 4, 415, 496, 816, 989, 1156, 1295, 1391
Mental Health, Developmental Disabilities and Substance Abuse Services, 111, 297, 409, 809, 1092, 1276
Social Services Commission, 183, 911, 1471

INDEPENDENT AGENCIES

Housing Finance Agency, 450, 576, 928, 1219

INSURANCE

Actuarial Services Division, 1411
Agent Services Division, 1410
Consumer Services Division, 125, 1157
Departmental Rules, 7, 1095, 1405
Engineering and Building Codes, 19, 643
Financial Evaluation Division, 1162
Fire and Rescue Services Division, 17, 1406
Hearings Division, 124, 1096
Life and Health Division, 22, 347, 1167
Property and Casualty Division, 20
Seniors' Health Insurance Information Program, 132

JUSTICE

Alarm Systems Licensing Board, 27, 189, 643, 919, 1414, 1486
Criminal Information, 1097
General Statutes Commission, 353
Private Protective Services, 918
Sheriffs Education and Training, 990
State Bureau of Investigation, 188, 499, 1413

LICENSING BOARDS

Architecture, 1111
Certified Public Accountant Examiners, 355

Chiropractic Examiners, 1416
Cosmetic Art Examiners, 360, 922
Dietetics/Nutrition, 923
Electrolysis Examiners, 69, 700
Medical Examiners, 1304, 1417
Nursing, Board of, 232, 700, 1528
Pharmacy, Board of, 1418
Professional Engineers and Land Surveyors, 566
Speech and Language and Pathologists and Audiologists, 705

LIST OF RULES CODIFIED

List of Rules Codified, 72, 362, 452, 584

PUBLIC EDUCATION

Departmental Rules, 1108
Elementary and Secondary, 852, 1108

REVENUE

License and Excise Tax, 712
Motor Fuels Tax, 361

STATE PERSONNEL

Office of State Personnel, 237, 705, 1113, 1419

TAX REVIEW BOARD

Orders of Tax Review, 494

TRANSPORTATION

Highways, Division of, 228, 856, 1062, 1110
Motor Vehicles, Division of, 68, 142

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