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# *The* **NORTH CAROLINA REGISTER**

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**EHNR**

**FINAL DECISION LETTERS**

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**Justice**

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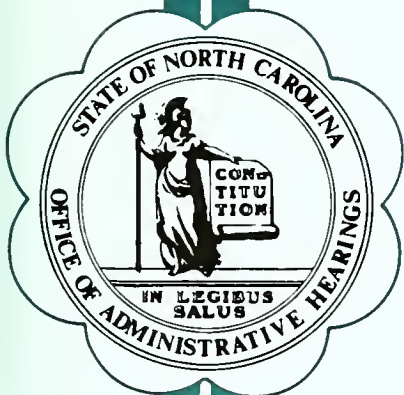
**FINAL RULES**

**Correction**

**Transportation**

**ISSUE DATE: SEPTEMBER 15, 1989**

**Volume 4 • Issue 12 • Pages 617-658**



# INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

## NORTH CAROLINA REGISTER

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

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues.

Requests for subscriptions to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, N. C. 27604, Attn: *Subscriptions*.

## ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing; a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; a reference to the Statutory Authority for the action and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any **amendment** which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Unless a specific statute provides otherwise, at least 30 days must elapse following publication of the proposal in the *North Carolina Register* before the agency may conduct the required public hearing and take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule for approval by the Administrative Rules Review Commission. Upon approval of ARRC, the adopted or amended rule must be filed with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, upon request by the agency, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule cannot become effective earlier than the first day of the second calendar month after the adoption is filed with the Office of Administrative Hearings for publication in the NCAC.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

## TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in

effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

## NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

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

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 52 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication available.

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

## NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes be examined carefully.

## CITATION TO THE NORTH CAROLINA REGISTER

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

**North Carolina Register.** Published bi-monthly by the Office of Administrative Hearings, P.O. Drawer 11666, Raleigh, North Carolina 27604, pursuant to Chapter 150B of the General Statutes. Subscriptions one hundred and five dollars (\$105.00) per year.

**North Carolina Administrative Code.** Published in looseleaf notebooks with supplement service by the Office of Administrative Hearings, P.O. Drawer 11666, Raleigh, North Carolina 27604, pursuant to Chapter 150B of the General Statutes. Subscriptions seven hundred and fifty dollars (\$750.00). Individual volumes available.

# NORTH CAROLINA REGISTER



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**NORTH CAROLINA REGISTER**  
*Publication Deadlines and Schedules*  
*(January 1989 - May 1990)*

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing & Adoption by Agency	* Earliest Effective Date
*****	*****	*****	*****	*****
01/02/89	12/08/88	12/15/88	02/01/89	05/01/89
01/16/89	12/27/88	01/03/89	02/15/89	05/01/89
02/01/89	01/10/89	01/17/89	03/03/89	06/01/89
02/15/89	01/26/89	02/02/89	03/17/89	06/01/89
03/01/89	02/08/89	02/15/89	03/31/89	07/01/89
03/15/89	02/21/89	03/02/89	04/14/89	07/01/89
04/03/89	03/10/89	03/17/89	05/03/89	08/01/89
04/14/89	03/23/89	03/31/89	05/14/89	08/01/89
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06/15/89	05/24/89	06/01/89	07/15/89	10/01/89
07/03/89	06/12/89	06/19/89	08/01/89	11/01/89
07/14/89	06/22/89	06/29/89	08/13/89	11/01/89
08/01/89	07/11/89	07/18/89	08/31/89	12/01/89
08/15/89	07/25/89	08/01/89	09/14/89	12/01/89
09/01/89	08/11/89	08/18/89	10/01/89	01/01/90
09/15/89	08/24/89	08/31/89	10/15/89	01/01/90
10/02/89	09/11/89	09/18/89	11/01/89	02/01/90
10/16/89	09/25/89	10/02/89	11/15/89	02/01/90
11/01/89	10/11/89	10/18/89	12/01/89	03/01/90
11/15/89	10/24/89	10/31/89	12/15/89	03/01/90
12/01/89	11/07/89	11/15/89	12/31/89	04/01/90
12/15/89	11/22/89	12/01/89	01/14/90	04/01/90
01/02/90	12/07/89	12/14/89	02/01/90	05/01/90
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03/01/90	02/08/90	02/15/90	03/31/90	07/01/90
03/15/90	02/22/90	03/01/90	04/14/90	07/01/90
04/02/90	03/12/90	03/19/90	05/02/90	08/01/90
04/16/90	03/23/90	03/30/90	05/16/90	08/01/90
05/01/90	04/09/90	04/17/90	05/31/90	09/01/90
05/15/90	04/24/90	05/01/90	06/14/90	09/01/90

\* The "Earliest Effective Date" is computed assuming that the public hearing and adoption occur in the calendar month immediately following the "Issue Date", that the agency files the rule with The Administrative Rules Review Commission by the 20th of the same calendar month and that ARRC approves the rule at the next calendar month meeting.



CHANGE IN NOTICE AS PUBLISHED IN THE NORTH CAROLINA REGISTER, VOLUME 4, ISSUE 10 ON PAGE 552.

TITLE 15 - ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

The Governor's Waste Management Board will be unable to conduct the rulemaking hearing scheduled for September 21, 1989, due to the special legislative session on hazardous wastes scheduled for the same day. The public notice and proposed rules for this hearing appeared in the N. C. Register, Volume 4, Issue 10, Page 552, on August 15, 1989. The rulemaking hearing has been rescheduled as follows:

*Notice is hereby given in accordance with G.S. 150B-12 that the Department of Environment, Health, and Natural Resources /Governor's Waste Management Board intends to repeal rule(s) cited as 10 NCAC 48A .0101-.0105, .0107 - .0108, .0201 - .0204, .0301 - .0303; and adopt rule(s) cited as 10 NCAC 48A .0401 - .0414, .0501 - .0514.*

*The proposed effective date of this action is January 1, 1990.*

*The public hearing will be conducted at 10:00 a.m. on October 19, 1989 in the Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina 27611.*

*Comment Procedures: Written comments concerning these rules must be submitted by October 18, 1989, to: Executive Director, Governor's Waste Management Board, 325 N. Salisbury Street, Raleigh, North Carolina 27611. Oral Comments may be presented at the hearing. In addition, a fiscal impact statement on the rule adoptions are available upon written request from the same address.*

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

U.S. Department of Justice  
Civil Rights Division

JPT:LLT:ST:rac  
DJ 166-012-3  
Y8286  
Z1192

Voting Section  
P.O. Box 66128  
Washington, D.C. 20035-6128

August 24, 1989

David A. Holec, Esq.  
City Attorney  
P.O. Box 1388  
Lumberton, North Carolina 28359

Dear Mr. Holec:

This refers to the procedures for conducting the September 12, 1988, special election, including the use of paper ballots, for the City of Lumberton in Robeson County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on June 30, 1989.

The Attorney General does not interpose any objections to the changes in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

James P. Turner  
Acting Assistant Attorney General  
Civil Rights Division

By:

Barry H. Weinberg  
Acting Chief, Voting Section

U.S. Department of Justice  
Civil Rights Division

JPT:LLT:RA:dfl:gmh  
DJ 166-012-3  
Y8048-8050

Voting Section  
P.O. Box 66128  
Washington, D.C. 20035-6128

August 23, 1989

Richard J. Rose, Esq.  
Poyner & Spruill  
P.O. Box 353  
Rocky Mount, North Carolina 27802-0353

Dear Mr. Rose:

This refers to the three annexations [Ordinance Nos. 179, 180, and 181 (1989)] to the City of Rocky Mount in Edgecombe and Nash Counties, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on June 28, 1989.

The Attorney General does not interpose any objections to the changes in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

James P. Turner  
Acting Assistant Attorney General  
Civil Rights Division

By:

Barry H. Weinberg  
Acting Chief, Voting Section

**TITLE 10 - DEPARTMENT OF HUMAN RESOURCES**

*Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources Division of Medical Assistance intends to repeal rule(s) cited as 10 NCAC 26H .0102 - .0107, .0201 - .0208, .0301 - .0304, .0401 - .0403, .0502 - .0507, .0601 - .0605.*

*The proposed effective date of this action is January 1, 1990.*

*The public hearing will be conducted at 1:30 p.m. on October 16, 1989 at North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 201, Raleigh, North Carolina 27603.*

*Comment Procedures: Written comments concerning these repeals must be submitted by October 16, 1989 to: Director, Division of Medical Assistance, 1985 Umstead Drive, Raleigh, N.C. 27603. Oral comments presented at the hearing should be limited to a maximum of ten minutes duration. Submittal of written copies of oral statements is encouraged. In addition, a fiscal impact statement of these proposed rule repeals is available upon written request from the same address.*

**CHAPTER 26 - MEDICAL ASSISTANCE**

**SUBCHAPTER 26H - REIMBURSEMENT PLANS**

**SECTION .0100 - REIMBURSEMENT FOR SKILLED NURSING FACILITY AND INTERMEDIATE CARE FACILITY SERVICES**

- .0102 RATE SETTING METHODS (REPEALED)**
- .0103 REASONABLE AND NON-ALLOWABLE COSTS (REPEALED)**
- .0104 COST REPORTING: AUDITING AND SETTLEMENTS (REPEALED)**
- .0105 RETURN ON EQUITY (REPEALED)**
- .0106 APPEALS (REPEALED)**

*Authority G.S. 108A-25(b); 108A-54; 108A-55; 150B-11; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C.*

**.0107 PAYMENT ASSURANCE (REPEALED)**

*Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C.*

**SECTION .0200 - HOSPITAL INPATIENT REIMBURSEMENT PLAN (REPEALED)**

- .0201 REIMBURSEMENT PRINCIPLES**
- .0202 RATE SETTING METHODS**
- .0203 COST REPORTING AND AUDITING**
- .0204 ADMINISTRATIVE APPEALS**
- .0205 PAYMENT FOR LOWER THAN ACUTE LEVEL OF CARE**
- .0206 PAYMENT ASSURANCE**
- .0207 PROVIDER PARTICIPATION**
- .0208 PAYMENT IN FULL**

*Authority G.S. 108A-25(b); 108A-54; 108A-55; 150B-11; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C.*

**SECTION .0300 - ICF-MR PROSPECTIVE RATE PLAN (REPEALED)**

- .0301 REIMBURSEMENT AMOUNTS**
- .0302 ALLOWABLE COST FINDING: REPORTING AND VERIFICATION**
- .0303 METHODS AND STANDARDS FOR DETERMINING RATES**

*Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. Part 447, Subpart C.*

**.0304 PROVIDER APPEALS**

*Authority G.S. 108A-25(b); 108A-54; 108A-55; 150B-11; S.L. 1985, c. 479, s. 86; 42 C.F.R. Part 447, Subpart C.*

**SECTION .0400 - PROVIDER FEE SCHEDULES (REPEALED)**

- .0401 PHYSICIAN FEE SCHEDULE**
- .0402 DENTIST FEE SCHEDULE**
- .0403 CHIROPRACTOR: OPTOMETRY: PODIATRY FEE SCHEDULE**

*Statutory Authority G.S. 108A-25(b); S.L. 1985, c. 479, s. 86.*

**SECTION .0500 - REIMBURSEMENT FOR SERVICES**

- .0502 CLINIC SERVICES (REPEALED)**
- .0503 MENTAL HEALTH CLINIC SERVICES (REPEALED)**

*Statutory Authority G.S. 108A-25(b); S.L. 1985, c. 479, s. 86.*

**.0504 INPATIENT HOSPITAL: INAPPROPRIATE LEVEL OF CARE (REPEALED)**

*Authority G.S. 108A-25(b); 42 C.F.R. 447.253; S.L. 1985, c. 479, s. 86.*



**.0505 HEALTH MAINTENANCE  
ORGANIZATIONS AND PREPAID  
HEALTH PLANS (REPEALED)**

*Authority G.S. 108A-25(b); S.L. 1985, c. 479, s. 86; 42 C.F.R. Part 434.*

**.0506 PERSONAL CARE SERVICES  
(REPEALED)**

*Authority G.S. 108A-25(b); 108A-54; 108A-55;  
S.L. 1985, c. 479, s. 86; 42 C.F.R. 440.170(f).*

**.0507 INDEPENDENT LABORATORY  
SERVICES (REPEALED)**

*Statutory Authority G.S. 108A-25(b); 108A-54;  
108A-55; P.L. 93-369; P.L. 99-272; 42 C.F.R.  
447.10; 42 C.F.R. 447.342.*

**SECTION .0600 - HOME HEALTH  
PROSPECTIVE REIMBURSEMENT  
(REPEALED)**

**.0601 REIMBURSEMENT PRINCIPLES  
.0602 REIMBURSEMENT METHODS  
.0603 APPEALS  
.0604 COST REPORTING AND AUDITING  
.0605 PAYMENT ASSURANCES**

*Authority G. S. 108A-25(b); 108A-54; 108A-55;  
S. L. 1985, c. 479, s. 86; 42 C.F.R. 440.70.*

**TITLE 12 - DEPARTMENT OF JUSTICE**

*Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Private Protective Services Board intends to amend rules cited as 12 NCAC 7D .0301, .0401, .0701, .0706, .0801, .0803, .0806, .0807, .0809; and adopt rule cited as 12 NCAC 7D .0707.*

*The proposed effective date of this action is January 1, 1990.*

*The public hearing will be conducted at 12:00 p.m. on October 20, 1989 at McKimmon Center, Gorman Street at Western Blvd., Raleigh, N.C.*

*Comment Procedures: All written comments must be filed with the Board's administrator no later than 5:00 p.m. on October 13, 1989 at P.O. Box 29500, Raleigh, N.C. 27626. Anyone wishing to make oral comments must contact the Administrator by 5:00 p.m. on October 13, 1989, in order to be placed on the agenda. The Administrator can be reached at (919) 779-1611.*

**CHAPTER 7 - PRIVATE PROTECTIVE  
SERVICES**

**SUBCHAPTER 7D - PRIVATE PROTECTION  
SERVICES BOARD**

**SECTION .0300 - SECURITY GUARD AND  
PATROL: GUARD DOG SERVICE**

**.0301 EXPERIENCE REQUIREMENTS/  
SECURITY GUARD AND PATROL  
LICENSE**

(a) In addition to the requirements of 12 NCAC 7D .0200, applicants for a security guard and patrol license shall:

- (1) establish to the Board's satisfaction three years experience within the past five years as a manager, supervisor, or administrator with a contract security company or a proprietary security organization performing guard and patrol functions; or
- (2) establish to the Board's satisfaction three years experience within the past five years as a manager, supervisor, or administrator in security with any federal, U.S. Armed Forces, state, county, or municipal law enforcement agency performing guard and patrol functions.

(b) The Board may give up to two years credit toward the experience requirements set forth in (a)(1) and (2) of this Rule as follows:

- (1) one year of credit for a two year Associate Degree in Security, Criminal Justice or the equivalent conferred by an accredited technical institute, college or university;
- (2) one year of credit for a Bachelor's Degree in Business or Economics or the equivalent conferred by an accredited college or university; or
- (3) two years of credit for a Bachelor's Degree, Masters Degree or Doctorate in Security or Criminal Justice or the equivalent conferred by an accredited college or university.

(c) Persons licensed under Chapter 74D of the General Statutes of North Carolina, may be issued a limited guard and patrol license exclusively for providing armed alarm responders. Applicants for such a limited license shall not be required to meet the experience requirements of 12 NCAC 7D .0302. Any experience gained under this limited license shall not be counted as experience for a full guard and patrol license. All armed responders shall be registered with the Board.

*Statutory Authority G.S. 74C-8; 74C-13.*

SECTION .0400 - PRIVATE INVESTIGATOR:  
COUNTERINTELLIGENCE

.0401 EXPERIENCE REQUIREMENTS FOR A  
PRIVATE INVESTIGATOR LICENSE

(a) In addition to the requirements of G.S. 74C-8 and 12 NCAC 7D .0200, applicants for a private investigator license shall: ~~meet the requirements of G.S. Chapter 74C-8(d)(3).~~

- (1) establish to the Board's satisfaction three years of acceptable experience within the past five years while satisfactorily conducting investigations as defined in G.S. 74C-3(a)(8) with a contract security company or with a private person, firm, association or corporation; or
- (2) establish to the Board's satisfaction three years of acceptable experience within the past five years while satisfactorily conducting investigations as defined in G.S. 74C-3(a)(8) while serving in an investigative capacity as defined in 12 NCAC 7D .0104(9) with any Federal, U.S. Armed Forces, state, county, municipal law enforcement agency or other governmental agency.

(b) The Board may give up to two years credit toward the experience requirements set forth in (a) of this Rule as follows:

- (1) one year of credit for a two year Associate Degree in Security, Criminal Justice or the equivalent conferred by an accredited technical institute, college or university;
- (2) one year of credit for a Bachelor's Degree in Business or Economics or the equivalent conferred by an accredited college or university; or
- (3) two years of credit for a Bachelor's Degree in Security or Criminal Justice or the equivalent conferred by an accredited college or university.

(c) Time spent teaching police science subjects at a post-secondary educational institution (such as a community college, college or university) shall toll the time for the minimum year requirements in 12 NCAC 7D .0401(a). For the purposes of this Section, "toll" means that the experience gained by an applicant immediately prior to beginning teaching shall not be discredited. "Toll" shall not mean that credit is given for teaching police science subjects.

*Statutory Authority G.S. 74C-5(2).*

SECTION .0700 - SECURITY GUARD  
REGISTRATION (UNARMED)

.0701 APPLICATION FOR UNARMED  
SECURITY GUARD REGISTRATION

(a) Each employer or his designee shall submit and sign an application form for the registration of each employee to the Board. This form shall be accompanied by:

- (1) one set of classifiable fingerprints on an applicant fingerprint card;
- (2) two recent head and shoulders color photographs of the applicant of acceptable quality for identification, one inch by one inch in size;
- (3) ~~statements of the result of a local criminal history records search by the city-county identification bureau or clerk of superior court in each county any criminal record obtained from the appropriate authority in each area where the applicant has resided within the immediate preceding 48 months; and~~
- (4) the applicant's non-refundable registration fee.

(b) The employer of each applicant for registration shall give the applicant a copy of the application and shall retain a copy of the application in the individual's personnel file in the employer's office.

(c) The applicant's copy of the application shall serve as a temporary registration card which shall be carried by the applicant when he is within the scope of his employment and which shall be exhibited upon the request of any law enforcement officer or other authorized representative of the Board.

(d) A statement signed by a certified trainer that the applicant has successfully completed the training requirements of 12 NCAC 7D .0707 shall be submitted to the Administrator not later than 70 days from the hiring of an unarmed security guard.

*Statutory Authority G.S. 74C-5; 74C-11; 74C-13.*

.0706 RENEWAL OR REISSUE OF  
UNARMED SECURITY GUARD  
REGISTRATION

(a) Each applicant for renewal of a registration identification card or his employer, shall complete a form provided by the Board. This form should be submitted not less than 30 days prior to the expiration of the applicant's current registration and shall be accompanied by:

- (1) two recent head and shoulders color photographs of the applicant of acceptable quality for identification, one inch by one inch in size;
- (2) ~~statements of the result of a local criminal history records search by the city-county identification bureau or clerk of superior court in each county any criminal record~~

obtained from the appropriate authority in each area where the applicant has resided within the immediate preceding 12 months; and

(3) the applicant's renewal fee.

(b) Each applicant for reissue of a registration identification card shall complete, and his employer shall sign a form provided by the Board. This form shall be submitted to the Board and accompanied by:

(1) two recent head and shoulders color photographs of the applicant of acceptable quality for identification, one inch by one inch in size; and

(2) the applicant's reissue fee.

(c) The employer of each applicant for a registration renewal or reissue shall give the applicant a copy of the application which will serve as a record of application for renewal or reissue and shall retain a copy of the application in the individual's personnel file in the employer's office.

*Statutory Authority G.S. 74C-11.*

#### **.0707 TRAINING REQUIREMENTS FOR UNARMED SECURITY GUARDS**

(a) Applicants for an unarmed security guard registration shall complete a basic training course for unarmed security guards within 60 days from hire consisting of a minimum of four hours of classroom instruction including:

- (1) Chapter 74C of the General Statutes;
- (2) report writing;
- (3) legal aspects of an unarmed security guard;
- (4) controlled substance identification and handling; and
- (5) deportment.

(b) Licensees shall submit the name and resume for a proposed certified unarmed security guard trainer to the Administrator for Board approval.

(c) Training shall be conducted by a Board approved certified unarmed security guard trainer. A Board approved lesson plan and training video covering the training requirements in 12 NCAC 7D .0707(a) will be made available to each trainer.

(d) These provisions shall not apply to:

- (1) temporary unarmed security guards as defined by G.S. 74C-11(f); and
- (2) any unarmed security guard registered with the Board on January 1, 1990.

*Statutory Authority G.S. 74C-11(f); 74C-13(m).*

#### **SECTION .0800 - ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT**

##### **.0801 APPLICATION FOR ARMED**

#### **SECURITY GUARD FIREARM REGISTRATION PERMIT**

(a) Each employer or his designee shall submit and sign an application form for the registration of each employee to the Board. This form shall be accompanied by:

(1) one set of classifiable fingerprints on an applicant fingerprint card;

(2) two recent head and shoulders color photographs of the applicant of acceptable quality for identification, one inch by one inch in size;

(3) statements of ~~the result of a local criminal history records search by the city-county identification bureau or clerk of superior court in each county~~ any criminal record obtained from the appropriate authority in each area where the applicant has resided within the immediate preceding 48 months;

(4) the applicant's non-refundable registration fee; and

(5) a statement signed by a certified trainer that the applicant has successfully completed the training requirements of 12 N.C.A.C. 7D .0807.

(b) The employer of each applicant for registration shall give the applicant a copy of the application and shall retain a copy of the application in the individual's personnel file in the employer's office.

(c) The applicant's copy of the application shall serve as a temporary registration card which shall be carried by the applicant when he is within the scope of his employment and which shall be exhibited upon the request of any law enforcement officer or other authorized representative of the Board.

(d) Applications submitted without firearms certificates shall not serve as temporary registration cards unless the contract security company or proprietary security organization has obtained prior approval from the administrator and provides satisfactory proof that the applicant has received prior firearms training.

(e) The provisions of (a), (b), and (c) of this Rule shall also apply to any employee whose employment is terminated within 30 days of employment.

*Statutory Authority G.S. 74C-5; 74C-13.*

#### **.0803 MINIMUM STANDARDS FOR ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT**

Applicants for an armed security ~~officer~~ guard registration shall meet all the requirements of 12 NCAC 7D .0703.



Statutory Authority G.S. 74C-5; 74C-13.

**.0806 RENEWAL OF ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT**

(a) Each applicant for renewal of ~~a~~ an armed security guard firearm registration permit identification card or his employer shall complete a form provided by the Board. This form shall be submitted not more than 90 days nor less than 30 days prior to expiration of the applicant's current armed registration and shall be accompanied by:

- (1) two recent head and shoulders color photographs of the applicant of acceptable quality for identification, one inch by one inch in size;
- (2) statements of ~~the result of a local criminal history records search by the city county identification bureau or clerk of superior court in each county~~ any criminal record obtained from the appropriate area where the applicant has resided within the immediate preceding 12 months; and
- (3) the applicant's renewal fee.

(b) The employer of each applicant for a registration renewal shall give the applicant a copy of the application which will serve as a record of application for renewal and shall retain a copy of the application in the individual's personnel file in the employer's office.

(c) Applications for renewal shall be accompanied by a statement signed by a certified trainer that the applicant has successfully completed the training requirements of 12 NCAC 7D .0807.

Statutory Authority G.S. 74C-5; 74C-11; 74C-13.

**.0807 TRAINING REQUIREMENTS FOR ARMED SECURITY GUARDS**

(a) Applicants for an armed security ~~officer~~ guard firearm registration permit shall complete a basic training course for armed security ~~officers~~ guards which consists of a minimum of four hours of classroom instruction including:

- (1) legal limitations on the use of handguns and on the powers and authority of an armed security ~~officer~~ guard;
- (2) familiarity with rules and regulations relating to armed security ~~officers~~ guards;
- (3) range firing procedures, handgun safety, and maintenance; and
- (4) any other topics of armed security ~~officer~~ guard training which the Board and the Attorney General deem necessary.

(b) Applicants shall attain a 70 percent score on a firearms course approved by the Board and

the Attorney General, a copy of which is on file in the administrator's office.

(c) All armed security ~~officer~~ guard training required by 12 NCAC 7D shall be administered by a certified trainer and shall be successfully completed no more than 90 days prior to the date of issuance of the armed security ~~officer~~ guard firearm registration permit.

Statutory Authority G.S. 74C-5; 74C-13.

**.0809 AUTHORIZED FIREARMS**

Armed security ~~officers~~ guards are authorized, while in the performance of official duties or traveling directly to and from work, to carry a standard .38 caliber, .32 caliber or .357 caliber revolver or any standard 12 gauge shotgun.

Statutory Authority G.S. 74C-5; 74C-13.

**TITLE 25 - OFFICE OF STATE PERSONNEL**

*Notice is hereby given in accordance with G.S. 150B-12 that the Office of State Personnel/State Personnel Commission intends to adopt rule(s) cited as 25 NCAC 1B .0435 - .0436; 25 NCAC 1D .0211 - .0213, .0308, .0406, .0608 - .0610, .0706 - .0710, .0808, .0910 - .0911; 25 NCAC 1D .1122 - .1128; 25 NCAC 1I .0901 - .0903; 25 NCAC 1K .0612 - .0613; 25 NCAC 1O .0101, .0201 - .0206, .0301 - .0305; amend rule(s) cited as 25 NCAC 1C .0211; 25 NCAC 1D .0101 - .0103, .0210, .0303, .0511, .0605, .0705, .0801, .0901, .0906, .0908; and intends to repeal rule(s) cited as 25 NCAC 1D .0108, .0202 - .0204, .0302, .0304, .0402, .0404, .0601 - .0603, .0606, .0702, .0802 - .0803, .0806, .0904 - .0905, .1101 - .1106, .1108 - .1109, .1115, .1117 - .1120; 25 NCAC 1E .0501 - .0504, .0506 - .0511.*

*The proposed effective date of this action is January 1, 1990.*

*The public hearing will be conducted at 9:00 a.m. on October 17, 1989 at State Personnel Center, 101 W. Peace Street, Raleigh, N.C.*

*Comment Procedures: Interested persons may present statements orally or in writing at the hearing or in writing prior to the hearing by mail addressed to: Drake Maynard, Office of State Personnel, 116 W. Jones Street, Raleigh, N.C. 27603.*

**CHAPTER 1 - OFFICE OF STATE PERSONNEL**

SUBCHAPTER 1B - STATE PERSONNEL  
COMMISSION

SECTION .0400 - APPEAL TO COMMISSION

.0435 REMEDIES: SALARY ADJUSTMENTS

(a) No department, agency or institution may use within-grade salary adjustments as a method of resolving any grievance, contested case or lawsuit without advance notice to the Office of State Personnel and the specific, written approval of the State Personnel Director and the State Personnel Commission. The only exception shall be such an adjustment in the context of a front pay award ordered by the State Personnel Commission pursuant to 25 NCAC 1B .0422.

(b) Any within-grade salary adjustment proposed to be approved by the State Personnel Director and the State Personnel Commission must be in compliance with existing salary administration policies (see 25 NCAC 1D .0100 et seq) or shall have prior approval as an exception to or waiver from such policies in accordance with 25 NCAC 1A .0004.

*Statutory Authority G.S. 126-4(2).*

.0436 SETTLEMENTS AND CONSENT  
AGREEMENTS IN GRIEVANCES,  
CONTESTED CASES

(a) Any settlement or consent agreement in a grievance or contested case which requires the approval and/or processing of personnel action forms by the Office of State Personnel must be approved by the Office of State Personnel and the State Personnel Commission before such personnel action forms will be processed. Approval by the Office of State Personnel shall be indicated by the signature of the State Personnel Director or his designee in an appropriate place on the settlement or consent agreement. This provision shall not be construed to require Office of State Personnel approval of a settlement in which the only portion requiring approval is the awarding of attorney's fees to the employee's attorney by the State Personnel Commission.

(b) The provisions of 25 NCAC 1A .0004 (EXCEPTIONS AND VARIANCES) must be complied with when any provision of a settlement or consent agreement in a grievance or contested case requires an exception to or variance from existing personnel policy. This compliance shall be in addition to the requirements of this Rule.

(c) Personnel action forms, required by the provisions of any settlement or consent agreement which has not been approved by the Office of State Personnel and the State Personnel Commission as required by this Rule, shall not

be processed by the Office of State Personnel and shall be returned to the agency without action.

(d) Any settlement or consent agreement which does not require action by the Office of State Personnel or the State Personnel Commission does not require the approval of either body to be effective.

*Statutory Authority G.S. 126-4.*

SUBCHAPTER 1C - PERSONNEL  
ADMINISTRATION

SECTION .0200 - GENERAL EMPLOYMENT  
POLICIES

.0211 PERSONAL PROTECTIVE EQUIPMENT

Effective May 1, 1976, the state will furnish, at no cost to the employee, certain personal protective equipment as required by the North Carolina Occupational Safety and Health Act of 1973. The State's responsibility is noted in each category listed below:

EQUIPMENT

GUIDE

(10) Foot Protection

(a) Safety Shoes

For employees who are required to wear safety shoes, under the provisions of the N.C. Occupational Safety and Health Act of 1973, the state will reimburse the employee for the purchase cost not to exceed ~~forty dollars (\$40.00)~~ fifty-four dollars (\$54.00) for one pair of shoes per year. The employee may purchase shoes personally and be reimbursed or an agency may supply shoes under the rules and regulations of the State Purchase and Contract Division not to exceed a unit cost of ~~forty dollars (\$40.00)~~ fifty-four dollars (\$54.00). If the employee is personally reimbursed, Forms BD-403 with attached receipt shall be used.

*Statutory Authority G.S. 126-4.*

SUBCHAPTER 1D - COMPENSATION



SECTION .0100 - ADMINISTRATION OF THE  
PAY PLAN

.0101 COMPENSATION PLAN

(a) It is the policy of the state to compensate its employees at a level sufficient to encourage excellence of performance and to maintain the labor market competitiveness necessary to recruit and retain a competent work force. To this end, and in accordance with the State Personnel Act, the State Personnel Commission shall conduct annual compensations surveys to determine the percent of funds appropriated for salary increases to be reserved for a general increase for all state employees and the percent to be reserved for performance-based increases for eligible employees.

(b) A compensation plan is maintained which provides a salary rate structure or structures adequate to appropriately compensate all positions subject to the State Personnel Act. This structure may be revised in composition, or the total structure moved upward or downward, in response to labor market trends and to legislative actions affecting salaries; such action is dependent on the availability of funds.

*Statutory Authority G.S. 126-4.*

.0102 SALARY RANGES

(a) Each classified position is assigned to a salary range that provides, based on similar employment in the defined labor market: minimum, intermediate and maximum salary rates that are competitive with rates in the external labor market consistent with the state's ability to pay; and proper relationships within state government employment to maintain internal equity.

(b) Based on labor market demands, salary rates for some classifications may be approved above the standard rates. When a higher salary range (i.e., both the minimums and maximums are raised) is needed to recruit employees to certain areas of the state, the higher range(s) will be known as geographic differentials. When only the entry rates (and not the maximums) need to be higher, the higher rates will be known as special entry rates. Special entry rates may be approved on a geographic basis also.

(c) When geographic differentials are in effect, all salary administration policies are applied as if the classification were at the higher grade. Provisions for applying special entry rates are included in each policy.

*Statutory Authority G.S. 126-4.*

.0103 STATE SALARY SCHEDULE

Annual salary ranges showing at least the minimum and maximum and intermediate steps pay rates for each job classification subject to the State Personnel Act are filed in the Office of State Personnel and in the personnel office of each state department and institution. Information on current salaries may be obtained at these locations. The salary schedule is adopted by reference October 1, 1984.

*Statutory Authority G.S. 126-4(2); 150B-14.*

.0108 AVAILABILITY OF FUNDS  
(REPEALED)

*Statutory Authority G.S. 126-4.*

SECTION .0200 - NEW APPOINTMENTS

.0202 HIRING RATE (REPEALED)  
.0203 JUSTIFICATION (REPEALED)  
.0204 TEMPORARY OR PART-TIME  
EMPLOYEES (REPEALED)

*Statutory Authority G.S. 126-4.*

.0210 TRAINEE SALARY ADJUSTMENTS

During a trainee appointment, an evaluation of the individual's performance and progress on the job is to be made at frequent intervals. As a general guide, salary increases are provided at specified intervals. These increases are not automatic and are not necessarily limited to the full elapse of specified intervals. Salary adjustments may be either advanced or delayed depending upon the progress of the employee. In cases where salary adjustments have been advanced, normally the trainee's salary will not be adjusted to ~~step one~~ the minimum rate of the range for the regular classification until the employee meets all education and experience requirements for the appointment; the salary can be moved to the regular class rate only when job performance demonstrates achievement of duties, knowledges, and skills at the level of the class as verified by individual job audit. Adjustments are to be given upon recommendation by the appointing authority and the supervisor that the employee has earned an increase.

*Statutory Authority G.S. 126-4.*

.0211 SALARY RATE

(a) The hiring rate of pay for a class, or trainee rate where applicable, shall normally be paid a qualified new employee. When a special entry rate has been authorized, that rate may be paid a qualified new employee if the agency has made a decision to use the new rate.

(b) It is intended that agencies make as few appointments above the hiring rate (or applicable special entry rate) as possible. Rates above this may be requested when:

- (1) extensive recruitment efforts have not produced qualified applicants; or
- (2) the applicant possesses exceptional qualifications above the hiring requirements of the class specification, and operational needs exist which justify filling the position at the salary above the minimum of the range. The additional experience and training must be in the same or closely related area to that stated as acceptable in the class specification. Generally, up to five percent may be considered for each qualifying year of experience above the minimum requirements.

(c) Appointments above the hiring rate are to be avoided if salary inequities would be created. This should be considered very carefully in order to avoid present or future inequities. One consideration must be the policy which would apply if a current employee were promoted to a vacancy. A serious inequity can occur if a new employee is paid at a rate higher than that which would be paid if a current employee were promoted to the same position.

(d) When an employee is given permanent status after successful completion of either the probationary period or the trainee period, the employee's salary shall be increased to the permanent rate of the range (unless appointment was made at or above this level). The effective date for change to permanent status must be the first day of a pay period. If the employee is in pay status for at least one-half of the workdays and holidays in the pay period, credit will be given for the full pay period.

(e) If the employee is hired initially at an authorized special entry rate, the employee's salary may be increased by five percent above the special entry rate upon successful completion of the probationary period.

(f) If the employee is hired at a salary below an authorized special entry rate because the lower salary is sufficient to attract applicants but not sufficient to retain the employee once experience is gained, an adjustment up to the special entry rate may be made during or at the end of the probationary period or at such time as performance indicates that it is justified.

*Statutory Authority G.S. 126-4.*

#### **.0212 JUSTIFICATION**

(a) Forms PD-105 requesting appointments at rates above the hiring rate must include a statement of reasons and justification for such rates.

(b) If conditions justify appointment above the hiring rate, the agency may elect to use the hiring rate for initial appointment with the option to increase the salary to a rate above the hiring rate upon successful completion of the probationary period.

*Statutory Authority G.S. 126-4.*

#### **.0213 TEMPORARY AND PART-TIME EMPLOYEES**

(a) The hiring rate shall normally be paid temporary employees. However, a lower rate may be set if reasons are acceptable to the Office of State Personnel. Temporary employees shall be paid hourly rates.

(b) Employees with permanent part-time appointments shall be paid a proportionate annual rate.

*Statutory Authority G.S. 126-4.*

#### **SECTION .0300 - PROMOTION**

##### **.0302 SALARY RATE (REPEALED)**

*Statutory Authority G.S. 126-4.*

##### **.0303 EFFECTIVE DATE**

(a) Permanent promotions shall be made effective on the first day of the pay period. Such requests cannot be made effective earlier than the first day of the following month when received after the tenth of the month.

(b) The required promotional increase shall be given on the effective date of the promotion.

(c) If the desired amount of increase is not given on the effective date of the promotion because of unavailable funds or equity considerations, an additional increase(s) up to the full allowable amount may be given at a later date(s) on a current basis. Additional increases are limited to two occurrences and must be awarded within 24 months of the original effective date of the action. If a subsequent promotion, reallocation or demotion occurs, this cancels the authorization to grant additional increases as a result of the previous promotion. If increases are to be given at later dates, a notation must be entered on the form stating the reason the increase is being delayed and showing the amount of the allowable increase, the amount given, and the balance that may be given later. The personnel actions submitted later must reference the original promotion.

(d) If no additional increase is to be given at a later date, no notation is necessary.

(e) Temporary promotions may be made effective on the date that an employee is officially placed in an "acting" capacity.

*Statutory Authority G.S. 126-4.*

**.0304 PERFORMANCE INCREASE  
ANNIVERSARY DATE (REPEALED)**

*Statutory Authority G.S. 126-4.*

**.0308 SALARY INCREASES**

The purpose of a promotional pay increase is to reward the employee for the assumption of duties more responsible and more difficult than those in the current position. Subject to the availability of funds, salary increases, not to exceed the maximum of the range, may be given in accordance with the following:

**(1) Permanent Promotion:**

- (a) The salary shall be increased to the minimum rate of the grade to which promoted or by five percent, whichever is larger. Exceptions:
  - (i) When internal salary equity or budget considerations in the receiving work unit or agency are necessary, and a specific salary rate or limitation is published in advance of a promotional offer;
  - (ii) When an employee is demoted with no change in salary and subsequently promoted back to the same level, the salary shall remain unchanged and treated as if the demotion had not occurred;
  - (iii) If the employee's salary is above the maximum as a result of a reallocation down, no increase can be given, but the salary may remain above the maximum.
- (b) The salary may be increased by more than five percent, the total not to exceed five percent for each salary grade provided by the promotion. The nature and magnitude of the change in jobs, the need to maintain equity of salaries within the work unit, and other management needs must be given consideration when making such requests.
- (c) If a probationary employee is promoted and the salary is at the hiring rate, the salary must be increased to the hiring rate of the grade to which promoted until the employee is eligible for permanent appointment.
- (d) If the employee is to receive a performance salary increase on the same date as the

promotion, the increase may be given before the promotional increase.

- (e) Only in extreme, well-documented circumstances will salary increases be considered which equate to more than five percent for each grade provided by the promotion. Personnel forms must include the justification.
- (f) If an employee is promoted from a class for which there is no special entry rate into a class which has a special entry rate, the employee's salary may be increased by the amount of the promotional increase plus the percent difference between the minimum and the special entry rate authorization.
- (2) Temporary Promotion:**
  - (a) Temporary promotions may be made when an employee is placed in an "acting" capacity for a period of time. When an employee is placed in an "acting" capacity, at the discretion of management, one of the following may occur:
    - (i) The employee may be placed in the higher level position (if vacant) with an understanding that he will return to the former position and salary when the position is filled.
    - (ii) A salary adjustment may be given in the present position with the understanding that the salary will be decreased when the "acting" capacity terminates. Indicate in Section 21 of the PD-105 the position number and classification for which the employee is serving in an "acting" capacity. Also include expected duration of "acting" capacity.
  - (b) The provisions for salary increases for permanent promotions apply in either case, except that the provision for a mandatory increase may not be applicable.
  - (c) The length of time that an employee is in an acting capacity should be limited, and the amount of promotional salary increase determined by the degree of assumption of the higher level duties.

*Statutory Authority G.S. 126-4.*

**SECTION .0400 - DEMOTION**

**.0402 SALARY RATE (REPEALED)**

*Statutory Authority G.S. 126-4.*

**.0404 PERFORMANCE INCREASE  
ANNIVERSARY DATE (REPEALED)**



*Statutory Authority G.S. 126-4.*

**.0406 SALARY RATE**

(a) When the employee's current salary falls within the range of the lower class, it may remain the same or be reduced to any salary in the lower range. Exception: When an employee is promoted and subsequently demoted or reassigned to any lower class within one year, the salary shall revert to the salary being paid before the promotion, plus any increases that would have been given had that promotion not occurred.

(b) When the employee's current salary is above the maximum of the range for the lower class, the salary shall be reduced at least to the maximum of the lower range.

*Statutory Authority G.S. 126-4.*

**SECTION .0500 - SEPARATION**

**.0511 REDUCTION IN FORCE PRIORITY CONSIDERATION**

Employees separated through reduction in force shall receive priority reemployment consideration for a period of twelve months. The following conditions apply:

- (4) For employees separated from trainee or flat-rate positions, who are eligible for priority reemployment consideration, the salary grade for which priority is to be afforded shall be determined as follows. For employees in flat-rate positions, the salary grade level shall be the salary grade which has as its mid-point, ~~(Step SB)~~ a rate equal to nearest the flat rate salary of the eligible employee. For employees in trainee status the salary grade level shall be the salary grade of the full class.

*Statutory Authority G.S. 126-4(6),(10).*

**SECTION .0600 - REALLOCATION**

- .0601 REALLOCATION DEFINED (REPEALED)**  
**.0602 ASSIGNMENT TO HIGHER GRADE (REPEALED)**  
**.0603 ASSIGNMENT TO A LOWER GRADE (REPEALED)**

*Statutory Authority G.S. 126-4.*

**.0605 EFFECTIVE DATE**

(a) Reallocation shall be made effective on the first day of the pay period. Forms PD-118 should be submitted to the Office of State Personnel 30 days prior to the proposed effective date to allow adequate time for study and proc-

essing of the requests. Requests received after the first day of the month are subject to be made effective no earlier than the first of the following month and requests can be effective only after complete information is available to make a decision. If any party is delayed in carrying out its responsibilities, the employee should not be caused to suffer delay and the effective date will be revised to the most reasonable date consistent with the time that complete information would have been available to make the decision on re-allocation of the position.

(b) Salary adjustments to the minimum rate (or hiring, if applicable) shall be given on the effective date of the reallocation. If funds are not available, the increase shall be given from the first available funds and made retroactive to the effective date of the reallocation. Employees who are denied increases because of poor performance may receive the increase on a current basis if/when performance becomes satisfactory.

(c) Salary increases within the range are optional and, if recommended, should be given on the effective date of the reallocation. If the desired amount of increase is not given on the effective date because of unavailable funds, equity considerations or performance, the increase(s), up to the full allowable amount, may be given at a later date(s) on a current basis. Total increases are limited to three occurrences and must be awarded within 24 months of the original effective date of the action. If a subsequent promotion, reallocation or demotion occurs, this cancels the authorization to grant additional increases as a result of the previous reallocation.

(d) If increases are to be given at later dates, a notation must be entered on the form stating the reason the increase is being delayed and showing the amount of the allowable increase, the amount given, and the balance that may be given later. The personnel actions submitted later must reference the original reallocation. If no increase is to be given at a later date, no notation is necessary.

*Statutory Authority G.S. 126-4.*

- .0606 PERFORMANCE INCREASE  
ANNIVERSARY DATE (REPEALED)**

*Statutory Authority G.S. 126-4.*

**.0608 REALLOCATION**

Reallocation is the assignment of a position to a different classification, documented through data collection and analysis according to customary professional procedure and approved by the State Personnel Director.

*Statutory Authority G.S. 126-4.*

**.0609 REALLOCATION TO A HIGHER GRADE**

When an employee's position is assigned to a higher grade as a result of reallocation, subject to the availability of funds and satisfactory employee performance, salary increases, not to exceed the maximum of the range, may be given in accordance with the following:

- (1) Salaries at the hiring rate shall be adjusted to the new hiring rate.
- (2) Salaries at the minimum rate shall be adjusted to the minimum rate of the new range, and may be adjusted further in accordance with Paragraph (3) of this Rule.
- (3) Salaries within the range may remain the same; or if funds are available and where appropriate, individual salary increases may be considered, the total not to exceed five percent for each salary grade provided by the reallocation. Salary equity within the work unit and other management needs must be given consideration when making such requests.
- (4) Only in extreme, well-documented circumstances will salary increases be considered which equate to more than five percent for each grade provided by the reallocation. Personnel forms must include the justification.
- (5) If the employee is to receive a performance salary increase on the same day as the reallocation, the performance increase may be given before a salary adjustment is considered.

*Statutory Authority G.S. 126-4.*

**.0610 REALLOCATION TO A LOWER GRADE**

(a) When an employee's position is assigned to a lower grade, the employee's salary may remain the same if it is within the lower range; or it may be reduced to any salary in the lower range to equitably relate to other employees' salaries in the same or related classifications.

(b) If the employee's salary is above the maximum of the grade to which the position is assigned, one of the following options will apply:

- (1) When reduction in level of the position results from management decisions on program changes, reorganization, or other management needs not associated with the employee's demonstrated motivation, capability, acceptance of responsibility or lack of performance, the salary of the employee may remain above the new maximum as long as the employee remains in

the same classification or is promoted to a higher level position. No further increases, other than legislative increases, may be granted as long as the salary remains above the maximum. If, however, a position is available, the level of which would not be as detrimental to the affected employee, and if the employee is qualified but not placed into the position, then the option in Paragraph (2) of this Rule shall apply.

- (2) When reduction in level of the position results from management's removal of duties and responsibilities from the employee because of change in demonstrated motivation, capability, acceptance of responsibility, or lack of performance, the effect is the same as a demotion and the salary must be reduced at least to the maximum as required by the policy on demotion.

(c) It is a management responsibility to avoid creation of salary inequities among employees. Each case must be evaluated to determine which of the salary administration alternatives is most appropriate, based on the circumstances as documented by the employing agency. It is a further management responsibility to consider feasible alternatives of job design or employee transfer which would restore the employee to a position at the former grade level in cases not based on employee performance. Feasible alternatives are dependent upon such factors as organizational constraint, program need, and employee qualifications.

*Statutory Authority G.S. 126-4.*

**SECTION .0700 - SALARY RANGE REVISION**

**.0702 ASSIGNMENT TO HIGHER GRADE (REPEALED)**

*Statutory Authority G.S. 126-4.*

**.0705 CLASSES DETERMINED NOT LABOR-MARKET-COMPETITIVE**

When critical recruitment or employee retention problems are officially recognized by the State Personnel Director, but salary range revisions are not necessary, feasible or practical (i.e., when range minimums are not competitive, but maximums are adequate), the Director may authorize a higher special entry rate. ~~In such cases, the director may also authorize agencies, subject to the availability of funds, to grant in-range adjustments to present employees as with a salary range revision, except that no salary is allowed above the maximum. Priority shall be given to~~



~~employees whose salaries are at or below approved hiring rates and to employees whose retention is critical to organizational needs. Salary increases shall not be given to employees whose performance does not warrant recognition.~~

*Statutory Authority G.S. 126-4.*

**.0706 ASSIGNMENT TO A HIGHER GRADE**

When an employee's position is assigned to a higher grade as a result of salary range revision, subject to the availability of funds and satisfactory employee performance, salary increases, not to exceed the maximum of the range, may be given in accordance with the following:

- (1) Salaries at the hiring rate shall be adjusted to the new hiring rate.
- (2) Salaries at the minimum rate shall be adjusted to the minimum rate of the new range, and may be adjusted further in accordance with Subparagraph (3) of this Rule.
- (3) Salaries within the range may remain the same; or if funds are available and where appropriate, individual salary adjustments may be considered, the total not to exceed five percent for each salary grade provided by the salary range revision. Salary equity within the work unit and other management needs must be given consideration when making such requests.
- (4) If the employee is to receive a performance salary increase on the same day as the salary range revision, the increase may be given before a salary adjustment is considered.
- (5) When a range revision occurs but the entry rate remains the same because of a previously existing special entry rate, no additional salary increases are allowed if the employee received the increase authorized by the special entry rate.

*Statutory Authority G.S. 126-4.*

**.0707 EFFECTIVE DATE**

(a) Salary increases shall be made effective on the first day of the pay period nearest to the effective date of the salary range revision. Salary increases to the minimum rate (or hiring, if applicable) shall be given on the effective date of the salary range revision. If funds are not available, the increase shall be given from the first available funds and made retroactive to the effective date of the salary range revision. Employees who are denied an adjustment because of poor performance may receive the adjustment on a current basis if/when performance becomes satisfactory.

(b) Salary increases within the range are optional and, if recommended, should be given on the effective date of the salary range revision. If the desired amount of increase is not given on the effective date because of unavailable funds, equity considerations or performance, the increase(s), up to the full allowable amount, may be given at a later date(s) on a current basis. Total increases are limited to three occurrences and must be awarded within 24 months of the original effective date of the action. If a subsequent promotion, reallocation, demotion or salary range revision occurs, this cancels the authorization to grant additional increases as a result of the previous salary range revision.

(c) If increases are to be given at later dates, a notation must be entered on the form stating the reason the increase is being delayed and showing the amount of the allowable increase, the amount given, and the balance that may be given later. The personnel actions submitted later must reference the original salary range revision. If no increase is to be given at a later date, no notation is necessary.

*Statutory Authority G.S. 126-4.*

**.0708 SALARY ADMINISTRATION: SPECIAL ENTRY RATES**

Special entry rates will be announced as a percent above the hiring rate and as a rate of pay. Agencies experiencing recruitment and retention difficulties may elect to use the special entry rates. Priority for salary increases shall be given to employees whose salaries are at or below special entry rates. Salary increases shall not be given to employees whose performance is not at a satisfactory level. Salary increases are not entitlements and all are subject to the availability of funds in the agency budget. When the agency decides to use the new rates, the following shall apply:

- (1) Salaries may be increased to the special entry rate on the date the agency decides to use the new rate. If funds are not available, but become available at a later time, increases may be retroactive.
- (2) Salaries at or above the special entry rate may be increased by the percent authorized above the hiring rate. If funds are not available, but become available at a later time, increases may be made on a current basis. Total increases are limited to three occurrences and must be awarded within 24 months of the original effective date of the action. If a subsequent reallocation, promotion or demotion occurs, this cancels the authorization to grant additional increases

as a result of the special entry rate authorization.

- (3) If a higher special entry rate is authorized for a class that already has a special entry rate, the employee may receive an increase up to the percent authorized between the two special entry rates.
- (4) When a special entry rate authorization does not include all classes within a class series, consideration for adjustments for employees in the class(es) without a special entry rate will be on an individual basis. Written justification must be submitted with such requests.

*Statutory Authority G.S. 126-4.*

#### **.0709 GEOGRAPHIC DIFFERENTIAL**

(a) When critical recruitment or employee retention problems in a specific location are officially recognized by the State Personnel Director, but salary range revisions are not necessary, feasible or practical (i.e., when both minimums and maximums are not competitive in a specific location but are competitive in most locations), the Director may authorize a higher salary range for those specific locations.

(b) Geographic differentials will be announced as a salary grade above the established salary range. Agencies experiencing recruitment and retention difficulties may elect to use the geographic differential. When geographic differentials are in effect, salary increases may be granted in accordance with the salary range revision policies and all salary administration policies are applied as if the classification were at the higher grade.

*Statutory Authority G.S. 126-4.*

#### **.0710 AVOIDANCE OF SALARY INEQUITIES**

In order to avoid inequities, it is particularly important for agency heads to make a study of all salaries within an agency and to give careful consideration to each individual case before recommending salary increases.

*Statutory Authority G.S. 126-4.*

### **SECTION .0800 - INITIAL CLASSIFICATION**

#### **.0801 POLICY**

Initial classification occurs in the following situations:

- (1) when a position or a group of positions ~~are~~ is classified and brought under the State Personnel Act;

- (2) when a position under the Personnel Act, but not officially classified, is reviewed and a permanent classification and salary range is assigned.

*Statutory Authority G.S. 126-4.*

#### **.0802 RATE BELOW MINIMUM (REPEALED)**

#### **.0803 RATE WITHIN ASSIGNED RANGE (REPEALED)**

*Statutory Authority G.S. 126-4.*

#### **.0806 PERFORMANCE INCREASE ANNIVERSARY DATE (REPEALED)**

*Statutory Authority G.S. 126-4.*

#### **.0808 SALARY RATE**

(a) If the employee is given probationary status and the salary is below the hiring rate for the range assigned, it shall be adjusted to the new hiring rate. If the employee is given permanent status and the salary is below the minimum rate, it shall be adjusted to the minimum rate of the range assigned.

(b) If the employee's salary falls within the range assigned to the position, it shall remain unchanged.

*Statutory Authority G.S. 126-4.*

### **SECTION .0900 - TRANSFER**

#### **.0901 DEFINITIONS**

(c) Promotions or demotions may occur simultaneously with transfers.

*Statutory Authority G.S. 126-4.*

#### **.0904 SALARY RATE: PERFORMANCE INCREASE ANNIVERSARY DATE (REPEALED)**

#### **.0905 BENEFITS TRANSFERRED (REPEALED)**

*Statutory Authority G.S. 126-4.*

#### **.0906 DETERMINING DATE OF TRANSFER**

(a) If an employee reports to work the first workday following separation, the releasing agency shall carry the employee on its payroll through the day prior to the effective date of the transfer even though the separation date may fall on a non-workday. An exception may be made when the releasing date falls on a non-workday at the first of the month, in which case the pickup should be made on the first day of the month. If other time is involved, such as holidays or approved vacation, the releasing agency

and the receiving agency shall agree upon who will pay the employee.

*Statutory Authority G.S. 126-4.*

**.0908 JOB QUALIFICATIONS**

(c) If the transfer is to a lower class and results in a demotion or reassignment, Demotion/ Reassignment Policy will the required qualifications for demotion apply. (See 25 NCAC 1D .0400.)

*Statutory Authority G.S. 126-4.*

**.0910 SALARY RATE**

(a) If an employee transfers to a position having the same salary grade, the salary shall remain unchanged. (Exception: The salary may be reduced if there is a lack of sufficient funds or if it results in the creation of a serious internal salary inequity.)

(b) If the transfer is to a higher class and results in a promotion, the Promotion Policy will apply. (See 25 NCAC 1D .0300.)

(c) If the transfer is to a lower class and results in a demotion or reassignment, the Demotion, Reassignment Policy will apply. (See 25 NCAC 1D .0400.)

(d) If an employee is in an agency not utilizing an authorized special entry rate and transfers to an agency which does, the special entry rate cannot be used as justification for a salary increase if both work stations are within the same geographic area, i.e., Research Triangle.

(e) If an employee is receiving a higher rate of pay by virtue of working in a position to which a geographic differential applies and transfers to a position to which a geographic differential does not apply (whether in the same geographic area to a position without a differential, or to the same job in a geographic area without a differential), the employee's pay rate must be reduced by the amount of the differential the employee had been receiving.

*Statutory Authority G.S. 126-4.*

**.0911 BENEFITS AND RECORDS  
TRANSFERRED**

(a) When an employee transfers to another agency, all unused sick and vacation leave shall be transferred. If the employee transfers to an exempt position in which leave will not be credited the same as employees subject to the Personnel Act, accumulated vacation shall be paid for in a lump sum. Accumulated sick leave will be transferred.

(b) The personnel file, as defined by statute, shall be transferred to the receiving agency.

*Statutory Authority G.S. 126-4; 126-22.*

**SECTION .1100 - PERFORMANCE SALARY  
INCREASES**

**.1101 POLICY (REPEALED)**

**.1102 PERFORMANCE SALARY INCREASES  
BELOW THE THIRD STEP  
(REPEALED)**

**.1103 PERFORMANCE SALARY INCREASES  
AT THIRD STEP OR ABOVE  
(REPEALED)**

**.1104 EMPLOYEES ON FLAT RATE  
(REPEALED)**

**.1105 SPECIAL SALARY INCREASES  
(REPEALED)**

**.1106 BASIS FOR AWARDING INCREASES  
(REPEALED)**

*Statutory Authority G.S. 126-4; 126-7.*

**.1108 COMMUNICATION WITH EMPLOYEES  
(REPEALED)**

**.1109 SALARY INCREASE FUNDS BECOME  
PART OF BASE SALARY (REPEALED)**

*Statutory Authority G.S. 126-4; 126-7.*

**.1115 COMPUTATION OF FUNDS FOR  
PERFORMANCE INCREASES  
(REPEALED)**

*Statutory Authority G.S. 126-4; 126-7.*

**.1117 ANNIVERSARY DATES FOR  
EMPLOYEES BELOW STEP THREE  
(REPEALED)**

**.1118 REVISION OF ANNIVERSARY DATES  
(REPEALED)**

**.1119 NO CHANGE IN ANNIVERSARY DATE  
(REPEALED)**

**.1120 PAYMENT DATES (REPEALED)**

*Statutory Authority G.S. 126-4; 126-7.*

**.1122 ANNUAL PERFORMANCE PAY  
COMPENSATION SURVEY**

In accordance with state policy and with the State Personnel Act the State Personnel Commission shall conduct an annual performance pay compensation survey. Each year the Commission shall present the findings of the survey and its performance pay recommendations to the Appropriations Committees of the House and Senate for inclusion in the state budget.

*Statutory Authority G.S. 126-7.*

**.1123 EMPLOYEES COVERED**

The provisions for awarding performance based increases shall apply only to employees with



permanent full-time or permanent part-time (half-time or more) appointment and do not apply to employees during trainee or probationary periods or to employees at or above the maximum of their assigned salary range.

*Statutory Authority G.S. 126-7.*

**.1124 BASIS FOR AWARDING INCREASES**

Each department, agency, or institution must have an operative performance management system which has been approved by the Office of State Personnel and which includes a summary performance appraisal using a rating scale of at least five levels, with the top three qualifying for performance increases. The complete requirements for an operative performance management and appraisal system are defined in Subchapter 10, Sections .0100, .0200 and .0300.

*Statutory Authority G.S. 126-7.*

**.1125 AMOUNT OF INCREASE**

(a) Each year the Office of State Personnel shall set the performance percent increase ranges (minimum, midpoint and maximum) allowable for each level of performance that exceed performance requirements. The performance increase ranges will be determined, in part, by the percent of total pay roll appropriated for performance and general increases and, in part, on labor market practices and the condition of the state's pay structure.

(b) Performance increases shall be distributed fairly within work units and across agencies and shall be rewarded only for performance that exceeds performance requirements. Absent the supervisor's written justification, an employee whose performance exceeds expectations shall receive a percent increase equal to the midpoint of the percent range of exceeding performance until the employee's salary is at the maximum of the range. An employee whose performance does not exceed performance requirements shall not receive a performance increase. A supervisor's performance appraisal plan, evaluation standards for each employee, and individual employee ratings and recommended performance increase amounts, with justification, shall be reviewed and approved by that supervisor's next higher level supervisor.

(c) The level of performance is the primary basis for determining whether an employee should receive a performance salary increase. Examples of acceptable justification for awarding a percent increase (higher or lower) other than the midpoint of the percent range associated with the level of exceeding performance are:

- (1) an employee's value to the organization;
- (2) an employee's placement in the salary range versus that for other employees in the unit with similar performance;
- (3) the length of time since an employee last received a salary increase (promotion, re-allocation, and range revision) and the amount of the increase;
- (4) the total performance budget available for the work unit versus the performance ratings and salaries of the employees in the work unit;
- (5) an employee's performance history.

(d) The State Personnel Director may suspend any performance increase that does not appear to meet the intent of the provisions of the performance pay system and require the originating department, agency, or institution to reconsider or justify the increase.

*Statutory Authority G.S. 126-7.*

**.1126 PERFORMANCE SALARY INCREASE EFFECTIVE DATES**

Performance increases shall be granted on the first day of the pay period which includes the first day of the month in any of the following months: August, November, February and May. The performance increase shall be based on the employee's performance summary rating for the most recent performance appraisal review cycle. An employee shall receive a performance appraisal review at least once during every 12 month work period. An employee may receive more than one performance increase during a 12 month work period, but the total performance increase for a 12 month work period shall not exceed the maximum percent set forth in the Appropriations Act.

*Statutory Authority G.S. 126-7.*

**.1127 LIMITATION ON FUNDS FOR PERFORMANCE INCREASE**

(a) The total annual amount of money available for performance salary increases for employees will be computed by the Office of State Budget and Management and communicated to each agency. Funds will be computed based on annual salaries as of June 30 minus employees who are exempt from the State Personnel Act and minus employees who are at Step 11B. Salaries for positions vacant on June 30 are included in the total.

(b) Each agency shall request a transfer of funds to cover all performance salary increases in an amount equal to the total funds allocated.

*Statutory Authority G.S. 126-7.*

**.1128 SALARY INCREASE FUNDS BECOME  
PART OF BASE SALARY**

When salary increase funds are granted to an eligible employee, such funds immediately become a part of the employee's base salary; therefore, when an increase is granted, it loses its identity. No performance increase reserve can be established by turnover once the increase has been granted.

*Statutory Authority G.S. 126-7.*

**SUBCHAPTER 1E - EMPLOYEE BENEFITS**

**SECTION .0500 - EDUCATIONAL ASSISTANCE  
PROGRAM**

- .0501 PURPOSE (REPEALED)**
- .0502 ELIGIBILITY (REPEALED)**
- .0503 APPROVED COURSES (REPEALED)**
- .0504 APPROVED HOURS (REPEALED)**

*Statutory Authority G.S. 126-4.*

- .0506 TUITION ASSISTANCE (REPEALED)**
- .0507 APPLICATION PROCEDURES  
(REPEALED)**
- .0508 REIMBURSEMENT (REPEALED)**
- .0509 EXCEPTION-COURSES TAKEN AT  
AGENCY REQUEST (REPEALED)**
- .0510 ADMINISTRATION RESPONSIBILITY  
(REPEALED)**
- .0511 EXTENDED EDUCATIONAL LEAVE  
(REPEALED)**

*Statutory Authority G.S. 126-4.*

**SUBCHAPTER 1J - EMPLOYEE RELATIONS**

**SECTION .0900 - INTERNAL PERFORMANCE  
PAY DISPUTE RESOLUTION PROCEDURES**

**.0901 OUTSIDE THE ESTABLISHED  
INTERNAL GRIEVANCE PROCEDURE**

(a) The following are requirements for an approved internal performance pay dispute resolution process which operates separate and apart from the existing internal grievance procedure:

- (1) There must be no more than two steps involved in the process.
- (2) The final decision in the matter must be rendered by the agency head.
- (3) If the matter is to be reviewed by a panel, there must be no more than three members on the panel.
- (4) Neither side will be permitted to be represented by an attorney.

- (5) The proceeding shall not be tape recorded; neither shall any person be required to testify under oath.
  - (6) Review of and decision in the matter must be concluded within 90 calendar days from initiation by employee.
  - (7) The employee must receive an answer in writing from the agency head.
  - (8) The employee may speak in his own behalf or have someone else (other than an attorney) do so.
  - (9) The employee must be allowed to appear in person either before the panel, a single reviewer or before the agency head before a final agency decision is rendered.
  - (10) The employee may choose not to appear, but may have the matter reviewed on documents presented.
  - (11) If the agency chooses to use a panel as part of the review process, the employee may strike up to two of the panel members.
  - (12) If the agency chooses to use a single reviewer, the employee may recuse at least the first reviewer chosen.
  - (13) The employee must choose at the beginning to go through this procedure or to file a grievance under G.S. 126-25. These are exclusive remedies; the choice is one or the other, but not both.
  - (14) The employee shall have 30 calendar days in which to seek review of a performance pay decision from date of receipt of action being disputed.
  - (15) The decision of the agency head is final; this matter cannot be appealed further.
- (b) The following are guidelines to be considered in establishing an internal process for the resolution of performance pay disputes:
- (1) The dispute may be reviewed either by a panel, a single reviewer or by the agency head.
  - (2) If the panel process is chosen, the agency should maintain a pool of qualified panel members.
  - (3) The pool of panel members should include representatives of all groups, including management, supervisors and line employee members.
  - (4) The review should be held at the employee's worksite.
  - (5) No comparative data (i.e., reference to other employees) should be allowed.
  - (6) Witnesses, other than the employee or management's representative, should be strictly limited.



- (7) All members of the panel should be allowed to ask questions of the employee or management's representative.
- (8) A majority vote, rather than a unanimous vote, of the panel should decide the recommendation to the agency head.
- (9) The agency head should state in writing why he is not accepting the recommendation of the panel or single reviewer.
- (10) The agency head may choose to meet with employee before reaching his decision.

*Statutory Authority G.S. 126-4.*

**.0902 USING THE ESTABLISHED  
INTERNAL GRIEVANCE PROCEDURE**

(a) The following are requirements for using an existing internal grievance procedure to incorporate a performance pay dispute resolution process:

- (1) The initial filing of a performance pay dispute shall be with the appropriate division head (department), department head (university) or person of a similar level. The employee shall not be required to begin the process with his immediate supervisor.
- (2) A grievance may only proceed to those steps which have been given authority by the agency head to make a decision. Employees shall not be required to go to a step/person who does not have the authority to reverse the decision they are disputing.
- (3) All applicable time frames of grievance procedure, particularly in regard to turn-around time for decisions, shall be observed, except that employees shall have 30 days in which to initiate dispute review.
- (4) All procedural aspects of the grievance procedure shall remain unchanged.
- (5) The employee shall be able to strike up to two of the initial members of the grievance committee.

(b) The following are guidelines to be considered in incorporating performance pay disputes as part of an existing internal grievance procedure:

- (1) An effort should be made to limit this issue to no more than two steps in the internal grievance procedure.
- (2) As much as is possible, the agency should strive to give the employee a final agency decision in 90 calendar days or less.

*Statutory Authority G.S. 126-4.*

**.0903 DEFINITIONS**

The following are definitions to be used in this Section:

- (1) Performance pay dispute: A complaint by an employee concerning the amount of performance increase, the performance rating or a failure to receive any performance increase.
- (2) G.S. 125-25 grievances: A complaint by an employee that his performance rating constitutes inaccurate and/or misleading personnel file material.
- (3) Employee: Any employee who has successfully completed an initial probationary period.
- (4) Remedy: The removal of a performance rating found to be inaccurate or misleading; the retroactive or prospective adjustment or granting of performance pay increase.
- (5) Final agency decision: A decision in writing by the agency head.

*Statutory Authority G.S. 126-4; 126-25.*

**SUBCHAPTER 1K - PERSONNEL TRAINING**

**SECTION .0600 - WORK  
PLANNING/PERFORMANCE REVIEW**

**.0612 INTERIM PERFORMANCE  
MANAGEMENT RULES**

From the effective date of this Rule through December 31, 1989, the rules in this Section shall govern performance management, in both the appraisal and compensation areas. Effective January 1, 1990, the Performance Management System in all its phases shall be governed by 25 NCAC, Subchapter 10, Performance Management System.

*Statutory Authority G.S. 126-4.*

**.0613 FISCAL YEAR 1989/90 PERFORMANCE  
PAY FUNDS**

Funds allocated to provide performance-based pay increases effective July 1, 1989 will not be released to any agency prior to January 1, 1990. On January 1, 1990, funds will be released to agencies determined to be in compliance with the work plan/performance review rules in effect prior to January 1, 1990. Funds for fiscal year 1990/91 will be released on and after July 1, 1990 to agencies determined to be in compliance with rules in effect on and after January 1, 1990.

*Statutory Authority G.S. 126-4.*

**SUBCHAPTER 1O - PERFORMANCE  
MANAGEMENT SYSTEM**

**SECTION .0100 - GENERAL PROVISIONS**

**.0101 POLICY**

(a) It is the policy of the State of North Carolina that top management within each department, agency, and institution initiate and maintain an operative Performance Management System. This system is based on the importance of managing each individual's work and continuous communication between employees and their supervisors. It ensures that all employees:

- (1) knows what is expected of them;
- (2) are provided with continuous feedback about their performance;
- (3) have access to development opportunities;
- (4) are rewarded in a fair and equitable manner.

(b) It is desirable that each agency has a system for managing performance with a twofold purpose of establishing, monitoring, and evaluating organizational goals; and establishing individual expectations, monitoring progress, and appraising performance. The first purpose is mandated under G.S. 143A-17 and G.S. 143B-10(h). Therefore, this policy focuses primarily on the second purpose. These two processes should operate in tandem with each other. Once the organizational goals are established and communicated, individual expectations can be set based on these goals such that each employee understands and can related assigned duties to agency goals and missions.

*Statutory Authority G.S. 126-4; 126-7.*

**SECTION .0200 - THE PERFORMANCE MANAGEMENT SYSTEM**

**.0201 PERFORMANCE MANAGEMENT PROCESS**

The Performance Management Process is the sequence of actions that supervisors take when interacting with employees about their performance. The three steps are as follows:

(1) Determine Performance Expectations:

- (a) At the beginning of the work period, the supervisor and the employee shall meet to determine the employee's expectations. It is the supervisor's responsibility to explain the performance management process to the employee so that the employee understands the importance of his role in the organization. This is a planning meeting intended to discuss and record the employee's current responsibilities plus the expectations that describe successful completion of each responsibility.

- (b) As soon as expectations are negotiated, the supervisor should begin employing modeling and coaching techniques that are continuous throughout the cycle. Modeling is putting positive organizational and managerial behaviors into practice. Coaching is checking with employees to determine and guide job performance.

(2) Hold the Interim Review:

- (a) Every supervisor shall meet with each employee at least at the midpoint of the work period for an interim review of performance. The purpose of this meeting is to discuss progress in meeting established expectations and initiate action toward improvement, if needed. It is intended to be informal in nature but must be documented by date as well as by placing a summary of the discussion in each employee's file. Progress toward each of the employee's expectations must be discussed in detail. If there are reasons why certain expectations can not be met, the supervisor and the employee shall determine alternative expectations or delete them from the work plan. The overall job performance shall also be discussed.
- (b) Throughout the work period, the supervisor continues to model and coach employees because this is a vital part of the Performance Management Process.
- (3) Performance Appraisal Review: At the end of the work period, every supervisor shall meet with each employee to review the employee's actual performance against the expectations set at the beginning of the work period. The supervisor shall discuss how well the work was performed, identify good performance, and performance which needs improvement. They should also agree on a plan for improvement, as needed, for the next work plan period. The supervisor shall determine, communicate, and explain the rating for each expectation to the employee. The overall performance rating shall be discussed so that each employee is told how they performed their job overall throughout the work period. The results of this meeting must be recorded in the official Performance Appraisal Summary and signed by the employee, supervisor, and the supervisor's manager.

*Statutory Authority G.S. 126-4; 126-7.*

**.0202 COMPONENTS OF AN OPERATIVE SYSTEM**

In addition to the three step process (see 25 NCAC 10 .0201) that supervisors must use when interacting with employees, there are certain components which each agency's system must have. An operative Performance Management System must have all of the following components to be approved:

- (1) Agency-Specific Policy. Top management within each department, agency, and institution shall develop, implement, and administer a Performance Management policy. This policy and procedures shall be tailored to meet the needs of the organization within the parameters of this Section. To simply adopt the provisions of the state's policy is unacceptable. Each policy must reflect the conscious decisions that agency management makes in designing their performance management system not inconsistent with this policy. A department, agency or institution's policy must include:
  - (a) All of the components of an operative system;
  - (b) Instructions about how the system will operate using the three step performance management process;
  - (c) An explanation about the role of the employee, the supervisor and the supervisor's manager;
  - (d) A provision requiring that one of the responsibilities included in each supervisor's and manager's work plan is managing the performance of subordinate employees in accordance with the agency's Performance Management policies and procedures;
  - (e) Sanctions to be levied by the agency head if all provisions are not met.
- (2) Individualized Work Plan. Each employee shall have a work plan established at least on an annual basis. A work plan is a specific course of action outlining the significant responsibilities and duties of an employee's job, taken from the employee's position description. If no position description exists, one shall be written using a job analysis approach. Expectations must be written in behavioral terms for each responsibility and or duty.
  - (a) Expectations are the objective measures or criteria which state specifically how performance is measured throughout the cycle. They also serve as the basis of the discussion during the interim and appraisal reviews. Expectations must be written at the "meets requirements level". These expectations must be substantive and include critical indicators so that if everyone in a unit performed at that level,

the unit's goals and objectives would be met. Typically, indicators should measure both results and behaviors. The work plan must also include the methods which are going to be used in collecting information about the individual's performance. Each employee's work plan should include a measure of the ongoing aspects of each job as well as any special one-time projects and or goals. A measure of both the day-to-day activities and the projects goals combined comprise a true picture of the total job being performed.

- (b) The method(s) used to define/establish expectations must be congruent with the job being done and the number of employees doing it. Methods selected must ensure that Performance Management Systems are as legally defensible as possible. If an agency chooses, it may write standards at each level of the rating scale for groups of employees performing repetitive, standardized jobs. If an agency chooses to pursue additional evaluative methods such as performance factor rating scales for specific categories of jobs, approval shall be required by the Office of State Personnel before the scale is implemented.
- (3) Overall Rating. The North Carolina Rating Scale shall be used by every department, agency, and institution. It is at least a five level rating scale. The levels and definitions follows:
  - (a) Level One - Does not meet expectations.
  - (b) Level Two - Meets expectations.
  - (c) Level Three - Occasionally exceeds expectations.
  - (d) Level Four - Exceeds expectations.
  - (e) Level Five - Frequently exceeds expectations.

Agencies have until July 1, 1991 to bring their overall rating scale into compliance with these new levels. When a new rating scale is implemented, managers, supervisors, and employees must be informed and trained in the use of the new measures. Employees must be informed of the new scale at the beginning of the cycle in which they will be used.

Agencies will have to notify the Office of State Personnel of the course of action their agency will follow for 1989 and 1990. Optional courses of action to help agencies change from their current scales are outlined in the Guidelines. (See 25 NCAC 10 Section .0300.)

If use of the N.C. Rating Scale proves that particular job(s) could not be defined



without compromising accuracy at the meets level, the agency head may petition the Office of State Personnel to use an alternative approach. The approach and the scale shall be approved by the Office of State Personnel prior to use in the respective agency.

(4) **Performance Appraisal Summary.** An official Performance Appraisal Summary is required (on at least an annual basis) for all employees and shall be maintained during the work period, completed at the end of the work period (at least annually), and placed in the employee's file. At the beginning of the work period, the supervisor shall record the employee's performance expectations in the Summary and ensure concurrence of the supervisor's manager.

(a) At the end of the work period, the supervisor shall indicate a rating for each performance expectation and include a similar evaluation of the employee's overall performance in the Summary. A summary evaluation statement by the supervisor must be included supporting the overall rating. The employee should also be provided space and the opportunity to comment on his overall rating. The Performance Appraisal Summary shall then be signed by the employee, the supervisor, and the supervisor's manager, treated in a confidential manner and filed in the Agency's official performance appraisal files. If an employee chooses not to sign the Summary, it is management's responsibility to determine an alternative method of documenting that the appraisal has been completely discussed with the employee.

(b) Each employee shall be notified by their supervisor where his Performance Appraisal Summary is kept. The summary shall be kept for three years and disposed of according to G.S. 121.5(b), (c).

(c) The same overall rating must be indicated on the form requesting an employee's performance salary increase.

(5) **Development or Performance Improvement Plan.** Each department, agency, or institution shall have a development or performance improvement plan. The development or performance improvement plan provides a specific course of action to be taken to improve the employee's performance or to document the growth opportunities in which the employee is participating. The development plan may be a part of the work plan or stand alone as a separate part of the performance appraisal.

(6) **Education/Training Program.** The State Personnel Commission recognizes the need for a comprehensive training component for agencies to implement a fair and consistent performance management system. To be fair and beneficial to management and employees, all employees must have the skills and resulting practices to assure fairness and consistency. Agency management shall establish an information and performance management skills development program for employees, managers and supervisors respectively. The State Personnel Director will develop and issue guidelines that management can use in their program.

(7) **Performance Pay Dispute Resolution Procedure.** Each department, agency, and institution shall have a procedure for reviewing and resolving disputes of employees concerning performance ratings and/or performance pay decisions. Such a procedure may be incorporated as part of an existing grievance procedure, or it may be separately administered. For policy requirements and guidelines on such procedures, see 25 NCAC 1J .0901 - .0903.

*Statutory Authority G.S. 121-5; 126-4; 126-7.*

#### **.0203 RELATIONSHIP OF PERFORMANCE MANAGEMENT TO OTHER HUMAN RESOURCES SYSTEMS**

(a) Performance management is an integral part of the overall management of an organization. Information obtained during the Performance Management Process about individual employees or from specific units of the organization shall be a consideration in making other personnel management decisions. In fact, connections with other systems indicate how effective the performance management system is. The design of the job is the basis for job analysis which determines the content of the performance appraisal. From an organizational perspective, information obtained from performance appraisals must influence selection, staffing, discipline, training, and development.

(b) Performance appraisal information is one consideration in making other personnel decisions such as movement from probation to permanent status, promotions, all performance-based disciplinary actions involving one or more aspects of the work plan, performance salary increases, and reductions in force. It is useful in comparing employees' performance as required in those decisions. Personnel policies dealing with these actions also require consideration of

other variables; therefore, performance appraisals alone can not dictate such decisions.

(c) In order to achieve internal consistency in personnel administration, agencies shall adopt procedures which meet the following requirements:

- (1) A current (within the past 12 months) Performance Appraisal Summary shall be on file for an employee before any of the personnel actions listed in Paragraph (b) of this Rule can be effected.
- (2) Any proposed personnel action as mentioned in this Rule shall be consistent with the overall rating of the employee's performance.
- (3) In cases in which the recommended personnel action appears inconsistent with the current overall rating, a written justification shall accompany the recommendation.

(d) In order to ensure that all employees have the opportunity to qualify for performance pay increase, agencies shall adhere to the following:

- (1) Probationary employees shall have a position description and work plan established within ten working days of date of employment. An appraisal shall be completed before an employee can be moved into permanent status. After the employee becomes permanent, he must have an established work plan that is monitored through a complete cycle in order to be eligible for performance pay.
- (2) Employees whose responsibilities and duties are changed either within their current position or by transfer (lateral, promotion, or demotion) shall have a new position description and work plan established within 30 days of the new assignment.
- (3) An appraisal review shall be completed with employees who transfer within state government, prior to their last day of work. The Work Plan and Performance Appraisal Summary must be placed in the employee's personnel file and sent to the receiving unit.
- (4) When the transferred employee arrives in the new unit, the supervisor may consider the level of documented performance in appraisal from the previous unit along with the overall performance rating in determining the time and amount of a performance salary increase.
- (5) Every employee in a trainee progression must have a work plan within ten working days of employment. This plan helps to guide the employee in reaching requirements for the full classification. An ap-

praisal should be completed before each salary increase is granted within the progression.

(e) To provide continuity and consistency in treatment when a supervisor changes or an employee terminates employment, agencies must assure that:

- (1) When a supervisor is leaving a unit, the next level manager and the supervisor shall agree on each employee's progress towards their work plans and document this.
- (2) When an employee terminates employment in State Government, the supervisor should complete the performance appraisal prior to the employee's last day of work and place it in the employee's file.

*Statutory Authority G.S. 126-4; 126-7.*

#### **.0204 RESPONSIBILITIES OF THE STATE PERSONNEL COMMISSION**

The State Personnel Commission, under the authority of G.S. 126-4 (8) and G.S. 126-7, shall adopt policy and rules for performance appraisal. The Commission shall submit a report on the Performance Management System annually in accordance with G.S. 126-7(c)(9). Such a report shall include, in addition to statutorily mandated information, recommendations for improving and correcting any inconsistencies in the total Performance Management System and in each department, agency, and institution.

*Statutory Authority G.S. 126-4(8); 126-7.*

#### **.0205 RESPONSIBILITIES OF THE OFFICE OF STATE PERSONNEL**

(a) The Office of State Personnel, under the authority of G.S. 126-3, shall have the authority to administer and enforce all policy, regulations, and procedures for the performance management system throughout North Carolina State Government by requiring each department, agency, or institution to submit whatever evidence and/or information it deems appropriate. This shall include submission of planning documents as well as participating in audits conducted by the Office of State Personnel. It shall be the responsibility of the Office of State Personnel to set the performance increases allowable for levels of performance which exceed performance requirements.

(b) The Office of State Personnel shall monitor the performance management systems in all departments, agencies, and institutions. This includes monitoring performance increase distribution of each employing unit within each



department, agency, or institution. The Office of State Personnel shall review the analyzed data from each department, agency, and institution to ensure that performance increases are distributed fairly and equitably. A summary report with conclusions drawn about the statewide system shall be prepared and submitted to the Personnel Commission. This report shall also include recommendations for improving the total performance management system and alleviating existing inconsistencies. If deficiencies exist within any department's, agency's, or institution's system, sanctions may be recommended.

(c) It shall also be the responsibility of the Office of State Personnel to advise departments, agencies, and institutions in planning, establishing, and administering their performance management systems. This includes consultation concerning training programs. If any department, agency, or institution requests, the Office of State Personnel shall also assist in establishing an internal performance review system or in using its existing grievance procedure to hear performance pay disputes.

*Statutory Authority G.S. 126-4; 126-7.*

**.0206 RESPONSIBILITIES: DEPARTMENTS, AGENCIES, INSTITUTIONS**

(a) Top management within each department, agency, and institution shall establish, monitor and evaluate their individually tailored performance management systems subject to approval by the State Personnel Director as being in full compliance with this Subchapter. Furthermore, the head of each department, agency, and institution shall be responsible for bringing all units within their purview into full compliance with this Subchapter by January 1, 1990, except for those provisions otherwise stipulated. Failure to adhere to this Subchapter may result in the loss or withholding of performance increase funds throughout an entire department, agency, or institution.

(b) It shall be the responsibility of each department, agency, or institution head to submit an annual report to the Office of State Personnel which includes a complete description of the current performance management system, performance increase distribution of each employing unit, data on demographics of performance ratings, frequency of evaluations, performance pay increases awarded, the implementation schedule for performance pay increases as well as all other information requested. Within 30 days after receipt of feedback on this annual report from the Office of State Personnel, the head of each department, agency, or institution shall prepare a

written plan alleviating inequities and systematic deficiencies and submit it to the Office of State Personnel for concurrence. The head of same department, agency, or institution shall also take sanctions against the managers of those units in which inequities or systematic deficiencies exist.

*Statutory Authority G.S. 126-4; 126-7.*

**SECTION .0300 - PERFORMANCE MANAGEMENT SYSTEM: GUIDELINES**

**.0301 IN GENERAL**

(a) This Subchapter is general in nature because it must apply to all departments, agencies, and institutions. An effective performance management system must be tailored to meet the needs of the organization within the parameters of this Subchapter.

(b) In order to be in compliance with the Performance Management System policy (See 25 NCAC 10 .0101 - .0102, .0201 - .0206), all departments, agencies, and institutions shall adhere to the mandatory provisions that are the minimum requirements. These include the components of the "Performance Management Process", the "Components of a Operative System", and "Responsibilities".

(c) While adhering to mandatory provisions of this Subchapter, top management should plan a course of action by determining:

- (1) The current organizational climate and readiness for change;
- (2) The type and the level of involvement of top managers, middle managers, and supervisors in the performance management system;
- (3) The process to be used to design or redesign the features of the performance management system specifically for each agency;
- (4) The purpose(s) and benefits of the Agency's present performance management system and over a one to three year period;
- (5) The design of the performance appraisal system and how it fits into the organizational structure as a management system;
- (6) Implementation strategies spanning a one to three year period.

*Statutory Authority G.S. 126-4; 126-7.*

**.0302 BENEFITS**

Complete implementation and maintenance of the Performance Management System may benefit each department, agency, and institution by providing a systematic way of:

- (1) clarifying the relationship between the employee's work assignment and the purpose and goals of the work unit and the Agency;
- (2) measuring all employees' performance by comparing the actual results to the expectations;
- (3) documenting the amount of improvement since the last appraisal;
- (4) comparing the employee's performance with others doing the same or similar jobs;
- (5) rewarding employees who exceed expectations;
- (6) motivating employees to achieve excellent performance;
- (7) making fair and equitable personnel management decisions;
- (8) enhancing communication between the employee and the supervisor as well as between the supervisor and the manager; and
- (9) establishing, monitoring progress, and meeting organizational goals by top management.

The optimum system would produce all of these eventually.

*Statutory Authority G.S. 126-4; 126-7.*

#### .0303 THE PERFORMANCE MANAGEMENT PROCESS

(a) The Performance Management process is cyclical in nature because one step in the process continuously leads to the next. The three stages deemed critical in managing performance in the broad organizational context are:

- (1) Establishing and Communicating Organizational Goals. Under G.S. 143A-17 and G.S. 143B-10(h), each department, agency, and institution is required to complete an annual plan of work. This plan should contain the organization's goals. After communicating them throughout the organization, these goals should set the direction of the organization and of the individual work plans for employees.
- (2) Monitoring Progress toward these Goals. Throughout the work period, management should continually monitor progress toward these goals through its employees' work performance. If sufficient progress has not been made or cannot be made, the goals may need to be revised and or redirected based on the feedback received.
- (3) Evaluating Organizational Goals. At the end of the work period, management must decide if the organizational goals were met based on whether or not employees performance met expectations. After outputs

have been determined, management uses information obtained from throughout the organization to determine their accountability to the public, funding sources, and to the employees who did the work. After recognizing team effort, the cycle then begins again for the next year.

(b) The Office of State Personnel is not responsible for implementing or monitoring this process.

(c) Use of the three step process for managing the performance of all employees, supervisors, and managers is crucial for sound working relationships. The process of appraisal must be regular and ongoing; supervisors must not wait until the interim or appraisal reviews to do it. There are two techniques which all supervisors and managers must use throughout the entire cycle. These techniques are modeling and coaching, which includes reinforcing.

(1) Modeling is demonstrating desired behavior which should be imitated. It is crucial that positive, sound management techniques be practiced every day.

(2) Coaching involves the informal job-oriented conversations that supervisors usually initiate with employees about how the work is progressing. They are usually positive in nature with emphasis on teaching or training the employee. Specific advice may be given, but the objective is to improve the employee's job performance as an individual and as a team member. Coaching is a way of moving employees toward new areas of experience, new demands for skill development, and new application of ingenuity and problem solving. Coaching is based on observation of the employee's performance. The key to effective coaching is handling problem situations without causing resentment.

(d) Beginning with step one, "Determining Performance Expectations", the supervisor is responsible for assuring that expectations for all jobs within his purview are consistent and equitable. The supervisor's manager must see that the expectations for similar jobs across all units reporting to him are consistent and equitable.

(e) The performance management process is a two-way system. Vital information must flow back and forth between the supervisor and employee. Employees have an active role. They must be prepared for the three meetings with management. They should gather information related to their past performance including specific data on activities and accomplishments. It is the employee's responsibility to tell the super-



visor if expectations seem inappropriate and the reasons why. After expectations are negotiated and the work plan is in place, employees must also keep supervisors informed as changes occur in case expectations can not be met as planned.

(f) The interim review is a minimum requirement. To be most effective, supervisors and managers need to be coaching and providing feedback throughout the process. If an employee is not progressing as expected at the interim review, the supervisor should meet with that employee at least once more before the final appraisal. One of the purposes of this system is to help employees be successful.

*Statutory Authority G.S. 126-4; 126-7; 143A-17; 143B-10(h).*

#### **.0304 COMPONENTS OF AN OPERATIVE SYSTEM**

(a) Policy. Since the policy must be agency-specific, additional management considerations in defining the policy are what they want to accomplish; how they will implement, monitor, and evaluate their system; the process and procedures that need be established to make the system effective for their organization; appropriate methods of appraisal to be used for various jobs; and the education training needed by employees, supervisors and managers to implement all of this Paragraph.

(1) Agency management is expected to hold managers and supervisors responsible for carrying out the Performance Management Process fairly and equitably. Sanctions and/or definite consequences must be clearly understood and must then occur as stated in the agency's policy.

(2) Performance management is a key responsibility for supervisors and managers. This shall be one of the responsibilities included on every supervisor's and every manager's work plan. The expectations for performance management at all levels of management should be defined in the department, agency, or institution's policy.

(3) Examples of sanctions which could be levied are:

(A) Automatic denial of any performance salary increase if the supervisor's rating on the performance management factor does not meet requirements even if all other performance exceeds requirements at the highest level;

(B) Issuance of appropriate disciplinary warnings, up to and including dismissal, for failure to carry out the performance

management process in accordance with agency policy;

(C) Automatic transfer/demotion of a manager following a second warning for failure to carry out performance management policy or seeing that subordinate supervisors carry out the responsibility in accordance with policy.

The intent behind these sanctions is that no employee should be penalized or excluded from consideration for a performance salary increase because a supervisor or manager has not done his job in managing the Performance Management Process.

(b) Individualized Work Plans. The policy (See 25 NCAC 10 .0101, .0201 - .0206) states that every employee shall have a work plan which specifies what each employee does (responsibilities and duties) and how it is performed satisfactorily (expectations). The following explains these two in detail.

(1) Significant Responsibilities and Duties.

In order for an employee to perform satisfactorily, he must have a description of the entire job he is to do. The various responsibilities and duties in a job are listed in the position description. This position description should be used as a basis for selecting the responsibilities listed in the work plan. The ones selected should cover 60-70 percent of the job being done. All would not be used because they may not be significant enough to warrant the time required for measuring performance. Listing only one or two responsibilities is unacceptable because it does not cover the job being done.

(A) Responsibilities include the ongoing aspects of the employee's job that continue from one cycle to the next and the one-time goals and/or special projects for that cycle. It is important to capture the actual work being done.

(B) Expectations must be established for each responsibility and/or duty. To be considered substantive at the "meets requirements" level, expectations must be measured by one or more indicators. Indicators used to clarify aspects of the responsibilities being measured are quality, quantity, timeliness, manner of performance, cost effectiveness, and resources. Expectations must measure behavioral aspects of the job as well as the product or result.

(C) It is the immediate supervisor's responsibility to determine performance expectations with the next level manager's



- approval. The supervisor shall involve the employee in the process, but retains final authority, with the approval of the manager, for approving the expectations.
- (2) Determination of the performance expectations requires a mutual understanding of:
    - (A) primary responsibilities and duties or projects;
    - (B) relationship of the responsibilities to the goals of the work unit and the Agency;
    - (C) the relative importance of the employees responsibilities and duties listed in relation to each other;
    - (D) what the indicators for measuring performance at "meets requirements" are as well as what and how information will be collected and used;
    - (E) how information will be reviewed and formally appraised at the end of the work period.
  - (3) Performance expectations must be established or updated at least annually. Expectations for ongoing responsibilities may remain constant from year to year, but they should be reviewed to verify that they are the same or have changed.
  - (4) Standards. Agency management should analyze the jobs in the organization to determine the appropriate methods for establishing expectations for similar jobs across the organization. Standards for groups of employees with the same or similar responsibilities may be developed through a group process. Standards are the expectations written each level of the approved rating scale. Formal standards are preferable for groups of positions which have the same responsibilities and duties so that all employees are appraised in a consistent manner. Different supervisors, supervising the same types of jobs, but in different units, should evaluate their employees using the same criteria.
  - (5) Additional Evaluation Methods. Use of a list of performance factors that management deems necessary for certain categories of jobs such as housekeeping or nurses may only be used in addition to the required work plan. A performance factor checklist is not an acceptable replacement for a work plan. The following guidelines should be followed:
    - (A) Obtain approval from State Personnel to proceed with this process.
    - (B) Analyze jobs to break them into specific functions and key elements. Demonstrate similarities for job category groupings.
    - (C) Weigh the importance of each function.
    - (D) Develop elements that are expressed in objective, measurable terms.
    - (E) Specify the level of performance necessary to achieve a particular rating for each function.
    - (F) Use separate elements for each job category, keying elements to the specific behaviors on which assessment of performance is based.
    - (G) Train raters in the use of the rating scale.
- Performance factor rating scales will have to be individualized to reflect the specific group of jobs being analyzed. Documentation should also be provided for specific performance data such as critical incidents that support the ratings.
- (c) Overall Rating Scale. The North Carolina Overall Rating Scale has been established to provide consistency in the Performance Management Process throughout State Government. Although the policy is effective January 1, 1990, agencies have until July 1, 1991 to implement the new scale. Performance increases are limited to those employees whose performance exceeds requirements. In order to determine the agency's course of action toward implementing the new scale, management may want to consider the following factors:
- (1) Length of time current appraisal system and rating scale have been in place and the amount of resistance expected;
  - (2) Experience and skill of managers and supervisors in writing performance expectations that clearly distinguish levels of performance;
  - (3) The numbers of employees comprising the organization and their locations;
  - (4) Number of different jobs;
  - (5) Relationship of measurement scale changes to other improvement plans, goals, and activities involved in implementing the performance management system;
  - (6) Time and effort required to communicate information and train to all employees;
  - (7) Training required to build skills of managers and supervisors in writing expectations using the new scale.
- (d) Performance Appraisal Summary. Management may choose to provide space on the Summary for employees to evaluate themselves or comment on the supervisor's evaluation. Since performance appraisal is a sensitive situation for employees, top management should

adopt procedures to ensure that appraisals are kept confidential. Employees deserve to know how the Summary is processed when completed, the safeguards taken to insure privacy, and location of the permanent file. Since the overall performance rating must be consistent with other personnel actions, the agency's procedures should address who has access to this information and under what circumstances.

(c) Development or Performance Improvement Plan. The knowledge and skills addressed in the work plan are directed to strengthening these areas to either correct deficiencies or to help maintain and enhance the employee's performance. Therefore, an employee's first development plan should be included in their work plan while in probationary status. Supervisors assess the employee's development level in relation to assigned responsibilities when establishing work plans and continue to assess progress throughout the cycle. Development activities must be planned when the work plan is established and/or revised during the cycle as needed.

- (1) The Development and Improvement Plan should specify the steps the employee must take to gain the knowledge or skill, and must clearly indicate what steps the supervisor will take to ensure that the employee acquires that knowledge and skills. The expected results have to be specified before the activity begins so that both the employee and supervisor understand and agree what knowledge and/or skill is to be gained and how it is applied after training. Timeframes for completion and demonstrated improvement should also be set.
- (2) Growth opportunities to enhance their performance in the current job and encourage employees to meet their fullest potential shall be offered to each employee. Employees may elect not to participate in this type of development, but should be encouraged because of the benefits to the employee and the organization.

(f) Education/Training. To be successful a performance management system will have to include training. Employees need to understand what the process is, what to expect and how they fit in. Supervisors must be skilled in the coaching, modeling and interaction process. Finally, the characteristics of a performance management training program and the competencies for those providing information and training are very important in providing the skills require.

(g) Performance Pay Dispute Resolution Procedure. Each agency, institution or university shall have, either as a component of an existing internal grievance procedure or as a separate procedure, a process to address complaints of employees regarding performance-based pay decisions. For more detailed requirements and guidelines for such procedures, see 25 NCAC 1J .0901 - .0903.

*Statutory Authority G.S. 126-4; 126-7.*

#### **.0305 OPTIONAL COURSES OF ACTION BETWEEN 1989 AND JULY 1, 1991**

An agency must designate the measurement scale that will be used in order for State Personnel to process their performance salary increase forms. Each department, agency, or institution must designate and use the same option for all units. To make the transition from its current rating scale to the N.C. Overall Rating scale an agency may elect to:

- (1) Maintain its current scale in 1989 and again in 1990.
- (2) Change the scale in 1989 and/or 1990. For example, an agency with a three level scale may decide to maintain that scale in 1989 and then gradually increase the "exceeds" level to two in 1990.
- (3) Change to the new N.C. Overall Rating scale (with three levels above meets expectations) in 1989 or 1990.

Agencies must, pursuant to G.S. 126-7, implement the new scale for appraisals completed between 1991 and 1992 and thereafter.

*Statutory Authority G.S. 126-4; 126-7.*

*The List of Rules Codified is a listing of rules that were filed to be effective in the month indicated.*

*Rules filed for publication in the NCAC may not be identical to the proposed text published previously in the Register. Please contact this office if you have any questions.*

*Adopted rules filed by the Departments of Correction, Revenue and Transportation are published in this section. These departments are not subject to the provisions of G.S. 150B, Article 2 requiring publication in the N.C. Register of proposed rules.*

*Upon request from the adopting agency, the text of rules will be published in this section.*

*An agency has 30 days from the effective date of a rule to notify this agency of any typographical or technical errors in the rule as codified. These corrections are incorporated into the List of Rules Codified and are noted as \* Correction. A typographical or technical error does not change the effective date if corrected within the 30 day requirement.*

## TITLE 5 - DEPARTMENT OF CORRECTION

### CHAPTER 2 - DIVISION OF PRISONS

#### SUBCHAPTER 2D - PUBLIC COMMUNICATIONS

#### SECTION .0200 - VISITATION: POLICY/PROCEDURE

##### .0201 GENERAL

(a) Introduction. Visiting performs a vital function in the correctional process and should be as free and open as security considerations permit. Inmates should be encouraged to maintain a close contact with members of their families and desirable friends through visitation privileges.

(b) Application. Each inmate shall be required to submit an application on Form DC-159 (approved visitors list) listing the name, address, relationship, and age of each person designated as a personal visitor. Visitors, other than immediate family members or those who have acted as im-

mediate family members, may not be approved for visiting privileges with more than one inmate. Immediate family members shall be interpreted for the purposes of this policy to mean parents, spouse, children, brothers, or sisters. The term "those who have acted as immediate family" shall be interpreted to mean those who have served as parents in the absence of natural or adopted parents. Only immediate family members or those who have acted as immediate family will be approved for visitation with more than one inmate.

(c) Approval of the Application. The complete visitor list DC-159, shall be submitted to the unit superintendent or institution head or his designated representative for approval. The visitor list shall be reviewed and questionable visitors shall be investigated prior to approval.

##### (d) Procedures for Disapproval

(1) Original Application. A copy of the original visitor list (DC-159) will be returned to the inmate indicating those visitors who have been disapproved. The basis for which a visitor may be disapproved must be reasonable. Reasonable grounds for which a visitor may be disapproved are as follows:

- (A) The visitor has been disruptive during previous visits.
- (B) The visitor has attempted to visit while under the influence of alcohol or drugs during previous occasions or has attempted to bring alcohol or drugs or other contraband into the prison facility.
- (C) The visitor has refused to submit to a routine search or show proper identification during a prior visit.
- (D) The visitor was a participant in the criminal activity for which the inmate is incarcerated.
- (E) The visitor's presence in the unit or institution would undermine security considerations or corrective treatment.
- (F) The visitor has previously had his visiting privileges terminated indefinitely without reinstatement by the Director of Prisons or his designated representative.

Upon receipt of the original visitor list, each inmate will be responsible for advising those visitors who have been disapproved that they will not be authorized entry into the prison facility.

- (2) Visitors who have been originally approved and have subsequently demonstrated reasonable grounds for disapproval in accordance with (1) of this Subsection, shall be notified in writing by the superintendent or institution head that their visiting privileges have been terminated.



The unit superintendent or institution head shall advise the visitor of the reason for the termination of the visiting privileges and whether the visiting privileges are terminated indefinitely or for a designated period of time. Disapproved visitors shall be advised that they may appeal in writing to the Director of Prisons or his designated representative requesting restoration of visiting privileges and their justification for this action.

(e) Prior Criminal Record. The fact that a visitor has a prior criminal record may be grounds for disapproval of the visitor's application. However, an exception may be granted for immediate family members. The fact that there has been no previous relationship between the inmate and the visitor prior to incarceration will not, in of itself, be grounds for denial of visitation privileges. Likewise, marital status of the inmate or the visitor will not be determinative. Normally, visits between inmates and the immediate family members of other inmates will not be allowed.

(f) Changes in the Approved List. Requested changes in the inmate's approved visitor's list may be submitted at intervals determined by the unit superintendent or institution head. The maximum interval for visitor list changes will not exceed 30 days and changes will be allowed by a receiving facility upon inmate transfer to that facility.

*History Note: Statutory Authority*

*G.S. 148-11; 148-22;*

*Eff. February 1, 1976;*

*Amended Eff. October 1, 1989;*

*November 20, 1978.*

**.0204 RULES FOR VISITING**

(a) Identification and Search. All visitors must be properly identified. Personal visitors may be required to present a driver's license, a social security card, or any other form of positive identification to prove that they are listed on the approved visitors list. Attorneys, clergymen, and other special visitors may be required to show professional credentials as well as personal identification. All necessary precautions shall be taken to assure that no contraband is carried into prison facilities. Visitors may be subjected to routine searches in accordance with departmental policy and procedure on search and seizure (5 NCAC 2F .0100).

(b) Visiting Hours, Number of Visitors, Frequency and Duration of Visits. Normally, inmates will be allowed no more than one visiting session per week not to exceed two hours. Normally, the maximum number of visitors per in-

mate per visiting session will not exceed three approved adults. Children under 16 years of age may be allowed to accompany the adults provided they remain under the immediate supervision of the adults during the visit:

(1) Visiting hours will be established by the unit superintendent and approved by the area administrator or institution head.

(2) Routine visiting hours may extend from 12 noon to 5:00 p.m., Saturdays and/or Sundays. Facilities with special control requirements may develop visiting periods and other visiting procedures to establish secure operations and proper supervision of the visiting area. Visitation will not occur on holidays unless special visits are approved by the superintendent/ institution head. Regular visitation periods may be modified to meet unusual security or operational considerations. Under routine visiting circumstances, general population inmate movement will not be restricted during visiting periods except from the visiting area. Inmates who pose a disruption to visitation may have their movements restricted. In the event that inmate disturbances recur, appropriate restrictions on general inmate movement may be imposed at the facility where the disturbance occurs, subject to approval by the area administrator or institution head.

(3) Food stuffs and picnic lunches may be authorized where outside visiting areas at minimum custody units may be utilized for this purpose. Food stuffs and picnic lunches will only be authorized in outside visiting areas at minimum custody units. No food stuffs of any type will be authorized at medium, close and maximum custody institutions. Beverages of any type shall not be authorized in any visiting area of the Division of Prisons.

(c) Visiting Areas and Supervision of Visits. The unit superintendent or institution head shall choose the visiting area at each facility. The area chosen should be as comfortable and pleasant as security requirements permit. An officer shall be present in the visiting area at all times to supervise visits and insure institution safety.

(d) Records. A record of all visits, regular and special, shall be kept on Form DC-163. The visitor's name and address shall be entered on this form. Whenever practical, the visitor shall be required to sign the form.

(e) Violations of Visiting Privileges. Visits shall be conducted in a quiet, orderly manner. In the event any inmate or visitor becomes unduly emotional or creates a disturbance, the visit may

be terminated and the participants removed from the visiting room or area. Any efforts to circumvent or evade these regulations may result in disciplinary action against the inmate and appropriate administrative and/or legal proceedings against the visitor. (note G.S. 14-258.1)

*History Note: Statutory Authority  
G.S. 148-11; 148-22;  
Eff. February 1, 1976;  
Amended Eff. October 1, 1989;  
November 20, 1978.*

## SUBCHAPTER 2E - TREATMENT

### SECTION .1500 - SAFETY AND HEALTH

#### .1501 PURPOSE

(a) The North Carolina Department of Correction subscribes to the Executive Order establishing the State Employee's Work Place Requirements Program for Safety and Health. The Division of Prisons through the exercise of its authority shall assure insofar as possible through a Comprehensive Correctional Safety and Health Program that every employee in the Division of Prisons will have safe and healthful working conditions and meet the standards provided in Executive Order No. 6 (1985); and G.S. 93-129.1; 95-130.1; and 95-148.

(b) The rights and duties of employers and employees as described in these standards shall henceforth become a part of the rules and regulations of the Division of Prisons.

(c) The Division of Prisons will make a vigorous and diligent effort to achieve full compliance with these standards and will commit such resources as required to fully perform the responsibilities assigned to state agencies as described in the Order.

(d) Employees are hereby guaranteed the exercise of their rights under the Safety and Health Standards without being subjected to retaliation. These rights include the right to register complaints about unsafe working conditions; the right to be fully informed about disposition of complaints; and the right to be fully advised about violations of safety standards. These rights also include the right to participate in the safety program and to be represented at safety inspections.

*History Note: Authority G.S. 95-129.1;  
95-130.1; 95-148; 148-11;  
Executive Order Number 6;  
Eff. October 1, 1989.*

#### .1502 SUPERVISORY AND EMPLOYEE RESPONSIBILITY

(a) Supervisory Responsibility. It shall be the basic responsibility of each supervisor to plan and conduct safe operations. It shall be the duty and responsibility of each supervisor to fully orient and instruct all employees in safe practices and procedures. Supervisors shall immediately take necessary corrective action to prevent recurrence or initiate such action as deemed necessary to correct any unsafe act or condition reported or observed. Allowing an unsafe condition to exist could be cause for disciplinary action.

(b) Employee Responsibility. It shall be the responsibility of each employee to abide by all departmental rules and regulations and to comply with all laws pertaining to employee safety and health. Unsafe acts or conditions observed by any employee shall be reported immediately to the responsible supervisor.

*History Note: Authority G.S. 95-129.1;  
95-130.1; 95-148; 148-11;  
Executive Order Number 6;  
Eff. October 1, 1989.*

#### .1503 CONTRACTING AGENCY RESPONSIBILITY

The Department shall encourage all lessors who contract with the Division of Prisons to cooperate fully with the Division to assure lessor compliance with these standards. The Division shall alert lessors of any observed serious violations and shall utilize such sanctions as are consistent with contract terms in assisting the responsible lessor to enforce safety laws, rules and regulations. The Division should refrain from contracting with lessors who fail to cooperate and comply with these standards.

**Note:** This regulation is not intended to relieve lessors of any liability they may have under existing law.

*History Note: Authority G.S. 95-129.1;  
95-130.1; 95-148; 148-11;  
Executive Order Number 6;  
Eff. October 1, 1989.*

## TITLE 19A - DEPARTMENT OF TRANSPORTATION

### CHAPTER 3 - DIVISION OF MOTOR VEHICLES

#### SUBCHAPTER 3D - LICENSE AND THEFT SECTION

#### SECTION .0200 - MOTOR VEHICLE DEALER AND SALESMAN LICENSE

#### .0216 DEFINITIONS

(a) **Statutory Definitions:** Definitions for words and phrases used in these regulations not defined in subsection (b) shall be the same as the definitions appearing in G.S. 20-286 and G.S. 20-4.01.

(b) **Administrative Definitions:** The following words and phrases shall have the meanings listed below when used in these regulations:

(1) "Principal Place of Business" - Means a salesroom containing 96 square feet of floor space in a permanently enclosed building or structure which is separate and apart from any living quarters, residence or other business and having a separate entrance; where any vehicles displayed are separate and apart from vehicles of any other dealer; having displayed thereon or immediately adjacent thereto a sign, in block letters of not less than 3 inches in height on a contrasting background, clearly and distinctly designating the trade name of the business at which a permanent business of bartering, trading and selling of motor vehicles will be carried on as such in good faith and at which place of business shall be kept and maintained the books, records, and files the Division may require as necessary to conduct the business at such location. A building would not be considered permanent if it has wheels. In order for a manufactured home to be considered a permanent enclosed building, it would have to be underpinned and wheels removed. Provided, however, the minimum area requirement provided for in this Paragraph is not applicable to any established place of business lawfully in existence and duly licensed on or before January 1, 1978.

(2) "Supplemental Location" - Any improved or unimproved lot that is not immediately adjacent to the principal place of business at which a permanent business of bartering, trading and selling motor vehicles will be carried on as such in good faith and which is located within the relevant trade area of the applicant dealer as defined by G.S. 20-286(13b). A supplementary lot must have displayed thereon a sign in block letters not less than 3 inches in height on a contrasting background, clearly and distinctly designating the trade name of the business and the address and telephone number of the principal place of business. Supplemental locations must operate in exactly the same name as the principal place of business and only vehicles owned by or lawfully consigned to the principal place of busi-

ness may be offered for sale at supplemental locations. Provided, the provisions of this Subparagraph shall not apply to sales of recreational vehicles and boat trailers which take place at trade shows within the franchise area of the participating licensed dealers. If a particular recreational vehicle or boat trailer manufacturer has not awarded a franchise in an area where a trade show is to take place, other licensed dealers holding a franchise from the manufacturer may nonetheless participate in the show."

(3) "Suspension" - The temporary withdrawal of a license issued by the Division of Motor Vehicles to a motor vehicle dealer, manufacturer, factory branch, distributor, wholesaler or their salesman or representative for a definite period.

(4) "Revocation" - The termination of a license issued by the Division of Motor Vehicles to a motor vehicle dealer, manufacturer, factory branch, distributor, wholesaler or their salesman or representative.

(5) "Automobile" - Any passenger car or station wagon.

*History Note: Filed as a Temporary Amendment Eff. February 9, 1989 For a Period of 180 Days to Expire on August 8, 1989; Statutory Authority G.S. 20-1; 20-302; Eff. June 1, 1988; Temporary Amendment Expired Eff. August 8, 1989; Amended Eff. October 1, 1989.*

#### **.0219 BUSINESS RECORDS**

(a) All motor vehicle dealers, manufacturers, factory branches, distributors and wholesalers shall keep a record for at least four years of all vehicles manufacturers, received, sold, traded or junked. In addition to these records, a copy of an odometer disclosure form, completed with the information required by law from the seller and a copy of an odometer disclosure form, completed with the information required by law, given to the purchaser.

(b) Additional records required under this section shall include:

- (1) Make, body style, vehicle identification number, and year model.
- (2) Name of person, firm or corporation from whom acquired.
- (3) Date vehicle purchased or manufactured.
- (4) Name of person, firm or corporation to whom sold or traded. If vehicle junked, date, name and address of person, firm or



corporation to whom frame, motor and body sold.

- (5) Date vehicle sold or traded.
- (6) Copy of bill of sale (written statement).

(c) All records required to be maintained in Paragraphs (a) and (b) shall be kept and maintained for every vehicle purchased or sold and shall be kept so as to be readily available for inspection upon demand from an authorized agent of the North Carolina Division of Motor Vehicles in order that the ownership of any vehicle purchased or sold can be traced.

(d) Manufacturer's Certificates of Origin and title for all vehicles owned by a motor vehicle dealer, manufacturer, factory branch, distributor or wholesaler must be immediately available to assign to the purchaser.

(e) Retail installment sales must be made in accordance with G.S. 20-303. Cash sales may be made by proper endorsement and delivery of the title to the purchaser and any other receipt that the purchaser and seller agree upon.

(f) Pursuant to 16 CFR 455.2 a dealer shall not willfully remove the "Monroney Label" or sticker from a new automobile that is displayed for sale. The "Monroney Label" must be affixed to the new automobile at the time of sale to the ultimate purchaser. "Ultimate Purchaser" means the first person, other than a dealer purchasing in his capacity as a dealer, who in good faith purchases a new automobile for purposes other than a resale.

(g) Pursuant to 15 USC Sec. 1231 every dealer offering used cars for sale shall post buyers guides with warranty information as required by the Federal Trade Commission and same shall be displayed at the time of sale.

*History Note: Statutory Authority*

*G.S. 20-1; 20-52, 20-75; 20-79(a) and (b); 20-82; 20-286(6) and (15); 20-297; 20-302; 20-303; 20-347;*

*Eff. June 1, 1988;*

*Amended Eff. October 1, 1989.*

**.0221 CONDITIONS FOR ISSUING TEMPORARY MARKERS BY A DEALER**

(a) Ownership in the vehicle must pass from the dealer to the purchaser by assigning the title or Manufacturer's Certificate of Origin and by delivering the vehicle to the buyer.

(b) Dealer has obtained from purchaser an application for registering and titling of the purchased vehicle.

(c) Dealer has collected all prescribed fees for titling and registering the vehicle.

(d) Dealer has certification (Form FR-2) certifying liability insurance in effect.

(e) Exception:

The only exception to the above rules b and c is when the dealer is selling the vehicle to an out-of-state purchaser and the vehicle is to be removed from the State of North Carolina to the purchaser's home state prior to the expiration of the 30-day temporary registration marker. Form FR-2 (Insurance Certification) shall be completed and kept by the dealer as part of his records.

(f) Issuance of 30-day temporary marker:

(1) All 30-day temporary markers shall be issued in numerical order, beginning with the lowest number of the set or sets.

(2) The vehicle identification number, the make, the issuance date, and the expiration date shall be entered clearly and indelibly on the face of the temporary marker.

(3) A receipt, which corresponds in number with the 30-day temporary marker, shall be issued.

(4) The receipt shall be completed in duplicate, with pen and ink, and must be readable.

(5) The white copy of the receipt, with the 30-day marker, shall be delivered to the purchaser. The pink copy is to be retained in the book by the issuing dealer for at least one year.

(6) All documents necessary to title and register the vehicle shall be presented to a license plate agency or mailed to the North Carolina Division of Motor Vehicles four working days from date of issuance.

(EXCEPTION): When the purchaser is a nonresident, a 30-day temporary marker may be issued to the nonresident for the sole purpose of removing the vehicle to his home state, provided the customer has in effect liability insurance with a company licensed in North Carolina. The dealer is neither required to obtain from such nonresident a written application for North Carolina registration nor to collect the North Carolina registration fees. However, Form FR-2 should be completed and kept by the dealer as part of his records. If a plate is to be transferred, a 30-day temporary marker cannot be issued. Record the information on the report sheet in the back of receipt book.

(7) All 30-day temporary markers and/or receipts that are voided shall be marked "voided" and recorded on the report sheet. The white copy of the receipt and the 30-day temporary marker shall be forwarded to the North Carolina Division of Motor Vehicles Enforcement Section

together with the report sheets. Receipts and 30-day temporary markers that do not match shall be returned to the Division after recording on report sheet. The receipt is not to be altered.

- (8) Only one 30-day temporary marker may be issued per vehicle per sale.
- (9) Upon issuance of all receipts (Markers) in each receipt book, the report sheet must be completed in duplicate and the original mailed to the Division. A copy of the report sheet must be retained by the Dealer for one year.

*History Note: Statutory Authority  
G.S. 20-39; 20-79.1;  
Eff. June 1, 1988;  
Amended Eff. October 1, 1989.*

**.0222 DEALER'S DELIVERY/PURCHASER'S  
APPL: REGISTRATION**

*History Note: Statutory Authority  
G.S. 20-39; 20-79.1;  
Eff. June 1, 1988;  
Repealed Eff. October 1, 1989.*

**.0224 ILLEGAL USE OF DEALER PLATES**

(a) It is illegal to use dealer plates on vehicles operated for any other business that the dealer is engaged in. The sale of farm machinery, not including farm tractors, is considered another business and delivery of farm machinery by motor transport is not permitted with dealer plates.

(b) Parts trucks used in delivering parts to other sales outlets may use dealer plates only if the sale of parts is incident to the dealer business. A parts business that is separate and apart from the dealership cannot use dealer plates.

(c) It is illegal to use dealer plates on vehicles that are not owned by the dealer.

(d) Dealer may allow the operation of motor vehicles and trailers owned by dealers in the personal use of persons other than those employed in the dealer's business, provided said persons shall at all times while operating a vehicle under this provision be in possession of a certificate valid for 96 hours. (Forms furnished by the Division for this purpose.) This permit may be renewed for one additional 96-hour period. The said permit must include license number, date and hour of issue and must be signed by dealer or sales manager and person receiving vehicle. Void if erasures are made.

(e) It is illegal to use dealer plates on wreckers used for general wrecker service or on wreckers which move vehicles on a rotation basis at the request of state or local law enforcement authorities. It is permissible to use a dealer plate on

wreckers which tow vehicles for the dealer's customers only.

*History Note: Statutory Authority  
G.S. 20-39; 20-79;  
Eff. June 1, 1988;  
Amended Eff. October 1, 1989.*

**.0228 BILL OF SALE, ODOMETER  
STATEMENT - WRITTEN  
DOCUMENTATION**

(a) Bill of Sale - Every motor vehicle dealer, manufacturer, factory branch, distributor or wholesaler at the time of sale or trade shall provide to the buyer in writing the applicable information listed below which may be on a bill of sale, buyer's order, financial statement or combination thereof. Each form must be completed in duplicate, signed by the buyer and seller, and the original or copy provided to the buyer and a copy of original retained by the dealer for four years. Such documents shall include:

- (1) Name and address of person, firm or corporation to whom vehicle sold or traded.
- (2) Date of sale or trade.
- (3) Name and address of motor vehicle dealer, manufacturer, factory branch, distributor or wholesaler selling or trading vehicle.
- (4) Make, body style, vehicle identification number and year model.
- (5) Sale price of vehicle.
- (6) Amount of cash down payment made by the buyer.
- (7) Description of any vehicle used as a trade-in and the amount credited the buyer for sale trade-in. [Description of trade-in shall be the same as outlined in (d) of this Rule.]
- (8) Amount of finance charge, if any, and interest.
- (9) The cost of insurance to the buyer, if any, and an explanation of the type and amount of coverage.
- (10) Any investigation charges, service charges or any other charge or charges not included in previous items. The purpose of each charge must be specified.
- (11) Net balance due from the buyer.
- (12) The amount of each payment and the time and schedule of deferred payment and to whom payments are to be made.
- (13) Bill of sale must be signed by both the seller and buyer.

(b) Odometer Statement - Odometer reading must be placed on ownership documents in compliance with Article 15 of Chapter 20 of the North Carolina General Statutes.

*History Note: Statutory Authority G.S. 20-39;  
Eff. June 1, 1988;  
Amended Eff. October 1, 1989.*

**.0231 HEARINGS PURSUANT TO ARTICLES  
12 AND 15 OF CHAPTER 20**

(a) The following shall be applicable to hearings requested under G.S. 20-296:

- (1) No license issued under this Article shall be suspended, revoked or renewal refused until a hearing has been had before the Commissioner or a person designated by him and licensee shall have been notified in writing ten days prior to such hearing by certified mail to his last known address as shown by records of the Division. Provided, however, if a licensee fails to maintain a bond as required by G.S. 20-288(e) or fails to purchase dealer license plates as required by G.S. 20-79, the Division shall cancel the dealer's license subject to the provision that the licensee shall be granted a hearing if requested in writing within ten days after the date of cancellation of such license.
- (2) Hearing shall be held at a place designated by the Commissioner.
- (3) The licensee shall be advised of the decision of the Commissioner in writing by certified mail within 30 days of the decision to his last known address as shown by records of the Division.
- (4) The decision of the Commissioner or his duly authorized representative, after hearing, shall be final and appeal therefrom shall be as provided in Chapter 150B of the North Carolina General Statutes (G.S. 20-300).

(b) Except as otherwise provided, the North Carolina Rules of Civil Procedure will be applicable to hearings requested under N.C.G.S. 20-304 through 20-305.4.

- (1) Action shall be initiated by the filing of a petition with the Commissioner of Motor Vehicles, North Carolina Division of Motor Vehicles, Raleigh, N. C. 27697, who shall serve a copy thereof on the affected manufacturer by certified mail (return receipt requested) with notice that such manufacturer should reply to the subject petition of the dealer within 30 days unless enlargement of time to file a reply is requested and allowed by the Commissioner.
- (2) Petitioner and replies:

(A) The form of the petition shall be the same as that required for filing of petitions in the superior court and there shall be

attached thereto a copy of the franchise agreement between the dealer and manufacturer.

(B) The form of the reply to the petition shall be the same as required for the filing of a reply to a petition in the superior court and there shall be attached thereto a copy of the franchise agreement between the manufacturer and dealer.

(C) Exhibits and supporting documents shall be attached to the petition or reply at the time of filing.

(3) The hearing shall be held at a place designated by the Commissioner upon 20 days written notice to both the petitioner and respondent.

(A) It shall be the obligation of the parties involved to have present at any hearing all witnesses which the parties desire to be heard.

(B) The parties shall be advised of the decision of the Commissioner in writing by certified mail to the addresses as shown in the pleadings filed in the action.

(4) The decision of the Commissioner or his duly authorized representative after hearing shall be final and appeal therefrom shall be as provided in Chapter 150B of the North Carolina General Statutes (G.S. 20-300).

(c) If license is cancelled due to licensee's failure to maintain a bond as required by G.S. 20-288(e) or failure to purchase dealer license plates as required by G.S. 20-79, then the licensee may have a hearing if requested in writing within ten days after the license cancellation.

*History Note: Statutory Authority  
G.S. 20-1; 20-294 through 20-296;  
20-301 through 20-305; 20-305.1  
through 20-305.3;  
Eff. June 1, 1988;  
Amended Eff. October 1, 1989.*

**SECTION .0500 - GENERAL INFORMATION  
REGARDING SAFETY INSPECTION OF  
MOTOR VEHICLES**

**.0515 SAFETY INSPECTION LICENSING  
AND PROCEDURES**

(a) The Director of the Office of Administrative Hearings has determined that publication of the complete regulations governing licensing as a North Carolina Safety Equipment Inspection Station, and the requirements and procedures for such inspections are impracticable, and that the substance of this Rule should be summarized in accordance with the provisions of G.S. 150B-63(c).



(b) The regulations and procedures governing the licensing of Safety Equipment Inspection Stations for all counties are contained in a manual entitled "Safety Equipment Emission Inspections, Windshield Certificate Replacement Regulations Manual." This manual includes all procedures and forms to be used in the process of the safety inspection required by law.

(c) Official copies of these manuals are available upon request from the Enforcement Section, Division of Motor Vehicles, Department of Transportation, 1100 New Bern Avenue, Raleigh, N. C. 27697.

*History Note: Statutory Authority*

*G.S. 20-1; 20-117.1(a); 20-122; 20-122.1; 20-123.1; 20-124; 20-125; 20-125.1; 20-126; 20-127; 20-128; 20-128.1; 20-129; 20-129.1; 20-130; 20-130.1; 20-130.2; 20-130.3; 20-131 through 20-134; 20-183.2; 20-183.3; 20-183.4; 20-183.5; 20-183.6; 20-183.7; 20-183.8; 150B-63(c);*

*Eff. January 1, 1983;*

*Amended Eff. October 1, 1989;*

*November 1, 1988.*

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