



**Volume 15, Issue 1  
Pages 1 - 58**

**July 3, 2000**

**This issue contains documents officially filed  
through June 12, 2000.**

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

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

<b>TITLE</b>	<b>DEPARTMENT</b>	<b>LICENSING BOARDS</b>	<b>CHAPTER</b>
1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Athletic Trainer Examiners	3
4	Commerce	Auctioneers	4
5	Correction	Barber Examiners	6
6	Council of State	Certified Public Accountant Examiners	8
7	Cultural Resources	Chiropractic Examiners	10
8	Elections	Employee Assistance Professionals	11
9	Governor	General Contractors	12
10	Health and Human Services	Cosmetic Art Examiners	14
11	Insurance	Dental Examiners	16
12	Justice	Dietetics/Nutrition	17
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14A	Crime Control & Public Safety	Electrolysis	19
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**Note: Title 21 contains the chapters of the various occupational licensing boards.**

**NORTH CAROLINA REGISTER**  
**Publication Schedule For January 2000 - December 2000**

NOTICE OF RULE-MAKING PROCEEDINGS				NOTICE OF TEXT							TEMPORARY RULE
FILING DEADLINES				earliest date for public hearing	non-substantial economic impact			substantial economic impact			
volume and issue number	issue date	last day for filing	earliest register issue for publication of text		end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	end of comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	270 <sup>th</sup> day from issue date
14:13	01/04/00	12/09/99	03/15/00	01/19/00	02/03/00	02/21/00	05/09/00	03/06/00	03/20/00	05/09/00	09/30/00
14:14	01/14/00	12/21/99	03/15/00	01/31/00	02/14/00	02/21/00	05/09/00	03/14/00	03/20/00	05/09/00	10/10/00
14:15	02/01/00	01/10/00	04/03/00	02/16/00	03/02/00	03/20/00	05/09/00	04/03/00	04/20/00	01/26/01	10/28/00
14:16	02/15/00	01/25/00	04/17/00	03/01/00	03/16/00	03/20/00	05/09/00	04/17/00	04/20/00	01/26/01	11/11/00
14:17	03/01/00	02/09/00	05/01/00	03/16/00	03/31/00	04/20/00	01/26/01	05/01/00	05/22/00	01/26/01	11/26/00
14:18	03/15/00	02/23/00	05/15/00	03/30/00	04/14/00	04/20/00	01/26/01	05/15/00	05/22/00	01/26/01	12/10/00
14:19	04/03/00	03/13/00	06/15/00	04/18/00	05/03/00	05/22/00	01/26/01	06/02/00	06/20/00	01/26/01	12/29/00
14:20	04/17/00	03/27/00	07/03/00	05/02/00	05/17/00	05/22/00	01/26/01	06/16/00	06/20/00	01/26/01	01/12/01
14:21	05/01/00	04/07/00	07/03/00	05/16/00	05/31/00	06/20/00	01/26/01	06/30/00	07/20/00	01/26/01	01/26/01
14:22	05/15/00	04/24/00	07/17/00	05/30/00	06/14/00	06/20/00	01/26/01	07/14/00	07/20/00	01/26/01	02/09/01

14:23	06/01/00	05/10/00	08/01/00	06/16/00	07/03/00	07/20/00	01/26/01	07/31/00	08/21/00	01/26/01	02/26/01
14:24	06/15/00	05/24/00	08/15/00	06/30/00	07/17/00	07/20/00	01/26/01	08/14/00	08/21/00	01/26/01	03/12/01
15:01	07/03/00	06/12/00	09/01/00	07/18/00	08/02/00	08/21/00	01/26/01	09/01/00	09/20/00	01/26/01	03/30/01
15:02	07/17/00	06/23/00	09/15/00	08/01/00	08/16/00	08/21/00	01/26/01	09/15/00	09/20/00	01/26/01	04/13/01
15:03	08/01/00	07/11/00	10/02/00	08/16/00	08/31/00	09/20/00	01/26/01	10/02/00	10/20/00	01/26/01	04/28/01
15:04	08/15/00	07/25/00	10/16/00	08/30/00	09/14/00	09/20/00	01/26/01	10/16/00	10/20/00	01/26/01	05/12/01
15:05	09/01/00	08/11/00	11/01/00	09/18/00	10/02/00	10/20/00	01/26/01	10/31/00	11/20/00	01/26/01	05/29/01
15:06	09/15/00	08/24/00	11/15/00	10/02/00	10/16/00	10/20/00	01/26/01	11/14/00	11/20/00	01/26/01	06/12/01
15:07	10/02/00	09/11/00	12/01/00	10/17/00	11/01/00	11/20/00	01/26/01	12/01/00	12/20/00	05/2002	06/29/01
15:08	10/16/00	09/25/00	12/15/00	10/31/00	11/15/00	11/20/00	01/26/01	12/15/00	12/20/00	05/2002	07/13/01
15:09	11/01/00	10/11/00	01/02/01	11/16/00	12/01/00	12/20/00	05/2002	01/02/01	01/22/01	05/2002	07/29/01
15:10	11/15/00	10/24/00	01/16/01	11/30/00	12/15/00	12/20/00	05/2002	01/16/01	01/22/01	05/2002	08/12/01
15:11	12/01/00	11/07/00	02/01/01	12/18/00	01/02/01	01/22/01	05/2002	01/30/01	02/20/01	05/2002	08/28/01
15:12	12/15/00	11/22/00	02/15/01	01/02/01	01/16/01	01/22/01	05/2002	02/13/01	02/20/01	05/2002	09/11/01



## EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

### GENERAL

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

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

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

### FILING DEADLINES

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

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

### NOTICE OF RULE-MAKING PROCEEDINGS

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

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

### NOTICE OF TEXT

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

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

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

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

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

**EXECUTIVE ORDER NO. 172  
EXTENDING EXECUTIVE ORDER NO. 136**

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

Executive Order No. 136, establishing the Governor's Advisory Council on Hispanic/Latino Affairs, is hereby extended until December 31, 2001.

This order is effective immediately.

Done in the Capitol City of Raleigh, North Carolina, this the 31<sup>st</sup> day of May, 2000.

-----  
s/sJames B. Hunt Jr.  
Governor

ATTEST:

-----  
s/sElaine F. Marshall  
Secretary of State



*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.*

TITLE 10 - DEPARTMENT OF HEALTH AND HUMAN SERVICES

CHAPTER 3 - FACILITY SERVICES

◆ PUBLIC NOTICE ◆

Citizens are invited to attend public hearings on the Draft 2001 State Medical Facilities Plan to be conducted by the North Carolina State Health Coordinating Council (SHCC) at the following times and locations:

Greenville	July 24, 2000 (Monday)	1:30-2:30 p.m.	The Willis Building East Carolina University 300 East First Street Greenville, NC 27858-4356
Asheville  Avenue	July 26, 2000 (Wednesday)	1:30-2:30 p.m.	Mountain Area Health Education Center (Straddles St. Joseph's/Memorial Mission Hospitals; entrance for Memorial Mission)  Second Floor, Classroom #1 Asheville, NC 28801-4686
Greensboro	July 26, 2000 (Wednesday)	1:30-2:30 p.m.	Greensboro AHEC Room 31 Moses Cone Hospital Campus 1200 North Elm Street Greensboro, NC
Charlotte	July 27, 2000 (Thursday)	1:30-2:30 p.m.	Carolinas Medical Center Rankin Education Center Auditorium 1200 Blythe Boulevard Charlotte, NC
Wilmington	July 28, 2000 (Friday)	1:30-2:30 p.m.	Coastal Area Health Education Center New Hanover Regional Medical Center Auditorium -- Ground Floor 2131 S. 17th Street Wilmington, NC
Raleigh	July 31, 2000 (Monday)	1:30-2:30 p.m.	Jane S. McKimmon Center Corner of Gorman Street & Western Boulevard) Raleigh, NC

**All persons commenting on the Draft Plan at the public hearings are asked to supply WRITTEN COPIES of their remarks. Persons with disabilities who need assistance to participate in the public hearing are requested to notify the Medical Facilities Planning Section in advance so that reasonable accommodations can be arranged.**

The State Medical Facilities Plan projects need for acute care hospital beds, rehabilitation facilities and beds, ambulatory surgery facilities and operating rooms, technology services and equipment, nursing care beds, home health agencies, kidney dialysis stations, hospice home care programs and inpatient beds, psychiatric hospitals, substance abuse treatment facilities, and intermediate care facilities for the mentally retarded. **NOTE:** After the need determinations and policies are adopted by the SHCC and approved by the Governor, they will be incorporated in Administrative Procedure Act Rules for the 2001 State Medical Facilities Plan.

Persons wishing to review or purchase the Draft 2001 State Medical Facilities Plan or who want information about the Plan or the series of public hearings may call 919-733-4130, or write to: Medical Facilities Planning Section, Division of Facility Services, 2714 Mail Service Center, Raleigh, NC 27699-2714. Inquiries may be made to this same address about comments or petitions received regarding the Draft Plan. Copies of the Draft Plan will also be made available to all Area Health Education Centers and to all Lead Regional Organizations (Councils of Government) in the State. **ALL WRITTEN COMMENTS AND PETITIONS ON THE DRAFT 2001 STATE MEDICAL FACILITIES PLAN MUST BE RECEIVED BY AUGUST 1, 2000.**

**NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

**SUMMARY OF NOTICE OF INTENT TO REDEVELOP  
A BROWNFIELDS PROPERTY**

**RUSH FAMILY, LLC**

Pursuant to G.S. 130A-310.34, Rush Family, LLC has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property. The Property consists of one parcel in Charlotte, North Carolina commonly known as 216 Dunavant Street. Groundwater contamination has been discovered on a portion of the property. Rush Family, LLC intends to continue to use the property for office space and warehousing and to construction additional improvement for expanded office and warehousing activity. Written public comments may be submitted to DENR within 60 days of the date of this Notice. Written requests for a public meeting may be submitted to DENR within 30 days of the date of this Notice. All such comments and requests should be addressed to the following:

**Mr. Bruce Nicholson, Head  
Special Remediation Branch  
Superfund Section  
Division of Waste Management  
North Carolina Department of Environment and Natural Resources  
401 Oberlin Road  
Suite 150  
Raleigh, North Carolina 27605**

TITLE 15A - DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2D - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .1400 - NITROGEN OXIDES

In addition to the public hearings previously published in the NC Register, Volume 14, Issue 22, Pages 1973 - 1979, the following public hearing date have been added for the following rules: 15A NCAC 2D .1402 - .1404, .1411, .1416 - .1417. The proposed amendments and adoptions are critical element in Governor Hunt's Clean Air Plan for North Carolina. These proposals will reduce nitrogen oxide emissions from power plants within North Carolina, which will, in turn, significantly reduce the formation of low-level ozone within this State.

*Comment Procedures: All persons interested in these matters are invited to attend the public hearings. Any person desiring to comment for more than three minutes is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The hearing officer may limit oral comments to no more than five minutes. The hearing record will remain open until September 1, 2000 to receive additional written statements. Comments should be sent to and additional information concerning the hearing or the proposals may be obtained by contacting Mr. Thomas C. Allen, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641, Phone (919)733-1489, Fax (919)715-7476, E-mail: Thom.Allen@ncmail.net.*

Thursday, July 27, 2000

2:00 pm

Jaycees' Building  
Franklin Memorial Park  
West Main Street  
Franklin, NC 28734

*An agency may choose to publish a rule-making agenda which serves as a notice of rule-making proceedings if the agenda includes the information required in a notice of rule-making proceedings. The agency must accept comments on the agenda for at least 60 days from the publication date. Statutory reference: G.S. 150B-21.2.*

**TITLE 21- OCCUPATIONAL LICENSING BOARDS**

**CHAPTER 32 - NORTH CAROLINA MEDICAL BOARD**

**CHAPTER 46 - NORTH CAROLINA BOARD OF PHARMACY**

*This agenda will serve as the notice of rule-making proceedings for the following rule-making bodies, The North Carolina Medical Board and The North Carolina Board of Pharmacy.*

**Citation to Existing Rules Affected by this Rule-Making:** *21 NCAC 32; 21 NCAC 46 - Other rules may be proposed in the course of the rule-making process.*

**Authority for the rule-making:** *G.S. 90-18(c)(3a), 90-6(c)*

**Statement of the Subject Matter:** *The North Carolina Medical Board and the North Carolina Board of Pharmacy joint subcommittee shall develop rules to govern the performance of medical acts by clinical pharmacist practitioners.*

**Reason for Proposed Action:** *G.S. 90-18(c)(3a) is to be effective July 1, 2000.*

**Comment Procedures:** *Written comments should be directed to Helen D. Meelheim, Medical Board, P.O. Box 20007, Raleigh, NC 27619. Public comments will also be accepted at a public hearing, to be scheduled at a later date.*

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

**TITLE 1 - DEPARTMENT OF ADMINISTRATION**

**CHAPTER 6 - STATE PROPERTY AND CONSTRUCTION**

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

**Citation to Existing Rules Affected by this Rule-Making:** *1 NCAC 6B .0101-.1100 - Other rules may be proposed in the course of the rule-making process.*

**Authority for the rule-making:** *G.S. 143-134(4); 143-146*

**Statement of the Subject Matter:** *The revision will update the APA in accordance with current legislation, everyday practices, and Department of Administration programs.*

**Reason for Proposed Action:** *This revision allows the State Property Office to operate in accordance with current legislation and will also clarify those areas that are ambiguous, particularly in respect to client agencies. This revision will also re-establish rules that were mistakenly repealed in 1986. Further, this revision will encompass Department of Administration program priorities.*

**Comment Procedures:** *All comments should be directed to Joseph H. Henderson, Director, State Property Office, 1321 Mail Service Center, Raleigh, NC 27699-1321, email: Joseph.Henderson@ncmail.net.*

*52B .0406 - Other rules may be proposed in the course of the rule-making process.*

**Authority for the rule-making:** *G.S. 106-405.17; S.L. 1999-237, s. 13.6*

**Statement of the Subject Matter:** *This Rule requires the testing of horses and other equine for equine infectious anemia (EIA) prior to sale, but allows equine to be sold pending receipt of test results. Proposed change would require equine to be isolated until official negative test is received.*

**Reason for Proposed Action:** *Existing rules allow equine to be removed from a livestock market or other place of sale and commingled with other equine before EIA test results are known. The State Veterinarian believes that these equine should be isolated pending test results to prevent possible exposure of other equine.*

**Comment Procedures:** *Written comments may be submitted to David S. McLeod, Secretary, North Carolina Board of Agriculture, PO Box 27647, Raleigh, NC 27611.*

**TITLE 12 - DEPARTMENT OF JUSTICE**

**CHAPTER 10 - N.C. SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION**

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

**Citation to Existing Rules Affected by this Rule-Making:** *12 NCAC 10B .0304, .0708-.0713, .0804-.0805, .0913-.0920, .1101-.1104, .1302, .1305-.1308, .1501-.1505, .1601-.1606 - Other rules may be proposed in the course of the rule-making process.*

**Authority for the rule-making:** *G.S. 17-E*

**Statement of the Subject Matter:** *12 NCAC 10B .0304 - Medical Examination - sets out guidelines for the Medical Examination and its submission to Division staff. 12 NCAC 10B .0708 - Administration of Telecommunicator*

**TITLE 2 - DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

**CHAPTER 52 - VETERINARY DIVISION**

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

**Citation to Existing Rules Affected by this Rule-Making:** *2 NCAC*

*Certification Course - sets out guidelines for the institution or 12 NCAC 10B .0709 - Responsibilities: School Directors, Telecommunicator Certification Course - sets out the responsibilities of the School Director in the administration of a Telecommunicator Certification Course.*

*12 NCAC 10B .0710 - Certification: School Directors, Telecommunicator Certification Course - sets out the qualifications an individual must have in order to be certified as a School Director for the Telecommunicator Certification Course.*

*12 NCAC 10B .0711 - Terms and Conditions of Telecommunicator School Director Certification - sets out what a School Director for a Telecommunicator Certification Course must do in order to maintain their certification as a School Director.*

*12 NCAC 10B .0712 - Suspension, Revocation, or Denial: Telecommunicator School Director Certification - sets out the Commission's authority to take action against a School Director's certification.*

*12 NCAC 10B .0713 - Admission of Trainees - sets out the qualifications an prospective trainee must have in order to gain admission into a Commission-accredited basic training course.*

*12 NCAC 10B .0804 - Accreditation: Delivery/Telecommunicator Certification Course - sets out what an agency or institution must submit to Division staff in order to be accredited to deliver a Telecommunicator Certification Course.*

*12 NCAC 10B .0805 - Reports/Telecommunicator Certification Course/Completion - sets out what paperwork a School Director for a Telecommunicator Certification Course must submit to Division staff prior to and after delivery of a Telecommunicator Certification Course.*

*12 NCAC 10B .0913 - Certification: Instructors for Telecommunicator Certification Course - sets out the categories of instructors for the Telecommunicator Certification Course.*

*12 NCAC 10B .0914 - Telecommunicator Instructor Certification - sets out what qualifications an individual must have in order to teach in a Telecommunicator Certification Course.*

*12 NCAC 10B .0915 - Terms and Conditions of Telecommunicator Instructor Certification - sets out what Telecommunicator Instructors must do in order to maintain their certification to teach in the Telecommunicator Certification Course.*

*12 NCAC 10B .0916 - Professional Lecturer Certification: Telecommunicator Certification Course -sets out what qualifications an individual must have in order to teach as a Professional Lecturer in a Telecommunicator Certification Course.*

*12 NCAC 10B .0917 - Terms and Conditions of Professional Lecturer Certification: Telecommunicator Certification Course - sets out what Professional Lecturers must do in order to maintain their certification to teach in the Telecommunicator Certification Course.*

*12 NCAC 10B .0918 - Use of Guest Participants: Telecommunicator Certification Course - sets out the guidelines*

*agency sponsoring a Telecommunicator Certification Course. the School Director must follow to include guest participants in the delivery of a Telecommunicator Certification Course.*

*12 NCAC 10B .0919 -Suspension, Revocation, or Denial: Telecommunicator Instructor Certification - sets out the Commission's authority to take action against Telecommunicator Instructors' certification.*

*12 NCAC 10B .0920 - Period Suspension, Revocation, or Denial of Telecommunicator Instructor Certification - sets out the period for which actions taken by the Commission against Telecommunicator Instructor's certification may be in effect.*

*12 NCAC 10B .1101 - Purpose - sets out the purpose & intent of the Service Award Program for full-time justice officers.*

*12 NCAC 10B .1102 - General Provisions - sets out general provisions of the Service Award Program for full-time justice officers.*

*12 NCAC 10B .1103 - Intermediate Service Award - sets out qualifications for obtaining the Intermediate Service Award.*

*12 NCAC 10B .1104 - Advanced Service Award - sets out qualifications for obtaining the Advanced Service Award.*

*12 NCAC 10B .1302 - Telecommunicator Certification Course - sets forth the 47-hour Telecommunicator Certification Course developed by the North Carolina Justice Academy as the Commission's accredited telecommunicator certification training program.*

*12 NCAC 10B .1305 - Trainee Attendance - sets out requirements for trainee attendance in the Telecommunicator Certification Course and explains the responsibilities of the School Director in relation to trainee attendance.*

*12 NCAC 10B .1306 - Completion of Telecommunicator Certification Course - sets out the requirements for a trainee to successfully complete the Telecommunicator Certification Course and what steps are to be taken in the event of absence or deficiencies.*

*12 NCAC 10B .1307 - Comprehensive Written Examination - Telecommunicator Certification Course - sets out the definition of the state exam and requires each trainee to successfully complete the state exam.*

*12 NCAC 10B .1308 - Satisfaction of Minimum Training Requirements - sets forth what a trainee must do in order to be credited with completion of the Telecommunicator Certification Course.*

*12 NCAC 10B .1501 - Purpose - sets out the purpose & intent of the Reserve Justice Officers Service Award Program.*

*12 NCAC 10B .1502 - General Provisions - sets out general provisions of the Reserve Justice Officers Service Award Program.*

*12 NCAC 10B .1503 - Intermediate Reserve Service Award - sets out the qualifications for obtaining the Intermediate Reserve Justice Officers Service Award.*

*12 NCAC 10B .1504 - Advanced Reserve Service Award - sets out the qualifications for obtaining the Advanced Reserve Justice Officers Service Award.*

*12 NCAC 10B .1505 - How to Apply - sets out the process*

which an individual may apply for the Reserve Justice Officers Service Award Program.

12 NCAC 10B .1601 - Purpose - sets out the purpose & intent of the Telecommunicator Professional Certificate Program.

12 NCAC 10B .1603 - Basic Telecommunicator Certificate - sets out the qualifications for obtaining the Basic Telecommunicator Professional Certificate.

12 NCAC 10B .1604 - Intermediate Telecommunicator Certificate - sets out the qualifications for obtaining the Intermediate Telecommunicator Professional Certificate.

12 NCAC 10B .1605 - Advanced Telecommunicator Certificate - sets out the qualifications for obtaining the Advanced Telecommunicator Professional Certificate.

12 NCAC 10B .1606 - How to Apply - explains the process by which an individual may apply for the Telecommunicator Professional Certificate Program and the method by which experience, education, and training must be documented.

**Reason for Proposed Action:**

12 NCAC 10B .0304 - Medical Examination - proposed amendment requires each enrollee in a Commission-accredited basic training course to complete, sign, and date the Commission's Medical History Statement Form (F-1) and be examined by a physician who will complete the Medical Examination Report (F-2).

12 NCAC 10B .0708 - Administration of Telecommunicator Certification Course - the guidelines in this proposed amendment make the administration of the Telecommunicator Certification Course more equivalent to the rules already in place governing the administration of the Detention Officer Certification Course.

12 NCAC 10B .0709 - Responsibilities: School Directors, Telecommunicator Certification Course - the proposed Rule explains the duties and responsibilities of the School Director, that they are responsible for the planning, coordination, and supervision of all aspects surrounding a course delivery.

12 NCAC 10B .0710 - Certification: School Directors, Telecommunicator Certification Course - sets out that in order to be certified as a School Director for the Telecommunicator Certification Course an individual must apply and show documentation of current certification as a General Instructor under the Criminal Justice Education and Training Standards Commission. The proposed Rule also "grandfathers" those individuals who currently hold certification as Telecommunicator School Directors.

12 NCAC 10B .0711 - Terms and Conditions of Telecommunicator School Director Certification - the proposed rule explains that a School Director for a Telecommunicator Certification Course must perform all duties as specified in proposed Rule .0709 in order to maintain their certification as a School Director.

12 NCAC 10B .0712 - Suspension, Revocation, or Denial: Telecommunicator School Director Certification - sets out the Commission's authority to take action against a School Director's certification by denying, suspending, or revoking a

12 NCAC 10B .1602 - General Provisions - sets out general provisions of the Telecommunicator Professional Certificate Program.

School Director's certification if the Commission finds that the individual has failed to meet any of the specified terms and conditions or fails to comply with the Commission's rules.

12 NCAC 10B .0713 - Admission of Trainees - the proposed rule provides guidance to the School Director regarding reading assessments, age and medical forms for trainees admitted into Commission-accredited basic training courses.

12 NCAC 10B .0804 - Accreditation: Delivery/Telecommunicator Certification Course -the proposed rule explains that an agency or institution must apply for accreditation to deliver the Telecommunicator Certification Course and gives the Commission power to suspend or revoke accreditation .

12 NCAC 10B .0805 - Reports/Telecommunicator Certification Course/Completion - the proposed rule explains that an agency or institution accredited to deliver the Telecommunicator Certification Course must submit a Pre-Delivery Report 30 days prior to commencing a delivery of the course and a Post-Delivery Report no more than 10 days after the conclusion of the course.

12 NCAC 10B .0913 - Certification: Instructors for Telecommunicator Certification Course - the proposed rule explains there are two categories of instructors for the Telecommunicator Certification Course - Telecommunicator Instructor and Professional Lecturer.

12 NCAC 10B .0914 - Telecommunicator Instructor Certification -the proposed rule explains that in order to teach in a Telecommunicator Certification Course an individual must have either successfully completed the Telecommunicator Certification Course or hold valid General or Grandfather Telecommunicator Certification, and hold valid General Instructor under the Criminal Justice Education and Training Standards Commission, and explains that qualified individuals may teach in any topic area of the course.

12 NCAC 10B .0915 - Terms and Conditions of Telecommunicator Instructor Certification - the proposed rule explains that in order to maintain their certification as Telecommunicator Instructors, or to be approved for Full certification after the probationary instructional period has passed, individuals must submit a recommendation from a School Director, documentation of a minimum of 8 hours of instruction in a delivery of the Telecommunicator Certification Course during the previous period of certification, and documentation that their General Instructor Certification with the Criminal Justice Education and Training Standards Commission remains valid.

12 NCAC 10B .0916 - Professional Lecturer Certification: Telecommunicator Certification Course -the proposed rule explains that in order to teach as a Professional Lecturer in the "Civil Liability for the Telecommunicator" block in the Telecommunicator Certification Course an individual must be a licensed attorney-at-law or hold a law degree from an accredited law school.



12 NCAC 10B .0917 - *Terms and Conditions of Professional Lecturer Certification: Telecommunicator Certification Course* - the proposed rule explains that Professional Lecturer 12 NCAC 10B .0918 - *Use of Guest Participants: Telecommunicator Certification Course* - explains that the School Director may approve the use of guest participants in the delivery of a Telecommunicator Certification Course, but stipulates that these guest participants shall in no way replace the primary instructor, and they are to be subject to direct on-site supervision by the certified instructor.

12 NCAC 10B .0919 - *Suspension, Revocation, or Denial: Telecommunicator Instructor Certification* -sets out the Commission's authority to take action against a Telecommunicator Instructor's certification by denying, suspending, or revoking a Telecommunicator Instructor's certification if the Commission finds that the individual has failed to meet any of the specified terms and conditions or fails to comply with the Commission's rules.

12 NCAC 10B .0920 - *Period Suspension, Revocation, or Denial of Telecommunicator Instructor Certification* - the proposed rule explains the time period for which actions taken by the Commission against a Telecommunicator Instructor's certification may be in effect. Depending upon the cause of sanction, the Commission may revoke certification for one to five years.

12 NCAC 10B .1101 - *Purpose* - explains the purpose & intent of the Service Award Program for full-time justice officers. The term "justice officers" is to be substituted for "deputies and detention officers" so that telecommunicators may be included as well, and therefore eligible to apply for service awards.

12 NCAC 10B .1102 - *General Provisions* - explains the general provisions of the Service Award Program for full-time justice officers and sets forth that an applicant can only count full-time service.

12 NCAC 10B .1103 - *Intermediate Service Award* - sets out the qualifications at a minimum of 15 years full time service in order for an individual to obtain the Intermediate Service Award.

12 NCAC 10B .1104 - *Advanced Service Award* - sets out the qualifications at a minimum of 20 years full time service in order for an individual to obtain the Advanced Service Award.

12 NCAC 10B .1302 - *Telecommunicator Certification Course* - the proposed rule adopts the 47-hour Telecommunicator Certification Course developed by the North Carolina Justice Academy as the Commission's accredited telecommunicator certification training program and specifies how many hours are to be allotted to each block of instruction. The rule also incorporates the training manual and course management guide as published by the Academy.

12 NCAC 10B .1305 - *Trainee Attendance* - the proposed rule explains the requirements for trainee attendance in the Telecommunicator Certification Course and explains the responsibilities of the School Director in relation to trainee attendance. The rule gives the School Director the authority to

certification is continuous so long as a renewal application submitted every two years.

excuse absences, schedule make-up work and to terminate trainee for habitual absences or tardiness.

12 NCAC 10B .1306 - *Completion of Telecommunicator Certification Course* - the proposed rule sets out the requirements for a trainee to successfully complete the Telecommunicator Certification Course and what steps are to be taken in the event of absences or deficiencies. The rule also explains provisions for limited enrollment.

12 NCAC 10B .1307 - *Comprehensive Written Exam for Telecommunicator Certification Course* - the proposed rule defines the state exam as comprehensive in nature, based on the topic areas identified in .1302, and that it is an objective test. The rule also requires each trainee to successfully complete the state exam with a score of 70% or better in order to successfully complete the course, and provides provisions for a trainee to retake the state exam should they make less than the minimum score required.

12 NCAC 10B .1308 - *Satisfaction of Minimum Trainee Requirements* - the proposed rule explains that a trainee must achieve a score of 70% or better, successfully complete the Telecommunicator Certification Course, and obtain a recommendation of the School Director in order to be certified upon completion of the Telecommunicator Certification Course.

12 NCAC 10B .1501 - *Purpose* - explains the purpose & intent of the Reserve Justice Officers Service Award Program, which recognizes those justice officers (deputy sheriff, detention officer and telecommunicator) serving in a part-time or reserve capacity for their service to their agency.

12 NCAC 10B .1502 - *General Provisions* - explains the general provisions of the Reserve Justice Officers Service Award Program. The rule makes the program specific to those individuals currently in a reserve or part-time status and sets forth a formula for calculation of one year of reserve service as 96 hours of service over a one-year period, and allows the substitution of past full-time service for part of the time requirement.

12 NCAC 10B .1503 - *Intermediate Reserve Service Award* - sets out the qualifications for obtaining the Intermediate Reserve Justice Officers Service Award at 15 years of reserve service.

12 NCAC 10B .1504 - *Advanced Reserve Service Award* - sets out the qualifications for obtaining the Advanced Reserve Justice Officers Service Award as 20 years of reserve service.

12 NCAC 10B .1505 - *How to Apply* - explains the process which an individual may apply for the Reserve Justice Officers Service Award Program and the method by which length of service must be documented.

12 NCAC 10B .1601 - *Purpose* - explains the purpose & intent of the Telecommunicator Professional Certificate Program, which is designed to recognize telecommunicators for their experience and education training beyond the minimum standard.

12 NCAC 10B .1602 - *General Provisions* - the proposed

explains the general provisions of the Telecommunicator Professional Certificate Program and what qualifications a telecommunicator must have in order to apply. The applicant must be a full-time telecommunicator certified by the Commission, holding General or Grandfather Certification. The rule also explains the formula for calculating education and training points.

12 NCAC 10B .1603 - Basic Telecommunicator Certificate - sets out the qualifications for obtaining the Basic Telecommunicator Professional Certificate as successful completion of the 12 NCAC 10B .1605 - Advanced Telecommunicator Certificate - sets out the qualifications for obtaining the Advanced Telecommunicator Professional Certificate based on varying combinations of education, training, and experience. The rule also explains what type of education the Commission considers acceptable for application to the Professional Certificate Program.

12 NCAC 10B .1606 - How to Apply - sets out the process by which an individual may apply for the Telecommunicator Professional Certificate Program.

Comment Procedures: Please contact Peggy Bilbrey in writing at PO Drawer 629, Raleigh, NC 27602, by phone at 919-716-6460, or email at pbilbrey@mail.jus.state.nc.us with any questions or comments concerning this information.

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CHAPTER 11 - NORTH CAROLINA ALARM SYSTEMS LICENSING BOARD

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

Citation to Existing Rules Affected by this Rule-Making: 12 NCAC 11 - Other rules may be proposed in the course of the rule-making process.

Authority for the rule-making: G.S. 74D-5(a)(1, 2, 3, 4, & 5), 74D-6

Statement of the Subject Matter: The Board proposes to adopt rules to provide a "grading system" to assist the Board, the staff, and the public in the review of criminal records as they relate to the application process for licensees and registrations.

Reason for Proposed Action: Currently the Board does not have written procedures to use when reviewing criminal record checks during the background investigation for a license or registration. The Board and its staff believes that a standardized review

Telecommunicator Certification Course and no less than one year of service.

12 NCAC 10B .1604 - Intermediate Telecommunicator Certificate - sets out the qualifications for obtaining the Intermediate Telecommunicator Professional Certificate based on varying combinations of education, training, and experience. The rule also explains what type of education the Commission considers acceptable for application to the Professional Certificate Program.

process will be beneficial to both the Board and the public.

Comment Procedures: Written comments are encouraged and may be submitted to W. Wayne Woodard, Administrator, NC Alarm Systems Licensing Board, 3320 Old Garner Rd., Raleigh, NC 27626.

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CHAPTER 11 - NORTH CAROLINA ALARM SYSTEMS LICENSING BOARD

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

Citation to Existing Rules Affected by this Rule-Making: 12 NCAC 11 - Other rules may be proposed in the course of the rule-making process.

Authority for the rule-making: G.S. 74D-5(a)(1, 2, 3, 4, & 5), 74D-6

Statement of the Subject Matter: The Board proposes adopting rules to establish a "grading system" that will be used during background investigations of applicants for license or registration. The "grading system" will be used to determine if an applicant, who has a criminal record, has the requisite good moral character to hold a license or registration.

Reason for Proposed Action: Currently, the Board has no rules to establish a standard for good moral character for applicants with a prior criminal history. To prevent arbitrary decision making, the Board believes a standard should be established which can be used by the staff or the industry in reviewing applicants for a license or a registration.

Comment Procedures: The record is open for receipt of written comments. Such comments, to become a part of the record, must be submitted to Administrator W. Wayne Woodard, Alarm Systems Licensing Board, 3320 Old Garner Rd., Raleigh, NC 27626.

TITLE 15A - DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CHAPTER 3 - MARINE FISHERIES

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

Reason for Proposed Action:

15A NCAC 3I .0101; 3J .0107, .0111; 3O .0503, .0505 - The Fisheries Reform Act of 1997 and its amendments (House Bill 1448) requires a complete review of the Marine Fisheries laws. G.S. 113-169.1, as adopted, authorizes the Marine Fisheries Commission to adopt permits and establish fees.

15A NCAC 3L .0207 - G.S. 143B-289.52(e) authorizes the adoption of temporary rules within six months of adoption or amendment of a fishery management plan or the notification of a change in management measures needed to remain in compliance with a fishery management plan. Addendum 1 to the fishery management plan for horseshoe crabs was approved in February of 2000. North Carolina requested and was granted de minimis status on April 4, 2000. The amendment to this Rule is necessary to maintain compliance with that plan and to retain de minimis status.

15A NCAC 3L .0301 - G.S. 143B-289.52(e) authorizes the adoption of temporary rules within six months of adoption or amendment of fishery management plan or the notification of change in management measures needed to remain in compliance with a fishery management plan. Amendment 3 to the fishery management plan for American lobster was approved in August of 1999. North Carolina requested de minimis status on October 11, 1999, and such status was granted on January 18, 2000. The amendment in this Rule is necessary to maintain compliance with that plan and to retain de minimis status.

15A NCAC 3M .0510 - G.S. 143B-289.52(e) authorizes the adoption of temporary rules with six months of adoption or amendment of a fishery management plan or the notification of a change in management measures needed to remain in compliance with a fishery management plan. The Atlantic States Marine Fisheries Commission adopted the Fishery Management Plan for American Eel on November 4, 1999. The amendment to this Rule is necessary to maintain compliance with that plan.

Comment Procedures: Written comments are encouraged and may be submitted to the MFC, Juanita Gaskill, PO Box 769, Morehead City, NC 28557.

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CHAPTER 7 - COASTAL MANAGEMENT

Citation to Existing Rules Affected by this Rule-Making: NCAC 3I .0101; 3J .0107, .0111; 3L .0207, .0301; 3M .0510 .0503, .0505 - Other rules may be proposed in the course of rule-making process.

Authority for the rule-making: G.S. 113-134; 113-182; 143B-289.52

Statement of the Subject Matter: Amendment of Marine Fish Rules.

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

Citation to Existing Rules Affected by this Rule-Making: NCAC 7H .2501-.2505 - Other rules may be proposed in course of the rule-making process.

Authority for the rule-making: G.S. 113A-119.1

Statement of the Subject Matter: Disaster Response Gen Permit

Reason for Proposed Action: This Rule will provide relief hurricane victims by deferring permit fees and expediting processes for rebuilding hurricane damaged structures.

Comment Procedures: Comments may be submitted to D Huggett, NC Division of Coastal Management, 1638 Mail Ser Center, Raleigh, NC 27699-1638.

TITLE 19A - DEPARTMENT OF TRANSPORTATION

CHAPTER 3 - DIVISION OF MOTOR VEHICLES

Notice of Rule-making Proceedings is hereby given by the Department of Transportation - Division of Motor Vehicle accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to a as a result of this notice of rule-making proceedings and comments received on this notice.

Citation to Existing Rules Affected by this Rule-Making: NCAC 3G - Other rules may be proposed in the course of the making process.

Authority for the rule-making: G.S. 20-39(b); 20-218; 20-3.

**Statement of the Subject Matter:** *The rules proposed for adoption state conditions necessary for an individual to obtain a license to drive a school bus in North Carolina.*

**Reason for Proposed Action:** *The rules proposed for adoption will ensure minimum physical standards for school bus drivers which will provide safe transportation for school children and other motorists.*

**Comment Procedures:** *Any interested person may submit written comments on the proposed rules by mailing the comments to Emily Lee, NCDOT, 1501 Mail Service Center, Raleigh, NC 27699-1501 by October 15, 2000.*

**Authority for the rule-making:** *G.S. 93E-1-10*

**Statement of the Subject Matter:** *The North Carolina Appraisal Board has, by rules, adopted the Uniform Standards of Professional Appraisal Practice (USPAP) as its standards of practice. Standard 3, which governs the review by one appraiser of an appraisal report prepared by another appraiser, contains specific requirements for an appraisal review. The proposed rule would required the Appraisal Board's investigators to perform an appraisal review in compliance with Standard 3 when investigating a disciplinary case against an appraiser.*

**Reason for Proposed Action:** *This rule-making proceeding was initiated as a result of a petition submitted by Thomas G. Hildebrandt, Jr.*

**Comment Procedures:** *Written comments should be submitted to Mel Black, Executive Director, North Carolina Appraisal Board, PO Box 20500, Raleigh, NC 27619-0500.*

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**TITLE 25 - DEPARTMENT OF STATE PERSONNEL**

**CHAPTER 1 - OFFICE OF STATE PERSONNEL**

*Notice of Rule-making Proceedings is hereby given by the State Personnel Commission in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-*

**TITLE 21 - OCCUPATIONAL LICENSING BOARD**

**CHAPTER 57 - REAL ESTATE APPRAISAL BOARD**

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

**Citation to Existing Rules Affected by this Rule-Making:** *21 NCAC 57A .0501 - Other rules may be proposed in the course of the rule-making process.*

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*making proceedings and any comments received on this notice.*

**Citation to Existing Rules Affected by this Rule-Making:** *25 NCAC 1E .0705-.0708 - Other rules may be proposed in the course of the rule-making process.*

**Authority for the rule-making:** *G.S. 126-4; 97-22; 97-28*

**Statement of the Subject Matter:** *The purpose of the Worker's Compensation Administration is to insure that employees injured on the job are provided compensation in accordance with the Workers' Compensation Act and to provide consistent application of these rules and regulations. These rules also insure a limited and determinate liability for the employer as well as providing swift and certain remedy to an injured employee.*

**Reason for Proposed Action:** *These amendments are proposed in order to reflect the affect third party administration will have on program administration. It also clarifies leave time allowances for employees who have not missed work, or have not missed enough work to meet the statutory waiting period before benefits can begin, but still must miss work periodically for medical or therapy treatment.*

**Comment Procedures:** *Written comments may be submitted on the subject matter of the proposed rule-making to Delores A Joyner, Rule-making Coordinator, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331.*

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

**TITLE 2 - DEPARTMENT OF AGRICULTURE  
AND CONSUMER SERVICES**

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Agriculture intends to repeal rules cited as 2 NCAC 43L .0304-.0305. Notice of Rule-making Proceedings was published in the Register on March 15, 2000.

Proposed Effective Date: March 1, 2001

Instructions on How to Demand a Public Hearing (*must be requested in writing within 15 days of notice*): Any person may request a public hearing on the proposed rules by submitting a request in writing no later than July 18, 2000, to David S. McLeod, Secretary, NC Board of Agriculture, PO Box 27647, Raleigh, NC 27611.

Reason for Proposed Action: Facilities at the Western North Carolina Agriculture Center are available for short-term (less than 15 days) rental pursuant to G.S. 146. Rental rates are established by the Board of Agriculture and incorporated into the rental agreements, making it unnecessary to set forth the rental rates in the Department's rules.

Comment Procedures: Written comments may be submitted no later than August 2, 2000, to David S. McLeod, Secretary, NC Board of Agriculture, PO Box 27647, Raleigh, NC 27611.

Fiscal Impact

State	Local	Sub.	None
			0

**CHAPTER 43 - MARKETS**

**SUBCHAPTER 43L - MARKETS**

**SECTION .0300 - FEES: WESTERN NORTH CAROLINA  
HORSE AND LIVESTOCK FACILITY FEE SCHEDULE**

**.0304 HORSE FACILITY**

(a) Fees for non-livestock events are as follows:

- (1) Fees for use of the show arena are eight hundred dollars (\$800.00) per show day or ten percent of the gate, whichever is greater, provided that for the show arena to be opened before 7:00 a.m. or after midnight requires an additional fee of fifty dollars (\$50.00) per hour or part thereof for a maximum of four hundred dollars (\$400.00).

- (2) Fees for use of the covered practice ring shall be ~~ten~~ hundred dollars (\$300.00) per day, provided that used in conjunction with the show arena.
- (3) Fees for use of the covered arena and office shall be ~~ten~~ hundred dollars (\$500.00) per day or ten percent of gate, whichever is greater, provided that for the covered arena and office to be opened before 7:00 a.m. or after midnight requires an additional fee of fifty dollars (\$50.00) per hour or part thereof for a maximum of hundred and fifty dollars (\$250.00).
- (4) The open practice rings shall be rented at the ~~same~~ rental rate as set forth in Rule .0305(e) of this Section.
- (5) A twenty-five dollar (\$25.00) fee shall be charged for electrical connection to facility power outlets.
- (6) The fees set forth in Paragraph (b) of this Rule apply to any activity not specifically covered under Paragraph.

(b) Fees for livestock events are as follows:

- (1) Fees for use of the show arena are six hundred and ~~thirty~~ dollars (\$650.00) per show day or ten percent of the gate, whichever is greater; provided that for the show arena to be opened before 7:00 a.m. or after midnight requires an additional fee of fifty dollars (\$50.00) per hour or part thereof for a maximum of three hundred and fifty dollars (\$350.00). Rental of the show arena shall include covered practice ring. The open practice ring adjacent to show arena may be rented for one hundred dollars (\$100.00) per show day provided it is used in conjunction with the show arena. This ring may be rented separately for two hundred dollars (\$200.00) per show day, provided it does not interfere with an event taking place in the show arena.
- (2) Fees for use of the covered arena and office shall be ~~ten~~ hundred dollars (\$400.00) per day or ten percent of gate, whichever is the greater, provided that for the covered arena and office to be opened before 7:00 a.m. or after midnight requires an additional fee of fifty dollars (\$50.00) per hour or part thereof for a maximum of hundred dollars (\$200.00). Rental of the covered arena and office includes the opened practice ring adjacent to covered arena and office.
- (3) Fees for stalls are as follows:

Days	Fees
.....	(A)
.....	\$12.00; \$15.00 minimum for youth show;

.....(B) 2  
 .....\$20.00;  
 .....  
 .....(C).....3  
 .....\$26.00;  
 .....  
 .....(D).....4

.....\$32.00;  
 .....  
 .....(E).....5  
 .....\$36.00; and  
 (F) \$3.00 per additional day thereafter.

- (4) ~~Agricultural youth organizations shall receive a 50 percent discount for stall rentals and a 25 percent discount on show arena rental when participation is restricted to youth. Educational clinics and seminars shall receive a 50 percent discount on show arena and covered practice ring rates when left in clean condition.~~
- (5) ~~A fee of seventy-five dollars (\$75.00) per day is required for use of the facility's jumps.~~
- (6) ~~A fee of twenty-five dollars (\$25.00) per hour is required for use of the facility's motorized grounds equipment. This fee includes the operator.~~
- (7) ~~Fees for use of the facility's office equipment, if available, are charged on an expense incurred basis.~~
- (8) ~~Fees for security and other support services at any event are charged on a cost plus ten percent basis. The need for security shall be determined by facility management in consultation with show management.~~
- (9) ~~A fee of ten dollars (\$10.00) per night is required for any camper parking overnight on facility grounds. Any horse trailer connected to a power outlet at the facility shall be charged the same fee as a camper.~~
- (10) ~~Miscellaneous horse facility equipment is available according to the following fee schedule:~~
- (A) ~~metal livestock panels — three dollars (\$3.00) each per show;~~
  - (B) ~~small livestock panels — one dollar (\$1.00) per panel or if installed, four dollars (\$4.00) per pen;~~
  - (C) ~~center ring set up — thirty-five dollars (\$35.00);~~
  - (D) ~~removal of end gates — fifty dollars (\$50.00);~~
  - (E) ~~farm wagon for staging — twenty-five dollars (\$25.00) each;~~
  - (F) ~~chairs — forty cents (\$0.40) each per day;~~
  - (G) ~~tables — two dollars (\$2.00) each per day;~~
  - (H) ~~paper table coverings — thirty-five cents (\$0.35) each;~~
  - (I) ~~portable PA system — twenty-five dollars (\$25.00) per event;~~
  - (J) ~~wireless mike system — twenty-five dollars (\$25.00) (batteries not included);~~
  - (K) ~~9-volt batteries — one dollar (\$1.00) each;~~
  - (L) ~~podium — ten dollars (\$10.00) per day;~~
  - (M) ~~projection screen — ten dollars (\$10.00) per day;~~
  - (N) ~~slide projector — thirty dollars (\$30.00) per day;~~
  - (O) ~~two-way radio — twenty-five dollars (\$25.00);~~
  - (P) ~~VHF hand held transceiver — six dollars (\$6.00) each per day.~~
- (11) ~~A fee of twenty-five dollars (\$25.00) per concessionaire is required.~~
- (12) ~~A lessee must have prior approval of the Agricultural Center Manager before catering services will be~~

allowed on the grounds. A fifty dollar (\$50.00) fee is charged for catering services that serve no more than 200 plates. For each plate served in excess of 200 plates, a fee of thirty-five cents (\$0.35) per plate shall be charged.

- (13) ~~Auditing of ticketed events: seven dollars (\$7.00) per hour for ticket sellers, six dollars (\$6.00) per hour for ticket takers and securing doors and ten percent administrative charge.~~
- (14) ~~There shall be a charge of ten dollars (\$10.00) per hour for the facility to be opened with minimum lighting after 5:00 p.m. the day prior to a show event.~~

Authority G.S. 106-22; 106-530; 106-6.1.

.0305 LIVESTOCK FACILITY

(a) Fees for use of the livestock facility are as follows:

- (1) ~~Non-agricultural groups shall be charged two hundred dollars (\$200.00) per day for use of the sales arena only or three hundred dollars (\$300.00) per day for the sales arena and barn;~~
- (2) ~~Agricultural youth groups are charged fifty dollars (\$50.00) per day for use of the sales arena only or one hundred dollars (\$100.00) per day for the sales arena and barn;~~
- (3) ~~Agricultural groups shall be charged one hundred dollars (\$100.00) per day for use of the sales arena only or two hundred dollars (\$200.00) per day for sales arena and barn;~~
- (4) ~~Use of the facility's kitchen is set at thirty dollars (\$30.00) per day for agricultural groups;~~
- (5) ~~Use of the facility's kitchen is set at thirty dollars (\$30.00) per day or 30.5 percent of gross receipts after taxes, whichever is the greater, for non-agricultural groups;~~
- (6) ~~Any group renting the sales arena only shall pay an additional fee of twenty-five dollars (\$25.00) for any time after 12:15 a.m. but before 2:00 a.m. The fee shall be twenty-five dollars (\$25.00) per hour after 2:00 a.m.~~

(b) Fees for use of folding chairs, tables, livestock panels and paper table coverings shall be based on the fee schedule set forth in .0304(b)(10) of this Section.

- (c) ~~A fifty dollar (\$50.00) charge for the removal of bedding from the barn is required.~~
- (d) ~~Fees for use of the Youth Building are set at thirty dollars (\$30.00) per day.~~
- (e) ~~Ground rental shall be at the rate of ten cents (\$0.10) per square yard or one hundred and fifty dollars (\$150.00) per day, whichever is greater.~~
- (f) ~~Ticketed event charges shall be at the daily rate of the facility~~

or ten percent of gate receipts, whichever is greater.

(g) Food catering fees shall be provided at the rate set forth in .0304(b)(12) of this Section.

Authority G.S. 106-22; 106-530; 106-6.1.

\*\*\*\*\*

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Agriculture intends to amend the rule cited as 2 NCAC 52B .0207. Notice of Rule-making Proceedings was published in the Register on March 15, 2000 and May 1, 2000.

Proposed Effective Date: March 1, 2001

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rule by submitting a request in writing no later than July 18, 2000, to David S. McLeod, Secretary, NC Board of Agriculture, PO Box 27647, Raleigh, NC 27611.

Reason for Proposed Action: Agency staff and swine industry advisory committees recommended the adopted of temporary rules to prevent the re-introduction of pseudorabies, a swine disease, into North Carolina, now that it has been eliminated from North Carolina swine herds. Existing rules do not require the vaccination or testing of feeder swine for the pseudorabies virus (PRV) prior to importation into North Carolina. Since North Carolina has recently achieved PRV-free status, it is now necessary to take additional precautions to prevent the re-introduction of PRV into North Carolina swine herds. These rules were previously adopted as temporary rules to prevent the re-introduction of PRV into North Carolina swine herds. The proposed changes would accomplish this by requiring vaccination, testing and additional restrictions on importation of swine into North Carolina.

Comment Procedures: Written comments may be submitted no later than August 2, 2000, to David S. McLeod, Secretary, NC Board of Agriculture, PO Box 27647, Raleigh, NC 27611.

<u>Fiscal Impact</u>			
State	Local	Sub.	None
			0

CHAPTER 52 - VETERINARY DIVISION

SUBCHAPTER 52B - ANIMAL DISEASE

SECTION .0200 - ADMISSION OF LIVESTOCK TO NORTH CAROLINA

Material shown in bold was approved on January 20, 2000, by the

Rules Review Commission and is pending in the 2000 session of the General Assembly, proposed effective July 1, 2000.

**.0207 IMPORTATION REQUIREMENTS: SWINE**

(a) All swine imported into the state, except by special permit for immediate slaughter, shall be accompanied by an official health certificate issued by a state, federal, or accredited veterinarian stating that they are free from any signs of infectious or communicable disease and are not known to have been exposed to same. The health certificate shall contain ear tag or tattoo number of each animal or other identifier acceptable to the State Veterinarian, animal. The health certificate must show the pseudorabies status of both the animal and state or area of origin. Swine imported for feeding or breeding purposes shall be moved in clean and disinfected trucks or other conveyances. "Accredited veterinarian" means a veterinarian accredited pursuant to Title 9, Part 161 of the Code of Federal Regulations.

(b) Breeding swine and all other swine being shipped to a breeding swine premise shall originate from a "Valid Brucellosis-Free" herd or a "Validated Brucellosis-Free" herd and shall originate from a "Qualified Pseudorabies-Negative Herd, Qualified-Negative Gene-Altered Vaccinated Herd (QNAGV) Pseudorabies Stage IV or V (Free) State. Breeding swine and other swine being shipped to a breeding swine premise originate from Stage II, II/III or III areas or states must also be isolated and tested negative to a statistical 95/5 sample test using a pseudorabies serological test approved pursuant to Title 9, Part 85.1 of the Code of Federal Regulations between 30 and 60 days after arrival before being added to the herd.

(c) All feeder swine imported into the state from a Pseudorabies Stage II, II/III, or III state or area shall be accompanied by an official health certificate issued by a state, federal or accredited veterinarian stating or showing that:

- (1) A permit for entry was obtained within 30 days prior to entry for feeder pigs that originate from a Stage II, II/III state or area and that they shall be quarantined and slaughtered; or
- (2) The swine originated from a pseudorabies-free area as determined by the State Veterinarian; or
- (3) The swine originated from a Qualified Pseudorabies Negative Herd; or

- (4) ~~The swine originated from a monitored feeder pig herd;~~  
 or  
 (5) ~~Swine from Stage II, II/III, III areas or states originated from a Qualified Negative herd or a pseudorabies monitored herd or tested negative on a statistical (95/10) test within 30 days prior to shipment.~~

a permit for entry issued by the State Veterinarian within 30 days prior to entry. The permit number and the date of issuance shall be shown on the health certificate. The feeder swine in the shipment must have been vaccinated for pseudorabies using a USDA-licensed pseudorabies vaccine with gI deletion and must have tested

(d) Healthy swine for feeding purposes may move directly from a farm of origin in a contiguous state on which they have been located for not less than 30 days to a livestock market or stockyard in North Carolina that has been state-federal approved for handling feeder swine, without the health certificate required herein, provided such swine are accompanied by proof of the pseudorabies status of the herd of ~~origin acceptable to the State Veterinarian.~~ origin. Such swine shall be inspected by a state or federal inspector or approved accredited veterinarian prior to sale at the market.

(e) Healthy swine may be shipped into the state for immediate slaughter without a health certificate provided they go directly to a slaughtering establishment ~~approved by the~~ under State Veterinarian, or Federal inspection, or to a state-federal approved livestock market or stockyard for sale to an ~~approved a~~ slaughtering establishment under State or Federal inspection for immediate slaughter only.

(f) Swine from a pseudorabies-quarantined herd or swine which have been in contact with pseudorabies-quarantined swine may be imported into the state for immediate slaughter only under the following conditions:

- (1) the swine must be accompanied by a shipping permit (Veterinary Services Form 1-27) issued by a veterinarian accredited pursuant to 9 CFR 161, or a state or federal animal health employee, consigning the swine only to a slaughtering establishment under state or federal inspection;
- (2) the vehicle transporting the swine must be sealed after loading with an official USDA or state of origin seal. The seal number must be recorded on the VS Form 1-27. The seal can be broken or removed only by an NCDA&CS or a USDA employee or other individual authorized by the State Veterinarian; and
- (3) the vehicle used to transport the swine must be cleaned and disinfected in a manner approved by the State Veterinarian immediately after unloading the swine and prior to using the vehicle to transport other livestock.

(g) Sporting swine:

- (1) For purposes of this Rule:
  - (A) "Sporting swine" means any domestic or feral swine intended for hunting purposes and includes the progeny of these swine whether or not the progeny are intended for hunting purposes;
  - (B) "Feral swine" means any swine that have lived any part of its life free roaming.
- (2) No person shall import sporting swine into North

negative on a statistical (95/2) test within 30 days prior to shipment, and they shall be isolated and quarantined until slaughtered. In addition, the swine must be tested on statistical (95/2) test between 30 and 45 days after arrival. The swine must originate from a Qualified Negative herd or a pseudorabies monitored herd that has tested negative on a statistical (95/10) test within 30 days prior to shipment. Feeder swine from a pseudorabies-free state or area may be imported in accordance with Paragraph (a) of this Rule.

Carolina unless:

- (A) The swine have not been fed garbage within their lifetime; and the herd of origin is validated brucellosis free and qualified pseudorabies negative; and
- (B) The swine have not been members of a herd of swine known to be infected with brucellosis or pseudorabies within the previous 12 months; and
- (C) The individual animals six months of age or over have a negative brucellosis and pseudorabies test within 30 days of movement; and
- (D) The swine have not been a part of a feral swine population or been exposed to swine captured from a feral swine population within the previous 12 months; and
- (E) The swine are accompanied by an official health certificate or certificate of veterinary inspection identifying each animal by ear tag, breed, age, sex, the state of origin, and certifying that the swine meet the import requirements of North Carolina.

Note: Violation of this Rule is a Class 2 misdemeanor under G.S. 106-307.6, ~~which provides for a five hundred dollar (\$500.00) fine, six months' imprisonment, or both.~~ 106-307.6.

Authority G.S. 106-307.5; 106-316.1; 106-317; 106-318.

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## 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 the rule cited as 16 NCAC 6D .0503. Notice of Rule-making Proceedings was not required per G.S. 115C-17.*

**Proposed Effective Date:** April 1, 2001

*A Public Hearing will be conducted at 9:30 a.m. on July 31, 2000 at the Education Building, Room 224, 301 N. Wilmington St., Raleigh, NC 27601.*

**Reason for Proposed Action:** *UNC General Administration has increased the requirements for entry into the University system by adding two courses in a second language, effective with the students who enter ninth grade in the fall of 2000. The State Board seeks to make its college preparatory graduation*



requirements consistent with the University system entrance requirements.

State Local Sub. None  
✓

**Comment Procedures:** Comments may be submitted in writing to Harry E. Wilson by mail at 301 N. Wilmington St., Raleigh, NC 27601-2825, by e-mail at hwilson@dpi.state.nc.us, or by fax at (919)715-0764. Written comments will be accepted through August 2, 2000.

**CHAPTER 6 - ELEMENTARY AND SECONDARY EDUCATION**  
**SUBCHAPTER 6D - INSTRUCTION**  
**SECTION .0500 - DEFINITIONS**

**Fiscal Impact**

(a) In order to graduate and receive a high school diploma, public school students shall meet the requirements of paragraph (b) and shall attain passing scores on competency tests adopted by the SBE and administered by the LEA. Students who satisfy all state and local graduation requirements but who fail the competency tests shall receive a certificate of achievement and transcript and shall be allowed by the LEA to participate in graduation exercises.

**.0503 STATE GRADUATION REQUIREMENTS**

- (1) The passing score for the competency test, which is the same as grade-level proficiency as set forth in Rule .0502 of this Subchapter, shall be level III or higher.
- (2) Special education students may apply in writing to be exempted from taking the competency tests. Before it approves the request, the LEA must assure that the parents, or the child if aged 18 or older, understand that each student must pass the competency tests to receive a high school diploma.
- (3) Any student who has failed to pass the competency tests by the end of the last school month of the year in which the student's class graduates may receive additional remedial instruction and continue to take the competency tests during regularly scheduled testing until the student reaches maximum school age.

pathway that leads to a specific career and which shall include a second- (advanced) course;

(vii) two elective credits of which one credit arts education is recommended; and

(viii) other credits designated by the LEA.

(B) three units in mathematics, one of which must be Algebra I; college technical preparation, which shall include:

(i) four credits in English language arts, which shall be English I, II, III, and IV;

(ii) three credits in mathematics, which shall be either algebra I, geometry, and algebra I, technical mathematics I, technical mathematics II; or integrated mathematics I, II, and III;

(iii) three credits in science, which shall include biology, a physical science, earth/environmental science;

(iv) three credits in social studies, which shall be Economic, Legal and Political Systems (ELPS), U.S. history, and world studies;

(v) one credit in health and physical education;

(vi) four credits in career/technical education which shall be in a career concentration pathway that leads to a specific career and which shall include a second- (advanced) course;

(vii) two elective credits of which one credit arts education is recommended; and

(viii) other credits designated by the LEA.

(b) In addition to the requirements of Paragraph (a), students must successfully complete 20 course units in grades 9-12 as specified below.

**NOTE:** A student who is pursuing this course of study must meet the requirements of a college/university course of study by completing one additional mathematics course for which Algebra is a prerequisite and, effective with the class entering the first grade for the first time in the 2002-03 school year, two credits in the same second language.

- (1) Effective with the class entering ninth grade for the first time in the 1998-99 2000-2001 school year, the 20 course units must include: students shall select one of the following three courses of study:

(A) four units in English, which must be English I, II, III, and IV; career preparation, which shall include:

(i) four credits in English language arts, which shall be English I, II, III, and IV;

(ii) three credits in mathematics, one of which shall be algebra I (except as limited by G.S. 115C-81(b));

(iii) three credits in science, which shall include biology, a physical science, and earth/environmental science;

(iv) three credits in social studies, which shall be Economic, Legal and Political Systems (ELPS), U.S. history, and world studies;

(v) one credit in health and physical education;

(vi) four credits in career/technical education, which shall be in a career concentration or

(C) three units in social studies, one of which must be in government and economics, one in United States history and one in world studies; college/university preparation, which shall include:

(i) four credits in English language arts, which shall be English I, II, III, and IV;

(ii) three credits in mathematics, which shall be algebra I, algebra II, and geometry or a high level course for which algebra II

- prerequisite; or integrated mathematics I, II, and III; however, effective with the class entering the ninth grade for the first time in the 2002-03 school year, this requirement shall become four credits in mathematics, which shall be algebra I, algebra II, geometry, and a higher level course for which algebra II is a prerequisite; or integrated mathematics I
- (v) one credit in health and physical education;
- (vi) two credits in the same second language;
- (vi) four elective credits of which one credit in arts education is recommended, except that effective with the class entering the ninth grade for the first time in the 2004-05 school year, this shall be reduced to three elective credits; and
- (viii) other credits designated by the LEA.
- (D) ~~three units in science, one of which must be biology, one a physical science, and effective with the class entering ninth grade for the 2000-2001 school year, one earth/environmental science; occupational, which shall include:~~
- (i) four credits in English language arts, which shall be Occupational English I, II, III, and IV;
- (ii) three credits in mathematics, one of which shall be Occupational Mathematics I, II, and III;
- (iii) two credits in science, which shall be Life Skills Science I and II;
- (iv) two credits in social studies, which shall be Government/U.S. History and Self-Advocacy/Problem Solving;
- (v) one credit in health and physical education;
- (vi) six credits in occupational preparation education, which shall be Occupational Preparation I, II, III, IV, 240 hours of community-based training, and 360 hours of paid employment;
- (vii) one unit in physical education and health;
- (viii) four vocational education elective credits (one credit in arts education is recommended but is a local board decision);
- (ix) computer proficiency as specified in the student's IEP;
- (x) a career portfolio; and
- (xi) completion of the student's IEP objectives.
- II, III, and one course beyond integrated mathematics III;
- (iii) three credits in science, which shall include biology, a physical science, and earth/environmental science;
- (iv) three credits in social studies, which shall be Economic, Legal and Political Systems (ELPS), U.S. history, and world studies;
- ~~(E) one unit in physical education and health; and~~
- ~~(F) six units designated by the LEA, which may be undesignated electives or courses designated from the standard course of study.~~
- (2) LEAs may count successful completion of course work in the ninth grade at a school system which does not award course units in the ninth grade toward the requirements of this Rule.
- (3) LEAs may count successful completion of course work in grades 9-12 at a summer school session toward the requirements of this Rule.
- (4) LEAs may count successful completion of course work in grades 9-12 at an off-campus institution toward the requirements of paragraph (b)(1)(F) this Rule. 23 NCAC 2C .0305 shall govern enrollment in community college institutions.
- (c) Effective with the class of 2001, all students must demonstrate computer proficiency as a prerequisite for high school graduation. The passing scores for this proficiency shall be 47 on the multiple choice test and 49 on the performance test. This assessment shall begin at the eighth grade. A student with disabilities shall demonstrate proficiency by the use of a portfolio if this method is required by the student's IEP.
- (d) Special needs students as defined by G.S. 115C-109, excluding gifted and pregnant, who do not meet the requirements for a high school diploma shall receive a graduation certificate and shall be allowed to participate in graduation exercises if they meet the following criteria:
- (1) successful completion of 20 course units by general subject area (4 English, 3 math, 3 science, 3 social studies, 1 health and physical education, and 6 local electives) under paragraph (b). These students are not required to pass the specifically designated courses such as Algebra I, Biology or United States history,
- (2) completion of all IEP requirements.

*Authority G.S. 115C-12(9b); 115C-81(b)(4); N.C. Constitution, Article IX, Sec. 5.*

*This Section includes temporary rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code and includes, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 2C .0500 for adoption and filing requirements. Pursuant to G.S. 150B-21.1(e), publication of a temporary rule in the North Carolina Register serves as a notice of rule-making proceedings unless this notice has been previously published by the agency.*

**EXPIRED TEMPORARY RULES**

<u>Administration/Nonpublic Education</u>	<u>Effective Date</u> <u>Expired</u>	
1 NCAC 40 .0101 - .0103	08/11/99	
		05/12/00
1 NCAC 40 .0201 - .0204	08/11/99	
		05/12/00
<u>Governor's Office/Sharing of Information Regarding Abused, Neglected, Dependent, Undisciplined, or Delinquent Juveniles</u>		
9 NCAC 05G .0101 - .0104	07/07/99	
		04/28/00

**TEMPORARY RULES ENTERED INTO THE CODE**

**TITLE 4 - DEPARTMENT OF COMMERCE**

Rule-making Agency: *Department of Commerce*

Rule Citation: *4 NCAC 19L .1901-.1904*

Effective Date: *June 9, 2000*

Findings Reviewed and Approved by: *Beecher R. Gray*

Authority for the rule-making: *G.S. S.L. 1999-463*

Reason for Proposed Action: *Law authorizes the Department of Commerce to adopt temporary rules in administering the Hurricane Floyd Recovery Assistance appropriated by the General Assembly.*

Comment Procedures: *Comments should be submitted to the Division of Community Assistance, 4313 Mail Service Center, Raleigh, NC 27699-4313.*

**CHAPTER 19 - DIVISION OF COMMUNITY ASSISTANCE**

**SUBCHAPTER 19L - NORTH CAROLINA COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM**

**SECTION .1900 - HURRICANE FLOYD RECOVERY ASSISTANCE**

**.1901 GENERAL**

The North Carolina Department of Commerce will follow the

administrative rules for the North Carolina Community Development Block Grant Program, 4 NCAC 19L administering the Hurricane Floyd Recovery Assist: appropriated by the General Assembly in Session Law 1999- Extra Session House Bill 2. Specifically, 4 NCAC 19L .0 .0800, .0900, .1000, and .1100 will apply to housing assist: grants authorized by Section 3(2) of "The Hurricane F Recovery Act of 1999" with the exception of 4 NCAC 19L .1 Citizen Participation, .1004 Environmental Reviews, and .1 Labor Standards.

*History Note: Authority S.L. 1999-463 (Extra Session); Temporary Adoption Eff. June 9, 2000 to expire on January 2003.*

**.1902 ENVIRONMENTAL REVIEWS**

The minimum criteria set forth in 15A NCAC 1C .0505 regard to Environmental Reviews shall be used to determine whether a North Carolina Environmental Policy Act document required for a Crisis Housing Assistance Project funded under Hurricane Floyd Recovery Act of 1999. No further SEPA review required under the following conditions:

- (1) If no DENR permit is required;
- (2) State infrastructure grants assist a subdivision defined in G.S. 153A-335 and G.S. 160A-376, that approved by the local government prior to December 1999; and
- (3) State funds assist a development with land disturbance activities covering an area of less than five acres.

*History Note: Authority S.L. 1999-463 (Extra Session);*

Temporary Adoption Eff. June 9, 2000 to expire on January 1, 2003.

**.1903 WAIVERS**

The Secretary of Commerce may waive any provisions that are not required by State Law, under Section .0104.

*History Note: Authority S.L. 1999-463 (Extra Session); Temporary Adoption Eff. June 9, 2000 to expire on January 1,*

**TITLE 14A - DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY**

*Rule-making Agency: NC Department of Crime Control & Public Safety; Division of Highway Patrol*

*Rule Citation: 14A NCAC 9H .0304-.0324*

*Effective Date: June 9, 2000*

*Findings Reviewed and Approved by: Beecher R. Gray*

*Authority for the rule-making: GS. 150B-21.1; 150B-21.19*

*Reason for Proposed Action: Administrative Law Judge Robert Reilly determined that the administrative rules as they currently exist are inadequate and has threatened that unless the department submits new rules within 60 days, he will issue an order declaring the wrecker rotation rules of NCSHP unenforceable. Repealing rules that do not meet the definition of rules.*

*Comment Procedures: Any interested person(s) may present comments relevant to the action proposed at the public hearing either in writing or oral form. Written statements to be presented at the public hearing may be directed prior to the hearing to Josie Macklin, Administrative Procedures Coordinator, 4701 Mail Service Center, Raleigh, NC 27699-4701 or call (919) 733-5007.*

**CHAPTER 9 - STATE HIGHWAY PATROL**

**SUBCHAPTER 9H - ENFORCEMENT REGULATIONS**

**SECTION .0300 - WRECKER SERVICE**

**.0304 IMPARTIAL USE OF SERVICES**

~~In order to perform its traffic safety functions, the Highway Patrol is required to use wrecker services to tow disabled, seized, wrecked, and abandoned vehicles. Members of the Highway Patrol shall assure the impartial use of wrecker services. Wrecker service includes any motor vehicle towing service which uses wreckers, rollbacks, cranes, or other such equipment.~~

*History Note: Authority G.S. 20-184; 20-187; 20-188; 143B-10;*

*2003.*

**.1904 EXPIRATION**

The rules in this section expire January 1, 2003.

*History Note: Authority S.L. 1999-463 (Extra Session); Temporary Adoption Eff. June 9, 2000 to expire on January 1, 2003.*

*Eff. August 1, 1994;*

*Temporary Repeal Eff. June 9, 2000.*

**.0305 ROTATION, ZONE, CONTRACT, AND DEVIATION FROM SYSTEM**

~~(a) The Troop Commander shall arrange for the telecommunications center to maintain an impartial system within each district of the Troop which may include the following:~~

- ~~(1) A computerized rotation wrecker log for the entire district whereby wrecker services are called in the order they appear on a log;~~
- ~~(2) A zone system within the district with a rotation wrecker log being maintained in each zone;~~
- ~~(3) A zone or contract system operated in conjunction with one or more local agencies;~~
- ~~(4) A rotation wrecker log, zone, or contract system for wreckers based upon size and capacity of the equipment or availability of repair services; or~~
- ~~(5) A combination of any such system.~~

~~(b) It is the policy of the Highway Patrol to use the wrecker service requested by the vehicle owner or person in apparent control of the motor vehicle to be towed. Patrol members shall not attempt to influence the person's choice of wrecker services, but may answer questions and provide factual information. If no such request is made, the Patrol system in place in the district will be used, absent an emergency or if the Patrol system is inoperable.~~

~~(c) The Troop Commander may deviate from any of these Rules if there are insufficient wrecker services of the type needed within a district to meet the needs of the Patrol.~~

~~(d) When exigent circumstances require, a telecommunicator may deviate from the Patrol system or the wrecker service requested by the motorist.~~

*History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188; Eff. August 1, 1994;*

*Temporary Repeal Eff. June 9, 2000.*

**.0306 WRECKER SERVICE REGULATIONS**

~~(a) In order to assure that the needs of the Patrol are met, the Troop Commander shall include on the Patrol wrecker system only those wrecker services which agree to comply with the following requirements:~~

- ~~(1) Have a safe storage area for all vehicles towed. This storage area may be a locked building or a secured, fenced area where the stored vehicles and other property are not accessible to the public.~~
- ~~(2) Equip each wrecker with legally required lighting and~~

other safety equipment to protect the motoring public and maintain such equipment in good working order.

- (3) ~~Equip each wrecker with brooms, shovels, etc. to remove debris from the highway and agree to clear the highway prior to leaving the scene of any collision.~~
- (4) ~~Be available to the Patrol and the general public on a 24-hour basis and be willing to accept collect calls from the~~
- (7) ~~Impose reasonable charges for work performed and present one bill to owner or operator of towed vehicle. Wrecker services may secure assistance from another wrecker when necessary, but only one bill is to be presented to the owner or operator of the vehicle for the work performed.~~
- (8) ~~Allow only wrecker operators who have valid drivers licenses for the type of vehicle driven and require each operator to conduct himself or herself in a proper manner at all collision scenes and when dealing with the public.~~
- (9) ~~Adhere to all statutes regarding solicitation of business from the highway.~~
- (10) ~~Employ only wrecker operators who demonstrate an ability to perform required services in a safe, timely, and efficient manner.~~
- (11) ~~Adhere to all applicable laws relating to wrecker services, including licensing, taxes, and insurance.~~
- (12) ~~Notify the Patrol without delay whenever the wrecker service is unable to respond to a call.~~
- (13) ~~Mark each wrecker service vehicle with the name and telephone number of the business.~~
- (14) ~~Secure all personal property at the scene of a collision to the extent possible, and preserve personal property in a vehicle which is about to be towed. A wrecker service is not to be held responsible for personal items which do not come into the possession of the service.~~
- (15) ~~Make all complaints to the Patrol regarding any incident involving the Patrol within 30 days of the alleged incident.~~
- (16) ~~The owner shall ensure that the owner, each wrecker driver, or other employee or agent involved in the wrecker service has not been convicted at any time of a felony arising out of the operation or use of a vehicle, or a felony involving force, violence, theft, embezzlement, forgery, fraud, false statement, sexual conduct, or the manufacture, sale, transportation, or possession of a controlled substance or alcoholic beverage, or convicted within the past five years of any other felony or a misdemeanor involving fraud, forgery, embezzlement, theft, force, or violence, controlled substances or sexual misconduct. Within 10 days of the employment of any person or upon the request of a member of the Patrol, the owner of the wrecker service agrees to supply the Patrol with the full name, current address, date of birth, social security number, and drivers license number and state of issuance for the owner, wrecker driver, or other employee or agent involved in the wrecker service.~~
- (17) ~~Upon request or demand, return personal property stored in or with a vehicle, whether the towing, repair,~~

Patrol.

- (5) ~~Consistently respond, under normal conditions, in a timely manner.~~
- (6) ~~For Patrol involved incidents, respond only upon request from proper Patrol authority and not use scanner or other police radio monitoring equipment to respond to disabled vehicle or wrecker.~~
- ~~or storage fee on the vehicle has been or will be paid.~~
- (18) ~~Tow disabled vehicles to any destination requested by vehicle owner or other person with apparent authority.~~
- (19) ~~Agree that being called by the Patrol to tow a vehicle does not create a contract with or obligation on the part of the Patrol personnel to pay any fee or towing charge except when towing a vehicle owned by the Patrol or when a vehicle is later forfeited to the Patrol, or when a court determines that the Patrol wrongfully authorized a tow and orders the release of the vehicle with payment of transportation and storage fees.~~
- (20) ~~Agree that being placed on the Patrol system does not guarantee a particular number of calls or the same number of calls as any other service, or compensation when not called in accordance with the system or removal from the system.~~
- (21) ~~Agree that the failure to respond to a call by the Patrol will result in being placed at the bottom of any rotation wrecker log, and consistent failures to respond will result in removal from the system.~~
- (b) ~~The District First Sergeant shall perform a background investigation on each wrecker service desiring to be placed on the Patrol wrecker system and determine if the wrecker service meets the requirements set forth in this Rule. The District First Sergeant shall be responsible for monitoring complaints and conducting random checks of compliance with all requirements.~~
- (c) ~~The Troop Commander shall provide that a wrecker service will only be included once on each log. In order to be listed on a zone or district, a wrecker service must have a full-time, manned and open for business at least five days per week and a secured lot within the district or zone. A wrecker service may not, through contract or agreement to provide wrecker services for service stations, garages, or other business, be listed through another company. Exceptions to this requirement may be made for specialized or large capacity wreckers when none are available in a zone or district.~~
- (d) ~~The Troop Commander may place wrecker services on the Patrol system which do not meet all the requirements contained in this Rule if the Troop Commander determines there are an insufficient number on the system in that area to meet the needs of the Patrol.~~
- (e) ~~If the Troop Commander chooses to use a contract, zone or other system administered by a local agency, the local agency shall govern the system.~~
- (f) ~~A wrecker service which is denied inclusion on the Patrol wrecker service system may appeal this decision to the appropriate Zone Director at Patrol Headquarters in Raleigh, NC.~~
- (g) ~~A wrecker service denied inclusion on the Patrol wrecker system may reapply at any time that the wrecker service meets requirements for inclusion. The Troop Commander may order~~

~~additional investigation. The wrecker service shall be included on the Patrol system when the wrecker service shows the Troop Commander that it meets all requirements for inclusion.~~

*History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188;*

~~(a) Once a wrecker service is placed on the wrecker service system, the District First Sergeant may remove a wrecker service which does not comply with the rules and policies of the Patrol. Unless public safety or welfare requires other action, at least seven days prior to removal, a District First Sergeant shall notify a wrecker service in writing of the reason for the removal.~~

~~(b) A wrecker service which has received notice of removal from the Patrol wrecker service system by the District First sergeant may appeal to the appropriate Troop Commander or his designee. If the appeal is received at least five days prior to removal, the hearing shall be held prior to removal. Otherwise, the hearings shall be held within 10 days of receipt of the appeal. The Troop Commander may uphold the decision of the First Sergeant or he may order the wrecker firm to be placed back on the rotation system. No wrecker service which is removed is entitled to additional calls, priority listing, or other compensation if placed back on the Patrol system.~~

~~(c) A wrecker service removed from the list may reapply at any time it can demonstrate it will comply with all rules. The Troop Commander may order additional investigation. The Troop Commander shall place the wrecker service back on the list when the Troop Commander has been presented evidence by the wrecker service that it now complies and will comply with all rules in the future.~~

*History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188;*

*Eff. August 1, 1994;*

*Temporary Repeal Eff. June 9, 2000.*

**.0308 DEFINITIONS**

The following definitions shall apply to the words and phrases found in this Chapter.

- (1) Applicant. A person or corporation owning a wrecker service and applying for inclusion on the Patrol Rotation Wrecker List.
- (2) Wrecker Service. A person or corporation engaged in the business of, or offering the services of, and owning a wrecker service or towing service whereby motor vehicles are or may be towed or otherwise removed from one place to another by the use of a motor vehicle manufactured and designed for the primary purpose of removing and towing disabled motor vehicles.
- (3) Car Carrier or "Rollback". A vehicle transport designed to tow or carry vehicles damage-free. The truck chassis shall have a minimum gross vehicle weight rating (GVWR) of 14,500 pounds. Two lift cylinders, minimum two and one-half inch bore; Individual power winch pulling capacity of not less than 8,000 pounds; 50 feet of 5/16 inch cable on winch drum; and four tie down hook safety chains. The carrier bed shall be a minimum of 16 feet in length and a minimum of 84 inches in width inside side rails. A cab protector,

*Eff. August 1, 1994;*

*Temporary Repeal Eff. June 9, 2000.*

**.0307 REMOVAL OF WRECKER SERVICE**

constructed of aluminum or steel, must extend a minimum of 10 inches above the height of the bed. A "rollback" is not considered a small or large wrecker.

- (4) Computerized Rotation Wrecker List. The names of those Wrecker Services that have been approved by the District First Sergeant to be included on the Patrol Rotation Log and entered in the Computer Assisted Dispatch (CAD) System. There shall be separate rotation wrecker lists for large and small wreckers for each Rotation Wrecker Zone.
- (5) Large Wrecker. A truck chassis having a minimum gross vehicle weight (GVWR) of 30,000 pounds and a boom assembly having a minimum lifting capacity of 50,000 pounds as rated by the manufacturer; tandem axles or cab to axle length of no less than 102 inches; 150 feet or more of 5/8 inch or larger cable on each drum; airbrake so constructed as to lock wheels automatically upon failure; and additional safety equipment as specified by these regulations.
- (6) Manual Rotation Wrecker List. A list of names of those wreckers that have been approved by the District First Sergeant to be included on the Patrol Rotation Wrecker List and entered into a Manual list that is to be used only when the CAD System is down. There shall be separate manual lists for large and small wreckers for each Rotation Wrecker Zone. These lists shall be maintained by the Troop Communications Center.
- (7) Minor Violations. Violations of these regulations which do not require removal for a definitive time, may be readily corrected, and do not involve a criminal act or pose a threat to the safety and well being of the public.
- (8) Major Violations. All violations of the regulations not determined to be minor.
- (9) Rotation Wrecker List. A list of wrecker services that have met the rules and regulations of the Patrol and whose vehicles are properly registered with the Division of Motor Vehicles.
- (10) Removal. Being taken off the Patrol Rotation Wrecker List for a determinate or indeterminate period of time.
- (11) Storage Facility. A sufficiently lighted off street storage facility secured by a minimum 6 foot high chain link fence, or a fence of similar strength, or other barrier sufficient to deter trespassing or vandalism; and where all entrances and exits are secure from public access. Storage facilities located on the property of another business must be separated by a minimum six-foot chain link fence, or a fence of similar strength, or other barrier sufficient to deter trespassing or vandalism; have separate entrances and exits; and be utilized solely for the business. The lot shall be of sufficient size to accommodate all vehicles towed by the wrecker service for the Patrol. Storage facilities shared by two or more

wrecker services may not be used to satisfy the facility

- (12) Small Wrecker means a truck chassis having a minimum gross vehicle weight (GVWR) rating of 10,000 pounds; a boom assembly having a minimum lifting power of 8,000 pounds as rated by the manufacturer; an 8,000 pound rated winch with at least 100 feet of 3/8 inch cable; a belt-type tow plate or tow sling assembly; a wheel-lift with a retracted lifting capacity of no less than 3,500 pounds; dual rear wheels; and additional safety equipment as specified by the Regulations.
- (13) Rotation Wrecker Zone means a geographic area which may encompass all or part of a District of a Troop.

*History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188; Temporary Adoption Eff. June 9, 2000.*

**.0309 VEHICLE REMOVAL PROCEDURES**

(a) Vehicles on the paved or main-traveled portion of the highway:

- (1) A member who encounters a vehicle parked, disabled from a collision or otherwise left standing on the paved or main-traveled portion of the highway shall:
- (A) remove the vehicle to a position off the roadway; or
- (B) with consent from the owner, operator, or legal possessor, transport and store the vehicle.
- (C) without consent from the owner, operator, or legal possessor, transport and store the vehicle if the vehicle presents a hazard, a potential hazard or otherwise as authorized by state law.
- (2) A member shall permit an objecting owner, operator, or legal possessor to remove a vehicle to a safe position off the roadway, if the driver is competent and licensed to drive the vehicle. A member may transport and store a vehicle which cannot be safely parked off the roadway as authorized in this Directive.

(b) Vehicles off the Paved or Main-Traveled Portion of the Highway

- (1) A member investigating an accident or collision in which a disabled vehicle is located off the paved or main-traveled portion of the highway may transport and store the vehicle. If the owner, operator, or legal possessor objects, a member shall not transport and store a vehicle unless, as standing, the vehicle creates a hazard.
- (2) A member who observes a vehicle unlawfully parked or disabled on the right-of-way, but not on the main-traveled portion of the highway may remove and store the vehicle only if the vehicle interferes with the regular flow of traffic or otherwise constitutes a hazard.
- (3) A member shall not transport and store a vehicle unlawfully parked on the highway right-of-way which does not interfere with the regular flow of traffic or otherwise constitutes a hazard until the vehicle remains on the highway right-of-way for a period of 48 hours or more, has been vandalized, or is otherwise abandoned.

(b) A member shall take reasonable precautions to secure the

requirement in Section :0321(a)(2).

(c) Vehicles subject to seizure - Vehicles which are authorized by law to be seized or which may be evidence in a criminal proceeding may be towed and stored.

*History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188; Temporary Adoption Eff. June 9, 2000.*

**.0310 SECURING VEHICLES WHEN OPERATOR IS ARRESTED**

Upon arresting or placing a vehicle operator in custody, a member shall:

- (1) With consent of owner, operator, or legal possessor, allow another licensed, competent individual to drive the vehicle to a position off the roadway; or
- (2) If no licensed, competent operator is present, or if the owner, operator, or legal possessor will not consent to such removal:
- (a) Move the vehicle, if necessary, to a position off the roadway, lock the vehicle and return the key to the owner, operator, or legal possessor; or
- (b) With or without consent of the owner, operator, or legal possessor, transport and store the vehicle in accordance with Rule 9H.0311 below.

*History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188; Temporary Adoption Eff. June 9, 2000.*

**.0311 VEHICLES TRANSPORTED AND STORED OVER OBJECTION OF OWNER**

A member may transport and store a vehicle over the objection of the owner, operator, or legal possessor if:

- (1) The vehicle cannot be lawfully parked off the roadway; or
- (2) The vehicle is lawfully parked off the roadway and creates a hazard; or
- (3) The owner, operator, or legal possessor refuses to remove the vehicle from the roadway; or
- (4) The vehicle is subject to seizure pursuant to G.S. 28.3 or other lawful authority.

*History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188; Temporary Adoption Eff. June 9, 2000.*

**.0312 PARKING VEHICLES OFF THE ROADWAY**

(a) A member who removes or allows a vehicle to be removed from a position off the roadway shall:

- (1) Lawfully park the vehicle in an apparently safe and secure location off the main-traveled portion of the highway; or
- (2) Place the vehicle in a position that creates no apparent hazard or other interference with the regular flow of traffic.

vehicle and its contents against theft, vandalism, and other damage.

by locking the vehicle (if possible) and returning the keys to the owner, operator, or legal possessor. In any case where the operator of the vehicle is arrested for DWI, a member shall either turn the keys over to the magistrate/jailer or, when appropriate, to a sober, responsible person.

*History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188; Temporary Adoption Eff. June 9, 2000.*

**.0313 TRANSPORTING AND STORING VEHICLES**

(a) A member shall arrange transportation and safe storage of a vehicle pursuant to this wrecker service Directive.

(b) A member who authorizes the transportation and storage of a vehicle shall, in every case, immediately notify the appropriate Communications Center via radio and furnish information necessary to complete a Signal 4 (Report of Vehicle Stored or Recovered).

(c) A member shall notify the Communications Center whenever he transports or stores a vehicle. If the vehicle is towed, stored, or removed to the shoulder of the road and left at the scene at the request of or with the consent of the owner, operator, or legal possessor, the member shall mark the applicable entries on the HP-305 and obtain the signature of the person making the request or giving the consent. Refusal to sign the HP-305 shall be deemed a withdrawal of the consent or request to tow. In such a situation, members shall be governed by 9H.0311 of these rules.

(d) A member shall, when notified by a magistrate of a hearing regarding payment of towing or storage fees, appear in person at the hearing or file HP-305.1 "Affidavit" with the magistrate prior to the hearing.

(e) Where necessary for accident reconstruction or a criminal investigation that multiple vehicles involved in an incident be stored at the same location, a member may designate the location at which all vehicles are stored. The storage facility shall be the first wrecker service dispatched unless otherwise designated by a supervisor.

(f) Where necessary for an accident reconstruction or a criminal investigation, a member may designate at which indoor or other appropriate storage facility a vehicle shall be stored to ensure preservation of the evidence. The storage facility shall be the first wrecker service dispatched unless otherwise designated by a supervisor.

(g) DWI seized vehicles shall be towed and stored in accordance with instructions from the County School Board or state or regional contractor.

*History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188; Temporary Adoption Eff. June 9, 2000.*

**.0314 NOTIFICATION**

(a) Unless exempted by vehicle seizure law, a registered owner must be notified of the vehicle being towed and stored. In order to accomplish this, the authorizing member shall immediately notify the Communications Center of the following:

(1) a description of the vehicle;

(c) The storage and security of the vehicle and its contents become the responsibility of the towing company when the vehicle

(2) the place where the vehicle is stored;

(3) the procedure the owner must follow to have the vehicle returned to him; and

(4) the procedure the owner must follow to request a probable cause hearing on the towing.

(b) A member who authorized the towing and/or storage of a vehicle in the absence of the registered owner, shall, as soon as practicable, attempt to notify the owner of such towing and/or storage. The member shall attempt to contact the owner by telephone or request a Telecommunicator to attempt to contact the owner by telephone and provide the owner with the location of the vehicle. At least three attempts must be made for vehicles registered in North Carolina and one attempt for vehicles registered out-of-state. A member must record the person contacted or the attempts made.

(c) Whether or not the owner is reached by telephone, a copy of the HPC-305.2 (Vehicle Towing/Notification, which is computer-generated at the Communications Center) shall be mailed to the last registered owner by the Troop Communications Center. In the absence of an HP-305 signed by the registered owner, Form HPC-305.2 shall be mailed to the owner within 24 hours. A duplicate copy of the HPC-305.2 is also computer-generated and will print automatically in the District office of the member.

(d) Whenever a vehicle with neither a valid registration plate nor registration is towed, in the absence of an HP-305 signed by the registered owner, the authorizing member shall make reasonable efforts, including checking the vehicle identification number, to determine the last known registered owner of the vehicle and to notify him of the information listed in Paragraph (a) of this Rule.

(e) If a vehicle is seized pursuant to G.S. 20-28.3, the appropriate DMV notification form shall be completed and forwarded to DMV and to the statewide contractor within 72 hours.

*History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188; Temporary Adoption Eff. June 9, 2000.*

**.0315 RELEASE OF VEHICLES**

Unless the vehicle is seized, a member shall immediately authorize the release of a stored vehicle to the owner upon proof of ownership if no other justification to hold the vehicle exists.

*History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188; Temporary Adoption Eff. June 9, 2000.*

**.0316 VEHICLE INVENTORY**

(a) A member who authorizes the transportation and storage of a vehicle in the absence of Form HP-305 signed by the owner, operator, or legal possessor shall take precautions to protect all property in and on the vehicle.

(b) An HP-305 signed by the owner, operator, or legal possessor is documentation that the vehicle was not removed from the possession of such person; therefore, the completion of a vehicle inventory is not required.

is towed from the scene and stored at the wrecker service storage facility. If the vehicle is to be seized for subsequent forfeiture or



stored at a Patrol facility, the arresting member may conduct an inventory, itemizing all property contained in the vehicle and the estimated value.

(d) All vehicles which are inventoried under the guidelines of these Rules shall be inventoried at the time of storage unless an emergency situation dictates otherwise.

- (1) The inventory must be thorough and complete, listing all items that are toxic, explosive, flammable, or of monetary value.
- (2) Unless locked or security wrapped, all containers in the vehicle, whether open or closed, shall be opened to determine contents unless evidence is discovered to indicate that opening the container may subject the member to exposure of toxic, flammable, or explosive substances. Locked or securely wrapped luggage, packages, and containers shall not be opened except as otherwise authorized by law or by owner consent, but shall be indicated on the inventory list as locked or securely wrapped items.
- (3) Contraband or other evidence of a crime discovered during a vehicle inventory may be seized and used as evidence when an inventory is conducted at the time of storage.
  - (a) Any evidence found in plain view is admissible. Closed containers (luggage, attache cases, etc.) are considered as units of inventory and cannot be searched without obtaining consent or a search warrant unless there is evident danger to the member or public.
  - (b) The member should consider obtaining a search warrant when there is probable cause for a thorough search of the vehicle and/or its contents when time and conditions permit.

*History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188; Temporary Adoption Eff. June 9, 2000.*

**.0317 REIMBURSEMENT OF WRECKER OPERATORS**

(a) A member shall promptly obtain a statement of transportation and storage fees from the wrecker operator involved when the court orders the release of any vehicle without payment of transportation and storage costs. The member shall promptly transmit to the appropriate Zone Director, through the chain-of-command, the statement and a copy of the HP-305.1 in addition to any other relevant information.

(b) The Zone Director shall, in consultation with the Patrol Commander, determine whether to appeal the action of the magistrate.

(c) The Patrol shall compensate the wrecker operator for reasonable transportation and storage fees in cases where no appeal is taken. When an appeal is taken, the Patrol shall not compensate wrecker operators until all appeals are exhausted.

(c) The Troop Commander, in his discretion, may deviate from any of these rules in emergency situations if there are insufficient

*History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188; Temporary Adoption Eff. June 9, 2000.*

**.0318 FINANCIAL INTEREST**

No member of the Patrol or any of its civilian employees shall hold any financial interest or any form of ownership interest in a wrecker service. No member may be employed by a wrecker service, nor shall any member be assigned to a county where relative of the member has any financial interest in or is employed by a wrecker service.

*History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188; Temporary Adoption Eff. June 9, 2000.*

**.0319 IMPARTIAL USE OF SERVICES**

In order to perform its traffic safety functions, the Patrol is required to use wrecker services to tow disabled, seized, wrecked, and abandoned vehicles. Members of the Patrol shall assure impartial use of wrecker services through strict compliance with these rules. In no event shall any Patrol member recommend wrecker service to the owner or driver of a wrecked or disabled vehicle nor shall any member recommend the services of a particular wrecker service in the performance of his duty. Members shall, whenever possible and practicable, dispatch the wrecker service requested by the motorist requiring such services.

*History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188; Temporary Adoption Eff. June 9, 2000.*

**.0320 ROTATION, ZONE, CONTRACT, AND DEVIATION FROM SYSTEM**

(a) The Troop Commander shall arrange for the use of the Telecommunications Center to maintain a rotation wrecker service within each District of the Troop which shall include the following:

- (1) Separate computerized large and small rotation wrecker lists and manual rotation lists for the use of each District whereby wrecker services are called in the event they appear on a list;
- (2) A zone system within the District with a rotation wrecker list being maintained in each Rotation Wrecker Zone;
- (3) A zone, contract or other system operated in conjunction with one or more local agencies;
- (4) A combination of any such system.

(b) It is the policy of the Patrol to use the wrecker service requested by the vehicle owner or person in apparent control of a motor vehicle to be towed. Patrol members shall not attempt to influence the person's choice of wrecker services, but may answer questions and provide factual information. If no such request is made, the Patrol system in place in the Rotation Wrecker Zone will be used, absent an emergency or other legitimate reason.

wrecker services of the type needed within a District to meet the needs of the Patrol.

(d) The Telecommunicator shall enter in the computerized log the name of the wrecker service contacted and the response by the service to the request. The date and time of the call is automatically recorded in the computerized log as well as the identification number of the Telecommunicator making the entry.

(e) In the event the computerized rotation wrecker list is not in service (CAD down), the member requesting wrecker service shall be notified and a wrecker from the manual rotation wrecker list will be utilized. The Telecommunicator shall refer to the manual list that is maintained by the Telecommunicator Center Supervisor at each Communication Center. The wrecker service name shall be entered on the slip log, the slip log will indicate CAD DOWN.

*History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188; Temporary Adoption Eff. June 9, 2000.*

**.0321 ROTATION WRECKER SERVICE REGULATIONS**

(a) In order to assure that the needs of the Patrol are met, the Troop Commander shall include on the Patrol Rotation Wrecker List only those wrecker services which agree in writing to adhere to the following conditions:

- (1) Upon application for inclusion to the Patrol Rotation Wrecker List the owner of the wrecker service must complete a wrecker application form.
- (2) In order to be listed on a rotation wrecker list within a zone, a wrecker service must have a full-time office within that Rotation Wrecker Zone that is manned and open for business at least eight hours per day, five days per week, and a storage facility. To be listed on the large rotation wrecker list, a wrecker service must have in operation at least one large wrecker. To be listed on the small rotation wrecker list, a wrecker service must have in operation at least one small wrecker.
- (3) Each wrecker must be equipped with legally required lighting and other safety equipment to protect the public and such equipment must be in good working order.
- (4) Each wrecker on the Patrol Rotation Wrecker List must be equipped with the equipment required on the application list and such equipment must, at all times, be operating properly.
- (5) The wrecker service operator must remove all debris, other than hazardous materials, from the highway and the right-of-way prior to leaving the incident/collision scene.
- (6) The wrecker service must be available to the Patrol for rotation service on a 24 hour per day basis and accept collect calls (if applicable) from the Patrol. Calls for service must not go unanswered for any reason; failure to respond to calls for service may result in removal from the rotation wrecker list.
- (7) Consistently respond, under normal conditions, in a
- (19) Secure all personal property at the scene of a collision to the extent possible, and preserve personal property in a vehicle which is about to be towed.
- (20) Upon application to the Patrol Rotation Wrecker List,

timely manner. Failure to respond in a timely manner may result in a second rotation wrecker being requested. If the second wrecker is requested before the arrival of the first rotation wrecker, the initial requested wrecker will forfeit the call and will immediately leave the collision/incident scene.

- (8) For Patrol-involved incidents, respond only upon request from proper Patrol authority.
- (9) Impose reasonable charges for work performed and present one bill to the owner or operator of any towed vehicle. Towing, storage and related fees charged may not be greater than fees charged for the same service for non-rotation calls. Wrecker services may secure assistance from another rotation wrecker service when necessary, but only one bill is to be presented to the owner or operator of the vehicle for the work performed. A price list for recovery, towing and storage shall be established and kept on file at the place of business. A price list is to be furnished, in writing, to the District First Sergeant and made available to customers upon request. The wrecker service shall notify the District First Sergeant in writing prior to any price change.
- (10) Ensure that all wrecker operators have a valid drivers license for the type of vehicles driven.
- (11) Wrecker owners/operators/employees shall not be abusive, disrespectful, or use profane language when dealing with the public or any member of the Patrol. He shall cooperate at all times with members of the Patrol.
- (12) Adhere to all Federal and State laws and local ordinances and regulations related to registration and operation of wrecker service vehicles and have insurance as required by G.S. 20-309(a).
- (13) Employ only wrecker operators who demonstrate an ability and desire to perform required services in a safe, timely, efficient and courteous manner.
- (14) The wrecker service must immediately notify the District First Sergeant of any insurance lapse or change.
- (15) Notify the Patrol without delay whenever the wrecker service is unable to respond to calls.
- (16) Notification of rotation wrecker calls will be made to the owner/operator or employee of the wrecker service. Notification will not be made to any answering service, pager or answering machine.
- (17) Mark each wrecker service vehicle, by painting the name and location on each side of the vehicle with letters not less than three inches in height. No magnetic or stick-on signs shall be used. The wrecker service operator shall provide a business card to the investigating officer or person in apparent control of the vehicle before leaving the scene.
- (18) Each wrecker service vehicle must be registered with the Division of Motor Vehicles in the name of the wrecker service and insured by the wrecker service.  
the owner shall ensure that the owner and each wrecker driver has not been convicted of, pled guilty to, or received a prayer for judgment continued (PJC):  
Within the last five years of:

- (A) A first offense under G.S. 20-138.1, 20-138.2, 20-138.2A or 20-138.2B;
- (B) Any misdemeanor involving a breach of the peace, larceny or fraud;
- (C) Misdemeanor Speeding to Elude Arrest; and
- (D) A violation of G.S. 14-223, Resist, Obstruct, Delay.

Within the last ten years of:

- (A) Two or more offenses in violation of 28-138.1, 20-138.2, 20-138.2A or 20-138.2B;
- (B) Felony speeding to elude arrest; and
- (C) Any Class F, G, H or I felony involving sexual assault, breach of the peace, fraud, larceny, misappropriation of property or embezzlement.

At any time of:

- (A) Class A, B1, B2, C, D, or E felonies;
- (B) Any violation of G.S. 14-34.2, Assault with deadly weapon on a government officer or employee, 14-34.5, Assault with firearm on a law enforcement officer; or 14-34.7, Assault on law enforcement officer inflicting injury; and
- (C) Any violation of G.S. 20-138.5, Habitual DWI.

- (21) Immediately upon employment or upon the request of the District First Sergeant, the owner of the wrecker service agrees to supply the Patrol with the full name, current address, date of birth, social security number, and driver's license number and state of issuance for the owner and wrecker driver(s). This obligation is a continuing obligation. If the owner or a driver is convicted of, enters a plea of guilty or no contest to, or receives a prayer for judgment continued (PJC) for any of the above crimes after a wrecker service is placed on the rotation, it is the responsibility of the wrecker service to inform the Patrol immediately.
- (22) Upon request or demand, the rotation wrecker shall return personal property stored in or with a vehicle, whether or not the towing, repair, and/or storage fee on the vehicle has been or will be paid.
- (23) Tow disabled vehicles to any destination requested by the vehicle owner or other person with apparent authority, after financial obligations have been finalized.
- (24) Being called by the Patrol, to tow a vehicle, does not create a contract with or obligation on the part of Patrol personnel to pay any fee or towing charge except when towing a vehicle owned by the Patrol, a vehicle that is later forfeited to the Patrol, or if a court determines that the Patrol wrongfully authorized the tow and orders the Patrol to pay transportation and storage fees.
- (25) Being placed on the Patrol Rotation Wrecker List does not guarantee a particular number or quantity of calls, does not guarantee an equivalent number of calls to every wrecker service on the rotation wrecker list, and agree

*History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188; Temporary Adoption Eff. June 9, 2000.*

.0322 RECORDING WRECKER

that they will not receive compensation when not called in accordance with the list or when removed from the rotation wrecker list.

- (26) The failure to respond to a call by the Patrol will result in being placed at the bottom of any rotation wrecker list. A wrecker service must respond to at least 75 percent of the Patrol rotation wrecker calls within the previous month period.
- (27) Rotation wreckers and facilities are subject to inspection by the District First Sergeant or his designee at any time.
- (28) A rotation wrecker service, upon accepting a call from the Patrol, must use their own wrecker companies and cannot refer a call to another wrecker company or substitute for each other.
- (29) If a rotation wrecker service moves its business location or has a change of address, the owner of the wrecker service must notify the District First Sergeant of the address or location. Notification shall be made by mail no later than ten days prior to the projected move.
- (30) A wrecker service may not send a car carrier "rollback" in response to a Patrol rotation call unless a car carrier "rollback" is specifically authorized by the Patrol.
- (31) A rotation wrecker driver or employee shall not respond to a Patrol related incident with the odor of alcohol on his/her breath or while under the influence of alcohol or any impairing substance.

(b) The District First Sergeant shall conduct an investigation of each wrecker service desiring to be placed on the Patrol Rotation Wrecker List and determine if the wrecker service meets the requirements set forth herein. If the District First Sergeant determines that a wrecker service fails to satisfy one or more of the requirements set forth herein, the District First Sergeant shall remove the wrecker service owner of the reason(s) for refusing to be placed on the rotation wrecker list. Once placed on the rotation wrecker list, a wrecker service that fails to comply with the requirements of these rules shall be removed from the rotation wrecker list.

(c) The Troop Commander shall ensure that a wrecker service will only be included once on each rotation wrecker list. Exceptions to this requirement may be made for specialized large capacity wreckers when none are available for a County zone.

(d) If the Troop Commander chooses to use a contract, zone, or other system administered by a local agency, the local agency governs the system.

(e) If a wrecker service responds to a call it shall be placed at the bottom of the rotation wrecker list unless the wrecker service is not used or receives no compensation for the call. In that event, it will be placed back at the top of the rotation list.

REQUESTS/INCIDENTS

(a) Members investigating collisions shall enter on the Collision Report Form the authorization for removal of vehicles from the scene.

(b) Troop Commanders shall require members to submit written verification of wrecker requests on Patrol Form HP-305.

(c) Members observing any violations of the rotation wrecker rules and regulations shall notify the District First Sergeant.

(d) Complaints concerning any wrecker service on the rotation wrecker list, whether instituted by the public or by a member, shall be investigated by the District First Sergeant.

*History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188; Temporary Adoption Eff. June 9, 2000.*

**.0323 SANCTIONS FOR VIOLATIONS**

(a) If a District First Sergeant determines that a violation of these rules has occurred, the First Sergeant may:

- (1) Issue a written warning and request for compliance;
- (2) Remove the wrecker service from the rotation wrecker list until proper corrective measures have been taken to bring the wrecker service into compliance with these rules and verification of such compliance has been demonstrated; or
- (3) If the violation is major, or in the case of repeat violations, remove the wrecker service from the rotation wrecker list for a specific period of time.

(b) The severity of the sanction imposed shall be commensurate with the nature of the violation and prior record of the wrecker service.

(c) If a wrecker service owner commits, is convicted of, pleads guilty to or receives a prayer for judgment continued for any of the offenses specified in 9 NCAC 9H .0321(20), the wrecker service shall be removed from the rotation wrecker list for the designated period of time as set out in that section.

(d) A wrecker service shall not employ or continue to employ, as a driver, any person who commits, is convicted of, pleads guilty to or receives a prayer for judgment continued for any of the offenses specified in 9 NCAC 9H .0321(20). This prohibition is for the designated period of time as set out in that section. A wrecker service that willfully violates this provision shall be removed from the rotation wrecker list.

(e) A wrecker service driver or owner who responds to a Patrol related incident with an odor of alcohol on his/her breath shall immediately be removed from the rotation wrecker list for one year. This period of removal is in addition to any removal that may result from any violation of 9 NCAC 9H .0321(20).

(f) A wrecker service driver or owner who responds to a Patrol related incident with an odor of alcohol on his/her breath, and who refuses to submit to any requested chemical analysis, shall immediately be removed from the rotation wrecker list for a period of five years. This period of removal is in addition to any removal that may result from any violation of 9 NCAC 9H .0321(20).

(g) A willful misrepresentation of any material fact shall be considered to be a serious violation of these rules and may result

(e) A wrecker service that is removed from the rotation wrecker list and subsequently placed back on the list, for any reason, shall not be entitled to additional calls, priority listing or any other form of compensation.

(f) Ordinarily, a wrecker service shall remain on the rotation wrecker list pending a final decision of the Troop Commander. A

in removal from the rotation wrecker list.

(h) For any violation of these rules for which no specific period of removal or disqualification is established, a wrecker service shall be suspended, at a minimum, until the violation is corrected.

(i) A wrecker service that is removed from the rotation wrecker list does not become eligible for reinstatement merely because ownership has been transferred to a family member.

*History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188; Temporary Adoption Eff. June 9, 2000.*

**.0324 HEARING PROCEDURES**

(a) If, the District First Sergeant refuses to include a wrecker service on the rotation wrecker list, the wrecker service may appeal the First Sergeant's decision, in writing, to the Troop Commander within 20 days of receipt of the decision. The Troop Commander may, in his discretion, conduct a hearing or review the record. In either event, he shall render a decision, in writing, within 10 days of receipt of the appeal. The Troop Commander's decision, if unfavorable, may be appealed to the Office of Administrative Hearings (OAH) pursuant to the provisions of GS 150-5.

(b) If a District First Sergeant issues a written warning to a wrecker service for a violation of any of these rules, the wrecker service may, within 20 days of receipt of the warning, submit a written response to the First Sergeant in mitigation, explanation or rebuttal. Written warnings may not be appealed.

(c) If a District First Sergeant determines that a violation of these rules has occurred, and determines that removal from the rotation wrecker list may be warranted, he shall notify the affected wrecker service, in writing, of this determination and afford the wrecker service an opportunity to be heard. The hearing shall take place within 10 days of actual notice or, if notice is by first class mail, within 13 days of the date the notice is placed in the mail. The hearing shall take place within 10 days of the request for hearing and not less than three days written notice. If a District First Sergeant removes a wrecker service from the rotation wrecker list, the wrecker service may appeal the removal to the Troop Commander (or his designee), in writing, within 20 days of receipt of the notice. The Troop Commander, in his discretion, may conduct a hearing or review the record. If the Troop Commander decides to conduct a hearing, he will give the wrecker service not less than 10 days notice. He shall render a decision, in writing, within 10 days of receipt of the appeal or date of the hearing, whichever occurs last. The Troop Commander's decision, if unfavorable, may be appealed to the Office of Administrative Hearings (OAH) pursuant to the provisions of GS 150-B.

(d) Hearings conducted by District First Sergeants and/or Troop Commanders shall be informal and no party shall be represented by legal counsel.

District First Sergeant, with the concurrence of the Troop Commander, may, however, summarily remove a wrecker service from the rotation wrecker list in those cases where there exists reasonable grounds to believe a violation enumerated in 9 NCAC 9H .0321(12), (20), or (31) or any violation relating to the safe and proper operation of the business or which may jeopardize the

public health, safety or welfare.

Temporary Adoption Eff. June 9, 2000.

*History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188;*

This Section contains the agenda for the next meeting of the Rules Review Commission on **Thursday, July 20, 2000, 10:00 a.m.**, at 1307 Glenwood Ave., Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners by **Friday, July 14, 2000, at 5:00 p.m.** Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.

**RULES REVIEW COMMISSION MEMBERS**

**Appointed by Senate**  
 Teresa L. Smallwood, Chairman  
 John Arrowood  
 Laura Devan  
 Jim Funderburke  
 David Twiddy

**Appointed by House**  
 R. Palmer Sugg, 1<sup>st</sup> Vice Chairman  
 Jennie J. Hayman, 2<sup>nd</sup> Vice Chairman  
 Walter Futch  
 Paul Powell  
 George Robinson

**RULES REVIEW COMMISSION MEETING DATES**

July 20, 2000  
 August 17, 2000

September 21, 2000  
 October 19, 2000

**LOG OF FILINGS**

**RULES SUBMITTED: May 20, 2000 through June 20, 2000**

AGENCY/DIVISION	RULE NAME	RULE CITATION	ACTION
<b>DHHS/DIVISION OF FACILITY SERVICES</b>			
	Applicability of Rules	10 NCAC 3R .3002	Repeal
	Multi-County Groupings	10 NCAC 3R .3010	Repeal
	CON Review Schedule	10 NCAC 3R .3020	Repeal
	Facility and Service Need Determinations	10 NCAC 3R .3030	Repeal
	Dialysis Station Need Determination	10 NCAC 3R .3032	Repeal
	Reallocations and Adjustments	10 NCAC 3R .3040	Repeal
	Policies	10 NCAC 3R .3050	Repeal
	Applicability of Rules	10 NCAC 3R .3051	Repeal
	CON Review Categories	10 NCAC 3R .3052	Repeal
	CON Review Schedule	10 NCAC 3R .3053	Repeal
	Multi-County Groupings	10 NCAC 3R .3054	Repeal
	Reallocations and Adjustments	10 NCAC 3R .3055	Repeal
	Dialysis Station Need Determination	10 NCAC 3R .3056	Repeal
	Acute Care Bed Need Determination	10 NCAC 3R .3057	Repeal
	Rehabilitation Bed Need Determination	10 NCAC 3R .3058	Repeal
	Ambulatory Surgical Facilities Need Determination	10 NCAC 3R .3059	Repeal
	Open Heart Surgery Services	10 NCAC 3R .3060	Repeal
	Heart-Lung Bypass Machines	10 NCAC 3R .3061	Repeal
	Heart-Lung Bypass Machines	10 NCAC 3R .3062	Repeal
	Cardiac Catheterization Equipment	10 NCAC 3R .3063	Repeal
	Cardiac Catheterization Equipment	10 NCAC 3R .3064	Repeal
	Cardiac Angioplasty Equipment	10 NCAC 3R .3065	Repeal
	Cardiac Angioplasty Equipment	10 NCAC 3R .3066	Repeal
	Burn Intensive Care Services	10 NCAC 3R .3067	Repeal
	Positron Emission Tomography Scanners	10 NCAC 3R .3068	Repeal
	Bone Marrow Transplantation Services	10 NCAC 3R .3069	Repeal
	Solid Organ Transplantation Services Need	10 NCAC 3R .3070	Repeal

Gamma Knife Need Determination	10 NCAC 3R .3071	Repeal	
Nursing Care Bed Need Determination	10 NCAC 3R .3072	Repeal	
Demonstration Project	10 NCAC 3R .3073	Repeal	
Home Health Agency Office	10 NCAC 3R .3074	Repeal	
Hospice Need Determination	10 NCAC 3R .3075	Repeal	
Hospice Inpatient Facility Bed Need	10 NCAC 3R .3076	Repeal	
Psychiatric Bed Need Determination	10 NCAC 3R .3077	Repeal	
Chemical Dependency Treatment Bed	10 NCAC 3R .3078	Repeal	
Intermediate Care Beds	10 NCAC 3R .3079	Repeal	
Polices for General Acute Care Hospitals	10 NCAC 3R .3080	Repeal	
Policies for Inpatient Rehabilitation Services	10 NCAC 3R .3081	Repeal	
Policies for Ambulatory Surgical Facilities	10 NCAC 3R .3082	Repeal	
Policies for Nursing Care Facilities	10 NCAC 3R .3083	Repeal	Repeal
Policies for Home Health Services	10 NCAC 3R .3084	Repeal	
Policies for End-Stage Renal Disease	10 NCAC 3R .3085	Repeal	
Policies for Psychiatric Inpatient Facilities	10 NCAC 3R .3086	Repeal	
Policies for chemical Dependency Treatment	10 NCAC 3R .3087	Repeal	
Policies for Intermediate Care Facilities	10 NCAC 3R .3088	Repeal	
Applicability of Rules	10 NCAC 3R .6101	Repeal	
Certificate of Need	10 NCAC 3R .6102	Repeal	
Certificate of Need Review Schedule	10 NCAC 3R .6103	Repeal	
Multi-County Groupings	10 NCAC 3R .6104	Repeal	
Service Areas	10 NCAC 3R .6105	Repeal	
Reallocations and Adjustments	10 NCAC 3R .6106	Repeal	
Acute Care Bed Need Determination	10 NCAC 3R .6107	Repeal	
Rehabilitation Bed Need Determination	10 NCAC 3R .6108	Repeal	
Ambulatory Surgical Facilities	10 NCAC 3R .6109	Repeal	
Open Heart Surgery Services Need	10 NCAC 3R .6110	Repeal	Repeal
Heart-Lung Bypass Machines	10 NCAC 3R .6111	Repeal	
Fixed Cardiac Catheterization	10 NCAC 3R .6112	Repeal	
Mobile Cardiac Catheterization	10 NCAC 3R .6113	Repeal	
Burn Intensive Care Services Need	10 NCAC 3R .6114	Repeal	Repeal
Positron Emission Tomography Scanners	10 NCAC 3R .6115	Repeal	
Bone Marrow Transplantation	10 NCAC 3R .6116	Repeal	
Solid Organ Transplantation Services	10 NCAC 3R .6117	Repeal	
Gamma Knife Need Determination	10 NCAC 3R .6118	Repeal	
Lithotripter Need Determination	10 NCAC 3R .6119	Repeal	
Radiation Oncology Need Determination	10 NCAC 3R .6120	Repeal	
Nursing Care Bed Need	10 NCAC 3R .6121	Repeal	
Demonstration Project	10 NCAC 3R .6122	Repeal	
Home Health Agency Office	10 NCAC 3R .6123	Repeal	
Dialysis Station Need	10 NCAC 3R .6124	Repeal	
Hospice Need Determination	10 NCAC 3R .6125	Repeal	
Hospice Inpatient Facility Bed Need	10 NCAC 3R .6126	Repeal	
Psychiatric Bed Need	10 NCAC 3R .6127	Repeal	
Chemical Dependency Treatment	10 NCAC 3R .6128	Repeal	
Intermediate Care Beds	10 NCAC 3R .6129	Repeal	
Polices for General Acute Care	10 NCAC 3R .6130	Repeal	
Policies for Inpatient Rehabilitation	10 NCAC 3R .6131	Repeal	Repeal
Policy for Ambulatory Surgical Facilities	10 NCAC 3R .6132	Repeal	
Policy for Provision of Hospital	10 NCAC 3R .6133	Repeal	
Policy for Nursing Care Beds	10 NCAC 3R .6134	Repeal	
Policy for Determination of Need	10 NCAC 3R .6135	Repeal	
Policy for Relocation	10 NCAC 3R .6136	Repeal	
Policy for Home Health Services	10 NCAC 3R .6137	Repeal	
Policy for End-Stage Renal Disease	10 NCAC 3R .6138	Repeal	Repeal
Policies for Psychiatric Inpatients	10 NCAC 3R .6139	Repeal	

Policy of Chemical Dependency	10 NCAC 3R .6140	Repeal
Policies for Intermediate Care	10 NCAC 3R .6141	Repeal
<b>DHHS/DIVISION OF MEDICAL ASSISTANCE</b>		
Physician's Fee Schedule	10 NCAC 26H .0401	Amend
<b>DHHS/DIVISION OF MEDICAL ASSISTANCE</b>		
Deprivation	10 NCAC 50B .0305	Amend
<b>DENR/COASTAL RESOURCES COMMISSION</b>		
Estuarine Shorelines	15A NCAC 7H .0209	Amend
<b>DENR</b>		
Lavatories and Baths	15A NCAC 18A .1809	Amend
Drinking Water Facilities	15A NCAC 18A .1811	Amend
Guestrooms	15A NCAC 18A .1812	Amend
Approval of Construction and Renovation Plans	15A NCAC 18A .2802	Amend
Food Storage	15A NCAC 18A .2806	Amend
Specifications for Kitchens	15A NCAC 18A .2810	Amend
Manual Cleaning and Sanitizing	15A NCAC 18A .2812	Amend
Water Supply	15A NCAC 18A .2815	Amend
Walls and Ceilings	15A NCAC 18A .2825	Amend
<b>DENR/DHHS</b>		
Access to Immunization Information	15A NCAC 19A .0406	Amend
Definitions	15A NCAC 19B .0101	Amend
Application for Initial Permit	15A NCAC 19B .0301	Amend
Limitation of Permit	15A NCAC 19B .0302	Amend
Conditions for Renewal of Permit	15A NCAC 19B .0304	Amend
Qualifications of Maintenance Personnel	15A NCAC 19B .0309	Amend
Log	15A NCAC 19B .0311	Amend
Breath-Testing Instruments	15A NCAC 19B .0313	Amend
Intoxilyzer: Model 5000	15A NCAC 19B .0320	Amend
Preventive Maintenance: Intoxilyzer: Model 5000	15A NCAC 19B .0321	Amend
Reporting of Alcohol Concentrations	15A NCAC 19B .0322	Repeal
Approval: Alcohol Screening Test Devices	15A NCAC 19B .0502	Amend
Approved Alcohol Screening Test Devices	15A NCAC 19B .0503	Amend
<b>DENR/COMMISSION FOR HEALTH SERVICES</b>		
General	15A NCAC 26B .0101	Amend
Definitions	15A NCAC 26B .0102	Amend
Confidentiality	15A NCAC 26B .0103	Amend
Reporting of Cancer	15A NCAC 26B .0104	Amend
Cooperation of the Central Cancer Registry	15A NCAC 26B .0105	Amend
Release of Central Cancer Registry Data	15A NCAC 26B .0106	Amend
Coding of Incidence Reports	15A NCAC 26B .0107	Repeal
Assistance and Consultation	15A NCAC 26B .0108	Amend
Failure to Report	15A NCAC 26B .0109	Adopt
<b>SECRETARY OF STATE</b>		
Registration of Legislative Agents	18 NCAC 2 .0201	Repeal
Written Authorization	18 NCAC 2 .0202	Repeal
Written Expenditures	18 NCAC 2 .0203	Repeal
Influencing Public Opinion or Legislation	18 NCAC 2 .0204	Repeal
<b>SECRETARY OF STATE</b>		
Location and Hours	18 NCAC 7 .0101	Amend
General Purpose	18 NCAC 7 .0102	Amend
Disposition of Commissions	18 NCAC 7 .0204	Amend
Requirements for Reappointment	18 NCAC 7 .0206	Amend
Revocation of Commissions	18 NCAC 7 .0207	Amend
Approved Course of Study	18 NCAC 7 .0301	Amend
Instructors	18 NCAC 7 .0302	Amend



TRANSPORTATION, DEPARTMENT OF/DIVISION OF HIGHWAYS

Repair/Maintenance/Alteration of Signs 19 NCAC 2E .0225 Amend

STATE BOARDS/DENTAL EXAMINERS, BOARD OF

Dental Hygienists 21 NCAC 16M .0102 Amend
Definitions 21 NCAC 16S .0101 Amend
Board Agreements with Peer Review 21 NCAC 16S .0102 Amend
Receipt and Use of Information 21 NCAC 16S .0201 Amend
Intervention and Referral 21 NCAC 16S .0203 Amend
Monitoring Rehabilitation and Performance 21 NCAC 16S .0205 Amend
Direction Defined 21 NCAC 16W .0101 Adopt
Training for Public Health Hygienists 21 NCAC 16W .0102 Adopt
Training for Public Health Hygienists 21 NCAC 16W .0103 Adopt

RULES REVIEW COMMISSION

June 15, 2000
MINUTES

The Rules Review Commission met on June 15, 2000, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners in attendance were Vice Chairman Palmer Sugg, John Arrowood, Jim Funderburk, Paul Powell, Laura Devan, David R. Twiddy, Walter Futch, and George Robinson.

Staff members present were: Joseph J. DeLuca, Staff Director; Bobby Bryan, Rules Review Specialist; and Celia Cox.

The following people attended:

Jan Morley DHHS/Division of Aging
David Tuttle Engineers & Land Surveyors
David McLeod AGRICULTURE
Lynne Berry DHHS/Division of Aging
Harry Wilson State Board of Education
John Runkle Conservation Council of NC
Portia Rochelle DHHS/DMA
Jim Payton DHHS/DMA
Emily Lee TRANSPORTATION
Elsee Roane DHHS/Social Services
Carol Roberts DHHS/DMA
Carolyn Wisner DHHS/DMA

APPROVAL OF MINUTES

The meeting was called to order at 10:10 a.m. with Vice Chairman Sugg presiding. The Vice Chairman asked for any discussion, comments, or corrections concerning the minutes of the May 18, 2000 meeting. There being none, the minutes were approved.

FOLLOW-UP MATTERS

2 NCAC 52B .0206, .0401, .0406, .0407, .0409, .0410, .0411, and .0412: AGRICULTURE/Board of Agriculture – The Commission approved the rewritten rules with the exception of .0406. The original rule .0406 submitted by the agency was approved.

10 NCAC 42A .0807: DHHS/Social Services Commission – This rule was returned to the agency at their request.

10 NCAC 42C .2506: DHHS/Medical Care Commission – No action was necessary.

18 NCAC 10 .0201, .0303, .0304, .0305, .0306, .0307, .0701, .0801, .0802, and .0901: SECRETARY OF STATE – No action was necessary on these rules.

21 NCAC 33 .0106: Midwifery Joint Committee – At the request of the agency this rule was returned to them.

21 NCAC 56 .0503, .0603, .0804, and .0901: N C Board of Examiners of Engineers and Surveyors – No action was necessary.

#### LOG OF FILINGS

Vice Chairman Sugg presided over the review of the log and all rules were approved with the following exceptions:

10 NCAC 26B .0113: DHHS/Division of Medical Assistance – The Commission objected to this rule due to ambiguity. In (5)(c), it is not clear what is meant by “significant” regression. This objection applies to existing language in the rule.

10 NCAC 42E .0704: DHHS/Social Services Commission – The Commission objected to this rule due to lack of statutory authority. There is no authority for the provision in (a) requiring programs exempted by statute from the certification requirements to meet them if they receive funding administered by the Division of Aging. This objection applies to existing language in the rule.

10 NCAC 42Q .0016: DHHS/Social Services Commission – The Commission objected to this rule due to lack of statutory authority. There is no authority to require compliance with procedures that have not been adopted as rules. This objection applies to existing language in the rule.

10 NCAC 42S .0501: DHHS/Social Services Commission – The Commission objected to this rule due to lack of statutory authority. There is no authority for the provision in (1). The Social Services Commission is the rulemaking authority, not the Division of Aging. This objection applies to existing language in the rule.

#### COMMISSION PROCEDURES AND OTHER BUSINESS

Mr. DeLuca reported that \$48,000 had been placed in our budget for attorney fees and \$200,000 had been placed in a special reserve for attorney fees. The Commission approved a motion that staff be allowed to stay at the NASS/ACR conference headquarter’s hotel and be reimbursed at the full rate. The rate is reasonable and there would be serious questions about the adequacy, convenience, and especially safety of any nearby locations that could provide accommodations at the state rate.

The next meeting will be on Thursday, July 20, 2000.

The meeting adjourned at 10:55 a.m.

Respectfully submitted,  
Sandy Webster

*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. Also, the Contested Case Decisions are available on the Internet at the following address: <http://www.state.nc.us/OAH/hearings/decision/caseindex.htm>.*

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge  
JULIAN MANN, III

Senior Administrative Law Judge  
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Sammie Chess Jr.  
Beecher R. Gray  
Melissa Owens Lassiter

James L. Conner, II  
Robert Roosevelt Reilly Jr.  
Beryl E. Wade

AGENCY	CASE NUMBER	ALJ	DATE OF DECISION	PUBLISHED DECISION REGISTER CITATION
<b>CRIME CONTROL AND PUBLIC SAFETY</b>				
Mamie Lee French v. N.C. Crime Victims Compensation Commission	99 CPS 1646	Conner	04/27/00	15:01 NCR 38
<b>HEALTH AND HUMAN SERVICES</b>				
<i>Child Support Enforcement Section</i>				
Susan Marie Grier v. Department of Health & Human Services	99 CSE 1484	Mann	06/02/00	
Anthony C. Lambert v. Department of Health & Human Services	99 CSE 1699	Gray	06/05/00	
Davis, Donald George v. Department of Health & Human Services	00 CSE 0107	Wade	06/08/00	
Davis, Donald George v. Department of Health & Human Services	00 CSE 0108	Wade	06/08/00	
Albertus Shaw III v. Department of Health & Human Services	00 CSE 0176	Gray	06/05/00	
Andrew S. McKenzie v. Department of Health & Human Services	00 CSE 0193	Wade	06/08/00	
Darryal K. Anderson v. Department of Health & Human Services	00 CSE 0200	Gray	06/09/00	
Izell Anthony Twiggs v. Department of Health & Human Services	00 CSE 0226	Gray	06/07/00	
Frederica LaShon Smith v. Department of Health & Human Services	00 CSE 0279	Wade	06/08/00	
Robert G. Wilson v. Department of Health & Human Services	00 CSE 0285	Lassiter	05/25/00	
Joseph Patrick Santana v. Department of Health & Human Services	00 CSE 0344	Morrison	06/07/00	
Kenneth Ray Smith v. Department of Health & Human Services	00 CSE 0416	Morrison	05/31/00	
James T. Graham v. Department of Health & Human Services	00 CSE 0426	Wade	06/08/00	
Ruth I. Johnson v. Department of Health & Human Services	99 DHR 0952	Chess	05/27/00	
<i>Division of Facility Services</i>				
Angela Denise Headen v. DHHS, Division of Facility Services	99 DHR 0107	Wade	04/11/00	15:01 NCR 41
Ruth Mae Wiley v. NC DHHS, Division of Facility Services	99 DHR 0331	Chess	05/27/00	
Crystal Shermain Byers v. DHHS, Division of Facility Services	00 DHR 0217	Mann	06/07/00	
<b>ENVIRONMENT AND NATURAL RESOURCES</b>				
<i>Division of Air Quality</i>				
Bullock Properties/Ralph M. Bullock v. DENR, Div. of Air Quality	99 EHR 1088	Morrison	04/12/00	
<b>JUSTICE</b>				
<i>Alarm Systems Licensing Board</i>				
Kenneth Waits Putnam v. Alarm Systems Licensing Board	00 DOJ 0574	Gray	06/07/00	
<i>Education and Training Standards Division</i>				
James Everett Hill v. Sheriffs' Education & Training Standards Comm.	99 DOJ 1479	Reilly	04/10/00	
Margaret A. Singleton v. Sheriffs' Education & Training Stds. Comm.	00 DOJ 0056	Gray	03/01/00	

*RULES REVIEW COMMISSION*

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*Private Protective Services Board*

Jason Stewart Duckett v. Private Protective Services Board	00 DOJ 0572	Gray	06/07/00		
Shannon Ray Nance v. Private Protective Services Board	00 DOJ 0609	Gray	06/07/00		
<b>PUBLIC INSTRUCTION</b>					
Charlie Lee Richardson v. Department of Public Instruction	99 EDC 0788	Reilly	04/11/00	15:01 NCR	45
Dale Y. Farmer v. Department of Public Instruction	00 EDC 0373	Gray	05/26/00		

**DEPARTMENT OF INSURANCE**

Jacquelyn Hastings v. NC Teachers & State Employees' Comprehensive Major Medical Plan	98 INS 1662	Gray	05/25/00		
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**STATE PERSONNEL**

*Health and Human Services*

Larry Wellman v. Department of Health & Human Services	99 OSP 0484	Reilly	05/11/00	15:01 NCR	47
Sarah C. Hauser v. Forsyth Co., Department of Public Health	99 OSP 0923	Lassiter	04/20/00	15:01 NCR	52

STATE OF NORTH CAROLINA

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
99 CPS 1646

COUNTY OF LEE

MAMIE LEE FRENCH )

Petitioner, )

v. )

N.C. DEPARTMENT OF CRIME CONTROL VICTIM )

JUSTICE SERVICES )

Respondent. )

RECOMMENDED DECISION

This matter came on for hearing on April 24, 2000 in Raleigh, North Carolina before Administrative Law Judge James L. Conner, II.

APPEARANCES

**Petitioner:** Mamie Lee French  
341 Fields Drive  
Sanford, North Carolina 27330  
Petitioner pro se

**Respondent:** Stacey T. Carter  
Associate Attorney General  
N.C. Department of Justice  
P.O. Box 629  
Raleigh, North Carolina 27602-0629

Upon careful consideration of the testimony and evidence presented at the hearing, the documents, and the entire record in this proceeding, the undersigned makes the following:

FINDINGS OF FACT

1. Christopher French was murdered on or about November 27, 1998. His mother, Mamie Lee French, is the Petitioner in this matter.
2. Christopher French's murderer was Larry McLeod.
3. At the time of his murder, Christopher French had engaged in a verbal argument with Mr. McLeod. Mr. McLeod is 6 feet, 7 inches tall and weighs 350 pounds. Christopher French was 5 feet, 6 inches tall and weighs 135 pounds. There was no evidence that Mr. French was armed.
4. The evidence presented on behalf of the State in this matter was that the argument was purely verbal, and not physical. Christopher French was apparently shot and killed as the culmination of this verbal argument.
5. The filings in this matter on behalf of Respondent suggest that Christopher French had some involvement in drug activity. However, there was no competent evidence presented at the hearing of this matter to support that insinuation. In fact, there were several items of evidence presented that would tend to indicate that Christopher French was not involved in drug sales or drug running.
6. Mr. French was convicted for a violation of N.C. Gen. Stat. §14-34.1, discharging a firearm into occupied property, on November 5, 1998. The underlying event occurred on December 25, 1997.

7. This conviction was the result of a guilty plea on the part of Christopher French, which was a change from his initial plea of not guilty.

8. According to all of the witnesses who testified at the hearing of this matter, and according to all of the documentation in the District Attorney's file that was obtained by the undersigned pursuant to N.C. Gen. Stat. §15B-12(d), Christopher French did not commit the offense of discharging a firearm into occupied property.

9. All of the evidence does indicate that Christopher French was driving the vehicle from which another person discharged a firearm into occupied property. By operation of N. C. Gen. Stat. §14-5.2, this could have resulted in Christopher French being convicted of the aforementioned offense. However, no evidence was presented at the hearing of this matter that would establish that Christopher French ever expressly or impliedly gave his assent to the commission of the felony. Therefore, his actual guilt of that offense is impossible to establish on the record before the undersigned.

10. There was no connection suggested or established by any evidence at the hearing of this matter that the murder of Christopher French was in any way connected with discharge of a firearm into occupied property that occurred on December 25, 1997.

11. Petitioner, Mamie Lee French, the mother of Christopher French, is not alleged to have had any involvement in the commission of any crime or other improper act.

Based upon the foregoing Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. N. C. Gen. Stat. §15B-11 provides numerous grounds for denial of victims compensation claims or reduction of awards under such claims. Most of the grounds for denial are mandatory, using the phrase "shall be denied."

2. N. C. Gen. Stat. §15B-11(c1) provides that :

a claim *may* be denied upon a finding that the claimant has been convicted of any felony classified as a Class A, B1, B2, C, D, or E felony ... and that such felony was committed within three years of the time the victim's injury occurred.

[emphasis added]

3. Discharging a firearm into occupied property is a Class E felony. A Class E felony is the lowest level felony for which a denial would justified under Subsection (c1).

4. Although Christopher French was convicted of a Class E felony pursuant to his guilty plea, this is an appropriate case for the Commission to use its discretion not to deny the claim of his mother for funeral expenses, given that the felony of which he was convicted was in the least serious category for which such denial might be justified, Christopher French did not actually commit the felony, there is no clear evidence that he would have been convicted of the felony had his case gone to trial on an aiding and abetting theory, and there was no connection between the purported felony and his murder.

RECOMMENDED DECISION

Based on the foregoing Findings of Fact and Conclusions of Law it is hereby recommended that Petitioner's claim for crime victim's compensation be ALLOWED.

ORDER

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

NOTICE

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

The agency is required by North Carolina General Statutes §150B-36(a) to serve a copy of the Final Decision on all parties and to furnish a copy to the Parties' attorney of record.

The agency that will make the final decision in this contested case is the North Carolina Department of Crime Control Victim Justice Services.

This the 26<sup>th</sup> day of April, 2000.

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James L. Conner, II  
Administrative Law Judge

STATE OF NORTH CAROLINA

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
99 DHR 0107

COUNTY OF MECKLENBURG

ANGELA DENISE HEADEN )  
Petitioner, )  
v. )  
NORTH CAROLINA DEPARTMENT OF HUMAN )  
RESOURCES, DIVISION OF FACILITY SERVICES, )  
Respondent. )

RECOMMENDED DECISION

This contested case was heard before the undersigned Administrative Law Judge in the Office of the Administrative Hearings, James K. Polk Building, Charlotte, North Carolina on June 10, 1999.

APPEARANCES

For Petitioner: Ferguson, Stein, Wallas, Adkins, Gresham & Sumter, Attorneys at Law, Charlotte, North Carolina; Henderson Hill appearing  
For Respondent: Jane Rankin Thompson, Assistant Attorney General, N. C. Department of Justice, Winston-Salem, North Carolina appearing

ISSUE

Whether charges of neglect against Petitioner were properly substantiated and provide an appropriate basis for the revocation of Petitioner’s foster home license.

FINDINGS OF FACT

1. Petitioner was licensed as a foster parent with Lutheran Family Services in Charlotte in November 1997.
2. On December 3, 1997, an 18 month old foster child, Kevona H., was placed in her home. Kevona was in the custody of Mecklenburg County Department of Social Services and her foster care worker was Belinda McLaughlin.
3. The only other resident of the home was petitioner’s four year old natural daughter, Ashley.
4. Kevona was well cared for by Ms. Headen and on August 6, 1998, Ms. McLaughlin asked Ms. Headen if she would be interested in adopting Kevona if DSS was successful in terminating the rights of Kevona’s mother. Ms. Headen did desire to adopt Kevona.
5. On August 11, 1998, 27 month old Kevona suffered third degree burns over fifty (50%) percent of her body when she fell into scalding bath water.
6. The injuries to Kevona were investigated by the Charlotte-Mecklenburg Police Department, the Mecklenburg County District Attorney’s Office, the District Attorney of Catawba County and the Catawba County DSS. More than 250 crime scene photographs were taken. Medical experts at the Burn Center at UNC-Chapel Hill participated in the investigation and treatment of Kevona’s injuries. Ms. Headen gave statements to ten to twelve different professionals involved in the medico-legal investigations. The law enforcement and prosecutorial agencies concluded that the injuries resulted from accidental causes and declined to file any criminal charges.



7. By correspondence from the Respondent dated December 1, 1998, the Respondent revoked the Petitioner's license to operate a foster home based upon an investigative finding by the Catawba County Department of Social Services that Petitioner neglected a foster child in her care Kevona. This investigation was conducted by Mr. James Ernst of the Catawba County DSS.
8. The facts leading up to the accident are not in serious dispute. Ms. Headen had run bath water, taken out braids and undressed Kevona. Before giving Kevona her bath, Ms. Headen went downstairs to check on the burners on the stove and assumed Kevona was following her as she and her own daughter always did. That evening her own daughter was at her first karate class with Ms. Headen's brother. Ms. Headen walked to the top of the stairs and saw that Kevona was next to her at the top of the stairs. Ms. Headen then proceeded down the stairs, through the living room and into the kitchen. She thought that the child was following her. When she reached the stove, she heard Kevona scream and ran upstairs to find Kevona in the bath tub trapped under the bath tub doors that had fallen in on top of her. Ms. Headen grabbed the doors to get them out of the way, took Kevona out of the water and started to apply what she believed to be proper medical attention which was, in fact, proper. Then she immediately called 911.
9. The State presented the testimony of three witnesses: Lisa Jennings, foster care case manager for Lutheran Family Services at the time of the accident; Belinda McLaughlin, foster care worker at Mecklenburg County Department of Social Services; and James H. Ernst, Child Protective Services Investigator for the Catawba County DSS, assigned to conduct the investigation of this incident. The three State's witnesses very consistently described Ms. Headen as a concerned and caring foster parent, who cooperated in every way with the investigations conducted concerning the injuries to the child.
10. Ms. Jennings went to the Headen home in response to Ms. Headen's telephone call on the evening of the accident. She described Ms. Headen as very upset, and very concerned about the injuries to Kevona. After the accident Ms. Headen visited Kevona all the time at the hospital. Prior to the accident Ms. Jennings thought that Ms. Headen was a good adoptive mother for Kevona.
11. Belinda McLaughlin saw no signs of abuse in Ms. Headen's care of Kevona before the accident. Kevona was always well groomed, nicely dressed, and clean. Ms. Headen was not involved in any relationships, habits or life style which impaired her relationship with Kevona. Ms. McLaughlin observed that Kevona and Ms. Headen's biological daughter got along with each other very well.
12. James Ernst testified, and the court finds as a fact, that from the beginning, Ms. Headen was cooperative with the DSS investigator. She was cooperative with the police department. She opened her home, even though she was not there, to the crime scene unit to go in and take pictures. Ms. Headen was also very cooperative with all of the doctors, and the law enforcement and DSS investigation. Mr. Ernst testified that there was never a question of Ms. Headen being anything but a careful and nurturing parent prior to the accident. Similarly, there is no question that Ms. Headen acted responsibly and properly in response to the accident.
13. Mr. Ernst testified, and the court finds as a fact, that the Catawba County DSS substantiated a finding of neglect based solely on the theory of negligent supervision. Mr. Ernst identified four bases supporting the substantiation of neglect:
  1. Ms. Headen ran bath water hotter than normal, therefore the tub would be a risk to the child;
  2. Ms. Headen took the child's clothes off and beads out of her hair, making Kevona more vulnerable to thinking she was getting prepared for a bath and was supposed to be taking a bath;
  3. Ms. Headen went to check on grease, saw Kevona at the top of the stairs, and as she began to go downstairs, she did not check to see if the 27-

month old child was with her while she went down the stairs, through the dining room, living room, and into the kitchen; and

4. Ms. Headen should have had Kevona in her supervision at all times.
14. Angela Headen testified regarding her conduct before, during and after the injuries to Kevona on August 11, 1998. The court took special care in observing the demeanor of Ms. Headen during her testimony. The court found Ms. Headen to be an accurate and honest reporter of events, and fully credits Ms. Headen's account of the accident.
15. Ms. Headen testified that she did not tell Mr. Ernst that she purposely ran the bath water hotter than normal. She did however accompany a police officer to the kitchen sink and turned on the tap water. Steam came out of the faucet and she told the officer "I had never seen the water that hot." The court after paying careful attention to Ms. Headen's demeanor and to the scope and form of the investigation conducted by law enforcement and DSS fully credits Ms. Headen's account of what she told Mr. Ernst.
16. Faye Marshall, the Service Coordinator at Metrolina Aids Project and a coworker of Ms. Headen testified before the court and by way of sworn affidavit. Ms. Marshall testified regarding her high regard for the character of Ms. Headen. The court found Ms. Marshall's testimony compelling, consistent with the testimony of the witnesses presented by the State, and fully credible. Specifically, Ms. Marshall testified, and the court finds as a fact, that Ms. Headen is a very compassionate, loving and nurturing individual. She is sensitive to children. Indeed, Ms. Marshall testified that Ms. Headen oftentimes "provides care for my children while I am out of town, so if there was any doubt that she could provide adequate care, I would not allow her that opportunity to provide that kind of support for my own children as a mother."

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

CONCLUSIONS OF LAW

1. Pursuant to Chapter 150B of the North Carolina General Statutes, the Office of Administrative Hearings has jurisdiction over the parties and the subject matter.
2. Petitioner provided Kevona with proper care, supervision and discipline and did not commit acts of neglect as defined in N.C.G.S. §7B-101 (15).
3. The Catawba County DSS substantiation of neglect is not supported by the facts nor is it compelled by the law. Allegations of neglect "must be proved by clear and convincing evidence." *In re Hayden*, 384 S.E.2d 558, 96 N.C. App. 77 (N.C. App. 1989). DSS concluded that Ms. Headen should have had Kevona under "supervision at all times," and her failure to do so for the seconds during which this tragic accident occurred, constituted neglect. In this conclusion DSS erred. The determinative issue between the parties is whether Kevona was "neglected". Perfection is not required of parents, not even of foster parents. Neglect has been found when a parent fails to exercise that degree of care consistent with the normative standards imposed upon parents by society and physical or emotional impairment follows, *see In re Thompson*, 64 N.C. App. 95, 306 S.E.2d 792 (1983), or when a parent shows a complete lack of parental concern for a child, *see Clark v. Williamson*, 91 N.C. App. 668, 373 S.E.2d 317 (1988).
4. The determination "that a child is not receiving proper care, supervision, or discipline, requires the exercise of judgment by the trial court." *In re Everette*, 514 S.E.2d 523 (N.C. App. 1999). At the hearing, the undersigned administrative law judge examined very closely the demeanor of the petitioner and that of the witnesses for both the Petitioner and for the Respondent. This judge was impressed by the consistent degree to which all witnesses confirmed that Petitioner maintained a clean, proper, loving and secure home for Kevona. Ms. Headen's quick and responsible reactions to the tragic accident, her extraordinary degree of cooperation with authorities, and her consistent care and support of Kevona during her extended medical treatment, provide further support for the conclusion that Petitioner was not negligent in her care and supervision of Kevona. The undersigned judge concludes that Petitioner's care and supervision of Kevona before, during and after the tragic accident on August 11, 1998, was consistent with the normative standards imposed upon parents by society. The tragic consequences of Kevona being out of Petitioner's sight for less than thirty seconds did not constitute neglect.

**RECOMMENDED DECISION**

The North Carolina Department of Human Resources will make the Final Decision in this contested case. It is recommended that the agency adopt the Findings of Fact and Conclusions of Law set forth above and reinstate the Petitioner's license to operate a foster home.

**ORDER**

It is hereby ordered that the agency serve a copy of the Final Decision on the Office of Administrative Hearings, Post Office Drawer 7447, Raleigh, North Carolina 27611-7447, in accordance with North Carolina General Statutes Section §150B-36(b).

**NOTICE**

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

The agency is required by North Carolina General Statutes Section §150G-36(b) to serve a copy of the FINAL DECISION on all parties and to furnish a copy to the parties' attorney of record.

This the 11<sup>th</sup> day of April, 2000.

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Beryl E. Wade  
Administrative Law Judge

STATE OF NORTH CAROLINA

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS

COUNTY OF WAKE

99 EDC 0788

CHARLIE LEE RICHARDSON )  
Petitioner, )  
v. )  
DEPARTMENT OF PUBLIC INSTRUCTION, )  
Respondent. )

RECOMMENDED DECISION

This matter came on for hearing before the undersigned administrative law judge on November 5, 1999. The parties were given until March 31, 2000 to resolve the matter and then to file a proposed recommended decision and exceptions. M. Travis Payne represented the petitioner and Laura E. Crumpler represented the respondent. The petitioner presented two witnesses and introduced Exhibits # 1 – 5, 7 – 9, and 11 - 13. The respondent presented one witness and introduced Exhibits 1 – 7.

FINDINGS OF FACT

1. Charlie Lee Richardson, the petitioner, is a teacher of twenty-two years and the holder of teaching license No. 251-92-7667, issued by the State Board of Education. In 1994, Mr. Richardson brought suit in the United States District Court for the Western District of North Carolina against his employer, the Cabarrus County Board of Education, claiming that the school board had unlawfully denied him promotion because of his race. He further asserted that he subsequently was given low evaluations and was not promoted because he had filed a discrimination charge with the E.E.O.C.

2. The case was tried before a federal magistrate who dismissed all but one of Mr. Richardson’s claims. The jury hung on the remaining claim and the judge declared a mistrial and scheduled a retrial.

3. Before the retrial of the matter, the attorneys reached an apparent settlement of the case. During that time, Jessie Blackwelder, assistant superintendent for the Cabarrus County Schools and a central witness for the defendant, received an anonymous letter by mail that indicated that she had lied and that it was time to get her back unless Mr. Richardson was immediately promoted. The letter also promised her “jail, fines, and sudden retirement” if she did not cooperate.

4. Four months later on April 8, 1997, Ms. Blackwelder received a second anonymous letter that referred to the settlement agreement as a “cheap ass deal” that Mr. Richardson was too smart to sign. The letter was angrier and more threatening than the first one and referred to Ms. Blackwelder as a “dike, lesbian, or pussy sucker.”

Two days later, Ms. Blackwelder intercepted a third letter that was addressed to her husband and that said she would “learn not to fuck with” the writer.

5. The school board was granted an evidentiary hearing to determine if Mr. Richardson was engaging in witness tampering or intimidation. Two hearings were conducted in which the magistrate determined that the first letter was typed on the same typewriter as was used by Mr. Richardson to type three documents in his personnel file.

6. The Board filed a motion to dismiss with prejudice and to release it from the settlement agreement. Mr. Richardson filed a motion to enforce the settlement agreement. The court granted the Board’s Motion and found that Mr. Richardson was in fact the author of the anonymous letters. The District Court and the Fourth Circuit Court of Appeals found that these letters threatened Ms. Blackwelder and that Mr. Richardson at least attempted to intimidate her. The District Court stated that Mr. Richardson’s actions probably violated federal laws dealing with perjury and intimidating witnesses.

7. The State Board of Education has adopted a rule, codified at 16NCAC 6C.0312, that governs the suspension or revocation of licenses. That rule provides, in part, that the Board may revoke a license for any illegal, unethical or lascivious conduct by a person if there is a reasonable and adverse relationship between the underlying conduct and the continuing ability of the person to perform any of his/her professional functions in an effective manner.

8. Respondent moved for summary judgment on the grounds that the petitioner was collaterally stopped from attacking the underlying conduct since the federal magistrate found as a fact that he was the author of the letters. Petitioner concurred in this argument and challenged only whether there was an adequate adverse relationship between the conduct and his continuing ability to perform his duties.

**CONCLUSIONS OF LAW**

Petitioner has engaged in conduct that was unethical. Petitioner's conduct in sending these threatening and obscene letters to his supervisor has a reasonable and adverse relationship to his continuing ability to perform any of his professional functions in an effective manner.

**RECOMMENDED DECISION**

It is recommended that the petitioner's teaching license be revoked.

**NOTICE**

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. The agency is required to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings. The agency that will make the final decision in this matter is the North Carolina State Board of Education.

This the 11<sup>th</sup> day of April, 2000.

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Robert R. Reilly, Jr.  
Administrative Law Judge

STATE OF NORTH CAROLINA

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
99 OSP 0484

COUNTY OF WILSON

LARRY WELLMAN, )  
Petitioner, )  
v. )  
DEPARTMENT OF HEALTH AND HUMAN SERVICES, )  
Respondent. )

RECOMMENDED DECISION

This matter came on for hearing before the undersigned administrative law judge on December 20, 1999, January 6, 2000, January 7, 2000, and April 4, 2000 in Wilson and Nashville. Petitioner was represented by M. Travis Payne and Elizabeth P. McLaughlin. Respondent was represented by Bruce S. Ambrose. The parties submitted a Pre-Trial Agreement. The parties presented closing arguments in Raleigh on April 11, 2000. The petitioner filed a proposed recommended decision on May 3, 2000.

CASE HISTORY

Petitioner introduced Exhibits # 1 – 14, 17 – 19, 21, 23 – 29, and 32 – 42. Exhibits # 20, 22 and 48 were accepted as Offers of Proof. The petitioner withdrew Exhibit # 49 as an Offer of Proof. The petitioner also filed an Offer of Proof Memorandum on April 7, 2000. The petitioner presented sixteen witnesses, including the petitioner himself.

Respondent introduced Exhibits # A – Z and aa, bb, cc, dd, ff and gg. Exhibit (ee) was accepted as an Offer of Proof. The respondent presented ten witnesses.

The issues presented in this contested case are whether the petitioner was discharged without just cause and due to race discrimination and retaliation.

FINDINGS OF FACT

1. The petitioner, Larry Wellman, is an African-American who was wrongfully dismissed from his position as a dorm teacher at the Eastern North Carolina School for the Deaf. The petitioner was falsely accused of and later discharged for sleeping on the job in the early evening of December 8, 1998. The petitioner had assisted the students who are deaf or hearing-impaired for more than thirteen years. The School, which serves students from preschool to twenty-one years of age, is a residential school. 60% of the students arrive on campus on Sunday evening and return home on Friday afternoon.

2. African-American students account for more than 60% of the student body. African-American employees comprise about 17% of the 250 employees. These employees are concentrated in the lowest paying positions. There are no African-American supervisory employees and only about 7% of the teaching staff is African-American. In contrast, African-American employees comprised about 42% of the houseparents, 40% of the night attendants and 67% of the dorm teachers. Annual salaries for these positions are less than \$20,000.

3. The School has a policy that staff supervising students, especially residential staff responsible for the students staying in the dorms, shall not sleep on the job. Sleeping employees will be dismissed. Numerous current and former employees of the School explained that an employee had to be caught sleeping by a supervisor before the person would be discharged. A report from a co-worker or a student would not be sufficient. Sarah Coley, a former employee, testified that, when she was dorm director, she and other supervisory employees were told in a supervisor’s meetings that the policy required an employee to be caught by a supervisor before he or she would be discharged. Superintendent Steven Withey was present during one or more of these meetings in which supervisors were informed that employees could not be discharged for sleeping on the job unless they were caught by a supervisor.

4. The actual practice was that, in most situations, upon receiving a report that an employee was sleeping, a supervisor would actually observe the employee to confirm that he or she was asleep. If a supervisor was not available

immediately, the supervisor would follow up over the next several shifts in an attempt to catch the employee asleep. Indeed, on at least one occasion, the dorm director, Susan Large, arranged to have dormitory alarms disabled so that she could come into the dormitories silently in the wee hours of the morning to attempt to catch a suspect. Ms. Large made at least three such silent visits before she finally caught the employee asleep. The person was then fired.

5. The policy on discharging sleeping employees was not always followed, especially when the employee was white.

6. At least two white employees, who were confirmed to be asleep, were not fired. Sarah Coley, an African-American, submitted a written report to the dean concerning a white houseparent. Even though a supervisor actually observed the residential employee asleep and put it in writing, the person was not discharged. No disciplinary action of any sort was taken against the person and the written report from Ms. Coley was not in any file concerning the person.

7. School officials, including Ms. Coley, Ms. Large, and Gary Farmer, stated that it was normally necessary to get close to an employee who appeared to be asleep in order to confirm the person's condition. Ms. Large stated that it would not be possible to confirm that someone was asleep by viewing them through a window in a door. Mr. Farmer testified that when he finds an employee who he believes is asleep, he sits down right in front of him or her and remains there very close to the person for five to fifteen minutes to confirm that the person was actually sleeping.

## II

8. The day after the petitioner's alleged sleeping, Lee Fields, a student, stopped by Ms. Large's office. In a causal manner, the student said "Guess what I saw last night?" He said he saw Mr. Wellman asleep. Ms. Large reported this information and an investigation was begun. The student stated that Mr. Wellman was asleep at least for one hour during the period from 7:30 p.m. to 9:00 p.m. However, on cross examination, he admitted that at an Employment Security Commission hearing when he was under oath, he stated that he only observed Mr. Wellman asleep for about two minutes.

9. Another student, Eddie Jiminez, told officials of the School that he came into the room briefly shortly before 9:00 p.m. He indicated that he saw the petitioner at his desk with his head resting on his hand. He was in the room very briefly, probably only a few seconds, and certainly less than a minute. The student mentioned the petitioner to another employee who just shrugged.

10. Neither the students nor the employee, who is totally deaf, went up to Mr. Wellman to determine if he were sleeping. The employee first testified that the petitioner was sleeping for thirty minutes but, after being told that a student estimated an hour, he changed his estimate to forty minutes. In truth, the employee did not know whether the petitioner was awake or asleep.

11. At the pre-dismissal conference convened by Superintendent Witchey on December 15, 1998, the petitioner presented a signed statement from a houseparent, Deborah Taybron, confirming that Mr. Wellman had been downstairs in the girls' portion of the dormitory from 8:30 p.m. until about 8:45 p.m. It was Mr. Wellman's custom to go downstairs to the girls' section of the dormitory at about this time every night to make sure that there were no problems.

12. During the pre-dismissal conference, the petitioner focused on the time period immediately before 9:00 p.m. when he got off of work. December 8, 1998, had been an unusually warm day with temperatures outside approaching 80 degrees. The heat was still on inside building, making the upstairs of the dormitory unpleasantly hot. The windows were open most of the day. However, there was a tractor or backhoe making some repairs right outside the dormitory. A very strong odor of exhaust fumes permeated the upstairs of the dormitory. The uncomfortable heat and exhaust fumes gave the petitioner a very strong headache that afternoon and evening.

13. The petitioner left the dorm at about 7:30 p.m. to pick up several residents of his group home from a Christmas party. He returned between 8:00 and 8:15 p.m. The petitioner went to his desk upstairs in the dormitory at about 8:45 p.m. Because of the headache, he sat at his desk for 10 to 15 minutes with his head in his hands. He was not asleep. He described both Mr. Fields and Mr. Jiminez coming into the room, looking around, and snickering or giggling at him. Shortly before 9:00 p.m., he called an employee at a private group home which he runs. He gathered some belongings together and left for the day.

## III

14. Racial slurs were used by employees of the School from time to time, including the word “nigger” without significant discipline being taken. In early April, 1999, a white employee in the administration building looked out on a demonstration by a group of mostly African-American employees and referred to the persons as “niggers.” Mr. Witchey, saying it was free speech, took no action. In the fall of 1995, a white teacher made a statement from the stage of an assembly of students that was called to address racial tensions. He stated that “since I arrived here from New York, all I have seen is niggers fighting niggers and there’s nothing wrong with separating whites and niggers during meal times.” The statement did not help racial tensions. African-Americans found the comment to be offensive. Mr. Witchey took no action. In fact, he had a practice of addressing African-American men as “boy.” The petitioner wrote to the Department to complain about the use of the word “nigger.”

12. Confederate battle flags hung at the school. A flag was on the wall in the room of a middle school teacher for more than a year although it was not being utilized the entire time for educational process. In addition, flags having representations of the Confederate battle flag have been up on the wall of the gymnasium for more than 10 years. African-American employees testified that they were offended by such symbols. The Confederate battle flag has one meaning as a part of our history of the War Between the States. However, in the Twentieth Century, it has been transformed into a symbol of racism by those who discriminate against African-Americans by denying them equal opportunities in education, housing and employment.

13. African-American employees of the school were more likely to be subjected to discipline than white employees. The petitioner was written up for failing to take Tylenol II for a student on a field. White employees, most particularly coaches of the athletic teams, had on numerous occasions failed to take medication for students that they took on trips away from the school, including on one occasion failing to take seizure medicine that a student was required to take. The white employees never received any discipline. The petitioner was also written up for going off campus to get food from a nearby fast food restaurant for himself and other employees. However, white employees, both before and after the petitioner was written up, regularly went off campus for the same purpose. African-American employees were written up for things such as changing a bus route, whereas white employees were not disciplined in similar situations.

#### IV

14. In the period from 1994 through 1998, Mr. Wellman assisted African-American employees on at least four different occasions in filing grievances concerning disciplinary write ups they had received. On all four occasions the disciplinary write ups were significantly reduced or actually removed from the employee’s file, at least by Step 2 of the grievance procedure. In two of these situations, the employees were actually reinstated after being fired.

15. On at least three occasions, the petitioner appealed written warnings that he had received. Those warnings were significantly reduced or instructions were given to remove the warnings from the personnel files. The petitioner also earned the title “Black Folk Lawyer” because of his assistance to African-American employees in grievances proceedings. The petitioner raised issues of discrimination and unfair treatment of African-American employees on several occasions with Mr. Witchey. He also addressed his concern that white employees were treated more favorably with respect to promotions and new, year-round jobs that came available.

16. In February of 1998, an African-American houseparent was alleged to have engaged in improper sexual activities with a thirteen year-old male student. The houseparent stated that he had come upon the student as the student was walking from the dorm to the cafeteria. He walked into the cafeteria with the student. The houseparent stated that he had not spent any time with the student on this occasion. Another houseparent, in charge of the student on that occasion, informed the School on multiple occasions that the child was out of her sight for less than one minute.

17. However, the student began telling a story about his activities with the houseparent when he was caught that evening by the houseparents and Ms. Large coming back from the infirmary through the girls portion of the dorm. On this occasion, Ms. Large took the student into her office, asked the houseparents to leave, and questioned the student alone for ten to fifteen minutes. It was only following this questioning that the boy began talking about the first houseparent. The student ultimately told a very elaborate story that would have taken far more than one minute of time if he and the houseparent had engaged in the activities alleged by the student.

18. Nevertheless, the houseparent was discharged. The petitioner took up the houseparent’s cause. He encouraged him to appeal, arranged for witnesses to testify and obtained an attorney. He began a “white ribbon campaign” which encouraged employees at the School to wear a piece of white ribbon in support of the houseparent. The employees who wore the ribbons were



predominately African-Americans. Some white supervisors instructed their African-America employees that they were not allowed to wear the white ribbons. The petitioner was successful and the houseparent was reinstated.

19. The petitioner and the houseparent spoke to a local reporter. On June 29, 1998, an article appeared in the local newspaper stating:

Larry Wellman, a dorm teacher at McAdams Residence Hall, wonders how much of the confession was encouraged. Ms. Large first said that she talked alone with the student for 20 seconds but witnesses said it was 15 minutes, Wellman said.

“We will keep her (Ms. Large’s) feet to the fire,” Wellman said. Her “white lie” almost destroyed a man’s life, he said.

Wellman and Brown, ... now are asking ENCSD to investigate Ms. Large. They also seek an Office of Minority Affairs.

20. In July, 1998, the petitioner arranged a meeting with George McCoy, the Interim Director for the Division of Services for the Deaf And Hard of Hearing. Approximately ten employees from the School attended that meeting wherein they raised the issue of racial discrimination at the School. They also requested the formation of an Office of Minority Affairs at the School to monitor the treatment that employees received. Although Mr. McCoy indicated that he would not reveal the identity of the employees, the School officials knew their identity by the time the employee returned to the school.

21. Ms. Large wrote Mr. McCoy on July 6, 1998, and expressed her substantial irritation and displeasure towards the petitioner and his statements in the newspaper. She referred to the petitioner: “Individuals who thrive on hate always need a source of power to fulfill their need to control.” She accused the petitioner of “.. feed[ing] the issue with unsubstantiated fuel.” Mr. Witchey received a copy of the letter, but like Mr. McCoy, took no action.

22. Ms. Large had much animosity towards the petitioner. While being cross-examined during the hearing, she referred to the petitioner as “Larry” but when pressed concerning her relationship and feelings towards the petitioner she switched to “Mr. Wellman.” Her hostility could be cut with a knife. After a recess, Ms. Large regained her composure and returned to addressing the petitioner as “Larry.”

23. Ms. Large had previously stated: “I think Larry [Wellman] ONCE again should be written up.” (Emphasis in the original.) She went on to state: “I will not tolerate this behavior any longer and I will not baby him or look the other way as has been done for so many years out of fear for what he might do or whatever connections he might have that I am always reminded of.” Wendi Batts, the personnel director, received Ms. Large’s e-mail that “we want to make sure that it will stick this time” Although Mr. Witchey received copies of these e-mails, he took no action.

V

24. Beginning in 1996 and continuing through 1998, the petitioner was primarily responsible for organizing numerous cultural events during Black History Month. Among the activities that he initiated were an exhibit of African-American inventors, including samples of their inventions such as the traffic light, refrigerator, air conditioner, gasoline powered mower, etc. He also organized a presentation and tasting of traditional African-American dishes with an explanation describing each dish. He also encouraged teachers to make black history displays and helped them with these activities.

25. Mr. Wellman also wrote, produced and directed three plays which were performed at the School during black history month. They were also performed on occasion at places away from the School. These plays had civil rights and historic African-American themes, including “A March Toward Freedom,” “The Impossible Dream”, and “The Promised Land”. Both African-American and white student participated in the plays.

CONCLUSIONS OF LAW

1. Respondent did not have just cause to discharge the petitioner. The respondent failed to follow standard procedures in establishing whether the petitioner was asleep. Instead, the respondent relied the statements of two students who

neither appreciated the seriousness of their allegations nor understood the necessity of approaching the person to determine if the person is asleep. The employee also did not approach the petitioner.

2. The petitioner's discharge was the result of intentional racial discrimination. There was a pattern and practice of discrimination towards African-American employees, including the petitioner. The Superintendent tolerated and condoned the use of racially derogatory words and symbols. Acquiescence in the face of racism is racism. He never intervened as Ms. Large waged her campaign against the petitioner.

3. The petitioner's discharge was also the result of retaliation against him for assisting other African-Americans at the school. After the petitioner's discharge, the Superintendent's concern was whether the charges would stick this time.

RECOMMENDED DECISION

It is recommended that (1) the petitioner be reinstated to the position he held as of December 15, 1998, (2) the petitioner be compensated with full back pay and fringe benefits, including any and all salary increases that he was likely to have received, for the period from December 16, 1998, through the date of his reinstatement, (3) the petitioner be provided with full seniority as a state employee as if he were never discharged on December 16, 1998, and had been continuously employed through the date of his reinstatement, and (4) the petitioner be paid reasonable attorneys' fees.

NOTICE

The State Personnel Commission will make the final decision in this contested case. The agency will give each party an opportunity to file exceptions to this recommended decision and to present written arguments to the agency. The agency will serve a copy of the final decision on all the parties, the attorneys of record, and the Office of Administrative Hearings.

This the 11<sup>th</sup> day of May, 2000.

\_\_\_\_\_  
Robert Roosevelt Reilly, Jr.,  
Administrative Law Judge

STATE OF NORTH CAROLINA

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS

COUNTY OF FORSYTH

99 OSP 0923

SARAH C. HAUSER  
Petitioner,

v.

FORSYTH COUNTY DEPT OF PUBLIC HEALTH  
Respondent.

RECOMMENDED DECISION

On December 13, 1999, Administrative Law Judge Melissa Owens Lassiter heard this contested case in Winston-Salem, NC. After receiving all the evidence at hearing, the undersigned dismissed Petitioner’s claims of discrimination based upon age, race, and handicapping condition as Petitioner failed to present any evidence proving these allegations.

At hearing, Respondent renewed its Motion to dismiss for Petitioner’s failure to state a claim upon which relief could be granted and for Petitioner’s failure to exhaust her administrative remedies. The undersigned hereby DENIES Respondent’s Motion to Dismiss on the grounds for failure to state a claim. In her July 22, 1999 Petition and attachments thereto, Petitioner sufficiently stated a claim in appealing her “wrongful termination.” However, the undersigned GRANTS Respondent’s Motion to Dismiss Petitioner’s harassment claim as Petitioner failed to raise this claim in her internal administrative appeal and therefore, failed to exhaust her administrative remedies as required by Chapter 126 of the NC General Statutes.

APPEARANCES

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ISSUES

Whether Respondent has just cause to terminate Petitioner’s employment for unsatisfactory job performance and unacceptable personal conduct?

BURDEN OF PROOF

In accordance with Peace v Employment Security Commission, 507 S.E.2d (N.C. 1998), Petitioner has the burden of proving by a preponderance of the evidence that the Respondent did not have just cause to terminate her employment.

FINDINGS OF FACT

**A. BACKGROUND FACTS**

1. From July 1976 until June 1999, Petitioner was employed by the Forsyth County Family Planning Unit as a Processing Assistant III. Petitioner's office/ work station was located in a facility known as the Reynolds Health Center.
2. In 1998, Respondent consolidated its Family Planning Unit with its other clinics under the Department of Public Health ("DPH").
3. On April 28, 1999, the Department of Public Health moved the Family Planning Unit and its employees from the Reynolds Health Center into the DPH's building.
4. On April 28, 1999, DPH Registration Supervisor Carole Cockerham became Petitioner's direct supervisor, and Patty Frye became the department manager supervising Cockerham. Angel Jesus "A.J." Miyares was the DPH Director of Administrative Services, and Dr. Sherman Kahn was the DPH Director.
5. Prior to the April 28, 1999 move, Respondent conducted training meetings with the Family Planning Staff, including Petitioner, regarding patient registration in the other clinics. Respondent advised the Family Planning staff that all DPH staff would be cross-trained in registering patients for all clinics, other than their own clinic. Petitioner and the Family Planning Staff would be trained by the other clinics' experienced staff, and via training manuals. The training would be done on the job at the DPH building, and could last up to 3 months.
6. Similarly, the Family Planning Staff would train the other clinics' staff who were less experienced in registering patients for family planning.
7. It was common knowledge among Respondent's employees that the orientation area was known as the "training area." Ms. Cockerham and other staff constantly referred to the orientation area as the "training area".
8. From approximately April – June 1999, Petitioner weighed approximately 275 pounds.

**B. FACTS RELATING TO PETITIONER'S DISMISSAL**

9. At the DPH building, Petitioner was first assigned to sit in a cubicle near the front or entrance of the department with the other Family Planning Staff. This cubicle was comfortable and spacious enough to accommodate Petitioner given her weight and blood clot condition.

10. On May 6, 1999, Frye told Petitioner to move to the orientation area for training. Petitioner advised Frye that she did not want to move, because she was more comfortable in her original cubicle. Petitioner stated that sitting in the smaller cubicle in the orientation area aggravated her blood clot condition. Frye explained to Petitioner needed to report to the orientation area to receive registration training for the other clinics. When Petitioner insisted on returning to her original cubicle, Frye asked Petitioner "I hope you are not refusing to follow my instructions?" Petitioner walked away and returned to her original seat. Petitioner did not report to the orientation area.

Later that day, Petitioner asked to meet with Frye. They met and discussed the orientation procedures Frye had already explained to the Family Planning Staff on April 28, 1999. Petitioner claimed that she was being treated "like a child".

After this conversation, Petitioner complied with Frye's instruction and instructed by Frye, and sat in the orientation area's middle cubicle for approximately two weeks. Petitioner felt uncomfortable at this cubicle, because this cubicle was smaller than the first one, and it caused pressure, pain, and swelling in her legs.

11. Frye knew about Petitioner's blood clot condition from the other coworkers. At the Equal Employment Opportunity Commission hearing on these issues, Frye testified that she remembered Petitioner had told her that sitting in the "back area" (orientation area) aggravated her blood clots.

12. On May 21, 1999, Petitioner asked Frye if she could return to her original cubicle. Frye responded no, because Petitioner was still in training, and Petitioner's training would take up to three months. Frye, however, indicated she would discuss Petitioner's progress with Petitioner's supervisor.

13. On the morning of May 24, 1999, Petitioner asked Ms. Cockerham, if she could return to her original cubicle. Petitioner advised that she had blood clots in her legs, and the seating arrangement in the orientation cubicle was uncomfortable. Ms Cockerham granted Petitioner permission to move back to her earlier cubicle/seat.

14. About 12:00 or 1:00 p.m. on May 24, 1999, Ms. Cockerham told Petitioner to return to the orientation cubicle or “training area” three separate times. Petitioner declined and did not move to that area. Upon telling Petitioner again that she had to return to the “training area,” Petitioner became argumentative, and verbally challenged Cockerham. Petitioner asked Cockerham, “Why are you harassing me?”

Cockerham advised Petitioner that if she did not go to the “training area”, she (Cockerham) would go see A.J. (Miyares), DPH’s Administrative Services Director. Petitioner arose from her chair, grabbed Cockerham’s elbow, and said, “Let’s go to A.J.” (Miyares). When Cockerham responded that Miyares was out of the office that week, Petitioner said, “Let’s go see Dr. Kahn”. Cockerham advised Petitioner that Dr. Kahn was also out of the office that day. Cockerham forcefully pulled her elbow from Petitioner’s grasp and stepped back. Cockerham advised Petitioner she would not discuss this with Petitioner until she met with Patti Frye, and Cockerham walked away.

15. During her June 3, 1999, Predissmissal Conference, Petitioner apologized to Cockerham for the touching incident and told Cockerham she didn’t intend to harm her.

16. DPH employee Rita Cook witnessed this touching incident between Petitioner and Cockerham. Cook heard loud talking, observed Petitioner grab Cockerham’s elbow, heard Petitioner say “let’s go see A.J.”, and saw Cockerham step back from Petitioner.

However, the remainder of Cook’s testimony is inconsistent because she attributed some statements to Petitioner that Petitioner did not speak. Furthermore, Cook was not present and thus, did not testify in any of the internal hearings on this matter. Her testimony at this hearing is the first time she has testified about this incident.

17. Cockerham admitted that she was not physically injured from Petitioner’s “touching”. Cockerham was frightened by Petitioner actions because she did not know Petitioner, was not accustomed to employees under her supervision touching her, and was a much smaller person than Petitioner. Due to this incident, Cockerham experienced trouble sleeping and was fearful of Petitioner.

18. On May 24, 1999, Cockerham weighed approximately 145 pounds.

19. Cockerham did not file criminal charges against Petitioner based upon this incident.

20. In supervising employees, Cockerham admitted that she does not order her employees to perform tasks. If an employee does not perform her requests, she does not argue with them, but walks away and “does something else.”

21. Cockerham admitted at the EEOC hearing on these issues, that the only time Petitioner was insubordinate was when she refused to move to the “training area.” However, every time Petitioner refused to move to the “training area”, Cockerham considered Petitioner’s refusal to be insubordination.

22. On or about May 25, 1999, Linda Darr asked Cockerham to cancel six patients’ Family Planning physicals because no one would be able to see those patients that day. Cockerham asked Petitioner to cancel and reschedule these physical examinations. Petitioner challenged Cockerham’s request by arguing that they could not cancel these appointments, because a patient may need a refill of birth control pills or a “Depo” (Depovera) shot. Petitioner also stated that these patients could still be registered, receive their birth control, and be rescheduled for another appointment.

23. Cockerham felt Petitioner was argumentative and refusing to follow a supervisory request, so she said she would handle it and walked away. Cockerham consulted with the clinic regarding those patients. The clinic advised her to send the patients needing birth control pills back to the clinic. In addition, two patients were seen or examined that afternoon.

24. There is no evidence that Cockerham had any prior experience with Family Planning registration. The evidence shows that Petitioner was correct regarding the procedure to follow. Nevertheless, by challenging Cockerham and being argumentative, Petitioner refused to follow Cockerham’s order to cancel these appointments.

25. Petitioner acknowledged that during May 1999, she did not follow proper procedure when she announced over the intercom system, "Patient 40, to go to STD (Sexually Transmitted Disease) Clinic." The proper procedure was to announce, "Patient 40, go to Station Number 3."

Earlier that day, Petitioner had informed Ms. Cockerham that she was fully trained, and saw no reason to report for any further training.

26. At the beginning of May 1999, Ms. Frye and Ms. Cockerham gave the DPH staff their phone numbers to call them when and if they could not report to work. Ms. Frye also gave the staff her home phone number.

27. On May 31, 1999, Petitioner's daughter delivered a baby. At approximately, 6:30 a.m. on June 1, 1999, Petitioner telephoned Ms. Frye at home, informing Frye that she was unable to attend work because she had to take care of her daughter's other children. Petitioner advised Ms. Frye that she would return to work when her daughter was out of the hospital. Frye asked Petitioner if she had sufficient leave, but Petitioner did not know how much available leave she had, if any. Frye asked Petitioner to call her back later in the day to update Frye on her situation, as they were short staffed and needed Petitioner at work.

28. On June 2, 1999, Petitioner did not come to work. Petitioner did not call Frye again on June 1. On June 2, 1999, Petitioner did not come to work. She also didn't call either Ms. Frye or Ms. Cockerham to advise them she was not reporting to work on June 2, 2000.

29. Petitioner was the only available person to care for her daughter's children on June 1 and 2, 1999.

30. DPH deemed Petitioner's June 1, 1999 phone call to Ms. Frye in compliance with Respondent's Attendance, Absenteeism, and Tardiness Policy.

31. Petitioner believed that her June 1, 1999 telephone conversation with Frye was adequate notice that she would not attend work on June 1 or 2, 1999.

32. Respondent's personnel records indicated that as of June 11, 1999, Petitioner had 5 hours of available sick leave and 21 hours of available vacation leave.

33. According to Respondent's Payroll Accounting Technician I, Karen Branson, advised that Petitioner had accumulated approximately 18 hours of available annual leave as of June 1, 1999. Ms. Branson indicated that since Petitioner had no sick leave on June 2, 1999, Respondent's personnel department deducted the remainder of Petitioner's June 1<sup>st</sup> and the June 2<sup>nd</sup> leave time from Petitioner's annual leave. Since Petitioner was no longer a DPH employee as of June 3, 1999. Respondent later paid Petitioner for the remainder of her vacation leave.

34. On the afternoon of June 2, 1999, A.J. Miyares telephoned and advised Petitioner that she was suspended without pay because she failed to inform her supervisor that she would not attend work June 1 and 2, 1999. Miyares called Petitioner again later that day, and advised that she was suspended with pay.

35. On June 3, 1999, Petitioner attended a predissmissal conference with Miyares, Frye, and Cockerham. Both Frye and Cockerham had submitted written recommendations to Miyares that Petitioner be dismissed for the above alleged incidents.

36. By letter dated June 7, 1999, Miyares dismissed Petitioner for unacceptable personal conduct and insubordination occurring on May 24 and 25, 1999 – "as well as other incidents" they discussed at the June 3, 1999 predissmissal conference. (See June 7, 1999 letter.)

37. On June 21, 1999, Petitioner appealed her dismissal to Sherman Kahn, Respondent's Public Health Director. Kahn conducted an internal hearing on July 3, 1999. By a Final Agency Decision dated July 9, 1999, Kahn upheld Miyares's recommendation for Petitioner's dismissal, and terminated Petitioner from employment for unacceptable personal conduct and insubordination. Kahn's specific reasons for dismissal were: Petitioner's failing to obey a supervisor's orders, inappropriately touching a supervisor, violating the employer's leave policy and absenteeism policy, and disrupting the department's staff and its efficient operation.

38. On July 22, 1999, Petitioner filed a petition and attachments for a contested case with the Office of Administrative Hearings. She alleged:

- (1) her discharge was without just cause
- (2) her discharge was based upon Respondent's discrimination against Petitioner's age, sex, and handicapped condition
- (3) Petitioner also wrote, "I was harassed to sit in a chair less than 20 feet away, even though it had no bearing on my performance."

39. Respondent had given Petitioner a copy of the Forsyth County Employee Handbook ("Handbook"). Petitioner admitted that she knew and understood the policies on personal conduct, attendance, leaves of absence, and the grievance procedure for adverse employment actions/decisions.

40. Petitioner acknowledged that when she began work at the DPH building, she received manuals/notebooks that Ms. Cockerham had prepared, which explained the proper registration procedures for all the clinics, except for family planning. Petitioner indicated that "all you have to do is follow the packet" to register patients for the other types of clinics.

41. Petitioner admits telling Cockerham that where she had to sit had nothing to do with learning because she had received the manuals, and all she had to do was follow the books.

42. Petitioner requested and Respondent allowed, Petitioner to use a specific chair wherever she sat in the office. However, there is no evidence that Petitioner requested any accommodation at work because of a blood clot condition.

44. While there is some evidence that Cockerham and Frye may have known something about Petitioner's blood clot condition, there is insubstantial evidence that Cockerham and Frye knew specifically why Petitioner was uncomfortable sitting in the "training area".

45. Cockerham and Frye's directive that Petitioner sit and receive the required training in the orientation or "training area" was a reasonable directive. All DPH staff were required to be cross-trained in this same manner, and all such staff had been advised of this requirement numerous times.

46. It is reasonable for a supervisor to conclude that her employee is disobeying or refusing to follow her directives, when the employee argues and challenges every directive the supervisor gives the employee.

#### CONCLUSIONS OF LAW

1. Pursuant to the State Personnel Act, Petitioner was a career state employee at the time of her dismissal. Because Petitioner has alleged that Respondent lacked just cause for her dismissal, the undersigned has personal and subject matter jurisdiction to hear this contested case.

2. N. C. Gen. Stat. § 126-35(a) states in pertinent part, "no career State employee subject to the State Personnel Act...shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause.

3. 25 NCAC 1 J .0604(h) provides that the two bases for disciplinary action or dismissal of employees for just cause are unacceptable personal conduct and unsatisfactory job performance.

4. Pursuant to the State Personnel Manual (SPM), Sect. 7, p3, "unacceptable personal conduct" is an act that is:
- (1) conduct for which no reasonable person should expect to receive a prior warning; or
  - (2) job-related conduct which constitutes a violation of State or federal law; or
  - (3) conviction of a felony or an offense involving moral turpitude that is detrimental to or impacts the employee's service to the State; or
  - (4) the willful violation of known or written work rules; or
  - (5) conduct unbecoming a state employee that is detrimental to State service; or
  - (6) the abuse of client(s), patient(s), student(s) or person(s) over whom the employee has charge or to whom the employee has a responsibility or of an animal owned by the State; or
  - (7) absence from work after all authorized leave credits and benefits have been exhausted; or
  - (8) falsification of a State application or in other employment documentation.

5. An employee may be dismissed for a current incident of unacceptable personal conduct without any prior disciplinary actions. 25 NCAC 1J .0608(a).

6. The Forsyth County Employee Handbook – General Conduct Section (March 1999) provides:

As a County Employee, you are expected to conduct yourself in accordance with the following guidelines:

- To know and observe all established County policies and procedures
- To perform the job assigned to you as instructed by your supervisor
- To be prompt in reporting to work . . .

The following actions are not permitted. Any employee discovered committing any of the following offenses while on duty is subject to dismissal. . . .

- Disrespect or refusing to carry out the instructions of a supervisor or other authorized person.
- . . .
- Fighting or provoking a fight on County property, using abusive, obscene, profane, or threatening language or engaging in immoral conduct while on duty.

7. Forsyth County’s Attendance, Absenteeism, Tardiness policy states, in part:

. . . Your unscheduled absence or tardiness places a burden on co-workers and hinders effective County operations. In situations where you must be tardy or absent, you must notify your immediate supervisor within the 30-minute period following your normal reporting time.

8. Forsyth County’s Paid Sick Leave policy, states, in part, “If you must be absent, unexpectedly due to a personal or a family illness or injury, you need to notify your supervisor within thirty (30) minutes of your normal reporting time”.

9. Refusal to accept a reasonable and proper assignment from an authorized supervisor constitutes insubordination, when the refusal is willful. Employment Security Commission v Lachman, 305 N.C. 492, 290 S.E.2d 616 (1982)

10. During May 24-25, 1999, Petitioner willfully violated Respondent’s General Conduct work rules by:

- (1) willfully refusing to follow her supervisor’s numerous reasonable directives to sit in the assigned orientation area for training.
- (2) willfully and explicitly refusing to receive further training.
- (3) willfully refusing to follow her supervisor’s reasonable order to cancel and reschedule several patients’ physical examinations.

11. On May 24, 1999, Petitioner touched her supervisor Ms. Cockerham, in an inappropriate and unauthorized manner, to wit: grabbing Ms. Cockerham’s elbow and talking to her in a threatening tone.

12. Petitioner’s willful actions and conduct on May 24-25, 1999 and during May 1999, violated Respondent’s written work rules, constituted insubordination, and was unacceptable personal conduct as defined by the State Personnel Act.

13. Petitioner did not violate Respondent’s leave of absence, sick leave, or absenteeism policies when she was absent on June 2, 1999. On June 1, 1999, Petitioner called Ms. Frye and informed Frye that she would not return to work until her daughter came home from the hospital. Petitioner’s statement sufficiently complied with Respondent’s notice requirements in its sick leave, leave of absence, and attendance policies.

In addition, Petitioner had sufficient annual leave to cover both her June 1 and 2, 1999 absences. In the end, Respondent personnel department deducted Petitioner’s June 1<sup>st</sup> and June 2<sup>nd</sup> leave from Petitioner’s annual leave. Lastly, even if one concluded Petitioner’s June 2<sup>nd</sup> absence was unauthorized, one absence does not amount to “excessive” absences justifying disciplinary action.

14. Petitioner failed to prove by a preponderance of the evidence that her discharge was without just cause.



15. A preponderance of the evidence proves that Respondent had just cause to terminate Petitioner from employment for unacceptable personal conduct and insubordination.

**RECOMMENDED DECISION**

Based upon the foregoing, the undersigned recommends Respondent's decision to dismiss Petitioner from employment, be UPHELD.

**ORDER**

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

**NOTICE**

In accordance with N. C. Gen. Stat. § 126-37, the State Personal Commission will issue an advisory decision to the Local Appointing Authority, the Director of the Forsyth County Department of Public Health, who will make the Final Agency Decision.

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

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

This the 24<sup>th</sup> day of April, 2000.

\_\_\_\_\_  
Melissa Owens Lassiter  
Administrative Law Judge