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The **NORTH CAROLINA REGISTER**

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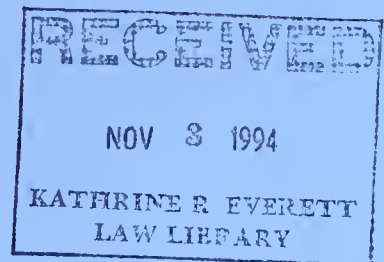
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ISSUE DATE: November 1, 1994

Volume 9 • Issue 15 • Pages 1152 - 1241



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 3 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

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

The NCAC is available in two formats.

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

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

CITATION TO THE NORTH CAROLINA REGISTER

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

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

NORTH CAROLINA REGISTER



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

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

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

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NORTH CAROLINA REGISTER
Publication Schedule
(November 1994 - September 1995)

Volume and Issue Number	Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing 15 days from notice	* End of Required Comment Period 30 days from notice	Last Day to Submit to RRC	** Earliest Effective Date
9:15	11/01/94	10/11/94	10/18/94	11/16/94	12/01/94	12/20/94	02/01/95
9:16	11/15/94	10/24/94	10/31/94	11/30/94	12/15/94	12/20/94	02/01/95
9:17	12/01/94	11/07/94	11/15/94	12/16/94	01/03/95	01/20/95	03/01/95
9:18	12/15/94	11/22/94	12/01/94	12/30/94	01/17/95	01/20/95	03/01/95
9:19	01/03/95	12/08/94	12/15/94	01/18/95	02/02/95	02/20/95	04/01/95
9:20	01/17/95	12/21/94	12/30/94	02/01/95	02/16/95	02/20/95	04/01/95
9:21	02/01/95	01/10/95	01/18/95	02/16/95	03/03/95	03/20/95	05/01/95
9:22	02/15/95	01/25/95	02/01/95	03/02/95	03/17/95	03/20/95	05/01/95
9:23	03/01/95	02/08/95	02/15/95	03/16/95	03/31/95	04/20/95	06/01/95
9:24	03/15/95	02/22/95	03/01/95	03/30/95	04/17/95	04/20/95	06/01/95
10:1	04/03/95	03/13/95	03/20/95	04/18/95	05/03/95	05/22/95	07/01/95
10:2	04/17/95	03/24/95	03/31/95	05/02/95	05/17/95	05/22/95	07/01/95
10:3	05/01/95	04/07/95	04/17/95	05/16/95	05/31/95	06/20/95	08/01/95
10:4	05/15/95	04/24/95	05/01/95	05/30/95	06/14/95	06/20/95	08/01/95
10:5	06/01/95	05/10/95	05/17/95	06/16/95	07/03/95	07/20/95	09/01/95
10:6	06/15/95	05/24/95	06/01/95	06/30/95	07/17/95	07/20/95	09/01/95
10:7	07/03/95	06/12/95	06/19/95	07/18/95	08/02/95	08/21/95	10/01/95
10:8	07/14/95	06/22/95	06/29/95	07/31/95	08/14/95	08/21/95	10/01/95
10:9	08/01/95	07/11/95	07/18/95	08/16/95	08/31/95	09/20/95	11/01/95
10:10	08/15/95	07/25/95	08/01/95	08/30/95	09/14/95	09/20/95	11/01/95
10:11	09/01/95	08/11/95	08/18/95	09/18/95	10/02/95	10/20/95	12/01/95
10:12	09/15/95	08/24/95	08/31/95	10/02/95	10/16/95	10/20/95	12/01/95

This table is published as a public service, and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2B .0103 and the Rules of Civil Procedure, Rule 6.

** An agency must accept comments for at least 30 days after the proposed text is published or until the date of any public hearing, whichever is longer. See G.S. 150B-21.2(f) for adoption procedures.*

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

**EXECUTIVE ORDER NO. 62
ESCORTS FOR FOREIGN RESEARCH
REACTOR SPENT NUCLEAR FUEL**

WHEREAS, the United States Department of Energy intends to ship by rail Foreign Research Reactor Spent Nuclear-Fuel from Sunny Point Army Terminal in North Carolina to the Savannah River federal facility in South Carolina;

WHEREAS, the United States Department of Energy has agreed that the State of North Carolina has a public safety interest in safeguarding these rail shipments; and

WHEREAS, the United States Department of Energy and the State of North Carolina have agreed to allow law enforcement and other State officials to review the status of the tracks ahead of the shipments, accompany the shipments, and provide escort for these shipments.

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

Section 1.

That for all Foreign Research Reactor Spent Nuclear Fuel shipped through the State of North Carolina, the North Carolina State Highway Patrol Commander shall assign such personnel and equipment as he deems necessary to accompany the shipments, to review the status of the tracks ahead of the shipments, and to escort the shipments.

Section 2.

That such other State employees, including members of the Department of Crime Control and Public Safety, Division of Emergency Management, and Department of Environment, Health, and Natural Resources, Division of Radiation Protection, shall be assigned as is deemed necessary by the respective Department heads.

This Order is effective immediately and shall expire 60 days from this date unless terminated or extended by further Executive Order.

Done in the Capital City of Raleigh, North Carolina, this the 9th day of September, 1994.

**EXECUTIVE ORDER NO. 63
ESTABLISHING THE NORTH CAROLINA
ALLIANCE FOR COMPETITIVE**

TECHNOLOGIES (NCACTS)

WHEREAS, the development and promotion of a technology-based economy is critical to the long-term welfare of the State and its citizenry;

WHEREAS, North Carolina ranks tenth in manufacturing shipments and has over 11,000 manufacturing firms that must continually modernize to stay competitive;

WHEREAS, North Carolina has leading national and international technology firms in areas such as pharmaceuticals, biotechnology, environmental technologies, telecommunications, electronics, materials, and computers;

WHEREAS, the State has invested substantial funds in public and quasi-public not-for-profit institutions charged with the development and deployment of technology to create commercial products and modernize manufacturing production; and

WHEREAS, the State has the potential to form a world class delivery and support system for technological innovation and manufacturing modernization;

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

Section 1. Establishment.

The North Carolina Alliance for Competitive Technologies (the "Alliance") is hereby established.

Section 2. Purpose.

A. The Alliance has been established to apply innovation, technology and technical resources to promote economic growth in the State. It will serve as a central, strategic organization to guide existing resources and develop additional resources as necessary. It will insure the availability of a set of comprehensive, coordinated resources to meet industry needs for innovation and modernization.

The Alliance has three primary objectives:

1. To develop a comprehensive strategy and vision to guide the use of state public resources devoted to technology development and deployment.
2. To organize public and private entities involved in technology to insure a rational, customer-driven delivery system that

measures and rewards results;

3. To match State investments with federal and other public and private investments for those initiatives critical to achievement of the State's technology strategy and its implementation.

B. The Alliance shall serve as a planning and coordinating organization for the State, charting future directions based on analysis of needs, demands and opportunities, and recommending future public investments in support of the State's overall technology strategy.

C. The Alliance shall work specifically with legislatively established entities, such as the Information Resources Management Commission (IRMC), to assist them in their activities and oversight functions related to specific technologies.

D. The Alliance shall coordinate state agencies and state-supported organizations involved in technology in accordance with a coherent long-range strategy and policies for application of technological resources to industry needs and economic development of the State.

E. The Alliance shall strive to maintain North Carolina's strategic technology leadership and further develop the infrastructure base to maintain its competitive position.

Section 3. Responsibilities.

The Alliance shall have the following functions and responsibilities:

- A. To organize an office with a board of directors representative of the public and private sectors;
- B. To conduct needs analyses of selective industries and systems capacity reviews in order to insure a delivery system accountable to its industry clients;
- C. To develop common outcome-based evaluation standards and performance benchmarks for technology service providers;
- D. To design a strategy for statewide and regional industrial centers of excellence, taking into account existing centers and their capabilities;
- E. To propose additional incentive systems to encourage adherence to strategies by providers, higher education institutions, and non-profit organizations involved in the technology development and deployment system;
- F. To review, assess and propose additional initiatives that further assist the State's industry to maintain competitiveness in a

world economy and maintain cutting-edge capabilities in technology;

- G. To provide recommendations on the strategic and effective use of state technology investments for long-term economic development;
- H. To review the State's existing infrastructure investments and analyze what additional investments are necessary in order to develop and maintain the competitiveness of North Carolina's industry; and
- I. To undertake such other activities as are necessary to accomplish the above items.

Section 4. Specific Activities.

A. To undertake studies and surveys and to convene focus groups, task forces, and committees to better determine industry needs in technology development and deployment;

B. To undertake information gathering activities that focus on research, technology development and deployment for key industries.

C. To work with existing oversight entities, including IRMC, and to coordinate existing and new initiatives of state agencies that involve technology development and deployment, and encourage cross-agency and intergovernmental cooperation and forming of private/public partnerships;

D. To coordinate the State's response to new Federal government initiatives in research and technology development that require state investments or building of private/public partnerships;

Section 5. Board of Directors.

A. The Alliance shall have a Board of Directors of 19 persons appointed by the Governor from among the public and private sectors with a majority of members being from the private sector. Nine directors shall be appointed from educational institutions, government (including executive and legislative branches), and non-profit institutions. Ten directors shall be appointed from private sector industry and technology fields, including but not limited to, pharmaceuticals and chemicals, environmental resources, food processing, furniture, information technologies, metals, paper, polymers, textiles, transportation and wood products. All initial directors, except the Chair, shall serve a one year term, and until their successors are appointed. Thereafter, terms shall be staggered. One third of the directors shall have one-year terms; one third, two-year terms; and one third, three-year terms. Directors appointed or reappointed thereafter shall serve three-year terms.

B. The Governor shall appoint the Chair of the Board of Directors to serve an initial three-year term.

C. Responsibilities of the Board of Directors shall be advisory in nature to the Governor and General Assembly. Their duties shall include:

1. Approval of policies, regulations, and by-laws that are necessary to form and operate the organization;
2. Oversight of the policies and plans of the Alliance, including the strategic plan, studies of needs, gaps in service delivery, and performance standards;
3. Implementation of procedures to insure cooperation with other parts of State government;
4. Adoption of a proposal for staffing the Alliance;
5. Approval of an operating plan for the Alliance; and
6. Identification of other activities and priorities that should be undertaken by the Alliance.

Section 6. Administration.

The Alliance shall be funded from federal and state matching funds. For administrative purposes, the Alliance shall be housed in the Department of Administration, with further oversight from the Office of the Governor.

This Executive Order shall become effective immediately.

Done in Raleigh, North Carolina, this the 26th day of September, 1994.

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

DIVISION OF MEDICAL ASSISTANCE

In accordance with Section 1923(c) of the Social Security Act, the Division of Medical Assistance is required to publish annually the name of each hospital qualifying for a payment adjustment under the Disproportionate Share Hospital Payment provision of the Act. Following is the list of hospitals qualifying for such payments and the amount of those payments from 1991 through 1994.

PROVIDER NAME	ESTIMATED FY 6/30/91 DSH PAYMENTS	FYE 6/30/92 DSH PAYMENTS	FYE 6/30/93 DSH PAYMENTS	FYE 6/30/94 DSH PAYMENTS
Alamance Memorial Hospital	0	507,942	538,161	52,965
Albemarle Hospital	0	1,549,488	568,787	44,920
Amos Cottage	2,264,081	4,470,615	1,359,820	561,806
Annie Penn Memorial Hosp	0	0	440,579	33,853
Anson County Hospital	0	720,793	124,071	9,362
Betsy Johnson Memorial	759,545	1,335,129	513,697	37,135
Bladen County Hospital	580,222	781,448	287,637	28,640
Broughton	2,721,417	4,700,347	66,815,993	142,028,136
Brunswick County Hospital	407,393	1,966,303	616,737	114,453
Cabarrus Memorial Hospital	0	0	1,484,087	0
Caldwell Memorial Hospital	0	1,859,864	441,518	44,010
Cape Fear Valley Hospital	8,040,222	16,752,322	4,073,427	618,440
Carolinas Medical	13,649,660	29,452,342	8,787,479	1,757,287
Charlotte Rehabilitation	1,360,446	3,105,199	999,177	89,844
Charter Northridge	0	0	0	12,214
Cherry Hospital	2,169,599	4,205,676	56,090,011	103,142,642
Chowan Hospital	574,979	1,546,413	410,850	64,430
Cleveland Memorial Hospital	0	0	0	48,552
Columbus County Hospital	1,579,334	3,462,314	837,142	48,689
Community General Hospital	0	0	556,889	44,788
CPC Cedar Springs	1,085,811	1,852,683	0	5,117
Craven Regional Hospital	0	0	1,429,784	161,752
Cumberland Hospital	1,386,364	5,999,530	868,551	58,572
C.J. Harris Community Hospital	0	0	0	43,222
Dorothea Dix Hospital	3,895,985	12,668,950	59,838,191	107,258,635
Duke Univ Medical Center	11,209,937	23,130,253	6,382,148	1,558,835
Duplin General Hospital	1,018,205	2,019,918	524,809	69,829
Forsyth Memorial Hospital	6,849,382	13,755,478	3,424,938	387,392
Forsyth Stokes Mental Health C	0	0	75,817	69
Gaston Memorial Hospital	2,805,400	7,310,168	2,157,286	176,752
Good Hope Hospital	1,017,271	2,300,327	424,312	13,637
Grace Hospital	0	0	0	82,376
Granville Medical Center	0	897,884	221,353	18,633
Halifax Memorial Hospital	2,320,934	5,388,100	1,337,143	103,829
Haywood County Hospital	0	0	0	30,436
Heritage Hospital	1,356,507	2,859,746	758,807	137,611
HSA Brynn Marr	897,759	3,482,765	590,596	58,587
Johnston Memorial Hospital	1,291,229	2,347,886	656,967	50,847
John Umstead Hospital	6,421,108	13,627,454	65,714,833	112,178,666
Kings Mountain Hospital	0	0	0	11,748
Lenoir Memorial Hospital	1,821,622	4,469,750	1,211,452	112,206
Lexington Memorial	0	0	0	18,758
Lincoln County Hospital	0	0	309,761	31,174
Maria Parham Hospital	788,314	1,714,147	420,642	33,091

IN ADDITION

Martin General Hospital	321,624	744,231	157,401	0
McDowell Hospital	0	0	0	15,271
Memorial Mission Hospital	4,283,158	7,873,530	2,544,118	397,296
Montgomery Memorial Hospital	270,043	646,033	153,462	13,342
Moore Regional Hospital	0	0	0	192,883
Moses Cone Memorial	4,716,530	11,793,098	3,146,712	497,897
Murphy Medical Center	0	0	0	11,701
Nash General Hospital	0	5,479,131	1,559,117	112,912
New Hanover Memorial Hospital	5,377,633	9,993,197	2,779,914	430,223
Northern Hospital of Surry	0	0	0	27,612
N.C. Baptist Hospital	7,340,504	15,553,520	4,501,143	1,074,708
Onslow Memorial Hospital	1,179,271	2,915,735	761,906	74,855
Park Ridge Hospital	2,388,073	4,749,102	897,158	152,866
Pitt County Memorial	9,193,549	19,591,595	5,166,058	1,239,411
Pungo District Hospital	0	387,399	85,857	0
Richmond Memorial Hospital	703,455	1,823,067	465,132	47,351
Roanoke Chowan Hospital	1,317,348	2,594,318	764,179	74,492
Rowan Memorial Hospital	0	0	0	74,455
Rutherford County Hospital	0	0	0	33,163
Sampson County Memorial	0	2,360,892	513,000	50,986
Scotland Health Group	1,274,757	4,334,551	1,049,969	92,915
Southeastern General	3,323,229	7,875,399	1,955,182	216,656
Stanly Memorial Hospital	0	0	0	31,976
Ten Broeck	1,328,446	3,226,173	507,864	0
Thoms Rehabilitation	1,556,901	2,088,605	363,620	45,373
Transylvania Community	981,328	41,304	773,525	156,018
UNC Hospital	10,879,861	20,388,783	6,308,471	1,921,170
Union Memorial Hospital	0	0	557,794	61,097
Wake Medical System	5,843,008	13,848,086	4,014,024	739,665
Washington County Hospital	2,351,944	0	103,839	0
Wayne Memorial Hospital	91,422	5,732,314	1,377,555	107,005
Western Carolina Center	42,495	80,605	17,146	3,561
Wilkes Regional Hospital	0	0	605,176	51,930
Wilson Memorial Hospital	3,419,099	6,446,428	1,509,304	103,985
Youth Focus	395,873	1,423,513	417,415	144,007
<hr/>				
Total Records = 79	146,852,276	332,231,843	334,349,493	479,580,722
<hr/>				

TITLE 5 - DEPARTMENT OF CORRECTION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Correction intends to repeal rules cited as 5 NCAC 2B .0101, .0106, .0108; and adopt rules cited as 5 NCAC 2B .0109 - .0114.

The proposed effective date of this action is February 1, 1995.

The public hearing will be conducted at 10:00 a.m. on December 1, 1994 at the Randall Building Conference Room, 831 West Morgan Street, Raleigh, NC 27603.

Reason for Proposed Action: To repeal existing rules so rules can be consecutive, to adopt rules for earned time in accordance with the Structured Sentencing Act, and to adopt rules for good time, gain time, and meritorious time.

Comment Procedures: Any person or organization desiring to make oral comments at the hearing should register to do so at the hearing. Statements will be limited to 10 minutes and one typewritten copy of any such statement should be submitted at the hearing. Any additional comments should be forwarded to the NC Division of Prisons, Attn.: Deborah L. McSwain, 831 West Morgan Street, Raleigh, NC 27603, by December 1, 1994.

Editor's Note: These Rules were filed as temporary rules effective November 15, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

CHAPTER 2 - DIVISION OF PRISONS

SUBCHAPTER 2B - INMATE CONDUCT RULES: DISCIPLINE

SECTION .0100 - GOOD TIME AND GAIN TIME

.0101 PURPOSE

(a) The General Statutes authorize the awarding of various sentence reduction credits to selected inmates. The awarding of such credits serves as an incentive for inmates to be productive and act

responsibly. Effective and efficient allocation of good time and gain time awards is a critical element for maintaining order, security, and appropriate management of the inmate population.

(b) This policy establishes a method of computing sentence reduction credits in the form of Good Time for satisfactory behavior, Gain Time for participation in work or program assignments, and meritorious time for behavior or specific acts not normally required of an inmate. This policy applies to inmates confined in any facility in the Division of Prisons of the North Carolina Department of Correction, a jail, a regional confinement facility, a "County Farm", or any other local confinement facility established for the incarceration of convicted offenders.

Statutory Authority G.S. 148-11; 148-13; 15A-1340.7.

.0106 SPLIT SENTENCES

Inmates serving an active prison term followed by a period of Special Probation are not eligible for Good Time, Gain Time or Meritorious Time. Inmates serving an active sentence following the revocation of Special Probation are eligible for Good Time, Gain Time, and Meritorious Time.

Statutory Authority G.S. 15A-1340.7; 148-11; 148-13.

.0108 CRIMINAL CONTEMPT

Inmates committed to custody for criminal contempt are not eligible for Good Time, Gain Time or Meritorious Time.

Statutory Authority G.S. 5A-12(c); 148-13.

.0109 SCOPE

(a) The General Statutes authorize the awarding of various sentence reduction credits to selected inmates. The awarding of such credit shall serve as an incentive for inmates to be productive and act responsibly. Effective and efficient allocation of Good Time, Gain Time, and Earned Time awards is a critical element for maintaining order, security and appropriate management of inmate population.

(b) This Rule establishes a method of computing sentence reduction credits in the form of Good Time for satisfactory behavior, Gain Time and Earned Time for participation in work or program assignments, and Meritorious Time for behavior or specific acts not normally required of an inmate. This Rule applies to inmates sentenced to the

custody of the Department of Correction for confinement in its facilities and sentenced jail prisoners.

Statutory Authority G.S. 15A-1340.7; 15A-1340.13; 15A-1340.20; 15A-1355; 148-11; 148-13.

.0110 DEFINITIONS

(a) Good Time - Good time is credit for good behavior at the rate of one day deducted from an eligible inmate's sentence for each day he spends in custody without a major infraction of prisoner conduct rules.

(b) Gain Time - Gain time is sentence reduction credit for participation in work and program activities awarded to eligible inmates sentenced for crimes committed prior to October 1, 1994.

(c) Earned Time - Earned time is sentence reduction credit awarded to inmates for participation in work and program activities and is applicable to inmates sentenced under the Structured Sentencing Act.

(d) Eligible Inmates - Inmates eligible to earn sentence reduction credits as outlined in Rules .0111, .0112, .0113 and .0114 of this Section.

(e) Meritorious Time - Meritorious time is sentence reduction credit awarded to eligible inmates for acts of exemplary conduct or work under extraordinary conditions.

(f) Sentence Reduction Credits - Time credits applied to an inmate's sentence that reduce the amount of time to be served. Included are good time, gain time, earned time and meritorious time.

(g) Fair Sentencing Act - Also known as presumptive sentencing, this sentencing act became effective for felonies committed on or after July 1, 1981 through September 30, 1994.

(h) Structured Sentencing Act - This sentencing act determines the sentence received for crimes, except impaired driving offenses, committed on or after October 1, 1994.

(i) Inmate Misconduct - Inmate disobedience to a lawful order of the Department of Correction, its agents or employees.

(j) Parole Eligibility Date - The date, if any, provided to the Department of Correction by the Parole Commission as the date an inmate becomes eligible for parole.

Statutory Authority G.S. 15A-1340.7; 15A-1355; 148-11; 148-13.

.0111 GOOD TIME

(a) Eligible inmates shall be awarded Good

Time at the rate of one day deducted from the inmate's prison or jail term for each day the inmate spends in custody without a major infraction of prisoner conduct rules.

(b) Forfeiture. Good Time shall be subject to forfeiture through disciplinary action for inmate misconduct. The amount of Good Time lost for inmate misconduct shall not exceed the amount of good time the inmate had earned to date.

(c) Restoration of Forfeited Good Time. Good Time forfeited through disciplinary action may be restored by facility superintendents; area administrators; institution heads; and, in the case of inmates confined to local confinement facilities, the sheriff or administrator of a regional confinement facility. Such restoration shall be based upon incidents of improved behavior by the inmate as determined by the judgment of the superintendent, facility administrator, or his designee. Restoration of lost Good Time cannot exceed the total time previously forfeited.

(d) The following inmates are not eligible for good time as a sentence reduction credit:

- (1) Inmates sentenced under the Structured Sentencing Act;
- (2) Inmates committed to custody for contempt of court;
- (3) Health law violators;
- (4) Inmates sentenced under the Fair Sentencing Act for Class A and B felonies;
- (5) Inmates serving an active prison term followed by a period of Special Probation;
- (6) Safekeepers; and
- (7) Presentence commitment for study defendants.

Statutory Authority G.S. 5A-12(c); 15A-1340.7; 130A-25; 148-11; 148-13.

.0112 GAIN TIME

(a) Gain Time. Eligible inmates who perform work, whether full-time, or part-time, or participate in training programs which would assist their productive re-entry into the community, shall be allowed sentence reduction credits which shall be regulated as Gain Time I, II, and III. Gain Time shall be administered as follows:

- (1) Gain Time I. In addition to Good Time credits, eligible inmates who perform short-term work assignments or who participate in training programs, which are designated for Gain Time I and require a minimum of four hours of productive activity per day, for the

number of days per month assigned to participate, shall receive credit at the rate of two days per month.

- (2) Gain Time II. In addition to Good Time credits, eligible inmates who satisfactorily perform job assignments or who participate in training programs, which are designated for Gain Time II and require a minimum of six hours participation per day, for the number of days per month assigned to participate, shall receive credit at the rate of four days per month.

- (3) Gain Time III. In addition to Good Time credits, eligible inmates performing assigned jobs with requirements for special skills or specialized responsibilities such as specialized maintenance, cook, equipment operator, canteen operator, hospital technician, who participate in full-time training programs, which are designated for Gain Time III and require a minimum of six hours participation per day, for the number of days assigned to participate, shall receive credit at the rate of six days per month.

(b) Forfeiture. Gain time shall not be subject to forfeiture for inmate misconduct.

(c) The following inmates are not eligible for gain time as a sentence reduction credit:

- (1) Inmate's sentenced under the Structured Sentencing Act;
- (2) Inmates committed to custody for contempt of court;
- (3) Health law violators;
- (4) Inmates sentenced under the Fair Sentencing Act for Class A and B felonies;
- (5) Inmates serving an active prison term followed by a period of Special Probation;
- (6) Safekeepers; and
- (7) Presentence commitment for study defendants.

Statutory Authority G.S. 5A-12(c); 15A-1340.7; 130A-25; 148-11; 148-13.

.0113 EARNED TIME

(a) Award of Earned Time. Inmates sentenced to a term of years for a crime committed on or after October 1, 1994, except those sentenced under G.S. 20-138.1, shall be allowed sentence reduction credits for work performed or for participation in training, education, or rehabilitation

programs and as provided in Rule .0114 of this Section. Total credit awards shall not exceed four days per month of incarceration for misdemeanants. Credit awards shall not reduce a felon's maximum term below the minimum term imposed. Earned Time reduction credit awards shall be awarded as Earned Time I, II, and III or as Meritorious Time as provided in Rule .0114 of this Section.

- (1) Earned Time I. Eligible inmates who perform short-term work assignments or who participate in training programs, which are designated for Earned Time I and require a minimum of four hours of productive activity per day, for the number of days per month assigned to participate, shall receive two days per month deducted from the inmate's sentence.

- (2) Earned Time II. Eligible inmates who satisfactorily perform job assignments or who participate in training programs, which are designated for Earned Time II and require a minimum of six hours participation per day, for the number of days per month assigned to participate, shall receive four days per month deducted from the inmate's sentence.

- (3) Earned Time III. Eligible inmates performing assigned jobs with requirements for special skills or specialized responsibilities such as specialized maintenance, cook, equipment operator, canteen operator, hospital technician, or who participate in full-time training programs, which are designated for Earned Time III and require a minimum of six hours participation per day, for the number of days per month assigned to participate, shall receive six days per month deducted from the inmate's sentence.

(b) Forfeiture of Earned Time. Earned Time shall be subject to forfeiture through disciplinary action for inmate misconduct. The amount of Earned Time lost for inmate misconduct shall not exceed the amount of time the inmate has earned to date.

(c) Restoration of Forfeited Earned Time. Earned time forfeited through disciplinary action may be restored by facility superintendents; area administrators; institution heads; and, in the case of inmates confined to local confinement facilities, the sheriff or administrator of a regional confinement facility. Such restoration shall be based upon

incidents of improved behavior by the inmate as determined by the judgment of the superintendent, facility administrator, or his designee. Restoration of lost Earned Time cannot exceed the total time previously forfeited.

(d) The following inmates are not eligible for earned time as a sentence reduction credit:

- (1) Inmates committed to custody for contempt of court;
- (2) Health law violators;
- (3) Inmates serving an active prison term followed by a period of Special Probation;
- (4) Safekeepers; and
- (5) Presentence commitment for study defendants.

Statutory Authority G.S. 15A-1340.13; 15A-1340.20; 15A-1355; 148-11.

.0114 MERITORIOUS TIME

(a) All inmates eligible for gain time or earned time are eligible for Meritorious Time sentence reduction credit awards. The Director of Prisons or his designee awards Meritorious Time sentence reduction credit to deserving inmates, as determined by his judgment.

(b) Total credit awards to misdemeanants sentenced for crimes occurring on or after October 1, 1994, shall not exceed four days per month for the total number of months sentenced to incarceration. Credit awards for felons sentenced for crimes occurring on or after October 1, 1994, shall not reduce the felon's maximum term below the minimum term.

(c) Credit awards to inmates eligible for gain time sentenced for crimes occurring prior to October 1, 1994, shall not exceed 30 days per month for work performed nor 30 days for each act of exemplary conduct.

(d) Consideration for Meritorious Time awards will be based upon the following categories:

(1) Work Performed.

(A) Overtime. Overtime is defined as satisfactory performance, as determined in the judgment of the supervisor, in a job activity beyond a regular 40-hour work week. Inmates assigned to the Work Release Program are not eligible to receive overtime based on a work release job.

(B) Adverse Working Conditions. Inmates are eligible for additional sentence reduction credit for work performed during inclement weather.

Inclement weather is defined as a chill factor of below 20 degrees Fahrenheit of temperature above 95 degrees Fahrenheit. Such conditions include rain, sleet, snow, or other unusual or abnormal circumstances as determined by the appropriate approving authority.

(C) Emergency Conditions. Inmates are eligible for additional sentence reduction credits for work performed during emergency conditions. Facility Superintendents will determine when an emergency condition exists. Such emergency conditions may include, but are not limited to, power failures, forest fires, work stoppages, riots, statewide emergencies established by the State Emergency responses network.

(2) Exemplary Conduct.

(A) Inmates are eligible for additional sentence reduction credit, not to exceed 30 days for each act, based upon the performance of an act which in the professional judgement of the Director or his designee is exemplary and merits the award of sentence reduction credits.

(B) Inmates attaining an educational degree are eligible for additional sentence reduction credit at a rate of 30 days per achievement. These awards are limited to successful completion of the General Educational Development Test (GED), receipt of a vocational trades license or trades certification based on successful completion of a formal program of vocational course work and supervised training, the attainment of an Associate of Arts or Science Degree (AA, AS), or the achievement of a Bachelor of Arts or Science Degree (BA, BS) or Graduate Degree (MA, MS, Ph.D., etc.). Inmates identified as special students by educational authorities may be awarded an additional five days per month for progress towards established educational goals in keeping with their individual education plans.

Statutory Authority G.S. 15A-1355; 148-11;

148-13.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the N. C. Medical Care Commission intends to amend rule cited as 10 NCAC 3H .0221.

The proposed effective date of this action is March 1, 1995.

The public hearing will be conducted at 9:30 a.m. on December 2, 1994 at the Council Building, Room 201, 701 Barbour Drive, Raleigh, N. C. 27603.

Reason for Proposed Action: To eliminate reference to the Internal Review Committee (IRC) in the rule due to a change in process.

Comment Procedures: In order to allow the Commission sufficient time to review and evaluate your written comments, please submit your comments to Mr. Jackie R. Sheppard, APA Coordinator, DFS, PO Box 29530, Raleigh, NC 27626-0530, telephone (919) 733-2342 by November 25th, but in no case later than the hearing on December 2, 1994.

CHAPTER 3 - FACILITY SERVICES

SUBCHAPTER 3H - RULES FOR THE LICENSING OF NURSING HOMES

SECTION .0200 - LICENSURE

.0221 ADMINISTRATIVE PENALTY DETERMINATION PROCESS

~~(a) The surveyor shall identify areas of non-compliance resulting from an investigation or survey which may be violations of patients' rights contained in G.S. 131E-117 or rules contained in this Subchapter. The areas of non-compliance shall be documented by the surveyor and a Negative Action Proposal submitted to the Internal Review Committee.~~

~~(b) The Internal Review Committee shall be comprised of three members:~~

~~(1) The assistant chief of the Licensure Section, or a person designated by the chief of the Licensure Section, who~~

~~shall serve as chairman;~~

~~(2) The head of the Complaints Investigation Branch, if the proposal is the result of a health care survey; or the head of the Health Care Facilities Branch, if the proposal is the result of a complaint investigation; or a person designated by the chief of the Licensure Section; and~~

~~(3) A third party selected by the chief of the Licensure Section.~~

~~(e) The Department shall notify the licensee by certified mail within 10 working days from the time the proposal is received by the Internal Review Committee that an administrative penalty is being considered.~~

~~(d) The licensee shall have 10 working days from receipt of the notification to provide the Department any additional written information relating to the proposed administrative penalty. Upon request by the licensee, the Department shall grant the licensee an extension of up to 30 days to submit additional written information relating to the proposed administrative action. The licensee shall have five working days from receipt of the notification to advise the Department as to whether the licensee, an authorized representative or both plan to meet with the Internal Review Committee.~~

~~(e) If the licensee chooses to attend the meeting as provided in Paragraph (d) of this Rule, a surveyor or a representative of the branch which conducted the investigation or survey shall attend the Internal Review Committee meeting when survey schedules permit. The Department shall notify the Division of Aging of the licensee's plans to meet with the Committee or any change in the date or time of the meeting. If the licensee chooses to attend the meeting, the agency that conducted the survey or investigation shall be responsible for notifying the complainant, if any. The complainant, if any, may attend the meeting relating to his or her complaint.~~

~~(f) The Internal Review Committee shall review all Negative Action Proposals, any supporting evidence, and any additional information provided by the licensee that may have a bearing on the proposal such as documentation not available during the investigation or survey, action taken to correct the violation and plans to prevent the violation from recurring.~~

~~(g) There shall be no taking of sworn testimony nor cross examination of anyone during the course of Internal Review Committee meetings.~~

~~(h) Time shall be allowed during the Internal Review Committee meetings for individual presentations, the total for which shall normally be one~~

hour for each facility where the violations took place, but shall not exceed two hours. The amount of time allowed, up to two hours, shall be at the discretion of the Internal Review Committee chair. The order in which presenters shall speak and length of presentations shall also be at the discretion of the chair.

(i) If it is determined that the licensee has violated applicable rules or statutes, the Internal Review Committee shall recommend an administrative penalty type and amount for each violation pursuant to G.S. 131E-129. The Department shall notify the licensee by certified mail of the Committee's decision within five working days following the Internal Review Committee meeting.

(j) If the recommended penalty is classified as Type B but is not a repeat violation (as defined by G.S. 131E-129), the licensee may accept the recommendation and notify the Department by certified mail within five working days following receipt of the recommendation. If the penalty is accepted, the licensee has 60 days from receipt of the recommendation to pay the penalty.

(k) If the recommended penalty is a Type A violation; is a Type B violation that has been previously cited during the previous 12 months or within the time period of the previous licensure inspection, whichever time period is longer; or is a Type B violation as provided in Paragraph (j) of this Rule but is not accepted by the licensee, the Internal Review Committee shall forward to the Penalty Review Committee the penalty recommendation, the rationale for the recommendation and all information reviewed by the Internal Review Committee.

(l) The Penalty Review Committee may agree with or recommend changes to the Internal Review Committee's recommendations. If the recommendations are different from those of the Internal Review Committee, the Department shall notify the licensee the day of the Penalty Review Committee meeting.

(m) Recommendations by the Penalty Review Committee shall be documented and forwarded to the Chief of Licensure who shall have five working days from the date of the Penalty Review Committee meeting to determine and impose administrative penalties for each violation as provided by G.S. 131E-129 and notify the licensee by certified mail.

(n) The licensee shall have 60 days from receipt of the notification to pay the assessment as provided by G.S. 131E-129 or 30 days to appeal the decision as provided by G.S. 150B-22. The Department shall notify the Attorney General's

Office of any outstanding assessments.

(a) The surveyor or complaints investigator shall identify and notify the facility of areas of noncompliance resulting from a survey or investigation which may be violations of patients' rights contained in G.S. 131E-117 or rules contained in this Subchapter. The facility may submit additional written information which was not available at the time of the visit for evaluation by the surveyor, investigator, or branch head. The surveyor, investigator or branch head shall notify the facility if a decision is made, based on information received, not to recommend a penalty. If the decision is to recommend a penalty, the surveyor or investigator shall complete a negative action proposal and recommend a penalty, by Type (A or B), to the branch head who shall make a decision on type and amount of penalty to be submitted for consideration. The negative action proposal shall then be submitted to the administrative penalty monitor for processing.

(b) The Department shall notify the licensee by certified mail within 10 working days from the time the proposal is received by the administrative penalty monitor that an administrative penalty is being considered.

(c) The licensee shall have 10 working days from receipt of the notification to provide the Department any additional written information relating to the proposed administrative penalty. Upon request by the licensee, the Department shall grant the licensee an extension of up to 30 days to submit additional written information relating to the proposed administrative penalty.

(d) If the penalty recommendation is classified as a Type B violation and is not a repeat violation as defined by G.S. 131E-129, the licensee shall be notified of the type and amount of penalty and may accept the recommendation instead of review by the Penalty Review Committee. If the penalty recommendation is accepted, the licensee must notify the administrative penalty monitor by certified mail within five working days following receipt of the recommendation. The licensee must include payment of the penalty with the notification. If payment is not received, the recommendation shall be forwarded to the Penalty Review Committee.

(e) The Penalty Review Committee must review a recommended penalty when: it is a Type A violation; is a Type B violation that has been previously cited during the previous 12 months or within the time period of the previous licensure inspection, whichever time period is longer; or is a Type B violation as provided in Paragraph (d) of

this Rule which is not accepted by the licensee.

(f) A subcommittee of the Penalty Review Committee consisting of four committee members assigned by the Penalty Review Committee chair shall meet to initially review non-repeat Type B violations. The Penalty Review Committee chair shall appoint the subcommittee chair and shall be an ex-officio member of the Penalty Review Committee subcommittee. The surveyor or investigator recommending the penalty or a branch representative shall attend the meeting when work schedules permit. Providers, complainants, affected parties and any member of the public may also attend the meeting. The administrative penalty monitor shall be responsible for informing parties of these public meetings.

(g) Time shall be allowed during the Penalty Review Committee subcommittee meetings for individual presentations regarding proposed penalties. The total time allowed for presentations regarding each facility, the order in which presenters shall speak and length of presentations shall be determined by the Penalty Review Committee subcommittee chair.

(h) The administrative penalty monitor shall have five working days from the meeting date to notify the facility and involved parties of penalty recommendations made by the Penalty Review Committee subcommittee. These recommendations including the vote of the Penalty Review Committee subcommittee shall be submitted for review by the full Penalty Review Committee at a meeting scheduled for the following month.

(i) The full Penalty Review Committee shall consider Type A violations, repeat Type B violations and non-repeat Type B violations referred by the Penalty Review Committee subcommittee. Providers, complainants, affected parties and any member of the public may attend full Penalty Review Committee meetings. Upon written request of any affected party showing good cause, the Department may grant a delay until the following month for Penalty Review Committee review. The Penalty Review Committee chair may ask questions of any of these persons, as resources, during the meeting. Time shall be allowed during the meeting for individual presentations which provide pertinent additional information, normally not to exceed 10 minutes in length for each proponent. The order in which presenters speak and the length of each presentation shall be at the discretion of the Penalty Review Committee chair.

(j) The Penalty Review Committee and Penalty Review Committee subcommittee shall have for

review the entire record relating to the penalty recommendation. The Penalty Review Committee and Penalty Review Committee subcommittee shall make recommendations after review of negative action proposals, any supporting evidence, and any additional information submitted by the licensee as described in Paragraph (c) of this Rule that may have a bearing on the proposal such as documentation not available during the investigation or survey, action taken to correct the violation and plans to prevent the violation from recurring.

(k) There shall be no taking of sworn testimony nor cross-examination of anyone during the course of the Penalty Review Committee subcommittee or full Penalty Review Committee meetings.

(l) If the Penalty Review Committee determines that the licensee has violated applicable rules or statutes, the Penalty Review Committee shall recommend an administrative penalty type and amount for each violation pursuant to G.S. 131E-129. Recommendations for nursing home penalties shall be submitted to the Chief of the Medical Facilities Licensure Section who shall have five working days from the date of the Penalty Review Committee meeting to determine and impose administrative penalties for each violation and notify the licensee by certified mail.

(m) The licensee shall have 60 days from receipt of the notification to pay the penalty as provided by G.S. 131E-129 or must file a petition for contested case with the Office of Administrative Hearings within 30 days of the mailing of the notice of penalty imposition as provided by G.S. 131E-2.

Statutory Authority G.S. 131D-34; 131E-104; 143B-165.

Notice is hereby given in accordance with G.S. 150B-21.2 that the N. C. Medical Care Commission intends to amend rules cited as 10 NCAC 3T .0102, .0402, .0901, .1102 and .1109.

The proposed effective date of this action is February 1, 1995.

The public hearing will be conducted at 9:30 a.m. on December 2, 1994 at the Council Building, Room 201, 701 Barbour Drive, Raleigh, N. C. 27603.

Reason for Proposed Action: To change staffing and physical plant requirements resulting from rules workgroup.

Comment Procedures: In order to allow the Commission sufficient time to review and evaluate your written comments, please submit your comments to Mr. Jackie R. Sheppard, APA Coordinator, DFS, PO Box 29530, Raleigh, NC 27626-0530, telephone (919) 733-2342 by November 25th, but in no case later than the hearing on December 2, 1994.

SUBCHAPTER 3T - HOSPICE LICENSING RULES

SECTION .0100 - GENERAL INFORMATION

.0102 DEFINITIONS

In addition to the definitions set forth in G.S. 131E-201 the following definitions shall will apply throughout this Subchapter along with the following:

- (1) "Attending Physician" means the physician licensed to practice medicine in North Carolina who is identified by the patient at the time of hospice admission as having the most significant role in the determination and delivery of medical care for the patient.
- (2) "Care Plan" means the proposed method developed in writing by the interdisciplinary care team through which the hospice seeks to provide services which meet the patient's and family's medical, psychosocial and spiritual needs.
- (3) "Clergy Member" means an individual who has received a degree from an accredited theological school and has fulfilled appropriate denominational seminary requirements; or an individual who, by ordination or authorization from the individual's denomination, has been approved to function in a pastoral capacity. The clergy member must have experience in pastoral duties and be capable of providing for hospice patients' spiritual needs.
- (4) "Coordinator of Volunteers" means an individual on the hospice staff who coordinates and supervises the activities of all volunteers.

- (5) "Dietary Counseling" means counseling given by a qualified dietitian, ~~one~~ who meets the qualifications established by the Committee on Professional Registration of the American Dietetic Association.
- (6) "Director" means the person having administrative responsibility for the operation of the hospice.
- (7) "Governing Body" means the group of persons responsible for overseeing the operations of the hospice, specifically for the development and monitoring of policies and procedures related to all aspects of the hospice program. The governing body ensures that all services provided are consistent with accepted standards of hospice practice.
- (8) "Home Health Aide" means an individual who is a qualified nurse aide listed on the nurse Aide Registry, and who performs personal care and other duties to hospice patients in a private home.
- (9) "Hospice caregiver" means an individual on the hospice staff who has completed hospice caregiver training as defined in 10 NCAC 3T .0402 and is assigned to a hospice residential facility.
- (10) (9)"Hospice Inpatient Unit" means a freestanding licensed facility providing inpatient hospice care or a designated unit in a licensed facility which has a contractual agreement with a licensed hospice for the provision of hospice inpatient care.
- (11) (10)"Hospice Residence" is a home licensed to provide hospice care to no more than six hospice residents.
- (12) (11)"Hospice Staff" means personnel working under the jurisdiction of a hospice, either salaried employee or volunteer.
- (13) (12)"Informed Consent" means the agreement to receive hospice care made by the patient and family which specifies in writing the type of care and services to be provided. The informed consent form is signed by the patient prior to service. If the patient's medical condition is such that a signature cannot be obtained, a signature is obtained from the individual having legal guardianship, applicable power of attorney, or the family member or individual assuming the responsibility of primary caregiver.
- (14) (13)"Inpatient Beds" means beds provid-

ed for use by hospice patients, for medical management of symptoms or for respite care.

- (15) (14) "Licensed Practical Nurse" means a nurse holding a valid current license as required by G.S. 90, Article 9A. North Carolina Statute.
- (16) (15) "Medical Director" means a physician who directs the medical aspects of the hospice's patient care program.
- (17) (16) "Nurse Aide" means an individual who is qualified authorized to provide nursing care under the supervision of a licensed nurse, has completed a training and competency evaluation program or competency evaluation program and is listed on the Nurse Aide Registry, ~~North Carolina Board of Nursing as set forth in 21 NCAC 36 .0400 at the Division of Facility Services.~~
- (18) (17) "Occupational Therapist" means an individual who is registered as such with the American Occupational Therapy Association.
- (19) (18) "Patient and Family Care Coordinator" means a registered nurse designated by the hospice to coordinate the provision of hospice services for each patient and family.
- (20) (19) "Pharmacist" means an individual duly licensed to practice pharmacy in North Carolina.
- (21) (20) "Physical Therapist" means an individual holding a valid current license as required by G.S. 90, Article 18B. North Carolina Statute.
- (22) (21) "Physician" means an individual licensed to practice medicine in North Carolina.
- (23) (22) "Primary Caregiver" means the family member or other person who assumes the overall responsibility for the care of the patient in the home.
- (24) (23) "Registered Nurse" means a nurse holding a valid current license as required by G.S. 90, Article 9A. North Carolina Statute.
- (25) (24) "Respite Care" means care provided to a patient for the purpose of temporary relief to family members or others caring for the patient at home.
- (26) (25) "Social Worker" means an individual holding a master's degree or a bachelor's degree in social work from a school accredited by the Council of Social Work

Education with experience in a health related field and who is capable of providing for hospice patients' and families' psychosocial needs. An individual holding a bachelor's or an advanced degree in psychology, counseling or psychiatric nursing may also function in this capacity if the same criteria are met.

- (27) (26) "Speech Therapist" means an individual holding a valid current license as required by G.S. 90, Article 22. North Carolina Statute.
- (28) (27) "Volunteer" means an individual, who has received appropriate orientation and training consistent with acceptable standards of hospice philosophy and practice.

Statutory Authority G.S. 131E-202.

SECTION .0400 - PERSONNEL

.0402 INSERVICE EDUCATION AND TRAINING

(a) Written policies shall be established and implemented which include orientation, hospice caregiver training, volunteer training and inservice education for all hospice staff. Records on the content of volunteer training sessions and on the subject of inservice shall be maintained by the hospice; attendance records for both shall be kept.

(b) Training for hospice staff providing direct patient and family services shall include, but not be limited to, the following:

- (1) hospice philosophy and concepts of care;
- (2) physiological and psychological aspects of terminal illness;
- (3) symptom management;
- (4) family dynamics and coping;
- (5) communication and listening;
- (6) emergency procedures;
- (7) procedure for death occurring in the home;
- (8) grief and bereavement, ~~and;~~ and
- (9) documentation and record keeping.

(c) In addition to the training described in Paragraph (b) of this Rule, the following additional training shall be provided to hospice caregivers assigned to a hospice residential facility:

- (1) training specific to the types of medications being administered when assisting the patient with self administration of medications and provision of personal care from a curriculum approved by the

Division of Facility Services;

- (2) orientation and instruction specific to the care needs of individual patients in the hospice residential facility; and
- (3) notification criteria for licensed nursing staff as defined in the agency policies and procedures.

Statutory Authority G.S. 131E-202.

SECTION .0900 - MEDICAL RECORDS

.0901 CONTENT OF MEDICAL RECORD

(a) The hospice shall have policies and procedures implemented to ensure that a medical record is maintained for each patient and is made available for licensure inspection unless the patient, who has been so informed, objects to such inspection in writing. If the patient is not able to approve or disapprove the release of such information for inspection, the patient's legal guardian may make the decision and so indicate in writing.

(b) The record shall contain pertinent past and current medical and social data and include the following information:

- (1) identification data (name, address, telephone, date of birth, sex, marital status);
- (2) name of next of kin or legal guardian;
- (3) names of other family members;
- (4) religious preference and church affiliation and clergy if appropriate;
- (5) diagnosis, as determined by attending physician;
- (6) authorization from attending physician for hospice care;
- (7) source of referral;
- (8) initial assessments;
- (9) consent for care form;
- (10) physician's orders for drugs, treatments and other special care, diet, activity and other specific therapy services;
- (11) care plan;
- (12) clinical notes containing a record of all professional services provided directly or by contract with entries signed by the individual providing the services;
- (13) home health aide and hospice caregiver notes describing activities performed and pertinent observations;
- (14) ~~(13)~~ volunteer notes, as applicable, indicating type of contact, activities performed and time spent;

- (15) ~~(14)~~ discharge summary to include services provided, or reason for discharge if services are terminated prior to the death of the patient; and
- (16) ~~(15)~~ bereavement counseling notes.

Statutory Authority G.S. 131E-202.

SECTION .1100 - HOSPICE RESIDENTIAL

.1102 HOSPICE RESIDENCE STAFFING

(a) There shall be trained hospice caregivers on duty 24 hours a day. ~~a licensed nurse on duty in each residence 24 hours a day. If the nurse is a licensed practical nurse, a~~ A registered nurse shall be continuously available, for consultation and direct participation in nursing care ~~and for supervision of the licensed practical nurse.~~ The registered nurse shall be on site when required to perform duties specified in the Nurse Practice Act. Supervision shall be provided by the patient and family care coordinator who may delegate this responsibility to the registered nurse on call.

(b) There shall be at least two staff on duty at all times.

(c) All staff, including volunteers, counselors and clergy, shall complete training specific to dealing with the terminally ill and their families.

(d) Nurse aides employed to provide direct care shall be supervised by licensed nurses.

(e) Interdisciplinary team services shall be provided in accordance with the hospice plan of care.

Statutory Authority G.S. 131E-202.

.1109 RESIDENT CARE AREAS

(a) Resident rooms shall meet the following requirements:

- (1) There shall be private or semiprivate rooms-;
- (2) Infants and small children shall not be assigned to a room with an adult resident unless requested by residents and families-;
- (3) Each resident room shall contain at least a bed, a mattress protected by waterproof material, mattress pad, and pillow, and a chair-;
- (4) Each resident room shall have a minimum of 48 cubic feet of closet space or wardrobe for clothing and personal belongings that provides

security and privacy for each resident. Each resident room shall be equipped with a towel rack for each individual-;

(5) Each resident bedroom shall:

- (A) be located at or above grade level-;
- (B) have provisions to ensure visual privacy for treatment or visiting;

~~(C) have a direct entry from the corridor.~~

(6) Artificial lighting shall be provided sufficient for treatment and non-treatment needs, 50 foot candles for treatment, 35 foot candles for non-treatment areas-; and

(7) A room where access is through a bathroom, kitchen or another bedroom will not be approved for a resident's bedroom.

(b) Bathrooms shall meet the following requirements:

(1) Bathroom facilities shall be conveniently accessible to resident rooms ~~and shall include a tub, lavatory and water closet.~~ One bathroom may serve up to four residents and staff. Minimum size of any bathroom shall be 18 square feet. The door shall be at least 32 inches wide.

(2) The bathroom shall be furnished with the following:

- (A) toilet with grab bars;
- (B) lavatory with four inch wrist blade controls;
- (C) mirror; ~~and~~
- (D) soap, paper towel dispensers, and waste paper receptacle with a removable impervious liner-;
- (E) water closet; and
- (F) tub or shower.

(c) Space shall be provided for:

- (1) charting, storage of supplies and personal effects of staff-;
- (2) the storage of resident care equipment-;
- (3) housekeeping equipment and cleaning supplies-;
- (4) storage of test reagents and disinfectants distinct from medication-;
- (5) locked medication storage and preparation-; and
- (6) drugs requiring refrigeration. They may be stored in a separate locked box in the refrigerator or in a lockable drug-only refrigerator, capable of maintaining a temperature range of 36 degrees F (2 degrees C) to 46 degrees F (8 degrees C). The storage and

accountability of controlled substances shall be in accordance with the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes.

(d) Kitchen and dining areas shall have:

- (1) a refrigerator-;
- (2) a cooking unit ventilated in an acceptable manner-;
- (3) a 42" minimum double-compartment sink and domestic dishwashing machine capable of sanitizing dishes with 160 degrees F. water-;
- (4) dining space of 20 square feet per resident-; and
- (5) adequate storage space for non-perishables.

(e) Other areas shall include:

- (1) a minimum of 150 square feet exclusive of corridor traffic for recreational and social activities-;
- (2) ~~There shall be~~ an audible and accessible call system furnished in each resident's room and bathroom-; and
- (3) ~~Each facility shall provide~~ heating and air cooling equipment to maintain a comfort range between 68 degrees and 80 degrees Fahrenheit.

Statutory Authority G.S. 131E-202.

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 411 .0305 and .0306.

The proposed effective date of this action is February 1, 1995.

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

Reason for Proposed Action:

10 NCAC 411 .0305 - Proposed for amendment in order to reduce unnecessary expenditure of agency time in checking the Central Registry for a state-wide history of child protective services reports. The amendment specifically eliminates the requirement for rechecking the Registry in two circum-

stances and allows agency discretion in other situations that may make checks unnecessary.

10 NCAC 41I .0306 - The proposed amendment provides for agency discretion in those situations for which the development of an intervention plan and the provision of services by the agency are not needed to ensure adequate care for the victim child or children.

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

CHAPTER 41 - CHILDREN'S SERVICES

SUBCHAPTER 41I - PROTECTIVE SERVICES

SECTION .0300 - CHILD PROTECTIVE SERVICES: GENERAL

.0305 CONDUCTING A THOROUGH INVESTIGATION

(a) The county director shall make a thorough investigation to assess:

- (1) whether the specific environment in which the child or children is found meets the child's or children's need for care and protection; and
- (2) facts regarding the existence of abuse, neglect, or dependency; and
- (3) the nature and extent of any injury or condition resulting from abuse, neglect, or dependency; and
- (4) the risk of harm to and need for protection of the child or children.

(b) When the county director receives a report of suspected abuse, neglect, or dependency, the county director shall check the county agency's records and the North Carolina Central Registry of child abuse, neglect, and dependency reports to ascertain if any previous reports of abuse, neglect, or dependency have been made concerning the alleged victim child or children. Central Registry checks are not necessary when the agency has conducted such a check within the previous 60 days or when the agency is providing continuous

child protective services to the family.

(c) Face-to-face contact with other children residing in the home shall be made as soon as possible, but no later than seven working days after the initiation of the investigation, unless there is documentation in the case record to explain why such contact was not made.

(d) There shall be a face-to-face interview with any parent or caretaker with whom the victim child or children reside, unless there is documentation in the case record to explain why such an interview was not conducted. The parent or caretaker shall be interviewed on the same day as the victim child or children unless there is documentation in the case record to explain why such interviews were not conducted.

(e) The investigation shall include a visit to the place where the child or children reside.

(f) There shall be a face-to-face interview with the alleged perpetrator or perpetrators unless there is documentation to explain why such an interview was not conducted.

(g) Any persons identified at the time the report was accepted for investigation as having information concerning the condition of the child or children shall be interviewed in order to obtain any information relevant to the investigation unless there is documentation in the case record to explain why such interviews were not conducted.

(h) When additional information is necessary to complete a thorough investigation, information from the following sources shall be obtained and utilized:

- (1) Professionals or staff at an out-of-home care setting having relevant knowledge pertaining to the alleged abuse, neglect, or dependency;
- (2) Other persons living in the household or attending or residing in the out-of-home care setting;
- (3) Any other source having relevant knowledge pertaining to the alleged abuse, neglect, or dependency;
- (4) Records; i.e., school, medical, mental health, or incident reports in an out-of-home care setting.

(i) The county director shall exercise discretion in the selection of collateral sources in order to protect the family's or out-of-home care setting's right to privacy and the confidentiality of the report.

(j) Conducting a thorough investigation as outlined in Paragraph (a) of this Rule when the alleged abuse, neglect, or dependency occurred in an institution shall include the following:

- (1) A discussion of the allegation with the individual who has on-site administrative responsibility for the institution;
- (2) A discussion of the procedure to be followed during the investigation;
- (3) The utilization of resources within and without the institution as needed and appropriate;
- (4) A discussion of the findings with the Administrator of the institution which shall be confirmed in writing by the county director and shall be held confidential by all parties as outlined in 10 NCAC 411 .0313, of this Subchapter.

Statutory Authority G.S. 7A-544; 143B-153.

.0306 WHEN ABUSE, NEGLECT OR DEPENDENCY IS FOUND

(a) When a thorough investigation reveals the presence of abuse, neglect, or dependency, the county director shall notify the following persons or agencies of the case finding:

- (1) any parent or caretaker who was alleged to have abused or neglected the child or children;
- (2) any parent or other individual with whom the child or children resided at the time the county director initiated the investigation; and
- (3) any agency with whom the court has vested legal custody.

Notification shall be in writing, and within five working days of the case decision. If the county director is unable to contact a parent, caretaker, or perpetrator, documentation of reasonable efforts to locate that person must be included in the case record.

(b) The county director shall conduct a structured risk assessment of every family in which abuse or neglect is substantiated. This risk assessment shall be completed within seven working days following a case finding of abuse or neglect and the findings of the risk assessment shall be used to evaluate the need for services and to develop an intervention plan.

(c) The director shall evaluate the appropriateness of using the formal risk assessment process in individual substantiated dependency cases. Examples of substantiated dependency cases that are appropriate for formal risk assessment are cases involving both neglect and dependency, and cases involving dependent

children who are being considered for reunification with their family.

(d) In all cases in which abuse, neglect, or dependency is found, the county director shall determine whether protective services are needed and, if so, shall develop, implement, and oversee an intervention plan to ensure that there is adequate care for the victim child or children. The intervention plan shall:

- (1) be based on the findings of the structured risk assessment when such a risk assessment was determined to be required according to the instructions provided by the Department of Human Resources, Division of Social Services; and
- (2) contain goals representing the desired outcome toward which all case activities shall be directed; and
- (3) contain objectives that:
 - (A) describe specific desired outcomes,
 - (B) are measurable,
 - (C) identify necessary behavior changes,
 - (D) are based on an assessment of the specific needs of the child or children and family,
 - (E) are time-limited, and
 - (F) are mutually accepted by the county director and the client;
- (4) specify all the activities needed to achieve each stated objective;
- (5) have clearly stated consequences that will result from either successfully following the plan or not meeting the goals and objectives specified in the plan; and
- (6) shall include petitioning for the removal of the child or children from the home and placing the child or children in appropriate care when protection cannot be initiated or continued in the child's or children's own home.

(e) For those cases that require the completion of a structured risk assessment, the risk assessment tool shall be completed at the following points in the case:

- (1) within seven working days following a case finding of abuse, neglect, or dependency, and prior to the development of the intervention plan and prior to the provision of treatment or supportive services; and
- (2) as part of the six-month review and the annual review, if the case remains open for services; and

- (3) when the county director is considering taking court action in relation to the case; and
- (4) when the county director is considering closing the case for services; and if the director decides to close the case, the case must be closed within 30 days following completion of the risk assessment; and
- (5) at other times, at the county director's discretion, when conducting a structured risk assessment would help the director in making decisions concerning an open child protective services case.

(f) When an investigation leads a county director to find evidence that a child may have been abused or may have been physically harmed in violation of a criminal statute by a person other than the child's parent, guardian, custodian, or caretaker, the county director shall follow all procedures outlined in G.S. 7A-548 in making reports to the prosecutor and appropriate law enforcement agencies. The report shall include:

- (1) the name and address of the child, of the parents or caretakers with whom the child lives, and of the alleged perpetrator when this person is different from the parents or caretaker;
- (2) whether the abuse was physical, sexual or emotional;
- (3) the dates that the investigation was initiated and that the evidence of abuse was found;
- (4) whether law enforcement has been notified and the date of the notification;
- (5) what evidence of abuse was found;
- (6) what plan to protect the child has been developed and what is being done to implement it.

(g) When a thorough investigation reveals the presence of abuse, neglect, or dependency in an institution, the county director shall complete the following steps:

- (1) the child's or children's legal custodian shall be informed;
- (2) an intervention plan for the care and protection of the child or children shall be developed in cooperation with the institution and the legal custodian; and
- (3) when abuse is found, a written report shall be made to the prosecutor in the county where the institution is located.

Statutory Authority G.S. 7A-544; 7A-548; 143B-153.

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 42A .0602.

The proposed effective date of this action is March 1, 1995.

The public hearing will be conducted at 10:00 a.m. on December 7, 1994 at the Albemarle Bldg., Room 943-2, 325 N. Salisbury Street, Raleigh, North Carolina 27603-5905.

Reason for Proposed Action: To allow an assessment for Adult Placement Services, which is transferred within the agency or referred from another service provider or facility, to be used and updated without requiring a personal contact with the client for the assessment.

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 this rule by calling or writing to Sharnese Ransome, Division of Social Services, 325 N. Salisbury Street, Raleigh, North Carolina 27603-5905, telephone: (919) 733-3055.

CHAPTER 42 - INDIVIDUAL AND FAMILY SUPPORT

SUBCHAPTER 42A - ADULT PLACEMENT SERVICES

SECTION .0600 - SERVICE REQUIREMENTS

.0602 ASSESSMENT AND SUPPORTIVE COUNSELING

(a) A thorough assessment must be conducted of the client's situation, including strengths and limitations in the following areas:

- (1) physical health;
- (2) mental health;
- (3) social system;
- (4) activities of daily living and instrumental activities of daily living;
- (5) economic and financial circumstances;

and

(6) environment.

(b) With the exception of the circumstances listed below the client must be seen personally by the social worker as many times as is necessary to do a thorough assessment in the six areas, but a minimum of one time. The personal contact may be in a setting other than the client's home, if the client or others can provide the necessary information for an assessment of the client's living environment, and, if during the course of the assessment, it does not appear that in-home services will be needed or appropriate as an alternative to placement or as an interim service plan.

(c) For the following situations, an assessment must be done as thoroughly as possible with information and resources available to the social worker, without requiring personal contact with the client to complete the assessment.

- (1) a client who is not currently living in the county in which the application is made;
- (2) a client who is in an emergency situation, where a placement is needed quickly and personal contact would be a barrier to achieving a quick placement;
- (3) a client whose case is being transferred ~~from one social worker to another~~ within the agency or referred by another service provider or facility, and an original assessment which addresses all six functional areas is available. This assessment must be updated to reflect current information.;
- ~~(4) a client who is already in a facility and is requesting Adult Placement Services, and an original assessment which addresses all six functional areas is available. This assessment must be updated to reflect current information.~~

(d) Documentation must reflect the reason the client was not seen personally in conducting the assessment.

Statutory Authority G.S. 143B-153.

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 .3601.

The proposed effective date of this action is March 1, 1995.

The public hearing will be conducted at 10:00 a.m. on December 7, 1994 at the Albemarle Building, Room 443-2, 325 North Salisbury Street, Raleigh, NC 27603.

Reason for Proposed Action: To eliminate the reference to the Internal Review Committee in the rule due to a proposed change in process.

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 this rule by calling or writing to Ms. Sharnese Ransome, Division of Social Services, 325 N. Salisbury Street, Raleigh, NC 27603, (919) 733-3055.

CHAPTER 42 - INDIVIDUAL AND FAMILY SUPPORT

SUBCHAPTER 42C - LICENSING OF FAMILY CARE HOMES

SECTION .3600 - ADMINISTRATIVE PENALTY DETERMINATION PROCESS

.3601 ADMINISTRATIVE PENALTY DETERMINATION PROCESS

~~(a) The county department of social services shall identify areas of non compliance resulting from an investigation or monitoring visit which may be violations of residents' rights contained in G.S. 131D-21 or rules contained in this Subchapter. If the county department decides to recommend an administrative penalty as defined in G.S. 131D-34, it shall prepare an administrative penalty proposal for submission to the Division of Facility Services. The proposal shall include documentation that the facility administrator was notified of the county department's intent to prepare and forward an administrative penalty proposal to the Division of Facility Services; offered an opportunity to provide additional information prior to the preparation of the proposal; after the proposal is prepared, given a copy of the contents of the proposal; and then extended an opportunity to request a local confer-~~

ence with the county department, allowing the administrator 10 days to respond prior to forwarding the proposal. The conference, if requested, shall include county department management staff. The administrator may request a conference and produce information to cause the county department to change its proposal. The county may rescind its proposal, or change its proposal and submit it to the Division of Facility Services or submit it unchanged to the Division. The proposal shall be reviewed by the Division's Internal Review Committee.

(b) The Internal Review Committee shall be comprised of three members:

- (1) The deputy chief of the Medical Facilities Licensure Section, or a person designated by the chief of the Medical Facilities Licensure Section, who shall serve as chairman;
- (2) A person designated by the chief of the Domiciliary and Group Care Section; and
- (3) A third party selected by the deputy director of the Division of Facility Services.

(c) The Division of Facility Services shall notify the administrator by certified mail within 10 working days from the time the proposal is received by the Internal Review Committee that an administrative penalty is being considered.

(d) The administrator shall have 10 working days from receipt of the notification to provide the Division and the county department of social services any additional written information relating to the proposed administrative penalty. Any information provided shall be considered by the Internal Review Committee. The administrator shall have five working days from receipt of the notification to advise the Division as to whether the administrator, and authorized representative or both plan to meet with the Internal Review Committee.

(e) If the administrator chooses to attend the meeting as provided in Paragraph (d) of this Rule, the Division shall notify representatives of the county department of social services and the Division of Aging of the administrator's plans to meet with the Committee or any change in the date or time of the meeting. The agency that conducted the investigation shall be responsible for notifying the complainant, if any. The complainant, if any, may attend the meeting relating to his or her complaint.

(f) The Internal Review Committee shall review all administrative penalty proposals, any support-

ing evidence, and any additional information provided by the administrator that may have a bearing on the proposal such as documentation not available during the investigation or monitoring visit, action taken to correct the violation and plans to prevent the violation from recurring.

(g) There shall be no taking of sworn testimony nor cross-examination of anyone during the course of Internal Review Committee meetings.

(h) Time shall be allowed during the Internal Review Committee meetings for individual presentations, the total for which shall normally be one hour for each facility where the violations took place, but shall not exceed two hours. The amount of time allowed, up to two hours, shall be at the discretion of the Internal Review Committee chair. The order in which presenters shall speak and length of presentations shall be at the discretion of the chair.

(i) If it is determined that the administrator has violated applicable rules or statutes, the Internal Review Committee shall recommend an administrative penalty type and amount for each violation pursuant to G.S. 131D-34. The Division shall notify the administrator and the county department of social services by certified mail of the Committee's decision within five working days following the Internal Review Committee meeting. Copies of the letter to the administrator shall be forwarded by the Division to all parties involved with the penalty recommendation. The agency that conducted the investigation shall be responsible for notifying the complainant, if any.

(j) If the recommended penalty is classified as Type B but is not a repeat violation (as defined by G.S. 131D-34), the administrator may accept the recommendation and notify the Division by certified mail within five working days following receipt of the recommendation. If the penalty is accepted, the administrator has 60 days from receipt of the recommendation to pay the penalty.

(k) If the recommended penalty is a Type A violation; is a Type B violation that has been cited during the previous 12 months; or is a Type B violation as provided in Paragraph (i) of this Rule but is not accepted by the administrator, the Internal Review Committee shall forward to the Penalty Review Committee the penalty recommendation, the rationale for the recommendation and all information reviewed by the Internal Review Committee.

(l) The Penalty Review Committee may agree with or recommend changes to the Internal Review Committee's recommendations. If the recommendations are different from those of the

~~Internal Review Committee, the Division shall attempt to notify the administrator the day of the Penalty Review Committee meeting.~~

~~(m) Recommendations by the Penalty Review Committee shall be forwarded to the Chief of the Domiciliary and Group Care Section who shall have five working days from the date of the Penalty Review Committee meeting to determine and impose administrative penalties for each violation as provided by G.S. 131D-34 and notify the administrator by certified mail.~~

~~(n) The administrator shall have 60 days from receipt of the notification to pay the assessment or 30 days to appeal the decision as provided by G.S. 131D-34. The Division shall notify the Attorney General's Office of any outstanding assessments.~~

(a) The county department of social services shall identify areas of non-compliance resulting from a complaint investigation or monitoring visit which may be violations of residents' rights contained in G.S. 131D-21 or rules contained in this Subchapter. If the county department of social services decides to recommend an administrative penalty as defined in G.S. 131D-34, it shall prepare an administrative penalty proposal for submission to the Department. The proposal shall include documentation that the licensee was notified of the county department of social services' intent to prepare and forward an administrative penalty proposal to the Department; offered an opportunity to provide additional information prior to the preparation of the proposal; after the proposal is prepared, given a copy of the contents of the proposal; and then extended an opportunity to request a local conference with the county department of social services, allowing the licensee 10 days to respond prior to forwarding the proposal. The conference, if requested, shall include county department management staff. The licensee may request a conference and produce information to cause the county department of social services to change its proposal. The county department of social services may rescind its proposal; or change its proposal and submit it to the Department or submit it unchanged to the Department.

(b) An assistant chief of the Domiciliary and Group Care Section shall receive the proposal and review it for completeness.

- (1) If the proposal is complete, the assistant chief shall make a decision on the type and amount of penalty to be submitted for consideration.
- (2) If the proposal is incomplete, the assistant chief shall contact the county

department of social services to request necessary changes or additional material.

- (3) When the proposal is complete and a type and amount of penalty determined, the assistant chief shall forward the proposal to the administrative penalty monitor for processing.

(c) The Department shall notify the licensee by certified mail within 10 working days from the time the proposal is received by the administrative penalty monitor that an administrative penalty is being considered.

(d) The licensee shall have 10 working days from receipt of the notification to provide both the Department and the county department of social services any additional information relating to the proposed administrative penalty.

(e) If the penalty recommendation is classified as a Type B violation and is not a repeat violation as defined by G.S. 131D-34, the licensee shall be notified of the type and amount of the penalty and may accept the recommendation instead of review by the Penalty Review Committee. If the penalty recommendation is accepted, the licensee must notify the administrative penalty monitor by certified mail within five working days following receipt of the recommendation. The licensee must include payment of the penalty with the notification. If payment is not received, the recommendation shall be forwarded to the Penalty Review Committee.

(f) The Penalty Review Committee must review a recommended penalty when: it is a Type A violation; is a Type B violation that has been previously cited during the previous 12 months or within the time period of the previous licensure inspection, whichever time period is longer; or is a Type B violation as provided in Paragraph (e) of this Rule which is not accepted by the licensee.

(g) A subcommittee of the Penalty review Committee consisting of four committee members assigned by the Penalty Review Committee chair shall meet to initially review non-repeat Type B violations. The Penalty Review Committee chair shall appoint the subcommittee chair and shall be an ex-officio member of the Penalty Review Committee subcommittee. Providers, complainants, affected parties and any member of the public may attend this meeting. The administrative penalty monitor shall be responsible for informing parties of these meeting dates with the exception that the agency which conducted the complaint investigation shall be responsible for notifying the complainant, if any.

(h) Time shall be allowed during the Penalty Review Committee subcommittee meetings for individual presentations concerning proposed penalties. The total time allowed for presentations concerning each facility, the order in which presenters shall speak and length of presentations shall be determined by the Penalty Review Committee subcommittee chair.

(i) The administrative penalty monitor shall have five working days from the meeting date to notify the facility and involved parties of penalty recommendations made by the Penalty Review Committee subcommittee with the exception that the agency which conducted the complaint investigation shall be responsible for notifying the complainant, if any. These recommendations including the vote of the Penalty Review Committee subcommittee shall be submitted for review by the full Penalty Review Committee at a meeting scheduled for the following month.

(j) The full Penalty Review Committee shall consider Type A violations, repeat Type B violations and non-repeat Type B violations referred by the Penalty Review Committee subcommittee.

Providers, complainants, affected parties and any member of the public may attend full Penalty Review Committee meetings. Upon written request of any affected party showing good cause, the Department may grant a delay until the following month for Penalty Review Committee review. The Penalty Review Committee chair may ask questions of any of these persons, as resources, during the meeting. Time shall be allowed during the meeting for individual presentations which provide pertinent additional information, normally not to exceed 10 minutes in length for each proponent. The order in which presenters speak and the length of each presentation shall be at the discretion of the Penalty Review Committee chair.

(k) The Penalty Review Committee and Penalty Review Committee subcommittee shall have for review the entire record relating to the penalty recommendation. The Penalty Review Committee and Penalty Review Committee subcommittee shall make recommendations after review of negative action proposals, any supporting evidence, and any additional information submitted by the licensee as described in Paragraph (d) of this Rule that may have a bearing on the proposal such as documentation not available during the complaint investigation or monitoring visit, action taken to correct the violation and plans to prevent the violation from recurring.

(l) There shall be no taking of sworn testimony nor cross-examination of anyone during the course of the Penalty Review Committee subcommittee or full Penalty Review Committee meetings.

(m) If the Penalty Review Committee determines that the licensee has violated applicable rules or statutes, the Penalty Review Committee shall recommend an administrative penalty type and amount for each violation pursuant to G.S. 131D-34. Recommendations for domiciliary home penalties shall be submitted to the Chief of the Domiciliary and Group Care Section who shall have five working days from the date of the Penalty Review Committee meeting to determine and impose administrative penalties for each violation and notify the licensee by certified mail.

(n) The licensee shall have 60 days from receipt of the notification to pay the penalty or must file a petition for a contested case with the Office of Administrative Hearings within 30 days of the mailing of the notice of penalty imposition as provided by G.S. 131D-34.

Statutory Authority G.S. 131D-2; 131D-34; 143B-153.

TITLE 12 - DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Private Protective Services Board intends to adopt rule cited as 12 NCAC 7D .0113.

The proposed effective date of this action is February 1, 1995.

The public hearing will be conducted at 2:00 p.m. on November 16, 1994 at the State Bureau of Investigation, Conference Room, 3320 Old Garner Road, Raleigh, N.C. 27626-0500.

Reason for Proposed Action: The rule will require all licensees and registrants to notify the Board of any changes in address. Such information is critical for the Board to maintain current licensing information and will allow the Board to promptly contact the license holder.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. The Record of Hearing will be open

for receipt of written comments until December 1, 1994. Written comments must be delivered to the Private Protective Services Board, 3320 Old Garner Road, Raleigh, N.C. 27626-0500.

CHAPTER 7 - PRIVATE PROTECTIVE SERVICES

SUBCHAPTER 7D - PRIVATE PROTECTIVE SERVICES

SECTION .0100 - ORGANIZATION AND GENERAL PROVISIONS

.0113 CHANGE OF ADDRESS OR TELEPHONE NUMBER

All licensees and registrants must inform the Board of their home address, business street address, home telephone number and business telephone number and must inform the Board within 15 days of any changes.

Statutory Authority G.S. 74C-5.

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Alarm Systems Licensing Board intends to adopt rule cited as 12 NCAC 11 .0123.

The proposed effective date of this action is February 1, 1995.

The public hearing will be conducted at 1:00 p.m. on November 17, 1994 at the Howard Johnson Plaza Hotel, Conference Room, Interstate 40 & Guilford-Jamestown Road, Greensboro, NC 27419.

Reason for Proposed Action: Sets forth consumer disclosure requirements for those engaged in the alarm systems business.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. The Record of Hearing will be open for receipt of written comments through December 1, 1994. Written comments must be delivered to the Alarm Systems Licensing Board, 3320 Old Garner Road, Raleigh, NC 27627-0500.

CHAPTER 11 - NORTH CAROLINA ALARM SYSTEMS LICENSING BOARD

SECTION .0100 - ORGANIZATION AND GENERAL PROVISIONS

.0123 CONSUMER DISCLOSURE REQUIREMENTS FOR ALARM SERVICES

(a) Any person, firm, association or corporation licensed to engage in the alarm systems business in North Carolina who sells, installs, services, responds to or monitors electrical, electronic or mechanical alarm systems must make a written disclosure to the consumer on a form provided by the Alarm Systems Licensing Board and must retain a duplicate, signed copy in the customer file. All transactions initiated after the implementation date consisting of the following:

- (1) Description of the sale(s) and/or service(s) provisions/limitation in brief, simple terminology;
- (2) Name, address, phone number of the company and the North Carolina licensee;
- (3) Statements that service requests or consumer complaints be addressed to licensee for resolution;
- (4) Statement that in the event a consumer complaint is not resolved by the licensee, that relief or assistance may be sought by contacting the Alarm Systems Licensing Board, P.O. Box 29500, Raleigh, N.C. 27626, telephone number (919) 662-4387.

(b) Any person, firm, association, or corporation licensed to engage in the alarm systems business in North Carolina by providing sales, installation, service, response, or monitoring to a consumer and who unilaterally terminates, causes to be terminated or reasonably knows of the termination of the monitoring, response or service to that consumer, shall provide notification to that consumer by verified personal service or certified mail at least 10 days prior to cessation of the service(s). This provision shall not apply to consumer initiated action to terminate or upon consumer relocation.

(c) Any person, firm, association or corporation licensed to engage in the alarm systems business in North Carolina by providing sales, installation, service, response, or monitoring to a consumer and who changes or causes to be changed the monitoring, response or service to that consumer, shall provide written notification to that consumer

of the change, the effective date and the name, address and telephone number of the new provider.

Statutory Authority G.S. 74D-2; 74D-5.

TITLE 13 - DEPARTMENT OF LABOR

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Labor intends to adopt rules cited as 13 NCAC 17 .0101 - .0112.

The proposed effective date of this action is March 1, 1995.

The public hearing will be conducted at 10:00 a.m. on December 5, 1994 at the NC Archives & History Building Auditorium, First Floor, 109 E. Jones Street, Raleigh, NC 27601-2807.

Reason for Proposed Action: To update the Private Personnel Services regulations.

Comment Procedures: Please submit your comments to Scott Templeton, APA Coordinator, NC Department of Labor, 4 W. Edenton Street, Raleigh, NC 27601, FAX (919) 733-6197; telephone (919) 733-0368 by December 5, 1994. You may present written or oral comments at the hearing; however, time limits may be imposed by the Chair.

CHAPTER 17 - PRIVATE PERSONNEL SERVICES

SECTION .0100 - PRIVATE PERSONNEL SERVICES REGULATIONS

.0101 DEFINITIONS

As used in G.S. 95, Article 5A and this Chapter, unless the context clearly requires otherwise:

- (1) "Accept an employer's offer of employment," as used in G.S. 95-47.1(1), means to consent verbally or in writing to take the job the employer is offering.
- (2) "Advertising" means any material or method used by a private personnel service for solicitation or promotion of business. This includes, but is not limited to, newspapers, radio, television, business cards, invoices, letterheads, or

other forms that may be used in combination with the solicitation and promotion of business.

- (3) "Communication," as used in G.S. 95-47.1(4), means a written communication.
- (4) "Days" means calendar days.
- (5) "Division" means the Private Personnel Service Division of the North Carolina Department of Labor.
- (6) "Employer fee paid personnel consulting service" means any business that consults employers in locating and placing employees where the sole obligation for the placement fee is assumed by the employer in all circumstances and the applicant is never obligated for the fee, directly or indirectly, even if the applicant quits or is terminated for cause.
- (7) "Employment agency" or "agency" means the same thing as a private personnel service which is defined in G.S. 95-47.1(16).
- (8) "Existing licensed business," as used in G.S. 95-47.2(f), means any existing licensed private personnel service or job listing service.
- (9) "Material information," as used in G.S. 95-47.2(d)(3)a., means any facts or knowledge that are relevant to operating a private personnel service.
- (10) "Operate" means to engage in the business of a private personnel service within the State of North Carolina. Within the State of North Carolina includes, but is not limited to, the following:
 - (a) Property, offices, or employees located in North Carolina;
 - (b) Use of a North Carolina phone number;
 - (c) Use of a North Carolina address; or
 - (d) Interviewing applicants in North Carolina.
- (11) "Premises," as used in G.S. 95-47.2(d)(3)c., means the property occupied by any owner or manager of the private personnel service where the business of the private personnel service is conducted. Two businesses occupy the same premises if a person can move from one to the other without traveling through a public area available to non-customers.
- (12) "Private personnel service industry" means all private personnel services that are or may be required to be licensed to operate in the State of North Carolina.

- (13) "Responsible for the operation" means to conduct the daily administrative functions required to direct and control the business. This includes, but is not limited to, current and ongoing knowledge and oversight of the following: all placement functions; hours the business operates; hiring, supervision, and dismissal of the business' personnel; the finances and financial records of the business; advertising; job orders; compliance with G.S. 95, Article 5A; and the needs of applicants and employers who work with the business to receive placement and hiring assistance. It further means that the person is available during working hours to answer questions and respond to the needs of applicants, employers, the business' own employees, and the Division.
- (14) Except in G.S. 95-47.2(d)(1), in G.S. 95-47.2(d)(3)b.2 and in G.S. 95-47.2(d)(3)b.3, "rules", "regulations", or "rules or regulations" as used in G.S. 95, Article 5A and in this Chapter refer to administrative rules adopted by the Department of Labor pursuant to G.S. 95, Article 5A and G.S. 150B.
- (15) "Temporary help service" means any business which employs persons whom it assigns to assist its customers. The employer-employee relationship exists between the temporary help service and the employee. A temporary help service never charges the employee a fee for providing its service even if it leads to a permanent placement with the temporary help service customer.

Statutory Authority G.S. 95-47.9.

.0102 LICENSING PROCEDURES

(a) Application for License. Any person desiring to operate a private personnel service, as defined in G.S. 95-47.1(16), shall file an application for license with the Commissioner.

- (1) If the private personnel service is owned by an individual, the application shall be made by that individual;
- (2) If the private personnel service is owned by a partnership, each partner shall file an application;
- (3) If the private personnel service is owned by a corporation, each stockholder who owns at least 20

percent of the issued and outstanding voting stock of the corporation shall file an application; or

- (4) If the private personnel service is owned by an association, society, or corporation in which no one individual owns at least 20 percent of the issued and outstanding voting stock, the application shall be made by the president, vice president, secretary and treasurer of the owner, by whatever title designated.

(b) Information to Accompany Application for License. Each application for a private personnel service license shall be made on forms prescribed and furnished by the Commissioner and shall contain details regarding the following information:

- (1) The proposed business name, street and mailing address, and telephone number of the private personnel service;
- (2) Four personal or business references who are not related to or currently employed by the applicant;
- (3) Whether the private personnel service will be affiliated in any way with a loan agency or collection agency;
- (4) The name and address of the person who is responsible for the direction and operation of the placement activities of the private personnel service;
- (5) Whether the person responsible for the direction and operation of the placement activities of the private personnel service has ever been employed in a private personnel service;
- (6) Whether the private personnel service will operate under a franchise agreement;
- (7) Whether the applicant, owner, officer, director or manager ever made an application for a license to operate a private personnel service in North Carolina or elsewhere;
- (8) Whether the applicant, owner, officer, director or manager ever had a license revoked, suspended, or refused, or has been subjected to any disciplinary action by any governmental body;
- (9) Whether the applicant, owner, officer, director or manager has ever been convicted of a crime other than parking violations and misdemeanor traffic offenses;
- (10) Whether the applicant, owner, officer,

director or manager of the service has any additional ownership or investment interest in other businesses;

- (11) The name and address of a newspaper of general circulation in the area where the applicant now resides;
- (12) The name and address of each of the applicants' prior employers during the five years immediately preceding the license application;
- (13) A copy of all contracts and forms to be used with applicants;
- (14) A copy of the fee schedule and a copy of the refund policy (if applicable) used with persons seeking employment and employers;
- (15) If the applicant is a corporation, a copy of the Articles of Incorporation;
- (16) If the applicant is a partnership, a copy of the Partnership Agreement;
- (17) The Surety Bond required by G.S. 95-47.2(j); and
- (18) Any other names, aliases, assumed business names, trade names, or doing business as ("DBA") names under which each applicant has operated.

(c) Assumed Name or Assumed Business Name:

- (1) If either the owner or the manager of a private personnel service wishes to use a name other than his or her legal name, then that person shall file the assumed name with the office of the register of deeds in the county in which they will operate and give a copy to the Division.
- (2) If any counselors or employees of the private personnel service, who work with applicants, wish to use a name other than his or her legal name, then those persons shall file the assumed name with the office of the register of deeds and give a copy to the Division.
- (3) If a private personnel service uses a name other than on the license application, then the owner(s) of the private personnel service shall file the assumed business name with the office of the register of deeds and give a copy to the Division.

(d) Release of Information Authorization:

- (1) By applicant:
 - (A) Each applicant for a private personnel service license shall sign a Release of Information authorizing the Commissioner to conduct a personal

background investigation for purposes of determining the applicant's suitability to operate a private personnel service.

- (B) The release shall be executed before a notary public.

(2) By officer, director or manager:

- (A) The officer, director or manager of a private personnel service, not covered by Subparagraph (d)(1) of this Rule, shall sign a Release of Information authorizing the Commissioner to conduct a criminal background investigation for purposes of determining the suitability of that person to operate a private personnel service.
- (B) The release shall be executed before a notary public.

(e) Interview with the Division. Each individual applicant shall come to the Division for an interview as part of the application process.

(f) Right to Protest. Individuals have a right to protest the issuance of a license in accordance with G.S. 95-47.2(d)(1):

- (1) In determining whether the protest is of such a nature that a hearing should be conducted and for a cause on which denial of a license may properly be based, the Commissioner will look to the reasons for denying a license found in G.S. 95-47.2(d)(3) and G.S. 95-47.2(e).
- (2) The hearing shall be conducted in accordance with the provisions of G.S. 150B-38 - G.S. 150B-42.

(g) Denial of License. Upon completion of the investigation, the Commissioner shall determine whether or not a license should be issued. In addition to the reasons for denial in G.S. 95, Article 5A, a license shall be denied if the applicant has failed to submit all of the necessary information and paperwork which is described under Licensing Procedures in Rule .0102 of this Chapter.

(h) Notice of Approval. If the Commissioner approves a private personnel service license, the applicant shall be notified and the license shall be issued.

(i) Notice of Opportunity to Withdraw:

- (1) If the application for a license is incomplete, the applicant shall be notified by telephone of this fact at least seven days prior to the end of the 30 day investigative period. The applicant can either complete the application within that

- seven days or withdraw the application.
- (2) If the applicant elects to withdraw the application, the Division will deem any supporting documents which the Division has obtained, such as the criminal background check and references, current for an additional 30 days within which time the applicant may refile the application.
- (3) Failure to withdraw an incomplete application before the end of the original 30 day investigative period will shall result in the denial of a private personnel service license. However, the applicant may re-apply.

(i) Notice of Denial. If the Commissioner denies a private personnel service license, the applicant shall be notified of this fact by certified mail sent to his or her last known address.

Statutory Authority G.S. 95-47.2; 95-47.3; 95-47.9.

.0103 DURATION OF LICENSE

(a) Period Issued. A license to operate a private personnel service shall be valid for one year from the date of issuance, which is the date that appears on the actual license.

(b) Renewal:

- (1) At least 30 days prior to the date of expiration, the Commissioner shall notify each licensee in writing of the expiration of the license.
- (2) Renewal applications, completed on a form provided by the Division, must be submitted to the Division at least 10 days prior to the expiration date of the license. The renewal application shall be executed before a notary public and shall include all material changes in the operation of the private personnel service different from the latest application for licensure or renewal or shall certify that no such changes have occurred.

(c) Review of Licensee's Records:

- (1) At the time of application for renewal, the Division's records regarding the licensee's operation shall be reviewed, including but not limited to, records of inspections and investigations conducted by the Division.
- (2) In determining whether a license should be renewed, the Commissioner will look to the reasons for denying a

license found in G.S. 95-47.2(d)(3), G.S. 95-47.2(e), and G.S. 95-47.2(f).

Statutory Authority G.S. 95-47.2; 95-47.9.

.0104 CHANGE OF PRIVATE PERSONNEL SERVICE STATUS

(a) Change of Private Personnel Service Name:

- (1) Licensees desiring to change the name of their private personnel service must give the Commissioner 30 days advance written notice.
- (2) In addition, the licensee must obtain a rider to the surety bond showing the new name and submit it to the Division before the new name can become final.
- (3) In addition, when a change in name requires a new filing of an assumed business name, a copy of the new filing must be provided to the Commissioner before the new name can become final.
- (4) A change in the name does not require a new license, only an amendment to the current license.
- (5) After completion of the requirements in this Paragraph, the licensee shall return his current license to the Division for such amendment and reissuance.

(b) Change of Private Personnel Service Location:

- (1) Licensees desiring to change the location of their private personnel service must give the Commissioner 30 days advance written notice.
- (2) A change in the location of the private personnel service does not require a new license, only an amendment to the current license.
- (3) The licensee shall return his current license to the Division for such amendment and reissuance.

(c) Assignment/Transfer of License:

- (1) Licensees desiring to assign or transfer their license to a new owner must give the Commissioner 30 days advance written notice.
- (2) In addition, the proposed new owner must file an application for license with the Commissioner and obtain a new surety bond.
- (3) After completion of the requirements in this Paragraph, the Commissioner shall issue a temporary license in accordance with G.S. 95-47.2(i).

(d) Relinquishment of License. Licensees

desiring to relinquish their license must:

- (1) Notify the Commissioner in writing;
- (2) Return the actual license to the Division; and
- (3) Comply with the provisions in G.S. 95-47.5 and Rule .0109 of this Chapter.

(e) Cancellation of the Bond by the Surety:

- (1) Upon receipt of a Notice of Cancellation of the bond by the surety, the Commissioner shall advise the licensee in writing of such cancellation. The Division must receive a new bond prior to the effective date of cancellation of the existing bond.
- (2) If a new bond is not received prior to the cancellation of the existing bond, the Commissioner shall advise the licensee in writing that the Commissioner will seek injunctive relief to suspend operation of the private personnel service under G.S. 95-47.10 pending receipt of the surety bond required by G.S. 95-47.2(j).
- (3) Failure to maintain the surety bond at all times shall be grounds for revocation of the license by the Commissioner.

(f) Disassociation of Manager:

- (1) Should any manager become disassociated with a licensee for any reason, the licensee shall notify the Commissioner of this fact within 10 days and shall at that time designate another manager unless there was more than one manager and the remaining manager(s) will be managing the private personnel service without replacement of the disassociating manager.
- (2) A newly designated manager shall sign a Release of Information authorization pursuant to Rule .0102 of this Chapter.
- (3) Upon completion of the investigation and approval of the newly designated manager, the licensee shall return his current license to the Division for such amendment and reissuance.

Statutory Authority G.S. 95-47.2; 95-47.9.

**.0105 CHANGES IN THE FEE
SCHEDULE OR CONTRACT**

Changes in the fee schedule or contract may only be made if the private personnel service receives written notification from the Commissioner that the changes conform to the requirements of G.S. 95,

Article 5A and the rules adopted in this Chapter.

Statutory Authority G.S. 95-47.3; 95-47.4; 95-47.9.

.0106 FEE REIMBURSEMENT

This Rule addresses requests for fee reimbursement by an applicant who accepts employment, the compensation for which is based, in whole or in part, on commission and who pays a fee based on the commission-based earnings.

(1) Complaints Against Employers:

(a) Filing the Complaint. Any applicant using a private personnel service desiring to file a complaint involving a fee reimbursement from an employer in accordance with G.S. 95-47.3A(a) shall file a written complaint with the Commissioner, signed before a notary public. The complaint shall be filed either within 60 days of the date last employed or after one year of employment, whichever is earlier.

(b) Contents of the Complaint. The complaint shall state the name and address of the employer complained against, the licensee's name and address, and shall fully detail the nature of the complaint.

(c) Copy of Complaint to Employer. When a complaint is filed, the Commissioner shall serve a copy of the complaint upon the employer complained against either personally, by certified mail, by overnight express, or faxed as long as the employer acknowledges receipt. Likewise, the Commissioner shall send a copy of the complaint by the same means to the licensee responsible for making the placement. The employer and the licensee shall respond to the complaint within 10 days of the receipt of the complaint. The response shall include copies of all written receipts and agreements which either the employer or the licensee has in its possession concerning the particular complaint and other material as requested by the Division.

(2) Complaints Against Private Personnel Services:

(a) Filing the Complaint. Any applicant using a private personnel service desiring to file a complaint involving a

fee reimbursement where the private personnel service is responsible for any potential fee refund in accordance with G.S. 95-47.4(h) shall file a written complaint with the Commissioner, signed before a notary public. The complaint shall be filed either within 60 days of the date last employed or after one year of employment, whichever is earlier.

(b) Contents of the Complaint. The complaint shall state the name and address of the licensee complained against and shall fully detail the nature of the complaint.

(c) Copy of Complaint to Licensee. When the complaint is filed, the Commissioner shall serve a copy of the complaint upon the licensee complained against either personally, by certified mail, by overnight express, or faxed as long as the licensee acknowledges receipt. The licensee shall respond to the complaint within 10 days of the receipt of the complaint. The response shall include copies of all written receipts and agreements which the licensee has in its possession concerning the particular complaint and other material as requested by the Division.

(3) Investigation:

(a) The Commissioner shall investigate the complaint to determine whether the applicant is entitled to a refund.

(b) If the employer is liable for a potential fee reimbursement, the burden of proof is on the employer to show that a statement by the employer in the licensee's written job order of potential or anticipated commission-based earnings is realistic under the circumstances.

(c) If the private personnel service is liable for a potential fee reimbursement, the burden of proof is on the private personnel service to show that a statement in the licensee's written job order of potential or anticipated commission-based earnings is realistic under the circumstances.

(d) In addition, the Commissioner may consider such factors including, but not limited to, the following:

(i) What compensation other people in

the same job as the applicant are making or have made;

(ii) The market and economy;

(iii) Competition.

The Commissioner shall look at these factors in the context of the complainant's job training, relative experience, number of hours worked, number of calls made in person or over the phone, and a determination of the complainant's ability and effort to do the job.

(4) Determination. The Commissioner shall make a determination within 60 days from the date of the filing of the complaint and shall notify both the complainant, and either the licensee or the employer, as is appropriate, of the determination.

(5) Hearing:

(a) Request for Hearing. Either party may file a written request for a hearing before the Commissioner within seven days from the receipt of notice of the Commissioner's determination.

(b) Notice of Hearing. Notice of the hearing shall be given in accordance with G.S. 150B-38.

(c) Conduct of Hearing.

(i) Parties may appear in their own behalf or be represented by counsel. When an attorney represents a party, he or she shall advise the Commissioner of his or her name, address and telephone number in advance of the hearing as soon as practicable after assuming representation.

(ii) All witnesses at the hearing shall testify under oath or affirmation.

(iii) The Commissioner may issue subpoenas requiring the attendance and testimony of witnesses and take depositions as deemed necessary.

(iv) Within 30 days after the conclusion of a hearing, the Commissioner shall render a decision in writing. Copies of the Commissioner's findings and order shall be sent by certified mail to the parties.

(v) A party aggrieved by the Commissioner's decision may seek a review of the decision in accordance with G.S. 150B-43 - G.S. 150B-52.

Statutory Authority G.S. 95-47.3A; 95-47.9.

.0107 JOB ORDERS

(a) Bona Fide Job Order Required. No private personnel service shall offer or hold itself out as being able to secure a specific position of employment for an applicant without having a bona fide job order.

(b) Oral Job Orders Must be Reduced to Writing. A bona fide job order shall be recorded on a form containing the following:

- (1) Name and title of person communicating job order to the private personnel service;
- (2) Name of person recording the job order;
- (3) Date;
- (4) Name and address of employer and name and title of person to whom the applicant is to report for an interview;
- (5) Job title and job requirements;
- (6) Requisite education/experience;
- (7) All known conditions of employment, including salary, or salary range, wages, commissions, benefits, hours and number of days of work per week;
- (8) Name of person or organization who is responsible for the placement fee.

(c) Private Personnel Service Responsible for Explaining Conditions of Employment

Prior to the applicants' interview with the employer, the private personnel service must disclose to the applicant information in Subparagraph (b)(4) through (b)(8) of this Rule, these items having been reduced to writing from conversations with the employer and being accurate to the best of the private personnel service's knowledge at the time of the interview.

(d) Commission-based Compensation:

- (1) If an applicant is to be compensated, in whole or in part, by commissions and the employer will be responsible for a potential fee reimbursement, then the job order must also be signed by the employer.
- (2) A private personnel service may, however, forego the written job order requirement if it is willing to assume liability for a potential fee reimbursement in accordance with G.S. 95-47.4(f) and G.S. 95-47.4(h)(2).

(e) Job Order Verification. Job orders for which candidates are referred or for which advertisements are placed shall be verified at least once every month.

Statutory Authority G.S. 95-47.3A; 95-47.6; 95-47.9.

.0108 CONTRACTS

(a) Types of Contracts. There must be a contract for any service if a fee is charged to the applicant. An applicant may enter into either or both of the following types of contracts with a private personnel service:

- (1) A contract for employment placement with payment of a fee contingent on acceptance of employment;
- (2) A fee contract for services including, but not limited to, career and occupational counseling, resume and letter writing, networking assistance, interviewing techniques, job prospecting and salary negotiations.

(b) Applicant to Receive Copy of Contract. At the time of execution an applicant shall receive a copy of the contract signed by the applicant and the private personnel service.

(c) Name of Applicant. The applicant's name shall be typed or printed adjacent to the place for the applicant's signature.

(d) Contract for Employment Placement. All contracts for employment placement with an applicant shall set forth in clear and unambiguous terms the respective rights and obligations of the applicant and the private personnel service and shall include the following:

- (1) A statement of the fees to be charged the applicant at various salary levels;
- (2) If compensation is based, in whole or in part, on commissions, a description of how the private personnel service determines its fees;
- (3) An explanation of when the applicant becomes obligated to pay a fee;
- (4) Where the private personnel service has no refund policy, yet compensation is based, in whole or in part, on commissions, the private personnel service must give further information to the applicant in either the contract or a supplement to the contract that is also executed by the applicant and the private personnel service (i.e., an addendum on the closing statement). It shall inform both the applicant and the employer in writing of the provisions of G.S. 95-47.3A governing fee refunds from employers;
- (5) If the private personnel service chooses to be liable for any potential fee

reimbursement under G.S. 95-47.3A, the service must provide to the applicant a clear description of how it provides the fee reimbursement. This description must be provided in either the contract or a supplement to the contract that is also executed by the applicant and the private personnel service (i.e., an addendum on the closing statement). The following is sample language that will fulfill this requirement:

REIMBURSEMENTS. If the applicant pays a service fee which is based, in whole or in part, on commissions and the applicant fails to earn at least 80 percent of the compensation amount stated by the employer in the job order, the applicant may file a written complaint with the Department of Labor in accordance with G.S. 95-47.3A. (Name of private personnel service) shall only pay a reimbursement within 10 days of receiving a written final determination from the Department of Labor that a reimbursement is due.

(e) Contract for Other Services. All contracts for other services with an applicant shall include the following:

- (1) A statement of what services will be provided and the fees for the various services;
- (2) A statement that the applicant becomes obligated to pay a fee once the service(s) is/are provided;
- (3) A statement that the private personnel service does not guarantee that the applicant will obtain employment as a result of its services.

(f) Definitions. If the following undefined terms or provisions are used in a contract with an applicant, they shall be deemed to have the following meanings:

- (1) Acceptance : A position is accepted when the applicant begins work or agrees to begin work on a fixed date at an agreed remuneration for a specific employer.
- (2) Placement or Employment : All placements or employment shall be considered to be of an indefinite term unless clearly disclosed in the closing document.
- (3) Fee or Service Charge : The amount

charged the applicant for any services rendered by the private personnel service.

(A) A fee or service charge for employment placement is due:

- (i) When the applicant accepts employment as a result of a referral to an employer by the private personnel service within one year after the referral.
- (ii) When the applicant fails to secure or does not accept the position to which the applicant was originally referred, but accepts another position with the employer or with another employer to whom the first employer refers the applicant within one year as a result, directly or indirectly, of the original referral.

(B) A fee or service charge for any other service is due after the service is rendered.

- (4) Fee Schedule - A percentage or set fee on file with, and clearly stated in a manner approved by, the Commissioner for all fees to be charged the applicant.
- (5) Base Salary or Earnings - A fixed compensation for services paid to a person on a regular basis.

(6) Termination of Employment:

(A) Termination by employer : An employee may be considered at fault for the following reasons (also includes termination for cause, discharge for just cause, and similar language):

- (i) Willful absence from duty;
- (ii) Having been convicted, subsequent to his or her employment, of a crime reflecting upon his or her employment;
- (iii) Being impaired by alcohol or a controlled substance on the job;
- (iv) Being disorderly or insubordinate on the job;
- (v) Violating written company policies or rules;
- (vi) Misrepresenting or withholding, without the knowledge of the licensee, any information regarding the applicant's ability to perform an essential core function with or without an accommodation.

(B) Termination by employee : An

employee has "just cause" (also includes reasonable cause, good cause, justification, and similar language) for voluntarily terminating employment within the length of time upon which the fee was based and is due a prorated refund of the fee (if a refund policy is applicable to the placement) when the conditions of employment were either knowingly misrepresented or withheld from the applicant by the private personnel service and said conditions would have, if known at the time of acceptance, caused the applicant to have reasonably refused employment. Such conditions of employment shall include, but not be limited to:

- (i) Probationary or trial periods;
- (ii) Bankruptcy or cessation of operation by the employer;
- (iii) Failure to pay wages when due;
- (iv) Conditions at the place of employment which are injurious to the employee's health or safety;
- (v) Change in remuneration or lower status than was agreed to when the position was accepted.

In calculating the prorated refund, the length of time upon which the fee was based will be determined in days and that number of days will be divided into the fee to calculate the fee paid per day. Then the amount of the refund will be calculated by multiplying the number of days worked by the fee paid per day and subtracting the result of that multiplication from the total fee paid. For example, the calculation would be as follows: the fee paid by the applicant was three thousand six hundred and fifty dollars (\$3,650) and the length of time upon which the fee was based was one year (beginning January 1) so the fee paid per day was ten dollars (\$10); the applicant worked January 1 through June 30 or 181 days. The number of days worked times the fee paid per day is one thousand eight hundred and ten dollars (\$1,810) which is subtracted from the fee three thousand six hundred and fifty dollars (\$3,650) for a refund due of one thousand eight hundred and forty dollars (\$1,840).

(g) Refund Policy. A private personnel service shall abide by the refund policy (if any) stated on its contract by paying any refund due under the terms of the contract within 15 days of:

- (1) Receiving a request from any applicant; or
- (2) If the refund is in dispute, upon receiving a written final determination that a refund is due. Such determination may be issued by the Commissioner, an arbitrator, or a court of law.

Statutory Authority G.S. 95-47.3; 95-47.4; 95-47.9.

.0109 RECORDS

(a) Job Orders or Job Specifications. Every private personnel service shall maintain records of job orders or job specifications for two years from the date on which the job order was last verified.

(b) Licensees Going Out of Business. If a licensee goes out of business records must be maintained pursuant to this Rule. Those records must be available to the Commissioner and the licensee must inform the Commissioner in writing as to where its records will be kept.

Statutory Authority G.S. 95-47.5; 95-47.9.

.0110 ADVERTISING

(a) Bona Fide Job Order Required. No licensee shall publish or cause to be published any advertisement soliciting persons to register for a specific job unless the licensee has on file a bona fide job order covering all known conditions of employment set forth in the advertisement.

(b) False or Misleading Advertisements. No licensee shall circulate any false or misleading information by advertisements or make any statements known to be false to any applicant or employer.

(c) Advertising of Salaries. All salaries, where the dollar amount is advertised, must be substantiated by the job order.

Statutory Authority G.S. 95-47.6; 95-47.9.

.0111 PROHIBITED ACTS

A private personnel service shall not engage in any of the following activities or conduct:

- (1) Accept an advance fee from an applicant for any of its services;
- (2) Coerce an applicant into accepting employment by applying or using duress,

undue influence, fraud or misrepresentation.

Statutory Authority G.S. 95-47.6; 95-47.9.

.0112 PENALTY

Any fine levied pursuant to G.S. 95-47.9(d) shall be in the amount of two hundred and fifty dollars (\$250.00).

Statutory Authority G.S. 95-47.9.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Coastal Management intends to amend rules cited as 15A NCAC 7H .0308, .1705; 7M .0202 and adopt 7H .0106.

The proposed effective date of this action is April 1, 1995.

The public hearing will be conducted at 4:00 p.m. on November 17, 1994 at the Ramada Inn, 1701 South Virginia Dare Trail, Kill Devil Hill, NC.

Reason for Proposed Action:

15A NCAC 7H .0106 - The adoption of this rule will establish a new subsection for definitions to apply to the various AECs. The proposed definition for structures is necessary to distinguish these forms of development from filling and other types of land disturbing activities.

15A NCAC 7H .0308 - The proposed amendments reflect the amendments to the policy statement in 15A NCAC 7M. Many are editorial so as to use more appropriate and consistent terminology throughout. Several are being repealed upon finding that they are either no longer necessary, or, confusing.

15A NCAC 7H .1705 - The proposed amendments will establish the length of time that sandbags may remain in place and will allow the use of sandbags to protect septic systems when the erosion escarpment is within 20 feet. Several paragraphs are being repealed in an effort to remove those that have been found to be either unnecessary or confusing. The proposed changes are essentially a major rewrite of the CRC rules that pertain to the use of sandbags to protect structures in the

Ocean Hazard AEC.

15A NCAC 7M .0202 - The proposed amendments are a major rewrite of the CRC's policy on erosion responses along the oceanfront. They do not change the existing policy, but, they more clearly state the CRC's preferred responses to erosion and more directly address the beach nourishment option.

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 1, 1994. Any person desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. Additional information concerning the hearing or the proposals may be obtained by contacting Rich Shaw, Division of Coastal Management, PO Box 27687, Raleigh, NC 27611-7687, (919) 733-2293.

CHAPTER 7 - COASTAL MANAGEMENT

SUBCHAPTER 7H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0100 - INTRODUCTION AND GENERAL COMMENTS

.0106 GENERAL DEFINITION

For purposes of this Subchapter the term "structures" includes, but is not limited to, buildings, bridges, roads, piers, wharves and docks (supported on piles), bulkheads, breakwaters, jetties, mooring pilings and buoys, pile clusters (dolphins), navigational aids and elevated boat ramps.

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

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.~~

- (A) All oceanfront erosion response activities shall be consistent with the general policy statements in 15A NCAC 7M .0200.
- (B) Erosion Permanent erosion control structures which may cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach, and, therefore, 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~~ response 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.~~
- (D) (E) All permitted oceanfront erosion ~~control activities, response projects,~~ other than beach bulldozing; and temporary 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.
- (E) (F) Shoreline erosion ~~control~~ response projects shall not be constructed in beach or estuarine areas that sustain substantial habitat for important fish and wildlife species unless adequate mitigation measures are incorporated into project design, as set forth in Rule .0306(i) of this Section.
- (F) (G) Project construction shall be timed to ~~have minimum significant~~ minimize adverse effect ~~effects~~ on biological activity.
- (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.~~

- (I) ~~All oceanfront erosion control projects shall be consistent with the general policy statements in Subchapter 7M .0200.~~
- (G) (J) Prior to beginning completing any beach nourishment or structural erosion control response project, all exposed remnants of or debris from failed erosion control structures must be removed by the permittee.
- (K) ~~All permitted erosion control devices shall be marked so as to allow identification for monitoring and potential cleanup purposes.~~
- (H) (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 imminently threatened by erosion;
 - (ii) the preferred erosion ~~control~~ response measures of relocation, beach nourishment or temporary stabilization are not adequate to protect public health and safety; and
 - (iii) the proposed erosion control measure structure will have no adverse impacts on adjacent properties in private ownership and will have minimal impacts on public use of the beach.
- (I) (M) Structures that would otherwise be prohibited by these standards may also be permitted on finding that:
 - (i) the structure is necessary to protect an historic site of national significance, which is imminently threatened by shoreline erosion; and
 - (ii) the preferred erosion ~~control~~ response measures of relocation, beach nourishment or temporary stabilization are not

- adequate and practicable to protect the site; and
- (iii) the structure is limited in extent and scope to that necessary to protect the site; and
- (iv) any permit for a structure under this Part ~~(M)~~ (I) may be issued only to a sponsoring public agency for projects where the public benefits clearly outweigh the short or long range adverse impacts. Additionally, the permit must include conditions providing for mitigation or minimization by that agency of any significant and unavoidable adverse impacts on adjoining properties and on public access to and use of the beach.
- (J) ~~(N)~~ Structures that would otherwise be prohibited by these standards may also be permitted on finding that:
 - (i) the structure is necessary to maintain an existing commercial navigation channel of regional significance within federally authorized limits; and
 - (ii) dredging alone is not practicable to maintain safe access to the affected channel; and
 - (iii) the structure is limited in extent and scope to that necessary to maintain the channel; and
 - (iv) the structure will not result in substantial adverse impacts to fisheries or other public trust resources; and
 - (v) any permit for a structure under this Part ~~(N)~~ (J) may be issued only to a sponsoring public agency for projects where the public benefits clearly outweigh the short or long range adverse impacts. Additionally, the permit must include conditions providing for mitigation or minimization by that agency of any significant and unavoidable adverse impacts on adjoining properties and on public access to and use of the beach.
- (K) Proposals for experimental erosion response measures will be considered on a case-by-case basis to determine consistency with 15A NCAC 7M .0200 and general and specific use standards within this Section.
- (2) Temporary Erosion Control Structures:
 - (A) Permittable temporary erosion control structures shall be limited to sandbags placed above mean high water and parallel to the shore. ~~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 Subpart (2)(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 septic system, or right-of-way in the case of roads, 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.

(C) Temporary erosion control structures may be used to protect only the principal structure and its associated septic system, but not such appurtenances as gazebos, decks or any amenity that is allowed as an exception to the erosion setback requirement.

(D) Temporary erosion control structures may be placed seaward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.

(E) Temporary erosion control structures must not extend more than 20 feet past the sides of the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet seaward of the structure to be protected or the right-of-way in the case of roads.

(F) A temporary erosion control structure may remain in place for up to two years after the date of approval if it is protecting a structure with a total floor area of 5000 sq. ft. or less, or, for up to five years if the structure has a total floor area of more than 5000 sq. ft. For those located in communities actively pursuing a beach nourishment project, they may remain in place for period of up to five years (regardless of the size of

structure), or, until the beginning of the nourishment project, whichever is shorter. The property owner will be responsible for removal of the structure. For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment project when a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study has deemed the project worthy of further consideration.

(G) Once the temporary erosion control structure is determined to be unnecessary due to relocation or removal of the threatened structure, it must be removed by the property owner within 30 days.

(H) Removal of temporary erosion control structures may not be required if they are covered by dunes with vegetation sufficient to be considered stable and natural.

(I) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.

(J) Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet, and the height shall not exceed six feet.

(K) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.

(L) The use of sandbags can be approved only once on any property regardless of ownership.

(M) Existing sandbag structures can be maintained provided that the permitted dimensions are not exceeded.

(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 appli-~~

~~nant 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.~~

(3) (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.

(4) (5) Beach Bulldozing. Beach bulldozing (defined as the process of moving natural 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 pre-emergency 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 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) 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 Part (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 Part (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 10 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 1-B and the local flood damage prevention ordinance as required by the National Flood Insurance Program. If any provision of the build-

ing 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.

SECTION .1700 - GENERAL PERMIT FOR EMERGENCY WORK REQUIRING A CAMA AND/OR A DREDGE AND FILL PERMIT

.1705 SPECIFIC CONDITIONS

(a) Temporary Erosion Control Structures in the Ocean Hazard AEC.

- ~~(1) Permittable temporary erosion control structures include only the following:~~

- ~~(A) bulkheads or similar structures made of sandbags or comparable materials;~~
- ~~(B) low sandbag groins or sandbag sediment trapping structures above mean high water provided they are continuously buried by suitable sand from an outside source.~~

- (1) Permittable temporary erosion control structures shall be limited to sandbags placed above mean high water and parallel to the shore.

- (2) Temporary erosion control structures as defined in Subparagraph (1) of this Rule Paragraph may be used only to protect imminently threatened structures. Normally, a structure will be considered to be imminently threatened if ~~the foundation its~~

- foundation, septic system, or, right-of-way in the case of roads, is less than 20 feet away from the erosion scarp.
- (3) ~~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.~~
- (4) ~~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 remains of all or portions of the temporary erosion control structure damaged by storms or continued erosion.~~
- (5) ~~Once the temporary erosion control structure is determined to be unnecessary due to a natural reversal of the eroding condition, relocation of the threatened structure, or adoption of an alternate erosion control method, any remnants or 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.~~
- (6) ~~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 15 feet. In no case shall the structure extend below the mean high water line.~~
- (7) ~~Excavation below mean high water in~~
- ~~the Ocean Hazard AEC may be allowed to obtain material to fill sandbags used for emergency protection.~~
- (3) Temporary erosion control structures may be used to protect only the principal structure and its associated septic system, but not such appurtenances as gazebos, decks or any amenity that is allowed as an exception to the erosion setback requirement.
- (4) Temporary erosion control structures may be placed seaward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.
- (5) Temporary erosion control structures must not extend more than 20 feet past the sides of the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet seaward of the structure to be protected or the right-of-way in the case of roads.
- (6) The permittee shall be responsible for the removal of remnants of all or portions of any damaged temporary erosion control structure.
- (7) A temporary erosion control structure may remain in place for up to two years after the date of approval if it is protecting a structure with a total floor area of 5000 sq. ft. or less, or, for up to five years if the structure has a total floor area of more than 5000 sq. ft. For those located in communities actively pursuing a beach nourishment project, they may remain in place for a period of up to five years (regardless of the size of structure), or, until the beginning of the nourishment project, whichever is shorter. For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment project when a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study has deemed the project worthy of further consideration.
- (8) Once the temporary erosion control structure is determined to be unnecessary due to relocation or removal of the threatened structure, it must be removed by the permittee within 30 days.

- (9) Removal of temporary erosion control structures may not be required if they are covered by dunes with vegetation sufficient to be considered stable and natural.
- (10) Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet, and the height shall not exceed six feet.
- (11) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
- (12) Excavation below mean high water in the Ocean Hazard AEC may be allowed to obtain material to fill sandbags used for emergency protection.
- (13) The use of sandbags can be approved only once on any property regardless of ownership.
- (14) Existing sandbag structures can be maintained provided that the permitted dimensions are not exceeded.

(b) Erosion Control Structures in the Estuarine Shoreline, Estuarine Waters, and Public Trust AECs. Work permitted by this general permit will be subject to the following limitations:

- (1) no work will be permitted other than that which is necessary to reasonably protect against or reduce the imminent danger caused by the emergency ~~and/or~~ or to restore the damaged property to its condition immediately before the emergency;
- (2) the erosion control structure will be located no more than 20 feet waterward of the endangered structure;
- (3) fill material used in conjunction with emergency work for storm or erosion control in the Estuarine Shoreline, Estuarine Waters and Public Trust AECs will be obtained from an upland source.

(c) Protection, Rehabilitation, or Temporary Relocation of Public Facilities ~~and/or~~ or Transportation Corridors.

- (1) Work permitted by this general permit will be subject to the following limitations:
 - (A) no work will be permitted other than that which is necessary to reasonably protect against or reduce the imminent danger caused by the emergency

~~and/or~~ or to restore the damaged property to its condition immediately before the emergency;

- (B) the erosion control structure will be located no more than 20 feet waterward of the endangered structure;
 - (C) any fill materials used in conjunction with emergency work for storm or erosion control shall be obtained from an upland source except that dredging for fill material to protect public highways or other structures of public interest will be considered on a case-by-case basis;
 - (D) all fill materials or structures associated with temporary relocations which are located within Coastal Wetlands, Estuarine Water, or Public Trust AECs shall be removed after the emergency event has ended and the area restored to pre-disturbed conditions.
- (2) This permit only authorizes the immediate protection or temporary rehabilitation or relocation of existing public facilities. Long-term stabilization or relocation of public facilities should be consistent with local governments' post-disaster recovery plans and policies which are part of their Land Use Plans.

Statutory Authority G.S. 113-229(cl); 113A-107(a),(b); 113A-113(b); 113A-118.1.

SUBCHAPTER 7M - GENERAL POLICY GUIDELINES FOR THE COASTAL AREA

SECTION .0200 - SHORELINE EROSION RESPONSE POLICIES

.0202 POLICY STATEMENTS

(a) Pursuant to Section 5, Article 14 of the North Carolina Constitution, proposals for shoreline erosion ~~control~~ response projects shall avoid losses to North Carolina's natural heritage. All means should be taken to identify and develop ~~control~~ response measures that will not adversely affect estuarine and marine productivity. The public right to use and enjoy the ocean beaches must be protected. The protected uses include traditional recreational uses (such as walking, swimming, surf-fishing, and sunbathing) as well as

commercial fishing and emergency access for beach rescue services. Private property rights to oceanfront properties including the right to protect that property in ways that are consistent with public rights should be protected.

(b) Nonstructural Erosion response measures designed to minimize the loss of private and public resources to erosion should be ~~are preferred solutions to erosion problems provided such measures are~~ economically, socially, ~~or~~ and environmentally justified. Preferred ~~nonstructural control response~~ measures for shoreline erosion shall include but not be limited to AEC rules, land use planning and land classification, establishment of building setback lines, building relocation, subdivision regulations and management of vegetation. ~~When structural controls are selected in developing alternative plans for erosion control a clear rationale should be presented and those structural control measures which have the least effect on natural processes should be given prime consideration. Note: For the purpose of this policy beach nourishment projects are included with traditional structural control measures such as revetments. The reason for this is that beach nourishment projects are land disturbing activities that can drastically alter the estuary (as a borrow area), the barrier island (through which pipelines will be laid) and the beach and nearshore (through the replacement of aquatic bottoms with dry sand).~~

(c) ~~Efforts to permanently stabilize the location of the shoreline by massive seawalls and similar protection devices which do not preserve public trust rights should not be allowed. The attendant environmental damages and public economic costs are unacceptably high. Temporary measures to counteract erosion, such as beach nourishment, sandbag bulkheads, and beach pushing, should be allowed, but only to the extent necessary to protect property for a short period of time until threatened structures may be relocated or until the effects of a short-term erosion event are reversed. In all cases, temporary stabilization measures must be compatible with public use and enjoyment of the beach.~~

(c) The replenishment of sand on ocean beaches can provide storm protection and a viable alternative to allowing the ocean shoreline to migrate landward threatening to degrade public beaches and cause the loss of public facilities and private property. Experience in North Carolina and other states has shown that beach restoration projects can present a feasible alternative to the loss or massive relocation of oceanfront development. In light of this experience, beach restoration and sand re-

nourishment and disposal projects may be allowed when:

- (1) Erosion threatens to degrade public beaches and to damage public and private properties;
- (2) Beach restoration, renourishment or sand disposal projects are determined to be socially and economically feasible and cause no significant adverse environmental impacts;
- (3) The project is determined to be consistent with state policies for shoreline erosion response and state use standards for Ocean hazard and Public Trust Waters Areas of Environmental Concern and the relevant rules and guidelines of state and federal review agencies.

When the conditions set forth in this Paragraph can be met, the Coastal Resources Commission supports, within overall budgetary constraints, state financial participation in Beach Erosion Control and Hurricane Wave Protection projects that are cost-shared with the federal government and affected local governments pursuant to the federal Water Resources Development Act of 1986 and the North Carolina Water Resources Development Program (G.S. 143-215.70-73).

(d) The following are required with state involvement (funding or sponsorship) in beach restoration and sand renourishment projects:

- (1) The entire restored portion of the beach shall be in permanent public ownership;
- (2) It shall be a local government responsibility to provide adequate parking, public access, and services for public recreational use of the restored beach.

(e) Temporary measures to counteract erosion, such as the use of sandbags and beach pushing, should be allowed, but only to the extent necessary to protect property for a short period of time until threatened structures may be relocated or until the effects of a short-term erosion event are reversed. In all cases, temporary stabilization measures must be compatible with public use and enjoyment of the beach.

(f) ~~The following are required with state involvement (funding or sponsorship) in oceanfront erosion control projects:~~

- (1) ~~An assessment consistent with the North Carolina Environmental Policy Act (SEPA) shall determine that there will be no unacceptable environmental impacts;~~
- (2) ~~The entire restored portion of the beach~~

- shall be in permanent public ownership;
- (3) ~~It shall be a local government responsibility to provide adequate parking, public access, and services for public recreational use of the restored beach;~~
- (4) ~~State expenditures are to be used only for maintenance of a public beach and not to protect endangered seawall or other erosion abatement structures.~~

(f) Efforts to permanently stabilize the location of the ocean shoreline with seawalls, groins, shoreline hardening, sand trapping or similar protection devices shall not be allowed except when the Coastal Resources Commission determines there is an overriding need to protect the public interest.

(d) (g) ~~The State of North Carolina will encourage consider innovative institutional programs and scientific research that will provide for effective management of coastal shorelines. The development of innovative innovative measures which may be developed in the future that will lessen or slow the effects of erosion while minimizing the adverse impacts on the public beach and on nearby properties should be is encouraged.~~

(e) (h) The planning, development, and implementation of erosion control projects will be coordinated with appropriate planning agencies, affected governments and the interested public. Maximum efforts will be made by the state to accommodate the interest of each interested party consistent with the project's objectives. Local, state, and federal government activity in the coastal area should reflect an awareness of the natural dynamics of the ocean front. Government policies should not only address existing erosion problems but should aim toward minimizing future erosion problems. Actions required to deal with erosion problems are very expensive. In addition to the direct costs of erosion abatement measures, many other costs, such as maintenance of projects, disaster relief, and infrastructure repair will be borne by the public sector. Responses to the erosion should be designed to limit these public costs.

(g) (i) The state will promote education of the public on the dynamic nature of the coastal zone and on effective measure to cope with our ever changing shorelines.

Statutory Authority G.S. 113A-102(b); 113A-107; 113A-124; 16 U.S.C. Sec. 1453 (12).

Notice is hereby given in accordance with G.S. 150B-21.2 that the DEHNR - Parks and Recreation intends to adopt rules cited as 15A NCAC 12K .0101 - .0111.

The proposed effective date of this action is April 1, 1995.

The public hearing will be conducted at 7:00 p.m. on the following dates and locations:

January 23, 1995

Raleigh - Ground Floor Hearing Room
Archdale Building

January 24, 1995

Asheville - DEHNR Regional Office
59 Woodfin Place

January 25, 1995

Winston-Salem - DEHNR Regional Office
585 Waughtown Street

January 26, 1995

Charlotte - County Government Complex

January 30, 1995

Elizabeth City - Knobbs Creek Recreation Center
200 East Ward Street

January 31, 1995

Wilmington - DEHNR Regional Office
127 Cardinal Drive Extension

Reason for Proposed Action: To establish guidelines for a local government matching grants program for local park and recreation purposes from the newly established Parks and Recreation Trust Fund, G.S. 113-44.15.

Comment Procedures: Any person requiring information may contact Mr. John Poole, N.C. Division of Parks and Recreation, Archdale Building, P.O. Box 27687, Raleigh, N.C. 27611, telephone (919) 733-4181. Written comments may be submitted to the above address no later than February 1, 1995.

Editor's Note: These Rules were filed as temporary adoptions effective November 1, 1994 for a period of 180 days or until the permanent rule

becomes effective, whichever is sooner.

CHAPTER 12 - PARKS AND RECREATION AREA RULES

SUBCHAPTER 12K - PARKS AND RECREATION TRUST FUND GRANTS FOR LOCAL GOVERNMENT

SECTION .0100 - GENERAL PROVISIONS

.0101 PURPOSE

The Parks and Recreation Trust Fund (PARTF), pursuant to G.S. 113-44.15(b)(2), is authorized to establish a matching grants program for qualified local governmental units for local park and recreation purposes. Annually, 20 percent of funds appropriated to the Department of Environment, Health, and Natural Resources (Department) from PARTF will be allocated to local governmental units on a dollar-for-dollar basis. Grants will be awarded using a project priority scoring system. The purpose of this Section is to set forth procedures to govern the program.

Statutory Authority G.S. 113-44.15.

.0102 ELIGIBLE APPLICANTS

All county governments and incorporated municipalities of the State of North Carolina and other legally constituted local governmental entities of the State with the legal responsibility for the provision of recreation sites and facilities for the use and benefit of the general public are eligible to submit applications.

- (1) Multiple cities and counties may apply jointly for a project.
- (2) School districts may submit a joint application with an incorporated city or county for funding of facilities located on property owned by the school district. This application will result in the school district and county or city being jointly responsible for compliance with all rules pertaining to operation and maintenance of PARTF assisted facilities developed on the land.
- (3) Unincorporated areas or communities must seek county sponsorship of their project to be eligible.
- (4) All applications submitted to the Department must be approved by the local governing body through a resolution or ordinance and funding requested by the chief elected or appointed official (city or

county manager, etc.).

- (5) A grantee with an active PARTF project by the closing date of an announced application submission period shall be ineligible for funds for the fiscal year covered by the submission period.

Statutory Authority G.S. 113-44.15.

.0103 FUNDING CYCLE

Funding cycle dates will be annually established by the Department.

Statutory Authority G.S. 113-44.15.

.0104 APPLICATION SCHEDULE

(a) A request for proposals, which announce the funding cycle and participation requirements, is distributed statewide to all mayors, chairpersons of county commissioners, councils of governments and local park and recreation directors.

(b) Notification of Intent (NOI) forms and applications are to be submitted to the regional park and recreation consultant serving the applicant.

(c) NOIs and applications shall be submitted according to requirements specified in this Rule and the request for proposals.

(d) State Clearinghouse environmental review comments made as a result of NOI review must be addressed in the application.

Statutory Authority G.S. 113-44.15.

.0105 EVALUATION OF APPLICATIONS

(a) All applications will be evaluated and ranked based on criteria patterned after the Open Project Selection Process established for the Land and Water Conservation Fund. Each eligible applicant shall be evaluated on the information provided in the application and in accordance with the established PARTF project priority scoring system.

(b) The regional park and recreation consultants will review and evaluate local government applications at the regional level before forwarding applications to the Department's PARTF Office.

(c) PARTF program staff will review, evaluate and rank all project applications based on the Department's approved PARTF project priority scoring system.

(d) The PARTF program staff will recommend a list of projects for funding to the LWCF/PARTF Review Committee. The LWCF/PARTF Review Committee's membership will be appointed by the Director of the North Carolina Division of Parks

and Recreation and should include representation from a broad range of recreation interests, including representation from outside state government as well as minority and disabled interests.

(e) During each funding cycle, the LWCF/PARTF Review Committee will review the evaluations, recommendations and other relevant data prepared by the applicant and the PARTF program staff. The Committee will recommend a list of projects to the Department for funding.

Statutory Authority G.S. 113-44.15.

.0106 GRANT AGREEMENT

(a) Upon Department approval, a written agreement will be executed between the grant recipient and the Department.

(b) The agreement defines Department's and grant recipient's responsibilities and obligations, the project period, project scope and the amount of grant assistance.

(c) The approved application and support documentation will become a part of the grant agreement.

(d) The grant agreement may be amended upon mutual consent and approval by the Department and the grant recipient.

Statutory Authority G.S. 113-44.15.

.0107 MATCHING REQUIREMENTS

The local governmental unit must match PARTF funds with at least an equal amount of local funds in the form of cash, check or money order. No federal assistance or other state funded assistance is eligible as local match sources.

Statutory Authority G.S. 113-44.15.

.0108 PROJECT ELIGIBILITY

PARTF grants are awarded to grantees for projects that are for the sole purpose of providing local recreation opportunities to the public. Applicants may request funds for the following types of projects:

- (1) Fee simple acquisition of real property for preservation of natural areas and future recreational development. Development on PARTF acquired property to allow general public access and use must occur within five years of the date of grant completion.
- (2) Development. Projects for the construction, expansion, and renovation/repair of the following:

(a) Primary facilities including outdoor and indoor recreation facilities. Examples include camping facilities, picnic facilities, sports and playfields, trails, swimming facilities, boating/fishing facilities, spectator facilities, gymnasiums, etc.

(b) Support facilities and improvements including roads, parking areas, handicapped accessibility, utilities, landscaping, support facilities, other infrastructure, etc. that would have little or no recreational value without the primary recreation facilities.

Statutory Authority G.S. 113-44.15.

.0109 SITE CONTROL AND DEDICATION

(a) Land acquired with PARTF assistance shall be dedicated in perpetuity as a recreation site for the use and benefit of the general public. The dedication must be recorded in the public property records by the grantee.

(b) The site of a PARTF development project shall be controlled (e.g. fee simple ownership or long-term lease) by the grantee by the closing date of the application submission period. Any lease agreement must extend for a minimum of 25 years.

(c) Grantees shall assure that PARTF assisted development facilities are maintained and managed for public recreation use for a minimum period of 25 years after the completion date set forth in the grant agreement.

(d) Projects sponsored jointly by a school district and incorporated city or county will require all sponsors to comply with all PARTF rules pertaining to operation and maintenance of PARTF assisted facilities and land.

(e) Failure by the grantee(s) to comply with the provisions of this Section and the project agreement shall result in the Department declaring the grantee(s) ineligible for further participation in the PARTF until such time as compliance has been obtained to the satisfaction of the Department.

Statutory Authority G.S. 113-44.15.

.0110 INSPECTIONS

(a) Regional park and recreation consultants or PARTF staff shall perform at least one progress inspection and a final close-out inspection of the project site to ensure compliance with the grant agreement prior to release of the final grant payment.

(b) Grantees will be responsible for conducting

periodic inspections (one every five years) to ensure compliance with the grant agreement and 15A NCAC 12K .0109 and submitting an inspection form with an affidavit verifying its content to the PARTF program office.

(c) Regional park and recreation consultants will conduct random inspections to verify program compliance.

Statutory Authority G.S. 113-44.15.

.0111 PROGRAM ACKNOWLEDGEMENT

Grantees will erect and maintain a sign in a conspicuous place acknowledging the assistance of the PARTF for the useful life of the project. Projects on land owned by or adjacent to schools must have sign(s) installed informing the public that the facilities are open to the general public. These signs should also indicate the times when the facilities are reserved exclusively for school use.

Statutory Authority G.S. 113-44.15.

TITLE 16 - DEPARTMENT OF PUBLIC EDUCATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Education intends to amend rules cited as 16 NCAC 6C .0101 and .0207.

The proposed effective date of this action is July 1, 1995.

The public hearing for Rule .0101 will be conducted at 9:30 a.m. and the hearing for Rule .0207 will be conducted at 10:00 a.m. on November 22, 1994 at the Education Building, Room 224, 301 N. Wilmington Street, Raleigh, NC 27601-2825.

Reason for Proposed Action:

16 NCAC 6C .0101 - Amendment will conform terminology with that generally used in the educational community.

16 NCAC 6C .0207 - Amendment makes clarifying and editorial changes.

Comment Procedures: Comments may be presented orally at the hearing or in writing through December 1, 1994. Comments should be sent to

Harry E. Wilson, APA Coordinator, Education Building, Room 2086, Raleigh, NC.

CHAPTER 6 - ELEMENTARY AND SECONDARY EDUCATION

SUBCHAPTER 6C - PERSONNEL

SECTION .0100 - GENERAL PROVISIONS

.0101 DEFINITIONS

As used in this Subchapter:

- (1) "Institution of higher education" (IHE) means a senior college or university.
- (2) "Instructional personnel" means all teachers as defined by G.S. 115C-325, with the exception of supervisors, and non-teaching principals, assistant principals, social workers, counselors and psychologists. The term includes principals, assistant principals, or counselors who teach any part of the day, librarians and instructional aides, except that:
 - (a) aides are not included for the purpose of applying Rule .0403 of this Subchapter; and
 - (b) aides are not included for the purpose of applying Rule .0301 of this Subchapter.
- (3) "License" has the same meaning as the term "certificate" as used in 16 NCAC 1A .0001(2).
- (4) (3) "National Teachers' Examination" (NTE) means the standard examination adopted by the SBE pursuant to G.S. 115C-284(c), 115C-296 and 115C-315(d).
- (5) (4) "Other personnel" means those persons not included within the definition of instructional personnel.
- (6) (5) "Part-time employee" means a person employed for at least 20 hours per week.
- (7) (6) "Permanent employee" means a person who is not a student enrolled in the school system who is employed:
 - (a) other than on an interim basis, to fill a position which is to become permanent if current needs and funds continue; or
 - (b) for at least six months under one contract, to replace one or more employees who are on leave without pay.
- (8) (7) "Professional public school employee" means and includes:

- (a) teachers;
- (b) Administrators (superintendents, assistant or associate superintendents, principals, assistant principals, and supervisors); and
- (c) education specialists (counselors, school social service workers, curriculum instructional specialists, school psychologists, and media personnel).
- (9) ~~(8)~~ "Renewal credit" means credit earned by a certificated employee for certificate renewal purposes.
- (10) ~~(9)~~ "SACS" means the Southern Association of Colleges and Schools.
- (11) ~~(10)~~ "Substitute" means a person who holds a teacher's certificate, or who is a college graduate, or who has been determined by a local board to be capable of performing the duties of a substitute teacher.
- (12) ~~(11)~~ "Teacher education program" means the curriculum, instructional resources and faculty that contribute to the quality of instruction and the acquisition of knowledge, skills and competencies required for professional personnel to perform effectively in the public schools.

Authority N. C. Constitution, Article IX, Sec. 5.

SECTION .0200 - TEACHER EDUCATION

.0207 PROSPECTIVE TEACHER SCHOLARSHIP LOANS

(a) Recipients of prospective teacher scholarship loans who attend a college or university will receive up to two thousand dollars (\$2,000) per year to pay for courses, fees and books. Recipients of prospective teacher scholarship loans who attend a technical/community college will receive nine hundred dollars (\$900) per year to pay for courses, fees and books.

(b) Loans Scholarship loans are available only to legal residents of North Carolina. To be considered a legal resident, a person must have lived in the state for at least 12 months before applying for the loan. ~~In addition to the requirement of G.S. 115C-471(2) regarding endorsement of the note by a minor's parent, each~~ Each recipient must obtain the signature as surety of one resident of the state who is at least age 21.

(c) Persons who are in default on another student loan will not be eligible for a scholarship loan under this Rule.

(d) ~~Loan~~ Scholarship loan recipients must enroll in and attend a public or private college or university in this state with an approved teacher education program, or a technical/community college in this state with a program of study that leads to teacher ~~certification~~ licensure.

(e) A recipient's scholarship loan may be continued during periods of study abroad only if the recipient remains enrolled in a North Carolina college or university and receives credit toward completion of requirements for the work completed while abroad.

(f) ~~(e)~~ Scholarship loans may not be used to obtain credits through correspondence courses or extension courses even if the recipient uses less than the maximum amount as an undergraduate.

(g) ~~(f)~~ The Department may cancel a loan if the recipient:

- (1) willfully reports requested information that is erroneous or incomplete;
- (2) fails to complete and return requested forms by the required dates;
- (3) fails to pursue a full-time program in teacher education or withdraws permanently from college;
- (4) is not admitted to the college's teacher education program;
- (5) is convicted of a felony or other crime involving moral turpitude, possession or use of controlled substances, or other grounds for which a teaching ~~certificate~~ license may be revoked under 16 NCAC 6C .0312;
- (6) does not maintain a ~~2.0~~ 2.5 cumulative average for the freshman year and a ~~2.5~~ 3.0 ~~cumulative~~ average for each of the following years, based upon a 4.0 grading scale; or
- (7) fails to keep the Department informed of any address change or change in status as a prospective teacher.

(h) ~~(g)~~ Upon cancellation or default, the entire principal balance, together with accrued interest, becomes immediately due and payable.

(i) ~~(h) Once a recipient receives a certificate based upon the entry level degree~~ Upon graduation, the amount of the loan and accrued interest must be repaid by either employment as a regular full-time teacher or by making cash payments. Recipients who do not begin teaching in the school year following their ~~qualifying for certification~~ graduation must begin repayment upon their failure to begin teaching. ~~The entire principal and accrued interest must be repaid within the same number of years as the number of~~

~~loans received, beginning September 1 of the year following the recipient's qualifying for certification. Repayment shall be made in full or in equal monthly installments as determined by the Department, contingent upon the number of notes received.~~

(i) ~~(*)~~For purposes of credit for teaching, "full school year" means a minimum of six calendar months. Service as a tutor, a substitute teacher, a part-time teacher or a teacher in a non-public school does not qualify as service credit for loan repayment.

Statutory Authority G.S. 115C-471.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 18 - BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Examiners of Electrical Contractors intends to amend rules cited as 21 NCAC 18B .0105, .0401, .0703, .0801, .0901, .1001 and repeal .0705.

The proposed effective date of this action is February 1, 1995.

The public hearing will be conducted at 8:30 a.m. on December 8, 1994 at the State Board of Examiners of Electrical Contractors, 1200 Front Street, Suite 105, Raleigh, NC 27609.

Reason for Proposed Action:

21 NCAC 18B .0105 - To clarify when board records are available for public inspection.

21 NCAC 18B .0401 - To provide for the licensing of limited liability companies.

21 NCAC 18B .0703 - To be consistent with new formal resolution agreement.

21 NCAC 18B .0705 - Formal resolution agreement terminated.

21 NCAC 18B .0801 - To be consistent with G.S. 87-43.3.

21 NCAC 18B .0901 - To set out procedures for applicants convicted of crimes.

21 NCAC 18B .1001 - To update information contained on forms provided by the Board.

Comment Procedures: Persons interested may

present written or oral statements at the public hearing or in writing prior to the hearing by mail addressed to: Robert L. Brooks, Jr., State Board of Examiners of Electrical Contractors, P.O. Box 18727, Raleigh, NC 27619.

SUBCHAPTER 18B - BOARD'S RULES FOR THE IMPLEMENTATION OF THE ELECTRICAL CONTRACTING LICENSING ACT

SECTION .0100 - GENERAL PROVISIONS

.0105 BOARD RECORDS

~~(a) The Board interprets G.S. Chapter 132 to mean that, except for examination questions and unused examinations, the records of the Board, which are required by the North Carolina General Statutes and which are necessary to be kept by the Board in the discharge of its duties, are public records. The Board's public records are construed to be classified as a privileged record or a non-privileged record as follows:~~

~~(1) Privileged Records. Privileged records are those records of the Board for which public inspection is restricted solely to the specific person, firm or corporation (party of record) about which the records are assembled and maintained. Privileged records specifically include, but may not be limited to:~~

~~(A) Personal information about an applicant for licensure which the Board assembles and evaluates in determining the applicant's eligibility to take a qualifying examination for any classification of electrical contracting license or to obtain or maintain a license. Personal information may be either verified or unverified and generally relates to the character, educational training, employment record, experience, and finances of the applicant.~~

~~(B) An examinee's actual examination or a true copy of the same from the Board's files.~~

~~(C) The actual grade an examinee made on his qualifying examination.~~

~~(D) Personnel files of Board members and members of the Board's staff.~~

~~(E) Any other record which is determined by the Board to be similar in nature~~

to, or within the scope of, the information stipulated in Subdivisions (a)(1)(A) through (D) of this Rule.

(2) ~~Non privileged Records. Non privileged records are any and all records of the Board other than examination questions, unused examinations, or records classified as privileged records.~~

(b) ~~Privileged records will be made available to the party of record for inspection in the Board's office during the Board's regular business hours at a time mutually convenient to the party of record and the Board. Such records may also be made available to the party of record for inspection at such other time and place as may be specifically authorized by the Board.~~

(c) ~~Privileged information will not be made available to anyone other than the party of record for any purpose except:~~

(1) ~~Pursuant to a specific waiver of privilege from the party of record, to the extent authorized by such waiver;~~

(2) ~~Pursuant to a subpoena or court order;~~

(3) ~~On a need to know basis to governmental agencies having statutory or other lawful authority to inspect, utilize or maintain such information in the performance of their official duties; and~~

(4) ~~Upon the introduction thereof as an exhibit in any court, administrative hearing or other public proceeding.~~

(d) ~~Non privileged records will be made available to the general public for inspection at a reasonable time in the Board's office during the Board's regular business hours and at such other places and times specifically authorized by the Board.~~

The records of the Board shall be maintained at the Board office and shall be available for public inspection, in accordance with G.S. 132, during regular office business hours.

Statutory Authority G.S. 87-42; 87-47; 132-1.

SECTION .0400 - LICENSING REQUIREMENTS

.0401 LICENSE APPLICANTS: REQUIREMENTS FOR EACH CLASSIFICATION

(a) An applicant for an electrical contracting license in each of the license classifications shall:

(1) submit a completed application to the Board on a form provided by the Board for the license classification involved;

(2) submit the annual license fee for the license classification involved as prescribed in Rule .0404 of this Section; and

(3) furnish the name, signature and social security number of at least one person to serve as the listed qualified individual for the applicant's license.

(b) Corporation, or Partnership or Limited Liability Company. If the license applicant is a corporation, or partnership, or limited liability company, the application shall contain the names and titles of the officers, or names of the partners, or names of the members of the limited liability company, whichever is applicable.

(c) Intermediate and Unlimited Classifications. License applicants in the intermediate and unlimited classifications shall also furnish a bonding ability statement or a line of credit letter issued by a bank, savings bank, or savings and loan association pursuant to G.S. 87-43.2(a)(4).

(d) Special Classifications. A license applicant in the SP-EL, SP-PH, SP-WP, SP-ES or SP-SP classification must also include on the license application information verifying that the applicant is conducting a lawful business in the State of North Carolina in the license classification involved.

Statutory Authority G.S. 87-42; 87-43.2; 87-43.3; 87-43.4.

SECTION .0700 - LICENSING RECIPROCITY

.0703 RECIPROCITY: VIRGINIA

Pursuant to the provisions of Rule .0701 of this Section and the formal resolution agreement between the Board and the Virginia State Board for Contractors, licensees of the Virginia Board, who are non-residents of North Carolina, are eligible to apply for and obtain a North Carolina electrical contracting license; and North Carolina licensees, who are non-residents of Virginia, are eligible to apply to the Virginia board Board and obtain a Virginia electrical contracting license in classifications as prescribed in the following table:

VIRGINIA LICENSEE	ELIGIBLE FOR NORTH CAROLINA LICENSE
<u>Class B</u>	<u>Limited or intermediate</u>
Class A	Limited, intermediate or

	unlimited
NORTH CAROLINA LICENSEE	ELIGIBLE FOR FOR VIRGINIA LICENSE
Intermediate	Class A or Class B
Unlimited	Class A or Class B

Statutory Authority G. S. 87-42; 87-50.

.0705 RECIPROCITY: GEORGIA

~~Pursuant to the provisions of Rule .0701 of this Section and the formal resolution agreement between the Board and the Georgia Construction Industry Licensing Board, licensees of the Georgia board, who are non residents of North Carolina, are eligible to apply for and obtain a North Carolina electrical contracting license and North Carolina licensees, who are non residents of Georgia, are eligible to apply to the Georgia board and obtain a Georgia electrical contracting license in classifications as prescribed in the following table:~~

GEORGIA LICENSEE ELIGIBLE FOR NORTH CAROLINA LICENSE	
Unrestricted	Unlimited

NORTH CAROLINA LICENSEE Unlimited ELIGIBLE FOR GEORGIA LICENSE	
Unrestricted	

Statutory Authority G.S. 87-42; 87-50.

SECTION .0800 - SPECIAL RESTRICTED LICENSES

.0801 GENERAL PROVISIONS

(a) Types. A special restricted electrical contracting license classification is a classification established by the Board pursuant to G.S. 87-43.3 or established directly by G.S. 87-43.4. Its purpose is to license persons, partnerships, firms, or corporations to engage or offer to engage in only a limited phase of electrical contracting work. Each special restricted license classification is separate from all other special restricted and regular license classifications. At the direction of G.S. 87-43.4, the Board created the special restricted single family dwelling electrical contracting license. Pursuant to G.S. 87-43.4 87-43.3, the Board has established the following special restricted electrical contracting licenses:

- (1) low voltage wiring license (SP-LV);
- (2) elevator license (SP-EL);

- (3) plumbing, heating, and air conditioning license (SP-PH);
- (4) groundwater pump license (SP-WP);
- (5) electric sign license (SP-ES); and
- (6) swimming pool license (SP-SP).

(b) Limited Scope. A special restricted contracting license does not authorize the licensee to engage or offer to engage in the business of electrical contracting in general. It authorizes the licensee to engage or offer to engage only in the limited phase of electrical contracting described in the Rule in this Section that specifies the scope of the applicable special restricted license.

(c) No Project Value Limit. The limitations concerning the dollar value of projects that may be undertaken by a limited or an intermediate licensee do not apply to special restricted licensees. Thus, the holder of a special restricted license may engage or offer to engage in any project authorized by the license regardless of the dollar value of the project.

(d) Effect of Regular License. A licensee in the regular license classifications, whether limited, intermediate or unlimited, is qualified to engage or offer to engage in any activity authorized by a special restricted license, subject to the project value limitations contained in G.S. 87-43.3, and does not have to obtain a special restricted license.

Statutory Authority G.S. 87-42; 87-43.3; 87-43.4.

SECTION .0900 - VIOLATIONS AND CONTESTED CASE HEARINGS

.0901 APPLICANTS CONVICTED OF CRIMES

~~The Board may deny an examination applicant permission to take an examination when it finds the applicant is not eligible, regardless of whether it has previously notified the applicant that he may take the examination. The Board may refuse to issue a license to a license applicant when it finds the applicant is not qualified, regardless of whether the applicant has passed the appropriate examination. An applicant may contest the Board's decision by requesting an administrative hearing. The Board shall consider the examination application of a person who has been convicted of a crime involving fraud or moral turpitude after at least one year has elapsed following the applicant's completion of the terms and conditions of any punishment for the conviction, including incarceration, probation and parole, or the Board shall consider the application before such completion at an administrative hearing requested by the appli-~~

cant or set by the Board.

Statutory Authority G.S. 87-42; 87-43.3; 87-43.4; 87-47(a1)(4).

SECTION .1000 - DESCRIPTION OF FORMS, CERTIFICATES AND PUBLICATIONS

.1001 FORMS PROVIDED BY THE BOARD

(a) Examination Applications. An application form is provided to a person wishing to apply to take a qualifying examination for an electrical contracting license. The application form is designed for an applicant to furnish the following information:

- (1) date;
- (2) name, address and telephone number;
- (3) age;
- (4) social security number;
- (5) whether or not applicant has taken a qualifying examination previously;
- (6) classification of license for which applicant wishes to qualify and amount of application-examination fee;
- (7) educational background;
- (8) experience background;
- (9) character references;
- (10) criminal convictions;
- (11) other references or information applicant wishes the Board to consider;
- (12) authorization for board to research all information submitted on or in support of applicant; and
- (13) signature of applicant.

(b) Examination Review Applications. Each failing examinee is provided a form for his use in applying for a detailed review of his failed examination. This form is designed for the applicant to furnish the following information:

- (1) date;
- (2) name, address and telephone number;
- (3) social security number;
- (4) date he took his failed examination;
- (5) location in which he took his failed examination;
- (6) examination review fee; and
- (7) signature of applicant.

(c) License Applicants. Each license applicant is provided with an application form for his use in initially applying for a license. The application form is designed for the applicant to furnish the following information:

- (1) classification of license for which he is

applying;

- (2) name in which he wishes the license to be issued;
- (3) business mailing and location address;
- (4) business and home telephone numbers;
- (5) whether business is partnership, or corporation or limited liability company and, if so, the names of the partners, or the names and titles of officers of the corporation or names of the members of the limited liability company;
- (6) whether business is to be operated part-time or full-time;
- (7) names, signatures and social security numbers of the listed qualified individuals to be indicated on the license;
- (8) annual license fee;
- (9) criminal convictions;
- (10) authorization for board to research all information submitted on or in support of application;
- (11) date; and
- (12) signature and title of applicant.

(d) License Renewal Applications. Each licensee is provided with an annual license renewal application form prior to the expiration of his current annual license. This application form is designed for the licensee to furnish the following information:

- (1) name in which his license is currently issued;
- (2) whether license is to be renewed in same name or, if not, new name in which he wishes license to be renewed;
- (3) mailing and business location address;
- (4) business and home telephone numbers;
- (5) whether business is to be operated part-time or full-time;
- (6) whether business is partnership, or corporation or limited liability company and, if so, the names of the partners, or the names and titles of officers of the corporation or names of the members of the limited liability company;
- (7) names, signatures and social security numbers of the listed qualified individuals to be indicated on new annual license;
- (8) annual license fee;
- (9) authorization for board to research all information submitted on or in support of application;
- (10) date; and
- (11) signature and title of applicant.

(e) Request for Change of Name or Address in

Which License Is Issued. A licensee wishing to change his license name or address is furnished a form for his use in requesting a change of name or address. This form is designed for the licensee to furnish the following information:

- (1) name and address in which license is currently issued;
- (2) name and address in which license is to be reissued;
- (3) whether business is to be operated part-time or full-time;
- (4) whether business is partnership, or corporation or limited liability company and, if so, the names of the partners, or the names and titles of officers of the corporation or names of the members of the limited liability company;
- (5) certification of listed qualified individual by name and conditions of employment;
- (6) name and title of person filing request and date of request; and
- (7) signature of listed qualified individual.

(f) License Applications: South Carolina Reciprocity. These forms are designed for an applicant to furnish the same type of information as is provided on the forms described in Paragraphs (c) and (d) of this Rule, with the following additional information:

- (1) name in which applicant's current South Carolina license is issued;
- (2) classification of applicant's South Carolina license;
- (3) number of current South Carolina license;
- (4) statement from South Carolina Licensing Board for Contractors certifying the individuals who are qualified under the applicant's South Carolina license and the extent of each individual's qualifications; and
- (5) names, signatures and social security numbers of the listed qualified individuals on South Carolina license and to be indicated as such on North Carolina license.

(g) License Application: Alabama Reciprocity. These forms are designed for the applicant to furnish essentially the same type of information as is provided on the forms described in Paragraphs (c), (d) and (f) of this Rule.

(h) License Application: Georgia Virginia Reciprocity. These forms are designed for the applicant to furnish essentially the same type of information as is provided on the forms described

in Paragraphs (c), (d) and (f) of this Rule.

(i) Bonding Ability Statement. A bonding ability statement form is provided to an applicant wishing to obtain a license in either the intermediate or unlimited classification. This form is to be completed by a bonding company duly licensed to issue performance bonds in North Carolina. The form is designed for the bonding company to state its bonding experience with the applicant and amount of performance bond the bonding company would be willing to issue to the applicant ~~at~~ on the date the form is completed and signed. The signer's power of attorney must accompany the bonding ability statement form.

(j) Certification of Listed Qualified Individual. This form is provided to any licensee or applicant for a license whose listed qualified individual is someone other than the licensee or applicant for a license. This form is designed for the licensee or applicant for a license to certify who will be the listed qualified individual for the licensee and that the listed qualified individual is, or will be, regularly employed by the licensee and has, or will have, the specific duty and authority to supervise and direct all electrical installation, maintenance, alteration or repair of any electric wiring, devices, appliances or equipment done in the name of the licensee.

(k) Affidavit certifying Bona Fide Employee. This affidavit form is provided to any licensee whose relationship with his employees has been challenged and it is alleged that someone other than his bona fide employee is engaged in electrical work under the auspices of his license. The form must contain the signature and title of the person completing the form and must be notarized. The form is designed for the licensee to furnish information establishing compliance with the requirements of Rule .0306(a)(2) and (3) of this Subchapter.

Statutory Authority G.S. 87-42.

CHAPTER 19 - BOARD OF ELECTROLYSIS EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Electrolysis Examiners intends to adopt rules cited as 21 NCAC 19 .0103, .0203, .0701 - .0704.

The proposed effective date of this action is February 1, 1995.

The public hearing will be conducted at 10:00 a.m. on December 3, 1994 at the State Employees' Credit Union Building, Fourth Floor Conference Room, 801 Hillsborough Street, Raleigh, North Carolina.

Reason for Proposed Action: It is necessary to establish continuing education requirements for licensed electrologists, to set standards and procedures for obtaining credit for continuing education, to establish procedures for renewal, reinstatement, and reactivation of licenses, and to inform the public of the Board's requirements.

Comment Procedures: The record of hearing will be open for receipt of written comments from November 1, 1994 through the close of the hearing on December 3, 1994. Written comments may be submitted at the hearing or delivered to the Board at its mailing address (P.O. Box 10834, Raleigh, NC 27605-0834). Anyone wishing to speak at the hearing should notify Trudy Brown in writing at the Board's mailing address no later than 5:00 p.m. the day before the hearing. All others will be able to speak only if time permits.

SECTION .0100 - GENERAL PROVISIONS

.0103 DEFINITIONS

In this Chapter, "continuing education unit" or "CEU" means 10 clock hours of participation in an organized continuing education experience that is:

- (1) related to the practice of electrolysis; and*
- (2) obtained after the original granting of licensure.*

Statutory Authority G.S. 88A-6; 88A-12; 88A-13; 88A-18.

SECTION .0200 - APPLICATION PROCEDURES

.0203 APPLICATION FOR RENEWAL, REINSTATEMENT, OR REACTIVATION OF LICENSE

(a) Unless the applicant's license expired more than 90 days prior to the filing of an application for renewal, each applicant for license renewal pursuant to G.S. 88A-12 shall pay the required renewal fee, including the late renewal charge if applicable, and shall provide proof of compliance with 21 NCAC 19 .0701(a).

(b) An electrologist whose license has been expired for more than 90 days but less than five years shall apply for reinstatement by sending the Board a written request for reinstatement, paying the reinstatement fee, and providing proof of competence pursuant to 21 NCAC 19 .0701(c).

(c) An electrologist who has been on the inactive list for less than five years who desires to be returned to active status shall send the Board a written request for return to the active list, pay the renewal fee, and provide proof of competence pursuant to 21 NCAC 19 .0701(b).

(d) Proof of compliance with 21 NCAC 19 .0701 may be provided either by affidavit of the applicant listing the programs or courses taken, the entity that offered the program or course, the CEUs obtained, and the date and location of the program or course, or by copies of a certificate of completion issued by the entity that offered the program or course, identifying the course and showing the date, location, and number of hours taken by the applicant. The Board may request confirmation of the number of hours from the entity that offered the program or course and will not give credit for hours that the entity does not confirm as hours actually taken by the applicant.

(e) Applicants for renewal of a school certification shall pay the required renewal fee and update the information submitted when the school initially applied. This update shall include any information required of new applicants that was not required when the school was initially certified.

(f) All other applicants for license or certification renewal, reinstatement, or reactivation shall comply with the requirements of G.S. 88A.

Statutory Authority G.S. 88A-6; 88A-12; 88A-13; 88A-18.

SECTION .0700 - CONTINUING EDUCATION

.0701 CONTINUING ED REQ/LICENSE RENEWAL, REINSTATEMENT/ REACTIVATION

(a) Each electrologist licensed in this State shall complete at least one CEU each renewal period as a requirement for renewal of the electrologist's license. Over any two renewal periods, the Board will give credit for no more than one-half CEU in the area of business management.

(b) An electrologist who has been placed on the inactive list by the Board for less than five years may present evidence of completion of one CEU within the 12 months preceding application for return to active status in satisfaction of the competency requirement of G.S. 88A-14 before the Board will return the electrologist to active status.

(c) An electrologist whose license has been expired for 90 days or more but less than five years may present evidence of completion of one CEU for each renewal period or part of a renewal period that has elapsed since the electrologist's license was last current in satisfaction of the competency requirement of G.S. 88A-12. At least one of the CEUs offered in satisfaction of a competency requirement must be completed within the 12 months immediately preceding the application for reinstatement.

Statutory Authority G.S. 88A-6; 88A-12; 88A-13; 88A-18.

.0702 BOARD APPROVAL OF COURSES

(a) The Board shall approve a program or course if it is:

- (1) In any subject required by 21 NCAC 19 .0601;
- (2) Offered by one of the following entities:
 - (A) A college or university authorized to grant degrees in this State,
 - (B) A state or national professional electrolysis association, or
 - (C) A school certified by the Board.

The entity offering the program or course shall provide the Board with the information listed in Paragraph (b) of this Rule and shall certify to the Board the names of all electrologists licensed by the Board who attended the program or course and their actual hours of attendance.

(b) The Board will not approve a program or course without the following information:

- (1) Title, location, and date of the course,
- (2) Sponsoring entity,
- (3) Course objective and content,
- (4) Hours of study,

(5) Name, education, and background of each instructor.

(c) An electrologist seeking credit for a program or course offered by an entity not listed in Paragraph (a) of this Rule may request that the Board approve the course by submitting in writing, at least two months in advance of the course registration date, the information listed in Paragraph (b) of this Rule on an application form provided by the Board.

(d) The Board shall approve a program or course if requested pursuant to Paragraph (c) of this Rule on a finding that it offers an educational experience designed to enhance the practice of electrology as required by G.S. 88A-13. In determining whether or not to make this finding, the Board shall consider the program or course in light of the criteria set forth in The Continuing Education Unit Criteria and Guidelines, 5th edition, as adopted by the International Association for Continuing Education and Training (IACET) and incorporated herein by reference without including subsequent amendments or editions. The presence of all criteria or the absence of individual criteria shall not be conclusive. Copies of The Continuing Education Unit Criteria and Guidelines, 5th edition, may be obtained at a charge of nine dollars (\$9.00) per copy for one to four copies [seven dollars (\$7.00) for IACET members] by writing IACET at 1101 Connecticut Avenue NW, Suite 700, Washington, D.C. 20036. The Board shall notify the electrologist by mail of the Board's findings and decision. A change in subject matter, length, or instructor of a course requires reapproval by the Board. The entity offering the program or course shall either provide to the electrologist or provide directly to the Board certification of the electrologist's actual hours of attendance after the program or course is completed.

Statutory Authority G.S. 88A-6; 88A-12; 88A-13; 88A-18.

.0703 COMPUTATION OF CONTINUING EDUCATION UNITS

(a) To obtain credit as a clock hour of continuing education, the learning activity scheduled for an hour shall occupy at least 50 minutes of the hour.

(b) An electrologist may fulfill the continuing education requirements of 21 NCAC 19 .0701 by completing more than one course if the total equals one or more CEUs.

(c) One semester credit hour at a university or

college is equivalent to one CEU. A course may be audited or taken for credit.

(d) An electrologist who teaches in a program or course approved by the Board may obtain CEU credit at the rate of four clock hours for each clock hour of teaching.

Statutory Authority G.S. 88A-6; 88A-12; 88A-13; 88A-18.

.0704 TIME LIMITS ON CREDIT

An electrologist may carry over up to one CEU from one renewal period to the next. An electrologist applying for reinstatement under 21 NCAC 19 .0203(b) who is presenting CEUs in satisfaction of competency requirements may, however, receive credit for that purpose for any CEUs taken during the time the applicant's license was expired.

Statutory Authority G.S. 88A-6; 88A-12; 88A-13; 88A-18.

CHAPTER 32 - BOARD OF MEDICAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Medical Examiners of the State of North Carolina intends to amend rules cited as 21 NCAC 32B .0305, .0315; 32O .0001, .0010 - .0012.

The proposed effective date of this action is February 1, 1995.

The public hearing will be conducted at 1:00 p.m. on November 17, 1994 at the Board of Medical Examiners, 1203 Front Street, Raleigh, NC 27609.

Reason for Proposed Action:

21 NCAC 32B .0305 - To include AOA-approved Board Certification as a recognized standard by which an osteopathic physician may be licensed by endorsement.

21 NCAC 32B .0315 - To include AOA-approved Board Certification as a recognized exclusion to the ten year qualification rule requiring passage of SPEX.

21 NCAC 32O .0001, .0010 - .0012 - To require Physician Assistants to maintain a list of the back-

up supervising physicians at each practice site, and to relieve the Medical Board staff of the burden of tracking each back-up supervising physician.

Comment Procedures: Persons interested may present written or oral statements relevant to the proposed actions at a hearing to be held as indicated above. Written statements not presented at the hearing should be directed to: Administrative Procedures, NC Medical Board, PO Box 20007, Raleigh, NC 27619, no later than December 1, 1994.

SUBCHAPTER 32B - LICENSE TO PRACTICE MEDICINE

SECTION .0300 - LICENSE BY ENDORSEMENT

.0305 EXAMINATION BASIS FOR ENDORSEMENT

(a) To be eligible for license by endorsement of credentials, graduates of medical schools approved by the LCME or AOA must supply certification of passing scores on one of the following written examinations:

- (1) National Board of Medical Examiners;
- (2) FLEX - under Rule .0314 of this Section;
- (3) Written examination administered by an allopathic or composite state medical board which issued the original license on the basis of written examination other than FLEX;
- (4) National Board of Osteopathic Examiners, all parts taken after January 1, 1990; or
- (5) USMLE - Step 1, Step 2, Step 3 of USMLE or a combination of examinations as set out in Rule .0215(c) of this Subchapter.

(b) Graduates of medical schools not approved by LCME or AOA must supply certification of passing scores on one of the following written examinations:

- (1) FLEX - under Rule .0314 of this Section;
- (2) Written examination other than FLEX from the state board which issued the applicant's original license by written examination together with American Specialty Board certification; or
- (3) USMLE - Step 1, Step 2, Step 3 of

USMLE or a combination of examinations as set out in Rule .0215(c) of this Subchapter.

(c) A physician who has a valid and unrestricted license to practice medicine in another state, based on a written examination testing general medical knowledge, and who within the past five years has become, and is at the time of application, certified or recertified by an American Specialty Board or an AOA approved Specialty Board, is eligible for license by endorsement.

(d) Applicants for license by endorsement of credentials with FLEX scores that do not meet the requirements of Rule .0314 of this Section must meet the requirements of Paragraph (c) in this Rule.

Statutory Authority G.S. 90-10; 90-13.

.0315 TEN YEAR QUALIFICATION

Pursuant to the discretion granted in G.S. 90-13, the Board may issue a license to any applicant without examination using the following guidelines.

- (1) In addition to all other requirements for licensure, an applicant who has not met one of the following qualifications within the past 10 years of the date of the application to the Board, must take the SPEX, or other examination as determined by the Board, and attain a score of at least 75:
 - (a) National Board of Medical Examiners certification;
 - (b) Exam scores as required under Rule .0314 of this Section;
 - (c) SPEX score of at least 75;
 - (d) certification or re-certification from a specialty board recognized by the American Board of Medical Specialties or the American Osteopathic Association;
 - (e) completion of formal postgraduate medical education as required under Rule .0313 of this Section; or
 - (f) examination combinations as set out in Rule .0215(c) of this Subchapter.
- (2) The SPEX requirement may be waived by the Board upon receipt of a current AMA Physician's Recognition Award.

Statutory Authority G.S. 90-11; 90-13.

SUBCHAPTER 320 - PHYSICIAN ASSISTANT REGULATIONS

.0001 DEFINITIONS

The following definitions apply to this Subchapter:

- (1) "Board" means the Board of Medical Examiners of the State of North Carolina.
- (2) "Physician Assistant" means a person approved by and registered with the Board to perform medical acts, tasks, or functions under the supervision of a physician licensed by the Board and who performs tasks traditionally performed by the physician and who has graduated from a physician assistant or surgeon assistant program approved by the American Medical Association Council on Medical Education.
- (3) "Physician Assistant License" means the document issued by the Board showing approval for the physician assistant to perform medical acts, tasks, or functions under North Carolina law.
- (4) "Registering" means paying an annual fee and updating practice information requested by the Board as outlined in Rule .0005 of this Subchapter.
- (5) "Supervising Physician" means a physician licensed to practice medicine by the Board and authorized not prohibited by the Board to supervise from supervising physician assistants.
 - (a) The "Primary Supervising Physician" is the physician who, by signing the application to the Board, accepts full responsibility for the physician assistant's medical activities and professional conduct at all times whether the physician personally is providing supervision or if supervision is being provided by a Back-up Supervising Physician. The Primary Supervising Physician shall assume total responsibility to assure the Board that the physician assistant is sufficiently qualified by education and training to perform all medical acts required of the physician assistant and shall assume total responsibility for the physician assistant's performance in the particular field or fields in which the physician assistant is expected to perform medical acts. No more than two physician assistants may be currently registered to a primary supervising physician.

- (b) The "Back-up Supervising Physician" means the physician who, by signing the application to the Board statement required in Rule .0010 of this Subchapter, accepts the responsibility to supervise the physician assistant's activities in the absence of the Primary Supervising Physician ~~only in the practice sites listed in the application approved by the Board~~. The Back-up Supervising Physician is responsible for the activities of the physician assistant only when he is providing supervision.
- (6) "Supervising" means overseeing the activities of, and accepting the responsibility for, the medical services rendered by a physician assistant in a manner approved by the Board.

Statutory Authority G.S. 90-18(13); 90-18.1.

.0010 SUPERVISION OF PHYSICIAN ASSISTANTS

Supervision shall be continuous but shall not be construed as necessarily requiring the physical presence of the supervising physician at the time and place that the services are rendered.

It is the obligation of each team of physician(s) and physician assistant(s) to ensure that the physician assistant's scope of practice is identified; that delegation of medical tasks is appropriate to the physician assistant's level of competence; that the relationship of, and access to, ~~the~~ each supervising physician is defined; and that a process for evaluation of the physician assistant's performance is established. A statement clearly describing these supervisory arrangements in all settings must be signed by ~~both the~~ each supervising physician and the physician assistant and shall be kept on file at all practice sites. This statement shall be ~~and~~ available upon request by the Board or its representatives.

The time interval between the physician assistant's contact with the patient and chart review and countersigning by the supervising physician may be a maximum of seven days for outpatient (clinic/office) charts. Entries by a physician assistant into patient charts of inpatients (hospital, long term care institutions) must comply with the rules and regulations of the institution, but at a minimum, the initial workup and treatment plan, and the discharge summary, must be countersigned by the supervising physician, within seven days of the time of generation of these notes; and, in the acute inpatient setting, the initial work-up, orders

and treatment plan must be signed and dated within two working days.

Statutory Authority G.S. 90-18(13); 90-18.1.

.0011 SUPERVISING PHYSICIANS

(a) A physician wishing to serve as a primary supervising physician ~~supervise a physician assistant~~ must:

- (1) be licensed to practice medicine by the Board and not prohibited by the Board from supervising physician assistant;
- (2) notify the Board of the physician's intent to serve as a primary supervising physician for ~~supervise~~ a physician assistant; and,
- (3) submit a statement to the Board that the physician will exercise supervision over the physician assistant in accordance with any rules adopted by the Board and that the physician will retain professional and legal responsibility for the care rendered by the physician assistant.

(b) A physician wishing to serve as a back-up supervising physician must be licensed to practice medicine by the Board and not prohibited by the Board from supervising physician assistants.

(c) It is the responsibility of the supervising ~~physician~~ physicians to ensure that the physician assistant has adequate back-up for any procedure performed by the physician assistant, in any practice location (office, home, hospital, etc.).

Statutory Authority G.S. 90-18(13); 90-18.1.

.0012 NOTIFICATION OF INTENT TO PRACTICE

(a) Prior to the performance of any medical acts, tasks, or functions, a physician assistant approved by the Board shall submit notification of such intent on forms provided by the Board. The physician assistant applicant may be provisionally approved by the Board's administrative staff to begin performing medical acts, tasks, and functions upon receipt of the application form in the Board's office subject to final approval by the Board. Such notification shall include:

- (1) the name, practice address, and telephone number of the physician assistant; and
 - (2) the name, practice address, and telephone number of the primary supervising physician(s).
- (b) The physician assistant shall notify the Board

of any changes or additions in a previously approved practice setting or in supervising physicians within 15 days of the occurrence.

(c) Intent to practice forms must be submitted for each additional job under a new primary supervising physician.

Statutory Authority G.S. 90-18(13); 90-18.1.

CHAPTER 36 - BOARD OF NURSING

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 .0217.

The proposed effective date of this action is February 1, 1995.

The public hearing will be conducted at 1:00 p.m. on December 15, 1994 at the North Carolina Board of Nursing Office, 3724 National Drive, Suite 201, Raleigh, North Carolina.

Reason for Proposed Action: To establish procedures to implement G.S. 14-208.5; 15A-1331A and 90-401.

Comment Procedures: Any person wishing to present oral testimony relevant to proposed rule may registered at the door before the hearing begins and present hearing officer with a written copy of testimony. Written comments concerning this amendment must be submitted by December 15, 1994: North Carolina Board of Nursing, P.O. Box 2129, Raleigh, NC 27602-2129, ATTN: Jean H. Stanley, APA Coordinator.

SECTION .0200 - LICENSURE

.0217 REVOCATION, SUSPENSION, OR DENIAL OF LICENSE

(a) The definitions contained in G.S. 90-171.20 and G.S. 150B-2 (01), (2), (2b), (3), (4), (5), (8), (8a), (8b), (9) are adopted by reference within this Rule according to G.S. 150B-14(c). In addition, the following definitions apply:

(1) "Administrative Law Counsel" means an attorney whom the Board of Nursing has retained to serve as procedural

officer for contested cases.

(2) "Prosecuting Attorney" means the attorney retained by the Board of Nursing to prepare and prosecute contested cases.

(b) A nursing license which has been forfeited under G.S. 15A-1331A may not be reinstated until the licensee has successfully complied with the court's requirements, has petitioned the Board for reinstatement, has appeared before the Licensure Committee, and has had reinstatement approved. The license may initially be reinstated with restrictions.

(c) ~~(b)~~ Behaviors and activities which may result in disciplinary action by the Board include, but are not limited to, the following:

- (1) drug or alcohol abuse;
- (2) violence-related crime;
- (3) illegally obtaining, possessing or distributing drugs or alcohol for personal or other use, or other violations of G.S. 90-86 to 90-113.8;
- (4) evidence of any crime which undermines the public trust;
- (5) failure to make available to another health care professional any client information crucial to the safety of the client's health care;
- (6) delegating responsibilities to a person when the licensee delegating knows or has reason to know that the competency of that person is impaired by physical or psychological ailments, or by alcohol or other pharmacological agents, prescribed or not;
- (7) practicing or offering to practice beyond the scope permitted by law;
- (8) accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform;
- (9) performing, without adequate supervision, professional services which the licensee is authorized to perform only under the supervision of a licensed professional, except in an emergency situation where a person's life or health is in danger;
- (10) abandoning or neglecting a client who is in need of nursing care, without making reasonable arrangements for the continuation of such care;
- (11) harassing, abusing, or intimidating a client either physically or verbally;
- (12) failure to maintain an accurate record

- for each client which records all pertinent health care information as defined in Rule .0224(f)(2) or .0225(f)(2);
- (13) failure to exercise supervision over persons who are authorized to practice only under the supervision of the licensed professional;
 - (14) exercising undue influence on the client, including the promotion of the sale of services, appliances, or drugs for the financial gain of the practitioner or of a third party;
 - (15) directly or indirectly offering, giving, soliciting, or receiving or agreeing to receive, any fee or other consideration to or from a third party for the referral of a client, or other violations of G.S. 90-401;
 - (16) failure to file a report, or filing a false report, required by law or by the Board, or impeding or obstructing such filing or inducing another person to do so;
 - (17) revealing identifiable data, or information obtained in a professional capacity, without prior consent of the client, except as authorized or required by law;
 - (18) guaranteeing that a cure will result from the performance of professional services;
 - (19) altering a license by changing the expiration date, certification number, or any other information appearing on the license;
 - (20) using a license which has been altered;
 - (21) permitting or allowing another person to use his or her license for the purpose of nursing;
 - (22) delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such a person is not qualified by training, by experience, or by licensure;
 - (23) violating any term of probation, condition, or limitation imposed on the licensee by the Board;
 - (24) accepting responsibility for client care while impaired by alcohol or other pharmacological agents; ~~or~~
 - (25) falsifying a client's record or the controlled substance records of the agency; or
 - (26) kissing, fondling, inappropriately touch-

ing or engaging in any other activities of a sexual nature with a client while responsible for the care of that individual.

(d) ~~(e)~~When a person licensed to practice nursing as a licensed practical nurse or as a registered nurse is also licensed in another jurisdiction and that other jurisdiction takes disciplinary action against the licensee, the North Carolina Board of Nursing may summarily impose the same or lesser disciplinary action upon receipt of the other jurisdiction's action. The licensee may request a hearing. At the hearing the issues will be limited to:

- (1) whether the person against whom action was taken by the other jurisdiction and the North Carolina licensee are the same person;
- (2) whether the conduct found by the other jurisdiction also violates the North Carolina Nursing Practice Act; and
- (3) whether the sanction imposed by the other jurisdiction is lawful under North Carolina law.

(e) ~~(d)~~Before the North Carolina Board of Nursing makes a final decision in any contested case, the person, applicant or licensee affected by such decision will be afforded an administrative hearing pursuant to the provisions of Article 3A, Chapter 150B of the North Carolina General Statutes.

- (1) The Paragraphs contained in this Rule shall apply to conduct of all contested cases heard before or for the North Carolina Board of Nursing.
- (2) The following general statutes, rules, and procedures apply and are adopted by reference within this Rule according to G.S. 150B-14(c), unless another specific statute or rule of the North Carolina Board of Nursing provides otherwise: Rules of Civil Procedure as contained in G.S. 1A-1 and Rules of Evidence pursuant to G.S. Chapter 8C; G.S. 90-86 through 90-113.8; 21 NCAC 36 .0224 - .0225; Article 3A, Chapter 150B; and Rule 6 of the General Rules of Practice for Superior and District Court.
- (3) Every document filed with the Board of Nursing shall be signed by the person, applicant, licensee, or his attorney who prepares the document and shall contain his name, title/position, address, and telephone number. If the individual

involved is a licensed nurse the nursing license certificate number shall appear on all correspondence with the Board of Nursing.

(f) ~~(e)~~In accordance with G.S. 150B-3(c) a license may be summarily suspended if the public health, safety, or welfare requires emergency action. This determination is delegated to the Chairman or Executive Director of the Board pursuant to G.S. 90-171.23(b)(3). Such a finding shall be incorporated with the order of the Board of Nursing and the order shall be effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and continues to be effective during the proceedings. Failure to receive the order because of refusal of service or unknown address does not invalidate the order. Proceedings shall be commenced in a timely manner.

(g) ~~(f)~~The Board, through its staff, shall issue a Letter of Charges only upon completion of an investigation, by the Discipline Consultant or other authorized Board staff, of a written or verbal complaint and review with legal counsel or prosecuting attorney or Executive Director.

- (1) Subsequent to an investigation and validation of a complaint, a Letter of Charges will be sent on behalf of the Board of Nursing to the licensee who is the subject of the complaint.
 - (A) The Letter of Charges shall be served in accordance with G.S. 1A-1, Rule 4, Rules of Civil Procedure.
 - (B) The Letter of Charges serves as the Board's formal notification to the licensee that an allegation of possible violation(s) of the Nursing Practice Act has been initiated.
 - (C) The Letter of Charges does not in and of itself constitute a contested case.
- (2) The Letter of Charges shall include the following:
 - (A) a short and plain statement of the factual allegations;
 - (B) a citation of the relevant sections of the statutes and/or rules involved;
 - (C) notification that a settlement conference will be scheduled upon request;
 - (D) explanation of the procedure used to govern the settlement conference;
 - (E) notification that if a settlement conference is not requested, or if held, does not result in resolution of

the case, an administrative hearing will be scheduled; and

- (F) if applicable, and in accordance with Board-adopted policy, an offer of voluntary surrender or reprimand also may be included in specified types of alleged violations of the Nursing Practice Act.

- (3) A case becomes a contested case after the licensee, person, or applicant disputes the allegations contained in the Letter of Charges, requests an administrative hearing, or refuses to accept a settlement offer extended by the Board of Nursing.

(h) ~~(g)~~No Board member shall discuss with any party the merits of any case pending before the Board of Nursing. Any Board member who has direct knowledge about a case prior to the commencement of the proceeding shall disqualify himself from any participation with the majority of the Board of Nursing hearing the case.

(i) ~~(h)~~A settlement conference, if requested by the licensee, is held for the purpose of attempting to resolve a dispute through informal procedures prior to the commencement of formal administrative proceedings.

- (1) The conference shall be held in the offices of the Board of Nursing, unless another site is designated by mutual agreement of all involved parties.
- (2) All parties shall attend or be represented at the settlement conference. The parties will be prepared to discuss the alleged violations and the incidents on which these are based.
- (3) Prior to the commencement of the settlement conference, a form shall be signed by the licensee which invalidates all previous offers made to the licensee by the Board.
- (4) At the conclusion of the day during which the settlement conference is held, a form must be signed by all parties which indicates whether the settlement offer is accepted or rejected. Subsequent to this decision:
 - (A) if a settlement is reached, the Board of Nursing will forward a written settlement agreement containing all conditions of the settlement to the other party(ies); or
 - (B) if a settlement cannot be reached, the case will proceed to a formal

administrative hearing.

(j) ~~(h)~~Disposition may be made of any contested case or an issue in a contested case by stipulation, agreement, or consent order at any time prior to or during the hearing of a contested case.

(k) ~~(i)~~The Board of Nursing shall give the parties in a contested case a Notice of Hearing not less than 15 calendar days before the hearing. The Notice shall be given in accordance with G.S. 1A-1, Rule 4, Rules of Civil Procedure. The notice shall include:

- (1) Acknowledgement of service, or attempted service, of the Letter of Charges in compliance with Paragraph (f) of this Rule;
- (2) Date, time, and place of the hearing;
- (3) Notification of the right of a party to represent himself or to be represented by an attorney;
- (4) A statement that, pursuant to Paragraph (m) of this Rule, subpoenas may be requested by the licensee to compel the attendance of witnesses or the production of documents;
- (5) A statement advising the licensee that a notice of representation, containing the name of licensee's counsel, if any, should be filed with the Board of Nursing not less than 10 calendar days prior to the scheduled date of the hearing;
- (6) A statement advising the licensee that a list of all witnesses for the licensee should be filed with the Board of Nursing not less than 10 calendar days prior to the scheduled date of the hearing; and
- (7) A statement advising the licensee that failure to appear at the hearing may result in the allegations of the Letter of Charges being taken as true and that the Board may proceed on that assumption.

(l) ~~(k)~~Prehearing conferences may be held to simplify the issues to be determined, to obtain stipulations in regards to testimony or exhibits, to obtain stipulations of agreement on nondisputed facts or the application of particular laws, to consider the proposed witnesses for each party, to identify and exchange documentary evidence intended to be introduced at the hearing, and to consider such other matters that may be necessary or advisable for the efficient and expeditious conduct of the hearing.

- (1) The prehearing conference will be conducted in the offices of the Board of

Nursing, unless another site is designated by mutual agreement of all parties.

- (2) The prehearing conference shall be an informal proceeding and shall be conducted by a Board-designated administrative law counsel.
- (3) All agreements, stipulations, amendments, or other matters resulting from the prehearing conference shall be in writing, signed by all parties, and introduced into the record at the beginning of the formal administrative hearing.

(m) ~~(j)~~Pre-hearing conferences or administrative hearings conducted before a majority of Board members shall be held in Wake County or, by mutual consent in another location when a majority of the Board has convened in that location for the purpose of conducting business. For those proceedings conducted by an Administrative Law Judge the venue will be determined in accordance with G. S. 150B-38(e). All hearings conducted by the Board of Nursing shall be open to the public.

(n) ~~(m)~~The Board of Nursing, through its Executive Director, may issue subpoenas for the Board or a licensee, in preparation for, or in the conduct of, a contested case.

- (1) Subpoenas may be issued for the appearance of witnesses or the production of documents or information, either at the hearing or for the purposes of discovery.
- (2) Requests by a licensee for subpoenas shall be made in writing to the Executive Director and shall include the following:
 - (A) the full name and home or business address of all persons to be subpoenaed; and
 - (B) the identification, with specificity, of any documents or information being sought.
- (3) Subpoenas shall include the date, time, and place of the hearing and the name and address of the party requesting the subpoena. In the case of subpoenas for the purpose of discovery, the subpoena shall include the date, time, and place for responding to the subpoena.
- (4) Subpoenas shall be served as provided by the Rules of Civil Procedure, G.S. 1A-1. The cost of service, fees, and expenses of any witnesses or documents subpoenaed shall be paid by the party

requesting the witnesses.

(o) ~~(n)~~ All motions related to a contested case, except motions for continuance and those made during the hearing, shall be in writing and submitted to the Board of Nursing at least 10 calendar days before the hearing. Prehearing motions will be heard at a prehearing conference or at the contested case hearing prior to the commencement of testimony. The designated administrative law counsel will hear the motions and the response from the non-moving party pursuant to Rule 6 of the General Rules of Practice for the Superior and District Courts and rule on such motions. If the pre-hearing motions are heard by an Administrative Law Judge from Office of Administrative Hearings the provisions of G.S. 150B-40(e) shall govern the proceedings.

(p) ~~(o)~~ Motions for a continuance of a hearing may be granted upon a showing of good cause. Motions for a continuance must be in writing and received in the office of the Board of Nursing no less than seven calendar days before the hearing date. In determining whether good cause exists, consideration will be given to the ability of the party requesting a continuance to proceed effectively without a continuance. A motion for a continuance filed less than seven calendar days from the date of the hearing shall be denied unless the reason for the motion could not have been ascertained earlier. Motions for continuance filed prior to the date of the hearing shall be ruled on by Disciplinary Consultant or Executive Director of the Board. All other motions for continuance will be ruled on by the majority of the Board members or Administrative Law Judge sitting at hearing.

(q) ~~(p)~~ All hearings by the Board of Nursing will be conducted by a majority of members of the Board of Nursing, except as provided in Subparagraph (1) of this Paragraph. The Board of Nursing shall designate one of its members to preside at the hearing. The Board of Nursing shall designate an administrative law counsel as procedural officer to conduct the proceedings of the hearing. The seated members of the Board of Nursing shall hear all evidence, make findings of fact and conclusions of law, and issue an order reflecting a majority decision of the Board.

- (1) When a majority of the members of the Board of Nursing is unable or elects not to hear a contested case, the Board of Nursing shall request the designation of an administrative law judge from the Office of Administrative Hearings to preside at the hearing. The provisions

of Article 3A, Chapter 150B and 21 NCAC 36 .0217 shall govern a contested case in which an administrative law judge is designated as the Hearing Officer.

- (2) In the event that any party or attorney or other representative of a party engages in conduct which obstructs the proceedings or would constitute contempt if done in the General Court of Justice, the Board may apply to the applicable superior court for an order to show cause why the person(s) should not be held in contempt of the Board and its processes.
- (3) During a hearing, if it appears in the interest of justice that further testimony should be received and sufficient time does not remain to conclude the testimony, the Board of Nursing may continue the hearing to a future date to allow for the additional testimony to be taken by deposition or to be presented orally. In such situations and to such extent as possible, the seated members of the Board of Nursing and the designated administrative law counsel shall receive the additional testimony. In the event that new members of the Board or a different administrative law counsel must participate, a copy of the transcript of the hearing will be provided to them prior to the receipt of the additional testimony.

(r) ~~(q)~~ All parties have the right to present evidence, rebuttal testimony, and argument with respect to the issues of law, and to cross-examine witnesses. The North Carolina Rules of Evidence in G.S. Chapter 8C shall apply to contested case proceedings, except as provided otherwise in this Rule and G.S. 150B-41.

- (1) Sworn affidavits may be introduced by mutual agreement from all parties.
- (2) All oral testimony shall be under oath or affirmation and shall be recorded. Unless otherwise stipulated by all parties, witnesses are excluded from the hearing room until such time that they have completed their testimony and have been released.

(s) ~~(r)~~ Any form or Board-approved policy or procedure referenced in this Rule, or any rules applicable to a case, are available upon request from the Board of Nursing and will be supplied at a reasonable cost.

Statutory Authority G.S. 14-208.5; 15A-1331A; 90-171.23(b)(3)(7); 90-171.37; 90-171.47; 90-401; 150B-3(c); 150B-11; 150B-14; 150B-38 through 150B-42.

TITLE 25 - OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to amend rules cited as 25 NCAC 1E .0901, .0903 - .0905, .0908 and repeal .0906.

The proposed effective date of this action is February 1, 1995.

The public hearing will be conducted at 9:00 a.m. on December 8, 1994 at the State Personnel Development Center, 101 West Peace Street, Raleigh, North Carolina.

Reason for Proposed Action:

25 NCAC 1E .0901, .0903 - .0905, .0908 - The 1991 General Assembly approved an amendment to the State Personnel Act which authorized the SPC to provide 12 holidays in the years when Christmas day falls on Tuesday, Wednesday or Thursday. The Commission approved the additional holiday for 1991 but took no action on changes to the Holiday rules. It is proposed that these rules be amended to outline the number of holidays for a ten-year period (1995 - 2004), to provide the additional day when Christmas Day falls on Tuesday, Wednesday or Thursday and to offer clarification to State agencies and universities.

25 NCAC 1E .0906 - This rule is proposed to be repealed because through the proposed amendment of Rule 25 NCAC 1E .0905 Alternative Holiday Schedules, this Rule has been added to 25 NCAC 1E .0905 for better clarification.

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

CHAPTER 1 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 1E - EMPLOYEE BENEFITS

SECTION .0900 - HOLIDAYS

.0901 APPROVED HOLIDAYS

The following days are adopted by the State Personnel Commission and approved by the Governor as holidays:

Holiday	Number of Days
New Year's Day	1
Martin Luther King, Jr.'s Birthday	1
Good Friday	1
Memorial Day	1
Independence Day	1
Labor Day	1
Veteran's Day	1
Thanksgiving Day and the day after	2
Christmas (2 days)	
<u>Christmas, 1995</u>	2
<u>Christmas, 1996</u>	3
<u>Christmas, 1997</u>	3
<u>Christmas, 1998</u>	2
<u>Christmas, 1999</u>	2
<u>Christmas, 2000</u>	2
<u>Christmas, 2001</u>	3
<u>Christmas, 2002</u>	3
<u>Christmas, 2003</u>	3
<u>Christmas, 2004</u>	2

Statutory Authority G.S. 126-4.

.0903 SCHEDULING HOLIDAYS

The schedule is issued on a calendar year basis, and each year a schedule of the holidays for that year will be issued to agency heads by the Office of State Personnel.

Statutory Authority G.S. 126-4.

.0904 TIME ALLOWED OFF

Agency heads shall post or issue written notice of the holiday schedule to all employee employees. Employees are granted eight hours away from work on each of these days except where operational needs require work on a designated holiday.

Statutory Authority G.S. 126-4.

.0905 ALTERNATIVE HOLIDAY SCHEDULES

The holiday schedule listed in 25 NCAC 1E .0901 shall be used by all state agencies operating under the policies, rules, and regulations of the Office of State Personnel unless the following applies:

- (1) Institutions of higher education and agen-

cies requiring a seven-day, 24-hour operation may adopt ~~varying~~ alternative holiday schedules in keeping with operational needs, provided the employees are given the same number of holidays as approved by the State Personnel Commission. Such special holiday schedules must be filed with the Office of State Personnel.

- (2) When the specific date of the legal holiday observance falls on Saturday or Sunday, agencies with a seven-day a week operation shall adopt an additional holiday schedule for employees regularly scheduled to work on the specific date of the legal holiday observance rather than the State government public holiday.
- (3) Both the State government public holiday(s) and the day(s) designated for observance, pursuant to Item (2) of this Rule, shall be specified as premium pay holidays.

Statutory Authority G.S. 126-4.

.0906 SHIFTS

~~Some agencies may need to adopt an additional holiday schedule applicable to their employees working on assigned shifts in maintaining a 24 hour operation; this schedule would designate as holidays the specific dates of the legal observances rather than substitute weekdays when the observance occurs on Saturday or Sunday. This would be in keeping with the purpose of the holiday premium pay period.~~

Statutory Authority G.S. 126-4.

.0908 ELIGIBILITY

Permanent full-time and part-time, including probationary, trainee and time-limited, are eligible for the paid holidays. Permanent part-time employees receive holidays on a pro rata basis. Temporary employees are not eligible for paid holidays.

Statutory Authority G.S. 126-4.

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

AGRICULTURE

Plant Industry

2 NCAC 48E .0302 - General Permits

Rule Returned to Agency for Failure to Comply with G.S. 150B-21.9(a) & 150B-21.2(f) 09/15/94

COMMERCE

Alcoholic Beverage Control Commission

4 NCAC 2T .0103 - Beer Franchise Law; "Brand" Defined

RRC Objection 09/15/94

Energy

4 NCAC 12C .0007- Institutional Conservation Program

RRC Objection 06/16/94

Rule Returned to Agency

07/14/94

Agency Filed Rule for Codification Over RRC Objection

Eff. 08/16/94

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Health: Epidemiology

15A NCAC 19A .0101 - Reportable Diseases and Conditions

RRC Objection 09/15/94

Agency Revised Rule

Obj. Removed 09/15/94

15A NCAC 19A .0102 - Method of Reporting

RRC Objection 09/15/94

Agency Revised Rule

Obj. Removed 09/15/94

15A NCAC 19C .0602 - Accreditation

RRC Objection 09/15/94

Agency Revised Rule

Obj. Removed 09/15/94

Mining: Mineral Resources

15A NCAC 5B .0013 - Response Deadline to Department's Request(s)

RRC Objection 09/15/94

Wildlife Resources and Water Safety

15A NCAC 10I .0001 - Definitions and Procedures

RRC Objection 08/18/94

Rule Returned to Agency

Obj. Cont'd 09/15/94

Agency Filed Rule for Codification Over RRC Objection

Eff. 10/01/94

HUMAN RESOURCES

Vocational Rehabilitation Services

10 NCAC 20C .0203 - Determination of Order of Selection Priority Category

RRC Objection 09/15/94

Agency Revised Rule

Obj. Removed 09/15/94

10 NCAC 20C .0316 - Other Goods and Services

RRC Objection 09/15/94

Agency Revised Rule

Obj. Removed 09/15/94

JUSTICE

Criminal Justice Education and Training Standards

12 NCAC 9B .0208 - Basic Training -- Probation/Parole Officers

RRC Objection 07/14/94

LICENSING BOARDS AND COMMISSIONS

Physical Therapy Examiners

21 NCAC 48F .0002 - Fees

RRC Objection 09/15/94

Agency Revised Rule

Obj. Removed 09/15/94

Therapeutic Recreation Certification

21 NCAC 65 .0004 - Academic - TRS Examination

RRC Objection 08/18/94

Agency Revised Rule

Obj. Removed 09/15/94

TRANSPORTATION

Division of Motor Vehicles

19A NCAC 3D .0519 - Stations

RRC Objection 09/15/94

Agency Revised Rule

Obj. Removed 09/15/94

19A NCAC 3D .0520 - Inspection Station Personnel

Rule Withdrawn by Agency

09/15/94

19A NCAC 3D .0522 - Licensing Requirements

RRC Objection 09/15/94

Agency Revised Rule

Obj. Removed 09/15/94

19A NCAC 3D .0523 - Denial, Suspension or Revocation of Licenses

RRC Objection 09/15/94

Agency Revised Rule

Obj. Removed 09/15/94

19A NCAC 3D .0524 - Operation of Safety/Exhaust Emissions Inspection Stations

RRC Objection 09/15/94

Agency Revised Rule

Obj. Removed 09/15/94

19A NCAC 3D .0532 - Reinspection

RRC Objection 09/15/94

Agency Revised Rule

Obj. Removed 09/15/94

19A NCAC 3D .0533 - Brakes

RRC Objection 09/15/94

Agency Revised Rule

Obj. Removed 09/15/94

19A NCAC 3D .0534 - Lights

RRC Objection 09/15/94

Agency Revised Rule

Obj. Removed 09/15/94

19A NCAC 3D .0544 - Inspection Procedure for Emissions Equipment

RRC Objection 09/15/94

Agency Revised Rule

Obj. Removed 09/15/94

19A NCAC 3D .0549 - Operation to Replace Windshield Inspection Stickers

RRC Objection 09/15/94

Agency Revised Rule

Obj. Removed 09/15/94

19A NCAC 3D .0550 - Recognition of Safety Inspections Issued by Certain Other Jurisdictions

Rule Withdrawn by Agency

09/15/94

19A NCAC 3D .0551 - Approval and Disapproval of Vehicles

RRC Objection 09/15/94

Agency Revised Rule

Obj. Removed 09/15/94

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

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
ADMINISTRATION				
<i>North Carolina Council for Women</i>				
Family Violence Prevention Services v. N.C. Council for Women	94 DOA 0242	West	04/13/94	
ALCOHOLIC BEVERAGE CONTROL COMMISSION				
Jerry Lee McGowan v. Alcoholic Beverage Control Comm.	93 ABC 0363	Morrison	08/23/94	
Alcoholic Beverage Control Comm. v. Entertainment Group, Inc.	93 ABC 0719	Gray	03/02/94	
Alcoholic Beverage Control Comm. v. Dachee Chang	93 ABC 0775	Morrison	09/21/94	
Rayvon Stewart v. Alcoholic Beverage Control Commission	93 ABC 0793	Nesnow	04/11/94	
Alcoholic Beverage Control Comm. v. Branchland, Inc.	93 ABC 0892	Morgan	06/03/94	
Alcoholic Beverage Control Comm. v. Peggy Sutton Walters	93 ABC 0906	Mann	03/18/94	
Russell Bernard Speller d/b/a Cat's Disco v. Alcoholic Bev Ctl Comm.	93 ABC 0937	Morrison	03/07/94	
Alcoholic Beverage Control Comm. v. Branchland, Inc.	93 ABC 0993	Morgan	06/03/94	
Edward Ogunjobi, Club Piccadilli v. Alcoholic Beverage Control Comm.	93 ABC 1024	West	03/03/94	
Robert Kovalaske, Nick Pikoulas, Joseph Marshburn, Evangelos Pikoulas, d/b/a Our Mom's BBQ v. Alcoholic Beverage Control Commission	93 ABC 1029	Gray	03/04/94	
Christine George Williams v. Alcoholic Beverage Control Comm.	93 ABC 1057	Becton	04/21/94	
Lynn Ann Garfagna v. Alcoholic Beverage Control Commission	93 ABC 1481	Gray	07/19/94	
Alcoholic Beverage Control Comm. v. Raleigh Limits, Inc.	93 ABC 1485	Mann	03/11/94	
Alcoholic Beverage Control Comm. v. COLAP Enterprises, Inc.	94 ABC 0060	Nesnow	06/07/94	
Alcoholic Beverage Control Comm. v. Mitch's Tavern, Inc.	94 ABC 0064	Gray	07/26/94	
Alcoholic Beverage Control Comm. v. Ms. Lucy Jarrell Powell	94 ABC 0070	Morgan	06/06/94	
Alcoholic Beverage Control Comm. v. Richard Wayne Barrow	94 ABC 0079	Gray	10/14/94	
Alcoholic Beverage Control Comm. v. Daphne Ann Harrell	94 ABC 0115	Nesnow	07/18/94	
Mr. & Mrs. Josh Bullock Jr. v. Alcoholic Beverage Control Comm.	94 ABC 0124	Morgan	06/06/94	
Jerome Crawford v. Alcoholic Beverage Control Commission	94 ABC 0125	Morgan	06/06/94	
Lawrence Mungin v. Alcoholic Beverage Control Commission	94 ABC 0149	Chess	08/08/94	
Willie Poole Jr. v. Alcoholic Beverage Control Commission	94 ABC 0232	Chess	09/02/94	
Alonza Mitchell v. Alcoholic Beverage Control Commission	94 ABC 0257	Morrison	07/28/94	9:11 NCR 870
Roy Dale Cagle v. Alcoholic Beverage Control Commission	94 ABC 0260	West	07/13/94	
Christopher C. Gause, James A Jinwright v. Alcoholic Bev. Ctl. Comm.	94 ABC 0532	Gray	09/27/94	
Rajaddin Abdelaziz v. Alcoholic Beverage Control Commission	94 ABC 0600	Chess	09/22/94	
COMMERCE				
<i>Savings Institutions Division</i>				
James E. Byers, et al v. Savings Institutions	93 COM 1622	Chess	03/01/94	
CORRECTION				
<i>Division of Prisons</i>				
Gene Strader v. Department of Correction	94 DOC 0252	Morrison	03/21/94	
CRIME CONTROL AND PUBLIC SAFETY				
Joseph Guernsey & Parents, Robert Guernsey & Dolores Guernsey v. Pitt County Hospital Eastern Radiologists	94 CPS 0413	Gray	07/11/94	

CONTESTED CASE DECISIONS

AGENCY	CASE NUMBER	ALJ	DATE OF DECISION	PUBLISHED DECISION REGISTER CITATION
<i>Crime Victims Compensation Commission</i>				
Mac H. McMillan v. Crime Victims Compensation Commission	92 CPS 1328	Morgan	08/11/94	
James Hugh Baynes v. Crime Victims Compensation Commission	93 CPS 0801	West	03/28/94	9:2 NCR 114
Ross T. Bond v. Victims Compensation Commission	93 CPS 1104	West	04/21/94	
James A. Canady v. Crime Victims Compensation Commission	93 CPS 1108	Gray	03/28/94	
Virginia Roof v. Department of Crime Control & Public Safety	93 CPS 1347	Nesnow	03/24/94	
Karen C. Tilghman v. Crime Victims Compensation Commission	93 CPS 1608	Reilly	05/17/94	9:6 NCR 407
Rosemary Taylor v. Crime Victims Compensation Commission	93 CPS 1626	Nesnow	05/25/94	
Violet E. Kline v. Crime Victims Compensation Commission	93 CPS 1670	Morgan	06/13/94	
James Benton v. Crime Victims Compensation Commission	94 CPS 0034	Chess	06/14/94	
Percy Clark v. Crime Victims Compensation Commission	94 CPS 0127	Reilly	04/19/94	
J. Richard Spencer v. Crime Victims Compensation Commission	94 CPS 0157	Chess	06/14/94	
Albert H. Walker v. Crime Victims Compensation Commission	94 CPS 0229	Reilly	08/11/94	
Barbara Henderson v. Crime Victims Compensation Commission	94 CPS 0259	Morrison	04/07/94	
Shirley Handsome v. Crime Victims Compensation Commission	94 CPS 0286	Gray	04/28/94	
Georgeann Young v. Crime Victims Compensation Commission	94 CPS 0292	Reilly	04/18/94	
Lawrence L. Tyson v. Crime Victims Compensation Commission	94 CPS 0368	Gray	04/26/94	
Ada Battle v. Crime Victims Compensation Commission	94 CPS 0414	Reilly	08/23/94	
Lyman L. Chapman v. Crime Victims Compensation Commission	94 CPS 0415	Chess	06/02/94	
Douglas and Virginia Wilson v. Crime Victims Compensation Comm.	94 CPS 0417	Reilly	06/07/94	
Michelle L. Wilcox v. Crime Victims Compensation Commission	94 CPS 0467	Reilly	06/07/94	
Charlie E. McDonald v. Crime Victims Compensation Commission	94 CPS 0468	Gray	09/02/94	9:13 NCR 1056
Michael G. Low v. Crime Victims Compensation Commission	94 CPS 0524	Morrison	06/13/94	
Maureen P. Wilson v. Crime Victims Compensation Commission	94 CPS 0567	Gray	09/23/94	
Kay Thompson Chambers v. Crime Victims Compensation Commission	94 CPS 0581	Morrison	09/28/94	
James R. Gray v. Crime Victims Compensation Commission	94 CPS 0603	Reilly	08/19/94	
Hazel Jarvis v. Victims Compensation Commission	94 CPS 0664	Chess	07/29/94	
Pattie Hale v. Victims Compensation Fund	94 CPS 0734	West	09/06/94	
Dana Harris v. Crime Victims Compensation Commission	94 CPS 0832	Nesnow	09/26/94	
Dorian Walter St. Patrick Scott v. Victims Compensation Comm.	94 CPS 0883	Nesnow	10/04/94	
Mary E. Haskins v. Crime Victims Compensation Commission	94 CPS 1406	Gray	03/17/94	
EMPLOYMENT SECURITY COMMISSION				
David Lee Bush v. Employment Security Commission	91 ESC 0395	Reilly	08/18/94	
ENVIRONMENT, HEALTH, AND NATURAL RESOURCES				
Bobby Stallings v. Environment, Health, and Natural Resources	90 EHR 0612	Morgan	08/11/94	
James M. Lyles v. Brunswick County Office of Permits	92 EHR 0333	Chess	09/22/94	
William P. Shaver, R. McKinnon Morrison III, Jill Ray, Dr. Wesley C. Ray, Douglas W. Furr, Catherine H. Furr & Caldwell Creek Farm, Inc. v. EHNHR-State of North Carolina	93 EHR 0452	Morgan	08/11/94	
Ron D. Graham, Suzanne C. Graham v. Robert Cobb, Mecklenburg Cty	93 EHR 1017	Becton	05/31/94	
Carnel D. Pearson Jr. v. Craven Co. Division of Health & DEHNR	93 EHR 1759	Mann	09/06/94	
Patricia D. Solomon v. Macon County Health Department	93 EHR 1777	West	05/23/94	
Elbert L. Winslow v. EHNHR/Guilford Cty Health Dept. & Guilford Cty Planning & Zoning Board	94 EHR 0086	Chess	07/13/94	
Kathryn A. Whitley v. Macon County Health Department	94 EHR 0088	West	07/13/94	
Brook Hollow Estates v. Environment, Health, & Natural Resources	94 EHR 0093	West	06/03/94	
Bobby Combs v. Public Water Supply Section	94 EHR 0202	West	10/19/94	
Oceanfront Court, David C. Gagnon v. Environment, Health, & Nat. Res.	94 EHR 0210	Chess	06/21/94	
Sam's Club #8219 v. Mecklenburg County Health Department	94 EHR 0329	Nesnow	06/15/94	9:7 NCR 496
Everhart & Associates, Inc. and Hettie Tolson Johnson v. Environment, Health, and Natural Resources and Zelig Robinson	94 EHR 0392	Reilly	10/18/94	9:15 NCR 1231
Richard A. Jenkins v. NC Water Pollution Ctl. Sys. Op. Cert. Comm.	94 EHR 0424	West	10/11/94	
Eugene Crawford & Nancy P. Crawford v. Macon County Health Dept.	94 EHR 0500	Gray	06/10/94	
Joseph B. Leggett v. Environment, Health, & Natural Resources	94 EHR 0560	West	09/21/94	
Tri-Circuits, Inc. v. Environment, Health, & Natural Resources	94 EHR 0601	Morrison	06/30/94	
Irene, Will, Eric Litaker v. Montgomery County Health Department	94 EHR 0776	Gray	09/06/94	

CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<i>Coastal Management</i>				
Roger Fuller v. EHNHR, Div. of Coastal Mgmt & Environmental Mgmt	89 EHR 1378 ^a	Gray	04/07/94	
Roger Fuller v. EHNHR, Div. of Coastal Mgmt & Environmental Mgmt	90 EHR 0017 ^a	Gray	04/07/94	
John R. Hooper v. EHNHR, Div./Coastal Mgmt & Bird's Nest Partnership	90 EHR 0455	Morgan	08/11/94	
Gary E. Montalbino v. Division of Coastal Management	93 EHR 1792	Nesnow	03/21/94	
Paley-Midgett Partnership v. Coastal Resources Commission	94 EHR 0315	Gray	06/01/94	
<i>Environmental Health</i>				
Jane C. O'Malley, Melvin L. Cartwright v. EHNHR & District Hlth Dept Pasquotank-Perquimans-Camden-Chowan	91 EHR 0838	Becton	04/06/94	
Henry Lee Bulluck v. Nash County Health Department & EHNHR	93 EHR 0348	Morgan	07/22/94	
Environment, Health, & Natural Res. v. Clark Harris & Jessie Lee Harris	93 EHR 0924	Becton	03/03/94	
Richard F. Ebersold v. Jackson County Health Department & EHNHR	93 EHR 1391	Chess	06/24/94	
Sidney S. Tate Jr. v. Dept. of Environment, Health, & Natural Resources	94 EHR 0005	Reilly	05/24/94	
George A. Waugh, Shirley A. Waugh v. Carteret Cty Health & Env. Hlth	94 EHR 0128	Chess	07/13/94	
Scotland Water Co., Laurin Lakes v. Environment, Health, & Nat. Res.	94 EHR 0200	Nesnow	04/27/94	
H.A. Lentz v. Department of Environment, Health, & Natural Resources	94 EHR 0235	Nesnow	07/19/94	
Floyd Benn Williams v. Dept. of Environment, Health, & Nat. Res.	94 EHR 0333	Reilly	05/18/94	
<i>Environmental Management</i>				
David Springer v. Dept. of Environment, Health, & Natural Resources	92 EHR 1797	Morgan	05/19/94	
Petroleum Installation Equipment Co., Inc. v. Env., Health & Nat. Res.	93 EHR 0531	Chess	03/21/94	
Jack Griffin v. Dept. of Environment, Health, and Natural Resources	93 EHR 1030	Becton	03/21/94	
Wooten Oil Company v. EHNHR, Div of Environmental Management	94 EHR 0001	West	09/30/94	
John G. Owens & J.B.S. Mechanical Svcs, Inc. v. EHNHR, Env. Mgmt.	94 EHR 0024	Mann	09/07/94	
<i>Land Resources</i>				
Wallace B. Clayton, Dr. Marshall Redding v. Div. of Land Resources	93 EHR 1407	Morgan	08/09/94	
Town of Kernersville (LQS 93-053) v. Environment, Health, & Nat. Res.	93 EHR 1781	Chess	06/29/94	9:8 NCR 581
Royce Perry, Paul Perry v. Dept. of Environment, Health, & Natural Res.	94 EHR 0525	Gray	07/01/94	
<i>Marine Fisheries</i>				
Robert I. Swinson, Virginia S. Swinson v. EHNHR, Div/Marine Fisheries	93 EHR 0394	Gray	04/11/94	
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^a Consolidated Cases.

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Jessie Liles v. Department of Human Resources	93 CSE 1757	Morgan	08/02/94	
Raymond Scott Eaton v. Department of Human Resources	93 CSE 1761	Becton	06/29/94	
Nelson Fowler Jr. v. Department of Human Resources	94 CSE 0039	Mann	10/10/94	
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Michael L. Franks v. Department of Human Resources	94 CSE 0142	Chess	08/16/94	
Donnie W. Craghead v. Department of Human Resources	94 CSE 0163	Mann	09/26/94	
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Wanda Jean Lee Daniels v. Department of Human Resources	94 CSE 0266	Morgan	08/02/94	
Charles E. Colston v. Department of Human Resources	94 CSE 0280	Reilly	08/30/94	
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Alarm Systems Licensing Board v. George P. Baker	93 DOJ 0457	Nesnow	03/10/94	
Patrick P. Sassman v. Alarm Systems Licensing Board	94 DOJ 0709	Chess	09/12/94	
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Larry C. Hopkins v. Private Protective Services Board	93 DOJ 1618	Morrison	03/07/94	
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Curtiss Lance Poteat v. Criminal Justice Ed. & Training Sds. Comm.	93 DOJ 0231	Chess	03/28/94	
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Mortuary Science v. Perry J. Brown, & Brown's Funeral Directors	93 BMS 0532	Chess	03/28/94	
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Rick McCullough v. Search Comm School/Dance, NC School of the Arts	94 OSP 0511	West	10/14/94	
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Alvin Lamonte Breeden v. Butner Adolescent Treatment Center	94 OSP 0899	Nesnow	10/12/94	
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Sandra J. Cunningham v. Catawba County	93 OSP 1097	Reilly	04/29/94	9:4 NCR 292
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Dianna Blackley v. North Carolina Central University	89 OSP 0494	Nesnow	09/14/94	
Ha-Yilyah Ha-She'B v. NCCU	93 OSP 0875	Becton	04/13/94	9:3 NCR 211
<i>Chapel Hill & Carrboro City School</i>				
Brenda J. Parker v. Stella Nickerson, Chapel Hill & Carrboro City School	94 OSP 0568	West	10/06/94	
<i>Cherry Hospital</i>				
Charles F. Fields v. Cherry Hospital	94 OSP 0498	Morrison	06/15/94	
Gail Marie Rodgers Lincoln v. Cherry Hospital, Goldsboro, NC 27530	94 OSP 0578	West	10/07/94	
<i>Department of Commerce</i>				
Ruth Daniel-Perry v. Department of Commerce	93 OSP 0725	Chess	03/04/94	9:1 NCR 63
<i>Department of Correction</i>				
Leland K. Williams v. Department of Correction	91 OSP 1287	Chess	02/22/94	
Elroy Lewis v. North Central Area - Dept of Correction, Robert Lewis	92 OSP 1770	Becton	05/24/94	9:6 NCR 395
Steven R. Kellison v. Department of Correction	93 OSP 0283	Chess	06/15/94	
Bert Esworthy v. Department of Correction	93 OSP 0711	Chess	04/21/94	
James J. Lewis v. Department of Correction	93 OSP 1121	West	08/31/94	
Merron Burrus v. Department of Correction	93 OSP 1145	West	09/30/94	
Lewis Alsbrook v. Department of Correction, Morrison Youth Institution	93 OSP 1739	West	07/20/94	

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Barry Lee Clark v. Department of Correction	94 OSP 0437	Chess	09/12/94	
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Lylla Denell Stockton v. Durham County Health Department	93 OSP 1780	Gray	05/25/94	
<i>East Carolina School of Medicine</i>				
Lillie Mercer Atkinson v. ECU, Dept of Comp. Med., Dr. William H. Pryor Jr., Sheila Church	94 OSP 0162	Gray	10/06/94	
William Lee Perkins v. ECU Sch of Med. Comp. Med. L. Blankenship, Tammy Barnes, Wm Pyroe	94 OSP 0741	West	09/30/94	
<i>Elizabeth City State University</i>				
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<i>Employment Security Commission of North Carolina</i>				
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<i>Department of Environment, Health, and Natural Resources</i>				
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William D. Nicely v. Environment, Health, & Natural Resources	92 OSP 1454	Becton	05/04/94	9:5 NCR 333
<i>Fayetteville State University</i>				
Roscoe L. Williams v. Fayetteville State University	93 OSP 0487	West	06/22/94	
<i>Department of Human Resources</i>				
Inez Latta v. Department of Human Resources	93 OSP 0830	Becton	03/28/94	
Charla S. Davis v. Department of Human Resources	93 OSP 1762	Gray	03/03/94	
Rose Mary Taylor v. Department of Human Resources, Murdoch Center	93 OSP 0047	Gray	05/06/94	
David R. Rodgers v. Jimmy Summerville, Stonewall Jackson School	94 OSP 0087	Chess	03/16/94	
Dr. Patricia Sokol v. James B. Hunt, Governor and Human Resources	94 OSP 0357	Chess	08/22/94	
Bruce B. Blackmon, M.D. v. DHR, Disability Determination Services	94 OSP 0410	Nesnow	09/14/94	
<i>Craven County Department of Social Services</i>				
Shirley A. Holland v. Craven Cty. Dept./Social Services & Craven Cty.	93 OSP 1606	Gray	07/01/94	
Nettie Jane Godwin (Lawhorn) v. Craven Cty. DSS & Craven Cty.	93 OSP 1607	Gray	07/18/94	9:9 NCR 655
Violet P. Kelly v. Craven Cty. Dept. of Social Services & Craven Cty.	93 OSP 1805	Reilly	07/05/94	
<i>Durham County Department of Social Services</i>				
Belinda F. Jones v. Daniel Hudgins, Durham Cty Dept of Social Svcs	93 OSP 0728	Chess	04/11/94	
Ralph A. Williams v. Durham County Department of Social Services	94 OSP 0167	Reilly	09/13/94	
<i>Haywood County Department of Social Services</i>				
Dorothy Marrow v. Haywood County Department of Social Services	94 OSP 0186	West	06/17/94	
<i>Pamlico County Department of Social Services</i>				
Mrs. Dietra C. Jones v. Pamlico Department of Social Services	94 OSP 0251	Chess	08/09/94	
<i>Lee County Health Department</i>				
James Shackleton v. Lee County Health Department	94 OSP 0344	Gray	08/17/94	
<i>Mental Health/Mental Retardation</i>				
Yvonne G. Johnson v. Blue Ridge Mental Health	93 OSP 1604	Becton	03/18/94	
<i>Wake County Mental Health, Developmental Disabilities, and Substance Abuse Services</i>				
Julia Morgan Brannon v. Wake County MH/DD/SAS	94 OSP 0214	Reilly	04/14/94	
<i>Public Instruction</i>				
Elaine M. Sills v. Department of Public Instruction	94 OSP 0781	Gray	10/06/94	
<i>Real Estate Appraisal Board</i>				
Earl Hansford Grubbs v. Appraisal Board	94 OSP 0753	Nesnow	08/24/94	
<i>Smoky Mountain Center</i>				
Betty C. Bradley v. Smoky Mountain Center	93 OSP 1505	Becton	09/26/94	9:14 NCR 1141
<i>N.C. State University</i>				
Laura K. Reynolds v. N.C. State University - Dept. of Public Safety	92 OSP 0828	Morgan	05/26/94	
Ashraf G. Khalil v. N.C.S.U.	93 OSP 1666	Nesnow	09/19/94	

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<i>Department of Transportation</i>				
Phyllis W. Newnam v. Department of Transportation	92 OSP 1799	Morgan	08/11/94	
Glenn I. Hodge Jr. v. Samuel Hunt, Sec'y. Dept. of Transportation	93 OSP 0297*	Morrison	03/10/94	9:1 NCR 60
Glenn I. Hodge Jr. v. Samuel Hunt, Sec'y. Dept. of Transportation	93 OSP 0500*	Morrison	03/10/94	9:1 NCR 60
Betsy Johnson Powell v. Department of Transportation	93 OSP 0550	Morrison	03/28/94	
Arnold Craig v. Samuel Hunt, Secretary Department of Transportation	93 OSP 0586	Nesnow	07/11/94	
Susan H. Cole v. Department of Transportation, Div. of Motor Vehicles	93 OSP 0908	Morrison	07/15/94	
Susan H. Cole v. Department of Transportation, Div. of Motor Vehicles	93 OSP 0908	Morrison	10/07/94	
Clyde Lem Hairston v. Department of Transportation	93 OSP 0944	Chess	02/28/94	
Angela Trueblood Westmoreland v. Department of Transportation	93 OSP 1001	Morrison	09/30/94	9:14 NCR 1136
Bobby R. Mayo v. Department of Transportation	93 OSP 1004	Nesnow	09/01/94	
Tony Lee Curtis v. Department of Transportation	93 OSP 1037	Reilly	08/26/94	
Darrell H. Wise v. Department of Transportation	93 OSP 1353	Gray	07/26/94	
Henry C. Puegh v. Department of Transportation	93 OSP 1710	Nesnow	05/24/94	
Kenneth Ray Harvey v. Department of Transportation	94 OSP 0423	Morrison	08/17/94	
Bobby R. Mayo v. Department of Transportation	94 OSP 0632	Gray	08/23/94	
Michael Bryant v. Department of Transportation	94 OSP 0728	Chess	08/15/94	
<i>University of North Carolina at Chapel Hill</i>				
William Paul Fearington v. University of North Carolina at Chapel Hill	91 OSP 0905	Reilly	10/19/94	
Eric W. Browning v. UNC-Chapel Hill	93 OSP 0925	Morrison	05/03/94	9:5 NCR 342
Beth Anne Miller, R.N.-C v. UNC James A. Taylor Std Health Svc.	94 OSP 0800	Nesnow	09/26/94	
<i>University of North Carolina at Greensboro</i>				
James S. Wilkinson v. UNCG Police Agency	93 OSP 0850	Chess	08/22/94	
<i>UNC Hospitals</i>				
Barry Alonzo Nichols v. UNC Hospitals Central Dist. Sect.	94 OSP 0509	Morrison	06/15/94	
<i>Wake County School System</i>				
Lula Mae Freeman v. Wake County School System	94 OSP 0576	Morrison	06/28/94	
<i>The Whitaker School</i>				
Dwayne R. Cooke v. The Whitaker School	94 OSP 0328	Chess	06/02/94	
<i>Winston-Salem State University</i>				
David Phillip Davis v. Winston-Salem State University	93 OSP 0947	Reilly	09/28/94	
Tonny M. Jarrett v. Winston-Salem State University Campus Police	93 OSP 0953	Reilly	09/12/94	
STATE TREASURER				
<i>Retirement Systems Division</i>				
Molly Wiebenson v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	92 DST 0015	Morgan	05/26/94	9:6 NCR 403
Judith A. Dorman v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	92 DST 0223	Morgan	08/11/94	
Nathan Fields v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	93 DST 0161	Morrison	05/18/94	
John C. Russell v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	93 DST 0164	West	03/07/94	
Marion Franklin Howell v. Teachers' & State Employees' Retirement Sys.	93 DST 0475	Nesnow	08/04/94	9:12 NCR 941
Robert A. Slade v. Bd./Trustees/N.C. Local Govtl. Emp. Ret. System	93 DST 0785	Becton	03/18/94	9:1 NCR 68
Connie B. Grant v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	93 DST 0883	Chess	06/15/94	
James E. Walker, Ind. & Admin for the Estate of Sarah S. Walker v. Bd./Trustees/N.C. Local Govt. Emp. Ret. System	93 DST 1054	Becton	05/31/94	9:7 NCR 490
Elizabeth M. Dudley v. Bd./Trustees/Teachers' & State Emps' Ret. Sys.	93 DST 1474	Nesnow	03/28/94	
Kenneth A. Glenn v. Bd./Trustees/Teachers' & St Employees' Ret. Sys.	93 DST 1612	Morrison	05/18/94	
Joseph Fulton v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	93 DST 1731	Becton	05/25/94	
Deborah W. Stewart v. Bd./Trustees/Teachers' & State Employees' Ret. Sys. and Anthony L. Hope & Derrick L. Hope	94 DST 0045	Nesnow	07/25/94	9:10 NCR 768
TRANSPORTATION				
Taylor & Murphy Construction Co., Inc. v. Department of Transportation	93 DOT 1404	Chess	08/24/94	

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<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
UNIVERSITY OF NORTH CAROLINA				
Heather Anne Porter v. State Residence Committee	92 UNC 0799	Nesnow	08/23/94	
Nixon Omolodun v. UNC Physicians and Associates	94 UNC 0295	Chess	06/27/94	

STATE OF NORTH CAROLINA
COUNTY OF HYDE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
94 EHR 0392

EVERHART & ASSOCIATES, INC.)	
AND HETTIE TOLSON JOHNSON,)	
Petitioners,)	
)	
v.)	
)	
DEPARTMENT OF ENVIRONMENT,)	RECOMMENDED DECISION
HEALTH, AND NATURAL RESOURCES,)	
Respondent,)	
)	
and)	
)	
ZELIG ROBINSON,)	
Intervenor-Respondent.)	

This matter came on for hearing before the undersigned administrative law judge on September 27, 1994, in Beaufort.

Mr. C. R. Wheatley III represented the petitioners. Mr. David G. Heeter and Mr. John A. Hedrick represented the respondent. The Intervenor-Respondent appeared pro se. The petitioners introduced three exhibits. The parties filed Offers of Proof on October 10, 11 and 12, 1994.

ISSUE

Did the respondent properly deny the petitioners' Coastal Area Management Act (CAMA) permit?

FINDINGS OF FACT

1. This contested case, commenced on March 24, 1994, concerns the denial of a CAMA permit to construct a bridge and develop a nine lot subdivision on Ocracoke. The permit, by letter dated March 4, 1994, was denied because the proposal was determined to be inconsistent with the May 1992 CRC Certified Hyde County/Ocracoke Land Use Plan Update in that (i) the proposal involved construction on sound or estuarine islands within one mile of Ocracoke Island, (ii) the proposal circumvented a policy that no new septic tank systems installed on Ocracoke shall exceed a capacity of 1,500 gallons and (iii) the proposal involved construction on 404 wetlands.

2. A hearing was set for August 11, 1994, and was continued to September 27, 1994. Mr. Zelig Robinson filed a Verified Motion to Intervene on September 20, 1994. The respondent filed a Motion in Limine on the same date. The Motions were heard at the commencement of the hearing.

3. Mr. Zelig Robinson was allowed to intervene as a party with all the rights of a party, except that he was prohibited, due to the lateness of the Motion, from raising issues other than those set forth in the denial letter.

4. The Motion in Limine contained several citations of North Carolina Supreme Court cases and argued that the meaning of the Land Use Plan Update had to be ascertained from the document itself and not from testimony of individuals who developed the plan. The undersigned agreed, allowed the Motion and prohibited all parties from presenting evidence concerning the meaning of the document. The undersigned permitted Offers of Proof on this issue.

5. The parties then made lengthy arguments to the undersigned concerning the meaning of the Land Use Plan Update. The petitioner introduced the March 4, 1994, denial letter (P. Exh. 1), the Land Use Plan Update (P. Exh. 2), and a drawing of the proposed development named "Egret's Nest" (P. Exh. 3). The undersigned, concluding that the plain language of the Land Use Plan Update resolved the issues presented in the denial letter, announced his recommended decision.

6. All maps contained in P. Exh. 2 show that the proposed development is on a peninsula and not on an island. The document states that "(w)ithin one mile of Ocracoke Island, Hyde County opposes any construction on sound or estuarine islands" (p. IV-11). The March 4, 1994, denial letter is grounded on the proposal's "inconsisten(cy) with the local land use plan." The denial letter further cites GS 113A-120(a)(8) which states that "(t)he responsible official or body shall deny an application for a permit upon finding . . . that the development is inconsistent with the State guidelines or the local land-use plans."

7. P. Exh. 3 shows the proposed development with nine lots, the two drain fields and repair areas, and the 404 wetlands line. The map indicates that a substantial amount of most of the nine lots is 404 wetlands. P. Exh. 2, p. IV-11, states that "(n)o construction on (pile supported or otherwise) or filling, excavating or draining of any 404 wetland on Ocracoke Island will be allowed."

CONCLUSIONS OF LAW

1. The proposal is not inconsistent with the May 1992 CRC Certified Hyde County/Ocracoke Land Use Plan Update in that the proposal involves construction on sound or estuarine islands within one mile of Ocracoke Island because the Land Use Plan Update (i) shows the proposal to be located on a peninsula and (ii) prohibits construction only on sound and estuarine islands.

2. The proposal is not inconsistent with the May 1992 CRC Certified Hyde County/Ocracoke Land Use Plan Update in that the proposal circumvents a policy that no new septic tank systems installed on Ocracoke shall exceed a capacity of 1,500 gallons because the policy prohibits multiple-unit construction, such as a condominium, from dividing one sewage system into several systems less than 1,500 gallons but does not prohibit single-unit construction, such as a house, from sharing a sewage system with other houses.

3. The proposal is inconsistent with the May 1992 CRC Certified Hyde County/Ocracoke Land Use Plan Update in that the proposal, as established by P. Exh. 3, involves construction on 404 wetlands.

4. The respondent properly denied a CAMA permit to the petitioners.

RECOMMENDED DECISION

It is recommended that the denial of the CAMA permit be upheld because of proposed construction on 404 wetlands. However, it is recommended that the petitioners be afforded an opportunity to modify their proposal, if possible, so that no construction of dwellings or sewage systems will occur on the 404 wetlands.

MEMORANDUM

The first reason for denial of the CAMA permit, as stated in the March 4, 1994, letter, was the subject of most of the arguments at the hearing. This reason was that the proposal was inconsistent with the May 1992 CRC certified Hyde County/Ocracoke Land Use Plan Update in that the proposal involved construction on sound or estuarine islands within one mile of Ocracoke Island.

The respondent, which wrote the denial letter, could have cited State guidelines but rather referred only to inconsistencies with the local land-use plan. See GS 113A-120(a)(8) in Finding of Fact #6. The issue became, therefore, not whether the proposal was an island or peninsula but whether the proposal was consistent or inconsistent with the local land-use plan. That plan clearly showed that the proposal involved a peninsula and that the plans prohibition on construction pertained only to islands. See Finding of Fact #6.

As stated by the undersigned during the hearing, the plain language of the statute must control. This is a standard rule of statutory construction. For example, in Reves v. Ernst & Young, 113 S Ct 1163, 1169 (1993), the United States Supreme Court stated:

In determining the scope of a statute, we first look to its language. If the statutory language is unambiguous, in the absence of a 'clearly expressed legislative intent to the contrary, that language must ordinarily be regarded as conclusive.'

Furthermore, any such contrary legislative intent must be found in the statute or local land-use plan in question. In its Motion in Limine, filed just seven days before the hearing, the respondent quoted from State v. Partlow, 91 NC 550, 552 that:

But the meaning must be ascertained from the statute itself. . . . It cannot be proved by a member of the legislature or other person, whether interested in its enactment or not.

Finally, as Justice Scalia observed in MCI v. American Tel. and Tel., 114 S. Ct. 2223, 2231 (1994), "the most relevant time for determining a statutory term's meaning" is when the statute became law. It is certainly not years later when parties in litigation produce witnesses to provide a certain spin on a local land-use plan.

In this case, the plain language of the local land-use plan controls. Construction is only prohibited on certain islands; the plan depicts the property as a peninsula; and therefore, the construction prohibition is inapplicable to the proposal.

NOTICE

The parties have the right to file exceptions and to present written arguments to the Coastal Resources Commission. The final decision in this contested case shall be made by that agency. The agency will mail a copy of the final decision to the parties and the Office of Administrative Hearings.

This the 18th day of October, 1994.

Robert Roosevelt Reilly, Jr.
Administrative Law Judge

STATE OF NORTH CAROLINA
COUNTY OF NORTHAMPTON

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
94 DOJ 0574**

 \mathbf{v}_i

**N.C. CRIMINAL JUSTICE EDUCATION AND
TRAINING STANDARDS COMMISSION,
Respondent,**

PROPOSAL FOR DECISION
N.C. Gen. Stat. 150B-40(e)

This matter was commenced by a request filed with the Director of the Office of Administrative Hearings for the assignment of an Administrative Law Judge. The administrative hearing was held before Brenda B. Becton, Administrative Law Judge, on September 19, 1994, in Jackson, North Carolina.

Petitioner: Pro se.

Respondent: Robin P. Pendergraft, Special Deputy Attorney General, North Carolina Department of Justice, Raleigh, North Carolina.

Is the Petitioner's certification as a correctional officer with the North Carolina Department of Correction properly suspended on the grounds that he has been convicted of a criminal offense or unlawful act defined in 12 NCAC 9A .0103 as a Class B misdemeanor?

12 NCAC 9A .0103(4)
12 NCAC 9A .0103(20)(b)
12 NCAC 9A .0203
12 NCAC 9A .0204(b)(3)A
12 NCAC 9A .0205(b)(1)
N.C. GEN. STAT. §14-33(b)

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

1. Warrant For Arrest/Judgment (93 CR 2355).
2. Memorandum dated October 19, 1993 from Petitioner to Tommy King, Assistant Superintendent, Tillery Correctional Inst.
3. Letter dated December 20, 1993 from Petitioner to Criminal Justice Standards Division.
4. Memorandum dated January 1, 1994 from Superintendent John R. Williams, Tillery Correctional Center to Petitioner regarding Final Written Warning.

5. Deferral of Suspension letter dated March 1, 1994 from David D. Cashwell, Director, Criminal Justice Standards Division to Petitioner.
6. Letter received by the Criminal Justice Standards Division on April 25, 1994 from Petitioner to David D. Cashwell.

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

FINDINGS OF FACT

Stipulated Facts

1. "Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, that Petitioner received the Deferral of Suspension of his Correctional Officer Certification letter mailed by Respondent on March 1, 1994."
2. "The North Carolina Criminal Justice Education and Training and Standards Commission (Respondent) has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 9, to certify criminal justice officers and to deny, revoke or suspend such certification."
3. "Petitioner applied with Respondent for certification as a correctional officer with the North Carolina Department of Correction (Tillery Correctional Center) in June 1988."
4. "Petitioner was issued a probationary certification (PRB 239272016) by Respondent effective June 1, 1988."
5. "Petitioner successfully completed the Basic Course for Correctional Officers at Caledonia Complex on August 5, 1988."
6. "Petitioner was issued a general certification (GNB 23927016) by the Respondent effective June 1, 1989."
7. "On or about Tuesday, October 12, 1993, Petitioner was charged with the criminal offense of assault with a deadly weapon inflicting serious injury, a felony in violation of N.C.G.S. §14-32(b). (Criminal case 93 CR 2355)."
8. "On November 29, 1993, in the above-referenced criminal case, Petitioner pled guilty to the general misdemeanor of assault on a female and District Court Judge Thomas Newbern imposed a term of imprisonment of not less than but not more than four (4) months which was suspended upon the following conditions that petitioner: be placed on unsupervised probation for two (2) years; commit no criminal offense; possess no firearm, explosive or other deadly weapon; remain gainfully employed; pay \$100.00 fine and \$100.00 community service fee; complete 300 hours of community service; and not assault nor communicate a threat to his wife for two (2) years."

Adjudicated Facts

9. The Petitioner and his wife, Marie Anderson, have been married for eight years and are the parents of two children, ages five and seven.
10. On October 12, 1993, the Petitioner learned that his wife was having an affair. After receiving this distressing information, the Petitioner went to the liquor store and purchased a bottle of Seagram's gin. He returned to his home and drank almost the entire bottle.

11. While the Petitioner was inebriated state, the wife of the person with whom Petitioner's wife was allegedly having an affair, came to the Petitioner's home. Petitioner's wife and the woman began to argue and fight.
12. The Petitioner went to the doorway of his house. The lady hollered to the Petitioner that his wife was having an affair with her husband. The Petitioner's wife came up to him and asked him if he was going to believe the woman.
13. The Petitioner shoved his wife back into the house, causing her to fall over the coffee table.
14. The Petitioner does not remember the subsequent events.
15. The Petitioner's wife testified that he did not stomp or kick or strike her. She does not know where the officer who questioned her at the hospital while she was being treated got that information.
16. The Petitioner is not an abusive husband. He had never struck or caused his wife any physical injury prior to this incident.
17. The Petitioner retained the services of an attorney to represent him on the criminal charges. On the advice of his attorney and the recommendation of the district attorney, the Petitioner pled guilty to assault on a female because it was believed that such a plea was the most certain way to guarantee that his job status would not be affected. It was the belief of all concerned that a plea and imposition of a sentence of four months or less would not jeopardize the Petitioner's certification.
18. Although the Petitioner entered a plea of guilty, his wife testified in court before the presiding judge that the Petitioner had not struck, kicked, or stomped her.
19. Fifteen days after pleading guilty to assault on a female, the Petitioner received notification that his certification as a correctional officer was subject to suspension.
20. By the time the Petitioner received notification that his certification was in jeopardy, the ten day time period for appealing his criminal conviction to superior court had expired.
21. 12 NCAC 9A .0103(4) provides, in pertinent part, that "'Convicted' or 'Conviction' means and includes, for purposes of this Chapter, the entry of: (a) a plea of guilty...."
22. 12 NCAC 9A .0103(20)(b) provides, in pertinent part, that:

"Class B misdemeanor" means an act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this state, or any other jurisdiction, either civil or military, for which the maximum punishment allowable for the designated offense under the laws and statutes of the jurisdiction in which the offense occurred includes imprisonment for a term of more than six months but not more than two years.

23. The Respondent's Administrative Rules provide that a criminal justice officer's certification may be suspended, denied, or revoked based upon the commission or conviction of a Class "B" misdemeanor.

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

CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings.

2. The Respondent has the authority under 12 NCAC 9A .0204 to revoke, suspend or deny certification as a criminal justice officer.
3. Under the Respondent's rules, the Petitioner's plea of guilty to assault on a female constitutes a "conviction" of a "Class B Misdemeanor" even though the sentence imposed was less than six months because the crime was one for which the maximum punishment allowable was imprisonment for more than six months but not more than two years. 12 NCAC 9A .0103(4), (20)(b).
4. As a result of his guilty plea, the Petitioner was found guilty of a general misdemeanor and, therefore, he was in violation of 12 NCAC 9A .0204(b)(3)(A).
5. Although the Respondent has the authority to suspend the Petitioner's certification, there is sufficient mitigating evidence to warrant imposition of a lesser penalty. Pursuant to 12 NCAC 9A .0205(b), the Commission may substitute a period of probation in lieu of suspension of certification following an administrative hearing.

PROPOSAL FOR DECISION

The N.C. Criminal Justice Education and Training Standards Commission will make the Final Decision in this contested case. Based upon the foregoing findings of fact and conclusions of law, it is hereby proposed that the N.C. Criminal Justice Education and Training Standards Commission enter a final decision substituting a period of probation in lieu of suspension of the Petitioner's certification as a criminal justice officer.

NOTICE

Before the N.C. Criminal Justice Education and Training Standards Commission makes the FINAL DECISION, it is required by North Carolina General Statutes section 150B-40(e) to give each party an opportunity to file exceptions to this PROPOSAL FOR DECISION, and to present written arguments to those in the agency who will make the final decision.

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to the attorney of record. N.C. Gen. Stat. §150B-42(a). It is requested that the agency furnish a copy to the Office of Administrative Hearings.

This the 4th day of October, 1994.

Brenda B. Becton
Administrative Law Judge

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

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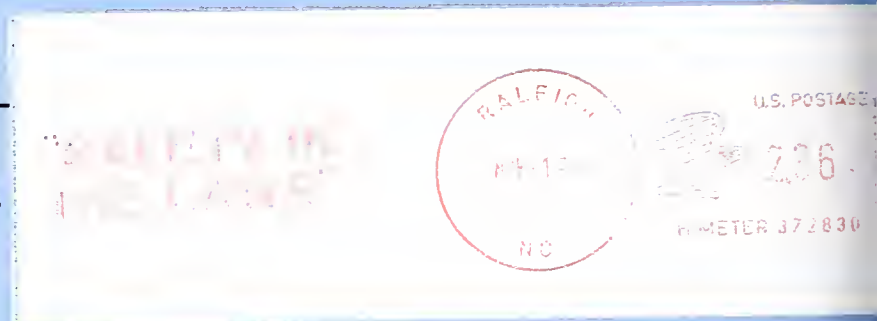
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