

The **NORTH CAROLINA REGISTER**

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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 27447, Raleigh, N. C. 27611-7447, 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 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 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 volumes totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. 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 and 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 number and date. 1:1 NCR 101-201, April 1, 1988 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1988.

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NORTH CAROLINA REGISTER



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Publication Schedule
(October 1991 - December 1992)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing	Earliest Date for Adoption by Agency	Last Day to Submit to RRC	* Earliest Effective Date

10/15/91	09/24/91	10/01/91	10/30/91	11/14/91	11/20/91	01/02/92
11/01/91	10/11/91	10/18/91	11/16/91	12/01/91	12/20/91	02/03/92
11/15/91	10/24/91	10/31/91	11/30/91	12/15/91	12/20/91	02/03/92
12/02/91	11/07/91	11/14/91	12/17/91	01/01/92	01/20/92	03/02/92
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11/02/92	10/12/92	10/19/92	11/17/92	12/02/92	12/20/92	02/01/93
11/16/92	10/23/92	10/30/92	12/01/92	12/16/92	12/20/92	02/01/93
12/01/92	11/06/92	11/13/92	12/16/92	12/31/92	01/20/93	03/01/93
12/15/92	11/24/92	12/01/92	12/30/92	01/14/93	01/20/93	03/01/93

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

EXECUTIVE ORDERS

EXECUTIVE ORDER NUMBER 153 NORTH CAROLINA 2000

WHEREAS, President Bush and the nation's governors have called upon every community in America to achieve the following national education goals:

- (1) By the year 2000, all children in America will state school ready to learn;
- (2) By the year 2000, the high school graduation rate will increase to at least 90 percent;
- (3) By the year 2000, American students will leave grades four, eight, and twelve having demonstrated competency over challenging subject matter including English, mathematics, science, history, and geography; and every school in America will ensure that all students learn to use their minds well, so they may be prepared for responsible citizenship, further learning, and productive employment in our modern economy;
- (4) By the year 2000, U.S. students will be first in the world in mathematics and science achievement;
- (5) by the year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship; and
- (6) By the year 2000, every school in America will be free of drugs and violence and will offer a disciplined environment conducive to learning; and

WHEREAS, American 2000, President Bush's strategy for education builds upon four related themes, to wit:

- (1) Creating better and more accountable schools;
- (2) Creating a new generation of American schools for tomorrow's students;
- (3) Transforming American into a "Nation of Students"; and
- (4) Making our communities places where learning will happen;

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

Section 1. ESTABLISHMENT. There is hereby established the North Carolina 2000 Steering Committee.

Section 2. MEMBERSHIP. The Governor shall appoint members of the Committee who shall serve at the pleasure of the Governor. The membership of the committee shall include rep-

resentatives from the following: The education community, business and industry, and government as well as parents of North Carolina students.

Section 3. TERMS. All members shall serve at the pleasure of the Governor.

Section 4. CHAIRPERSON. The Governor shall appoint a chairperson.

Section 5. MEETINGS. The Committee shall meet bi-monthly.

Section 6. QUORUM. A majority of the membership shall constitute a quorum.

Section 7. PURPOSE. The purpose of the Committee shall be to:

- (1) Officially adopt the national education goals;
- (2) Establish a strategy for challenging local communities to develop community action teams;
- (3) Develop state-wide capability to disseminate information regarding the strategies and activities developed by local goal teams; and
- (4) Develop and implement a reporting system to assimilate information regarding progress through an annual state-wide report.

Section 8. DUTIES AND POWERS. The Committee shall perform such duties as assigned by the Governor which shall include, but not be limited to, the following:

- a. To develop an action plan for making the achievement of the national education goals a State priority; and
- b. To provide statewide vision and leadership to mobilize public attention and support to enable communities to: develop local action plans to meet goals, disseminate information regarding plans and programs, to evaluate results, and to seek funding for a "New American School" from the U.S. Department of Education.

Section 9. ADMINISTRATION AND EXPENSES. The administrative support for the Committee shall be provided by the Office of the Governor.

Section 10. SEMI-ANNUAL REPORT. The Committee shall report semi-annually from the date of this Executive Order to the Governor regarding the progress of North Carolina 2000.

This Executive Order is effective immediately and shall remain in effect until June 30, 1993, unless terminated earlier or extended by further Executive Order.

Done in Raleigh, North Carolina, this the 24th day of September, 1991.

**EXECUTIVE ORDER NUMBER 154
AMENDING EXECUTIVE ORDER NUMBER 53
THE GOVERNOR'S INTER-AGENCY ADVISORY
TEAM ON ALCOHOL AND OTHER DRUG
ABUSE**

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

Executive Order Number 53, as amended by Executive Order Number 85 and as amended and extended by Executive Order Number 144, is hereby amended to add the following member to the Advisory Team.

Section 1. Establishment

The Advisory Team shall consist of not less than twelve members and shall include the following...

A member from the North Carolina Commission on Indian Affairs.

This Executive Order shall become effective immediately.

Done in Raleigh, this the 30th day of September, 1991.

**EXECUTIVE ORDER NUMBER 155
AMENDING EXECUTIVE ORDER NUMBER 65
NORTH CAROLINA STATE DEFENSE MILITIA**

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

Executive Order Number 65 is hereby amended to add the following language at the end of the fourth "WHEREAS" clause: "or when otherwise called upon by the Governor"; and is also amended to add the following language to the end of Section 1: "and, when otherwise called upon by the Governor."

This Executive Order shall become effective immediately.

Done in Raleigh, this the 17th day of October, 1991.

**EXECUTIVE ORDER NUMBER 156
ESTABLISHING THE NORTH CAROLINA
COMMITTEE ON LITERACY AND BASIC
SKILLS AND RESCINDING
EXECUTIVE ORDER NUMBER 90**

WHEREAS, the Governor's Advisory Council on Literacy was created by Executive Order Number 90 on May 18, 1989, with the purpose of providing advocacy for adult literacy in North Carolina and advising the Governor on improving the literacy of the State's citizens; and

WHEREAS, the Advisory Council has accomplished its primary mandates by focusing its attention on the expansion of Family Literacy programs, expansion of workplace literacy, and the establishment of a private, non-profit trust fund for the support of literacy programs; and

WHEREAS, there is a need for a continuing mechanism for public advocacy and guidance of public policy in adult literacy which is more closely linked to the State Board of Community Colleges, the State's primary governing board for the delivery of adult basic education;

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

Section 1. ESTABLISHMENT

The North Carolina Committee for Basic Skills is established to:

- a. Advise the Governor, the State Board of Community Colleges, and other public policy and education leaders on issues and needs in basic skills education for adults;
- b. Foster cooperation between the public and private sectors in meeting the critical need for higher basic skills in the workplace;
- c. Expand public awareness of the need for a literate citizenry.

Section 2. MEMBERSHIP

- a. The Committee membership shall consist of 13 members to be appointed by the Governor and who serve at his pleasure. The Governor shall select a chairperson from among the members.
- b. The Committee shall include representation from the following groups: education, job training, human services, public assistance, libraries, economic development, and classroom literacy teachers.
- c. Members of the Committee shall serve terms from July 1, 1991, to December 31, 1992.

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- d. The membership may be supplemented as deemed appropriate by the Chairman of the State Board of Community Colleges.

Section 3. ADMINISTRATIVE SUPPORT

The North Carolina State Board of Community Colleges and the Department of Community Colleges shall provide administrative support to the Committee.

Section 4. RESCISSION OF EXECUTIVE

ORDER NUMBER 90

The Governor's Advisory Council on Literacy is dissolved with gratitude to the membership for the significant work accomplished.

This Executive Order shall become effective immediately.

Done in Raleigh, North Carolina, this the 17th day of October, 1991.

PROPOSED RULES

TITLE 4 - DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT

Statutory Authority G.S. 54B-55; 54B-57;
54C-53.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Savings Institutions Division intends to amend rule(s) cited as 4 NCAC 16A .0103 - .0105; 16C .0101, .0103 - .0104, .0201 - .0203, .0305, .0401 - .0405, .0501 - .0503; 16F .0001 - .0003, .0006 - .0012; 16H .0001 - .0003, .0005 - .0008; 16I .0702 - .0704, .0801, .0803, .0901 - .0902, .1001 - .1003, .1101 - .1102, .1104 - .1106, .1201 - .1203, .1301; 16J .0001 - .0003; 16K .0001 - .0017; 16L .0002 - .0004; and adopt rule(s) cited as 4 NCAC 16C .0105; 16E .0103 - .0105, .0201 - .0204, .0301 - .0303, .0401 - .0405, .0501 - .0502, .0601 - .0602, .0701 - .0702.

The proposed effective date of this action is February 15, 1992.

The public hearing will be conducted at 10:00 a.m. on November 19, 1991 at the Hearing Room, 3rd Floor, 1110 Navaho Drive, Raleigh, N.C.

Reason for Proposed Action: These Rules are required by the adoption by the General Assembly of Chapter 54C of the General Statutes.

Comment Procedures: All requests to present testimony must be received at the Division's address at least 48 hours before the hearing. Written comments will be received for 30 days after publication of the notice of hearing.

Editor's Note: These Rules have been filed as temporary rules effective October 2, 1991 for a period of 180 days to expire on March 31, 1992.

CHAPTER 16 - SAVINGS INSTITUTIONS DIVISION: SAVINGS INSTITUTIONS COMMISSION

SUBCHAPTER 16A - GENERAL PROVISIONS

SECTION .0100 - GENERAL

.0103 DEFINITIONS

Unless otherwise indicated, words and phrases defined by G.S. 54B-4 and G.S. 54C-4 shall have the same meaning in this Chapter.

Statutory Authority G.S. 54B-55; 54C-53.

.0104 SUPERVISORY FEE

The annual supervisory fee for associations savings institutions and their holding companies shall be collected in the month of July. This fee shall be non-refundable.

.0105 RESTRICTIONS: PAYMENT OF DIVIDENDS AND REPURCHASE OF STOCK

(a) A stock association savings institution shall not declare or pay a cash dividend on, or repurchase any of, its capital stock if the effect thereof would be to reduce the net worth of the association savings institution to an amount which is less than the minimum required by the federal regulatory authority and for savings banks, an amount less than the minimum required by G.S. 54C-163.

(b) Without the prior written approval of the Administrator, a stock association savings institution which has been in operation or converted from mutual form for less than five years shall not repurchase any of its capital stock.

(c) A stock association savings institution which has been in operation or converted from mutual form for less than five years shall obtain the written approval of the Administrator before declaring or paying a cash dividend on its capital stock in an amount in excess of one-half of the greater of:

- (1) the association's savings institution's net income for the most recent fiscal year end; or
- (2) the average of the association's savings institution's net income after dividends for the most recent fiscal year end and not more than two of the immediately preceding fiscal year ends, if applicable.

(d) For a period of three years following the date of completion of a conversion from mutual to stock form, no person shall, directly or indirectly, offer to acquire or acquire the beneficial ownership of more than ten percent of any class of an equity security of the a converted association savings institution without the prior written approval of the Administrator. Securities beneficially owed in violation of this Paragraph in excess of ten percent of any class of securities shall not be counted as shares entitled to vote and shall not be voted by any person or counted as voting shares in connection with any matters submitted to the stockholders for a vote. Unless made applicable by the Administrator by prior advice in writing, the restriction contained in this Paragraph shall not apply to any offer or announcement of an offer which if consummated would result in the acquisition by a person, together with all other acquisitions by that person of the same class of securities during the preceding 12-month period, of not more than one per-

PROPOSED RULES

cent of the class of securities. Nor shall this Paragraph apply to:

- (1) any offer with a view toward public resale made exclusively to the ~~association~~ savings institution or its underwriters or the selling group acting on its behalf; or
- (2) any offer to acquire or acquisition of beneficial ownership of more than ten percent of the common stock of ~~an association a~~ savings institution by a corporation whose ownership is or will be substantially the same as the ownership of the ~~association,~~ savings institution, provided that the offer or acquisition is made more than one year following the date of completion of the conversion.

Statutory Authority G.S. 54B-43; 54B-55; 54C-44; 54C-53.

SUBCHAPTER 16C - APPLICATIONS

SECTION .0100 - CHARTER APPLICATION

.0101 FORMS

(a) Application for a mutual ~~association~~ savings institution is accomplished through the execution of Form MC.

(b) Application for a stock ~~association~~ savings institution is accomplished through the execution of Form SC.

(c) Forms MC and SC incorporate all statutory requirements and criteria and provide for the submission of required information. These forms can be obtained from and filed with the Division, at its mailing address.

Statutory Authority G.S. 54B-9; 54B-55; 54C-9; 54C-53.

.0103 CORPORATE NAME

(a) ~~An association~~ A savings institution shall not have the same name as that of another ~~association~~ savings institution or a name so similar to that of another ~~association~~ savings institution as to mislead the public. Each name shall contain the words "savings and loan", "savings and loan association", or "savings bank". ~~An association~~ A savings institution shall not use a name which has not been approved by the Administrator.

(b) In addition to the requirements of Paragraph (a) of this Rule, the name of each stock ~~association~~ savings institution shall contain the wording "corporation," "incorporated," "limited," or "company"; an abbreviation of one of such words; or other words sufficient to distinguish stock ~~associations~~ savings institutions from mutual ~~associations~~ savings institutions.

(c) Each branch office of ~~an association a~~ savings institution shall have the same name as that of the ~~association,~~ savings institution; provided ~~an association a~~ savings institution may, upon written approval of the Administrator, include as part of its name a designation or branch name which reflects the identity of the branch office. The term "branch office" as used in this Paragraph shall mean a legally established place of business of ~~an association a~~ savings institution other than the main office, including an office acquired through merger or any other legal means, where the business of the ~~association~~ savings institution may be conducted.

~~(d) Each association chartered or participating in a merger after 1940 shall be in compliance with this Rule at the first annual meeting after the effective date of this Rule.~~

Statutory Authority G.S. 54B-10; 54B-55; 54C-12; 54C-53.

.0104 INTERIM SAVINGS INSTITUTIONS

The organization of an interim ~~association~~ savings institution may be requested as a part of an acquisition application or a supervisory transaction. The acquisition application shall contain specific reasons for the request to organize an interim ~~association.~~ savings institution.

Statutory Authority G.S. 54B-45; 54B-55; 54C-46; 54C-53.

.0105 CONVERSION TO SAVINGS BANK

Application to convert to a savings bank charter is accomplished through the execution of the Application For Conversion Of An Existing Depository Institution Into A North Carolina Savings Bank. These forms can be obtained from and filed with the Division at its mailing address.

Statutory Authority G.S. 54C-30; 54C-53.

SECTION .0200 - BRANCH OFFICE APPLICATION

.0201 FORM

Application for a branch office of ~~an association~~ a savings institution is accomplished through the execution of Form AB. Form AB incorporates all statutory requirements and criteria and provides for the submission of required information. The form can be obtained from and filed with the Division, at its mailing address.

Statutory Authority G.S. 54B-22; 54B-55; 54C-23; 54C-53.

.0202 BRANCH OFFICE APPLICATION

RESTRICTIONS

If a branch office application is denied, the ~~association~~ savings institution shall wait at least six months before refileing another branch office application for any substantial part of the same service area as determined by the Administrator.

Statutory Authority G.S. 54B-22; 54B-55; 54C-23; 54C-53.

.0203 FORFEITURE OF BRANCH OFFICE FINAL APPROVAL

Any ~~association~~ savings institution not opening its branch office within 12 months after final approval shall forfeit such approval. Provided, the Administrator upon written application from the ~~association~~, savings institution, for good cause shown, may grant the ~~association~~ savings institution a six month extension within which to open the branch office. Provided further, in no event may ~~an association~~ a savings institution delay opening a branch office for more than 18 months after final approval.

Statutory Authority G.S. 54B-55; 54C-53.

SECTION .0300 - APPLICATION TO CHANGE LOCATION OF BRANCH OFFICE OR PRINCIPAL OFFICE

.0305 PURCHASE OF BRANCH

No ~~association~~ savings institution shall purchase a branch office without first obtaining the written approval of the administration. The ~~association~~ savings institution shall furnish such information as to the purchase as the Administrator may prescribe.

Statutory Authority G.S. 54B-22; 54B-55; 54C-24; 54C-53.

SECTION .0400 - REMOTE SERVICE UNITS

.0401 DEFINITIONS

As used in this Section, unless the context otherwise requires, the term:

- (1) "Generic data" means statistical information which does not identify any individual account holder.
- (2) "Personal security identifier" means any word, number, or other security identifier essential for an account holder to gain access to an account through use of an unmanned remote service unit.
- (3) "Remote service unit" means a customer communications terminal, point-of-sale terminal, automated teller machine, cash-dispensing machine, automated or other direct or or remote information processing

device or machine, whether manned or unmanned, through or by means of which funds or information relating to any financial service or transaction rendered to the public is stored and transmitted, instantaneously or otherwise to or from ~~an association~~ a savings institution terminal or terminals controlled or used by or with other parties.

Statutory Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146.

.0402 APPLICATION: GUIDELINES FOR APPROVAL BY ADMINISTRATOR

(a) ~~An association~~ A savings institution may apply to the Administrator for permission to establish or use remote service units and participate with other parties in remote service unit operations, on an unrestricted geographic basis. ~~An association~~ A savings institution may share a remote service unit controlled by a third party or an institution not subject to examination by a State regulatory agency only if such third party or institution has agreed in writing that the remote service unit is subject to such examination by the Administrator as he deems necessary.

(b) Application for a remote service unit is accomplished through the execution of Form RSU. Form RSU incorporates all regulatory requirements and guidelines for the establishment of a remote service unit and provides for the submission of required information. This form can be obtained from and filed with the Division, at its mailing address.

(c) The Administrator shall consider the following guidelines when reviewing an application to establish a remote service unit:

- (1) The policies, financial condition, and operation of the applicant afford no basis for supervisory objection.
- (2) The proposed remote service unit will be established within six months of approval; provided, for good cause shown, the Administrator, upon written application from the ~~association~~ savings institution may grant the ~~association~~ savings institution a six-month extension within which to establish the remote service unit.

Statutory Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146.

.0403 GENERAL POLICIES

(a) Prohibited uses. A remote service unit shall not be used to open savings accounts or establish loan accounts.

(b) Service charges. ~~An association~~ A savings institution may impose service charges for remote service unit financial services.

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(c) Bonding. ~~An association~~ A savings institution shall take all steps necessary to protect its interest in financial services processed at each remote service unit, including obtaining available fidelity, forgery, and other appropriate insurance.

(d) Security. ~~An association~~ A savings institution shall protect electronic data against fraudulent alterations or disclosure.

Statutory Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146.

.0404 UNMANNED REMOTE SERVICE UNIT ACCESS TECHNIQUES

~~An association~~ A savings institution shall provide a personal security identifier to each account holder and require its use when accessing an unmanned remote service unit. The ~~association~~ savings institution shall not employ unmanned remote service unit access techniques that require the account holder to disclose a personal security identifier to another person. The ~~association~~ savings institution shall inform each account holder that the personal security identifier is for security purposes and shall not be disclosed to third parties. Any device used to activate an unmanned remote service unit shall bear the words "Not Transferable" or their equivalent. A passbook may not be such a device.

Statutory Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146.

.0405 PRIVACY OF ACCOUNT DATA

~~An association~~ A savings institution shall allow account holders to obtain any information concerning their remote service unit accounts. Except for generic data or data necessary to identify a transaction, ~~an association~~ a savings institution shall not disclose account data to third parties, other than the Administrator or his agents, unless express written consent of the account holder is given, or applicable law requires. ~~An association~~ A savings institution may operate a remote service unit according to an agreement with a third party ~~or financial institution if the third party~~ agrees to abide by this Rule as to information concerning remote service unit accounts in the ~~association~~ savings institution.

Statutory Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146.

SECTION .0500 - INTERSTATE RECIPROCAL ACQUISITIONS

.0501 FORM

Application for approval to acquire a North Carolina ~~association~~ savings institution is accomplished through the execution of ~~Form AQ-~~

an Acquisition Application. The form can be obtained from and must be filed with the Division, at its mailing address.

Statutory Authority G.S. 54B-48.6; 54B-55; 54C-53; 54C-178.

.0502 ACQUISITION RESTRICTIONS

(a) A Southern region savings ~~and loan association~~ institution or holding company which has a pending ~~acquisition application~~ Acquisition Application may not file an additional ~~acquisition application~~ Acquisition Application until the pending application has been approved by the Administrator.

(b) An ~~acquisition application~~ Acquisition Application which has been denied by the Administrator shall not be processed upon refiled unless a period of six months has elapsed since the denial.

Statutory Authority G.S. 54B-48.6; 54B-55; 54C-53; 54C-178.

.0503 FEES

(a) The ~~acquisition application~~ Acquisition Application fee is the same as for a savings ~~and loan~~ institution holding company application.

(b) The administration fee for ~~an association~~ a savings institution acquired by a Southern region savings ~~and loan association~~ institution or holding company shall be the same as the supervisory fee for a North Carolina ~~association~~ savings institution of similar asset size.

(c) The Southern region savings ~~and loan association~~ institution or holding company that has acquired an association shall pay the same supervisory fee as a North Carolina holding company.

(d) If comparable fees in the home state of the parent ~~association~~ savings institution or holding company are higher than the applicable North Carolina fee, then the higher fee shall be applicable.

Statutory Authority G.S. 54B-48.6; 54B-55; 54C-53; 54C-178.

SUBCHAPTER 16E - OPERATION OF SAVINGS BANKS

SECTION .0100 - DIRECTORS, BYLAWS AND CHARTER

.0103 COMPOSITION OF BOARD OF DIRECTORS

(a) Requirements for the composition of a board of directors are as follows:

(1) Except in the case of a savings bank having 80 percent or more of any class of

voting shares owned by a holding company or controlling person, no more than one-third of the Board of Directors shall be salaried officers or employees of the savings bank, or of any subsidiary or any holding company or affiliate thereof or any controlling person affiliate thereof.

(2) In the case of a savings bank having 80 percent or more of any class of voting shares owned by a holding company or controlling person, no more than 49 percent of the Board of Directors shall be salaried officers or employees of the savings bank, or of any subsidiary or any holding company or affiliate thereof or any controlling person affiliate thereof.

(3) No more than two directors shall be members of the same immediate family.

(4) No two directors who are attorneys may be members of the same law firm.

(5) The managing officer of the savings bank shall be a member of the Board of Directors.

(b) A director shall not vote on any matter in which he has a personal or financial interest.

(c) When a savings bank takes action resulting in the establishment of a new chief executive officer or director, the savings bank shall notify the Administrator in advance in writing of such change, and shall provide the name of the new chief executive officer or director, the effective date of the appointment, and a statement of the person's past and current business and professional affiliations. The name of any departing chief executive officer or director shall also be provided to the Administrator in writing.

(d) Significant ownership interest for the purposes of G.S. 54C-101(c) shall depend upon the ownership circumstances of each savings bank as determined by the Administrator. However, without the written consent of the Administrator, at a minimum, for savings banks under fifty million dollars (\$50,000,000) in assets, such ownership shall be stock ownership in the institution or its holding company of at least two thousand five hundred dollars (\$2,500.00) in market value at time of purchase for a stock savings bank or at least a two thousand five hundred dollar (\$2,500.00) deposit relationship for a mutual savings bank. For savings banks of over fifty million dollars (\$50,000,000) in assets, at a minimum, absent a finding of special circumstances by the Administrator, such ownership shall be stock ownership in the institution or its holding company of at least a five thousand dollar (\$5,000.00) in market value at the time of purchase for a stock savings bank or at least a five thousand dollar (\$5,000.00) deposit relationship for a mutual savings bank. For savings

banks that cross the fifty million dollar (\$50,000,000) threshold, the Administrator will allow a reasonable period for the Directors to comply with the ownership interest requirement.

Statutory Authority G.S. 54C-53; 54C-101.

.0104 BYLAWS

The Administrator shall be deemed to have approved any bylaws or amendments to which he has not objected within 25 days after the date on which such bylaws or amendments are filed.

Statutory Authority G.S. 54C-53; 54C-102.

.0105 AMENDMENT OF CONVERTED SAVINGS BANK'S CHARTER

(a) Notwithstanding anything contained in a savings bank's charter or bylaws, a savings bank which has converted from mutual to stock form may amend its charter to provide for the application of any or all of the following provisions, to apply for no more than five years from the date of completion of conversion:

(1) Beneficial Ownership Limitation. No person shall directly or indirectly offer to acquire the beneficial ownership of more than ten percent of any class of an equity security of the savings bank. This limitation shall not apply to a transaction in which the savings bank forms a holding company without change in the respective beneficial ownership interests of its stockholders other than pursuant to the exercise of any dissenter and appraisal rights or the purchase of shares by underwriters in connection with a public offering. In the event shares are acquired in violation of this provision, all shares beneficially owned by any person in excess of ten percent shall be considered "excess shares" and shall not be counted as shares entitled to vote and shall not be voted by any person or counted as voting shares in connection with any matters submitted to the stockholders for a vote.

(2) Cumulative Voting Limitation. Stockholders shall not be permitted to cumulate their votes for election of directors.

(3) Call for Special Meetings. Special meetings of stockholders relating to changes in control of the savings bank or amendments to its charter shall be called only upon direction of the Board of Directors.

(b) For purposes of this Section, the following definitions apply:

(1) The term "person" includes an individual, a group acting in concert, a corporation,

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- a partnership, an association, a joint stock company, a trust, an unincorporated organization or similar company, a syndicate, or any other group formed for the purpose of acquiring, holding or disposing of the equity securities of a savings bank.
- (2) The term "offer" includes every offer to buy or otherwise acquire, solicitation of an offer to sell, tender offer for, or request or invitation for tenders of, a security or interest in a security for value.
- (3) The term "acquire" includes every type of acquisition whether effected by purchase, exchange, operation of law or otherwise.
- (4) The term "acting in concert" means the knowing participation in a joint activity or conscious parallel action towards a common goal whether or not pursuant to an express agreement, or a combination or pooling of voting or other interests in the securities of an issuer for a common purpose pursuant to any contract, understanding, relationship, agreement or other arrangements, whether written or otherwise.

Statutory Authority G.S. 54C-33; 54C-53.

SECTION .0200 - PROXIES

.0201 VOTING BY PROXY

(a) Voting rights in the affairs of a savings bank shall be exercised by voting either in person or by proxy.

(b) For purposes of this Rule, the term "proxy" shall include every written form of authorization by which a member or a stockholder of a savings bank or his attorney in fact can appoint one or more agents to act for him in the exercise of his voting rights in the affairs of the savings bank.

Statutory Authority G.S. 54C-53; 54C-105.

.0202 FORM OF PROXY

(a) Every form of proxy solicited by a savings bank shall conform to the following requirements:

(1) The proxy shall be revocable at will, with the power to revoke not being conditioned on any event or occurrence or otherwise limited; however, a proxy may be made irrevocable to the extent permitted by the applicable provisions of G.S. 55-7-22 and only when the proxy clearly indicates that it is to be irrevocable.

(2) The proxy shall be clearly labeled "Revocable Proxy" in at least 18-point, boldface type.

(3) The proxy shall not be part of any other document or instrument. Provided, however, that a carbex signature card (a two-part form consisting of a signature card and proxy card) is specifically permitted. The account holder must sign both the signature card and the proxy card in order to validate them.

(b) The proxy may include provisions permitting both permanent revocation of the proxy as to any particular meeting or meetings, and a provision that the proxy will remain valid until "cancelled by a writing delivered to the Secretary of the savings bank".

Statutory Authority G.S. 54C-53; 54C-105.

.0203 HOLDERS OF PROXIES

A proxy shall not designate as a holder any corporation or partnership including any person acting on behalf of any corporation or partnership, or any person other than a living, natural person. However, a proxy may designate the holder of a specified title or office, if a natural person; or committee composed solely of natural persons, including a committee composed of the Board of Directors of the savings bank.

Statutory Authority G.S. 54C-53; 54C-105.

.0204 PROXY SOLICITATION

A proxy shall not be solicited by means of any oral or written communication which:

- (1) solicits any undated or postdated proxy;
- (2) solicits any proxy providing that it shall be deemed to be dated as of any date subsequent to the date on which it is signed by the member or stockholder;
- (3) contains any statement that is false or misleading with respect to any material fact; or
- (4) omits to state any material fact:
 - (a) necessary to make the statements therein not false or misleading; or
 - (b) necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter that has subsequently become false or misleading.

Statutory Authority G.S. 54C-53; 54C-105.

SECTION .0300 - RECORDS AND POLICIES

.0301 GENERAL POLICIES

(a) Records to be Kept at Principal Office. Every savings bank shall keep at the principal office correct and complete books of account and minutes of the proceedings of members, shareholders, directors and committees. Complete

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records of all business transacted at the principal office shall be maintained at the principal office. Everything relating to the business of a savings bank shall be examined and investigated by the Administrator on a regular and periodic basis. Every savings bank and service corporation thereof shall be audited at least once in each calendar year by independent auditors. The audit shall be done on the basis of generally accepted accounting principles, unless otherwise provided by this Chapter. The savings bank shall file with the Administrator one copy of the audit report along with one copy of the auditor's management letter and any other letters regarding the audit within 90 days after the end of its fiscal year, unless extended in writing by the Administrator. The savings bank shall also submit to the Administrator a copy of the savings bank's written response to the auditor's management letter at the time such response is provided to the appropriate federal regulatory authority.

(b) Records to be Prepared at Branch Office. Each branch office shall prepare detailed records of all business transacted at such branch office, and shall furnish full control records to the principal office.

(c) Books to be Closed on December 31. Every savings bank shall close its books at the close of business on December 31 of each year, or other dates if authorized by the Administrator.

(d) Bonds and Other Obligations to be Carried at Actual Costs. The bonds or other investments of a savings bank shall not be carried on its books at more than the actual costs thereof.

(e) Real Estate to be Carried at Amount Invested in Same. A savings bank shall not carry any real estate on its books at a sum in excess of

the total amount invested by such savings bank on account of such real estate, including advances, costs, and improvements, but excluding accrued, uncollected interest.

(f) Appraisal of Real Estate Owned. Every savings bank shall appraise each parcel of real estate at the time of acquisition thereof. The report of each such appraisal shall be submitted in writing to the Board of Directors and shall be kept in the records of the savings bank.

(g) Maintenance of Membership Records. Every mutual savings bank shall maintain membership records, which shall show the name and address of the member, the status of member, status of the member as a deposit account holder, or an obligor, or a deposit account holder and obligor, and the date of the membership thereof.

(h) Maintenance of Stockholder Records. Every stock savings bank shall keep at its principal office or at the office of its transfer agent or register, a record of its stockholders which contains the names and addresses of all stockholders, and the number, class and series of shares held by each. Whenever called upon by the Administrator, a stock savings bank shall file in the office of the Administrator a correct list of all its stockholders, the resident address of each, the number of shares of stock held by each, and the dates of issue. When ten percent or more of the outstanding capital stock of the savings bank shall be controlled by one owner, a savings bank shall advise the Administrator in writing, and shall include the resident address and number of shares held by the shareholder.

Statutory Authority G.S. 54C-22; 54C-53.

.0302 RETENTION, REPRODUCTION AND DISPOSITION OF RECORDS

(a) Each savings bank shall take reasonable precautions to protect records from damage by fire, flood or other hazards, and to safeguard records from unnecessary deterioration as a result of excess heat, humidity, dryness or lack of proper ventilation. Adequate safeguards shall be maintained to protect records from access or removal by unauthorized persons.

(b) Each savings bank or branch officer thereof shall retain all records set forth in this Paragraph for at least the periods specified.

RECORDS TO BE RETAINED

MINIMUM RETENTION PERIOD (YRS.)

CORPORATE

<u>Audit Reports</u>	<u>3</u>
<u>Pension Trust (IRS Ruling, Bylaws, Trust Agreements)</u>	<u>T + 5</u>
<u>Annual Reports to Supervisors</u>	<u>5</u>
<u>Examination Reports and Supervisory Letters</u>	<u>5</u>
<u>Minute Books, (Members, Stockholder, Directors and Committees)</u>	<u>P</u>
<u>Charter, Bylaws and Amendments</u>	<u>P</u>
<u>Blanket Bonds</u>	<u>T + 5</u>
<u>Ballots and Proxy Votes of Members and Stockholders</u>	<u>3</u>
<u>Certificate of Insurance</u>	<u>P</u>

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<u>FHLB Membership Certificate</u>	P
<u>Attachments, Executions and Releases</u>	3
<u>Claims, Court Orders and Restraining Orders</u>	10
<u>Deeds, Leases and Contracts; Titles to Vehicles</u>	T + 5
<u>U.S. Corporate Income Tax Forms</u>	15
<u>N.C. Corporate Tax Forms</u>	15
<u>Social Security and Unemployment Tax Records</u>	15
<u>Personal Property Tax Records</u>	15

ACCOUNTING - ASSOCIATION

<u>Bank Statements and Reconcilements</u>	5
<u>Cancelled Checks</u>	5
<u>Check Vouchers or Stubs</u>	5
<u>Duplicate Deposit Slips</u>	5
<u>Expense and Paid Bills File</u>	3
<u>FHLB and State Reports</u>	5
<u>General and Subsidiary Ledgers</u>	P
<u>General and Other Journals</u>	P
<u>Original Entry Records</u>	5
<u>Pre-authorized Bank Forms</u>	5
<u>Tellers' Cash Proof Sheets</u>	2
<u>Trial Balances</u>	3

DEPOSIT ACCOUNTS

<u>Deposit</u>	5
<u>Inheritance Tax Releases</u>	10
<u>Cancelled Savings Certificates</u>	5
<u>Withdrawal Slips or Checks</u>	P
<u>Affidavits for Lost Passbook or Certificate</u>	P
<u>Lost Instrument Bonds for Passbooks or Certificates</u>	P
<u>Power of Attorney or Affidavits</u>	P
<u>Signature Card Files</u>	T + 5
<u>Savings Certificates Record of Issue</u>	T + 5
<u>Deposit Account Loan Notes</u>	R
<u>Deposit Account Loan Disclosures After Note "Paid"</u>	2
<u>Deposit Account Assignment or Transfer Records</u>	P
<u>Returned 1099 Forms</u>	6
<u>No-Mail Notice</u>	T + 4

MORTGAGE LOANS

<u>Loan Register</u>	P
<u>Mortgage Loan Disclosure Statement (Form HMDA-1)</u>	5
<u>Commitments</u>	T + 3
<u>Signature Cards</u>	T + 3
<u>Construction Loan Agreement</u>	T + 3
<u>Cost Estimates</u>	T + 3
<u>Inspection Reports</u>	T + 3
<u>Waiver of Liens</u>	T + 3
<u>Paid Bills for Borrowers Construction</u>	T + 3
<u>Affidavits</u>	T + 3
<u>Collection Records</u>	T + 3
<u>FHA Insurance Receipts</u>	T + 3
<u>Applications</u>	T + 3
<u>Appraisals</u>	T + 3
<u>Construction Loan Authorizations</u>	T + 3
<u>Credit Reports</u>	T + 3
<u>Escrow Agreements and Records</u>	T + 3
<u>Title Opinions</u>	T + 3
<u>Disclosure and Recision</u>	T + 3

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<u>Flood Insurance Documentation</u>	<u>T + 3</u>
<u>Additional Collateral Agreement</u>	<u>T + 3</u>
<u>Settlement Statement</u>	<u>T + 3</u>
<u>Correspondence</u>	<u>T + 3</u>
<u>Modifications</u>	<u>T + 3</u>
 <u>LOANS (Commercial, Consumer Credit, Credit Cards)</u>	
<u>Borrowers' Statement</u>	<u>T + 3</u>
<u>Posting or Transaction Journal</u>	<u>3</u>
<u>Loan Proceeds Disbursement Records</u>	<u>T + 3</u>
<u>Interest Rebate Record</u>	<u>T + 3</u>
<u>Loans Made Record</u>	<u>T + 3</u>
<u>Loans Paid Record</u>	<u>T + 3</u>
<u>Liability Card and/or Ledger</u>	<u>T + 3</u>
<u>Loan Ledger Cards</u>	<u>T + 3</u>
<u>Note and/or Loan Register</u>	<u>P</u>
<u>Resolutions</u>	<u>T + 3</u>
<u>Charged-off Loan Records</u>	<u>10</u>
<u>Collateral Records</u>	<u>10</u>
<u>Disclosure Document</u>	<u>2</u>
<u>Customer Application</u>	<u>T + 1</u>
<u>Sales Tickets or Drafts - Credit Card</u>	<u>3</u>
<u>Statement of Account - Credit Card</u>	<u>5</u>
<u>Merchant Agreement - Credit Card</u>	<u>T + 2</u>
 <u>REAL ESTATE OWNED</u>	
<u>Trustee's Report</u>	<u>T + 3</u>
<u>Appraisal</u>	<u>T + 3</u>
<u>Contracts for Sale</u>	<u>T + 3</u>
<u>Leases</u>	<u>T + 3</u>
<u>Tax Records</u>	<u>T + 3</u>
<u>Deeds</u>	<u>T + 3</u>
<u>PMI Claims</u>	<u>T + 3</u>
<u>Notice of Intent to Foreclose</u>	<u>T + 3</u>
<u>Title Policies</u>	<u>T + 3</u>
 <u>INSURANCE</u>	
<u>Public Liability - Workers Compensation</u>	<u>10</u>
<u>Fire and Extended Coverage, Auto Errors and Omissions</u>	<u>3</u>
<u>Directors and Officers Liability</u>	<u>10</u>
 <u>MISCELLANEOUS</u>	
<u>Savings Bonds</u>	
<u>Applications</u>	<u>2</u>
<u>Duplicate Stubs</u>	<u>2</u>
<u>Letter of Transmittal of Bonds Redeemed</u>	<u>2</u>
<u>Monthly Report of Sales and Holdings</u>	<u>2</u>
<u>Travelers Checks</u>	
<u>Applications</u>	<u>2</u>
<u>Consignment Receipts</u>	<u>2</u>
<u>Personnel Records</u>	
<u>Time Cards</u>	<u>3</u>
<u>Group Insurance Records</u>	<u>T + 6</u>
<u>Employment Applications</u>	
<u>1. Hired</u>	<u>T + 3</u>

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<u>2. Not Hired</u>	<u>3</u>
<u>Payroll Records</u>	<u>10</u>
<u>Safe Deposit Boxes</u>	
<u>Rent Receipts</u>	<u>3</u>
<u>Lease Contracts</u>	<u>T + 3</u>
<u>History Cards</u>	<u>P</u>
<u>Investments</u>	
<u>Register</u>	<u>P</u>
<u>Purchase and Sale</u>	<u>T + 3</u>
<u>Safe-Keeping Receipts</u>	<u>T + 3</u>
<u>Mail Register</u>	<u>3</u>
<u>General Correspondence</u>	<u>3</u>
<u>OSHA</u>	
<u>OSHA Records and Reports</u>	<u>6</u>
<u>Purchases, Sales and Participation</u>	
<u>Agreement</u>	<u>T + 3</u>
<u>Sale List</u>	<u>T + 3</u>
<u>Remittance Report</u>	<u>T + 3</u>
<u>All Retirement Plan Accounts</u>	
<u>All Related Forms and Documents</u>	<u>T + 7</u>

KEY TO SYMBOLS USED

- P - Permanent
- T - Termination (Closed, Paid-off or Settled)
- R - Return to Customer After Termination of Contractual Relationship

Statutory Authority G.S. 54C-53.

.0303 REQUIRED POLICIES

Every savings bank shall adopt, implement and maintain the following written policies. Not less than annually, the Board of Directors shall review and formally readopt these policies for use by the savings bank. The Administrator may require such additional written policies as the Administrator deems appropriate for the specific circumstances of each savings bank.

- (1) Appraisal. A policy which insures that appraisals reflect professional competence and facilitate the reporting of estimates of market value upon which the savings bank relies to make lending decisions.
- (2) Classification of assets. A policy which requires the Board of Directors to review the classification of the savings bank's assets at least quarterly and establishes, at a minimum, the following categories:
 - (a) Special Mention. Assets which require close attention because they have a potential weakness or pose an unwarranted financial risk that, if not corrected, could

weaken the asset and increase risk in the future.

- (b) Substandard. Assets which are inadequately protected by the current net worth and paying capacity of the obligor or of the collateral pledged, if any. Assets so classified must have a well-defined weakness or weaknesses. They are characterized by the distinct possibility that the savings bank will sustain some loss if the deficiencies are not corrected.
- (c) Doubtful. Assets which have all the weaknesses inherent in those classified Substandard with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of currently existing facts, conditions, and values, highly questionable and improbable.
- (d) Loss. Assets which are considered uncollectible and of such little value that their continuance as assets is not warranted. This classification does not mean that an asset has absolutely no recovery

or salvage value, but, rather, that it is not practical or desirable to defer writing off a basically worthless asset even though partial recovery may be effected in the future.

- (3) General valuation allowances. A policy for determining and maintaining prudent levels of general loss reserves including a formula which specifically addresses the risks associated with the particular lending and investment practices of the savings bank.
- (4) Loan underwriting. A policy which, at a minimum, establishes the guidelines to be used by the savings bank in lending its funds for the following activities, as applicable to the savings bank's lending practices: residential mortgage lending, acquisition and development lending, construction lending, other mortgage lending, commercial lending and consumer lending.
- (5) Risk management. A policy which establishes the savings bank's asset/liability structure and defines, at a minimum, the parameters for interest rate risk, liquidity risk, credit risk and capital adequacy.
- (6) Investment policy. A policy which, at a minimum, defines the types and levels of permissible investments and the officers with investment authority and which distinguishes those assets held for sale, trading or investment purposes including specific descriptions of any hedging techniques which the institution may employ.

Statutory Authority G.S. 54C-53.

SECTION .0400 - LOANS

.0401 SERVICING LOANS

A savings bank may service loans originated by the savings bank or by other lenders.

Statutory Authority G.S. 54C-53.

.0402 APPRAISALS

Except as exempted under the regulations of the appropriate federal regulatory agency, a savings bank shall not grant, make, disburse any portion of, or invest its funds in any loan on the security of real estate, until at least one qualified person, whose compensation shall not be affected in any way by the approval or denial of the loan, has appraised the real estate security in accordance with the regulations of the appropriate federal regulatory agency.

Statutory Authority G.S. 54C-53; 54C-128.

.0403 RECORDS WITH RESPECT TO LOANS

(a) Mortgage Loans. Each savings bank shall maintain records with respect to each loan on the security of real estate which shall include:

- (1) An application signed by the borrower or his agent, containing adequate information which shall include the purpose of the loan, the identity of the property or properties securing the loan, and the purchase price of the property paid by or agreed to be paid by the applicant where the purpose of the loan is for the purchase of the real estate securing such loan;
- (2) The credit ability of the applicant shall be ascertained in the application or by credit report, a financial report or by others at the request of the savings bank;
- (3) A written appraisal report conforming to the written appraisal policy of the savings bank, signed and dated prior to the approval of the application;
- (4) Evidence to show:
 - (A) proper approval of the loan and the terms and conditions of such approval;
 - (B) a loan settlement statement, signed by the borrower, showing the distribution of the loan proceeds;
 - (C) the savings bank's approved attorney's title opinion or a valid title insurance policy from a title insurance company authorized to do business in North Carolina;
 - (D) hazard insurance coverage;
 - (E) release or releases of any portion of the collateral, with a revised appraisal of the remaining security retained; and
 - (F) the loan agreement, inspection reports, owner's and contractor's affidavits and other necessary procedures on construction loans, where applicable;
- (5) All loan modifications, properly executed and documented and recorded in the minutes;
- (6) Record of insurance expirations unless a master mortgagee insurance policy is held in full force and effect;
- (7) Tax records;
- (8) A mortgage loan register to show:
 - (A) account number;
 - (B) borrower's name;
 - (C) date of deed of trust;
 - (D) appraisal;
 - (E) interest rate;
 - (F) monthly payment and date of first payment;
 - (G) purpose of the loan and purchase price if for purchase of property securing the loan and the contract price if for purposes of construction; and
 - (H) hypothecation, if any, designating hypothecator, amount, and type of pledge

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collateral; all to be incorporated in the hypothecation agreement;

(9) Records on acquisition of mortgaged security to include:

(A) a detailed record of the acquisition, whether through foreclosure or otherwise, and a description of the property or properties including the name of the former owner;

(B) maintenance of subsidiary ledger accounts for each separate acquisition, to record all items subject to capitalization or to income and expense during the period such property is owned by the savings bank;

(C) designation of all fees, charges and commissions and to whom such were paid;

(D) a copy of the trustee's report relating to foreclosure, when applicable;

(10) A review of 60 days or over delinquent mortgage loans by the savings bank's board of directors or executive committee at least once a month and such review to be recorded in the minutes of the Board of Directors or Executive Committee meeting;

(11) A "loans in process account" to support the undisbursed portion of the proceeds of each construction loan; and

(12) A certification signed by the borrower indicating that the borrower has received the disclosure material required by the Federal Truth-In-Lending Act, 15 USC 1601 et. seq.

(b) Deposit Account Loans. Each savings bank shall maintain records with respect to each loan secured by deposit accounts which shall include a deposit account loan register. Such loan register or registers shall include:

- (1) account number;
- (2) borrower's name;
- (3) date of loan;
- (4) interest rate;
- (5) payment schedule.

(c) Consumer Loans. Defined as loans for personal, family or household purposes and loans incident thereto, which may be made as either open end or closed end consumer credit, but not including credit extended in connection with credit cards or bona fide overdraft loans. Each institution shall maintain records with respect to each consumer loan which shall include:

- (1) An application signed by the borrower or his agent, containing adequate information which shall include the purpose of the loan, the identity of the collateral securing the loan and the purchase price

of the collateral where the purpose of the loan is to purchase said collateral.

(2) The credit ability of the applicant shall be ascertained in the application and supported by a written credit report and a complete financial statement, verified and analyzed by a qualified loan officer.

(3) A written appraisal or value estimate of the collateral conforming to the written policies of the institution and dated prior to the approval of the application if the loan is to be secured.

(4) An approved attorney's title opinion or valid title insurance policy issued by an insurance company authorized to do business in North Carolina if the loan is underwritten based on the value of real estate collateral.

(5) Evidence to show:

(A) proper approval of the loan and the terms and conditions of such approval;

(B) the distribution of the loan proceeds;

(C) proper insurance coverage on the collateral;

(D) perfection of liens or security interest by proper endorsement of automobile titles and/or UCC filings.

(6) All loan modifications, extensions and renewals properly executed and documented and, if required by the savings bank's consumer lending policy, recorded in the minutes.

(7) A consumer loan register to show:

(A) account number;

(B) borrower's name;

(C) date of loan;

(D) interest rate;

(E) payment schedule and date of first payment;

(F) purpose of loan;

(G) type and value of collateral, if secured.

(d) Commercial Loans. Defined as any loan for commercial, corporate, business or agricultural purposes which would not otherwise qualify as a mortgage loan. Each institution shall maintain records with respect to each commercial loan which shall include:

(1) An application signed by the borrower or his agent containing adequate information to include the purpose of the loan, and the collateral securing the loan (if applicable).

(2) The credit ability of the applicant shall be ascertained in the application and supported by a written credit report and a complete set of current financial statements, verified and analyzed by a qualified loan officer.

- (3) A written appraisal report, if secured by real estate, or other written estimate of value conforming to the institution's policies if secured by other than real estate.
- (4) Evidence to show:
- (A) proper approval of the loan and the terms and conditions of such approval;
- (B) a loan settlement statement, signed by the borrower, showing the distribution of the loan proceeds;
- (C) adequate perfection of all liens and security interests including attorney's title opinion or valid title insurance policy from a title insurance company authorized to do business in North Carolina if secured by commercial real estate;
- (D) appropriate insurance on all collateral;
- (E) release or partial releases of collateral, with a revised appraisal of the remaining collateral;
- (F) all loan modifications, extensions and renewals, properly executed and documented and recorded in the minutes.
- (5) A commercial loan register to show:
- (A) account number;
- (B) borrower's name;
- (C) date of note;
- (D) appraisal or other estimate of value;
- (E) interest rate;
- (F) payment schedule and date of first payment;
- (G) loan purpose and type of collateral, if secured.

Statutory Authority G.S. 54C-53; 54C-128.

.0404 UNSECURED LOANS LIMIT

The aggregate amount of unsecured loans outstanding which may be made by a savings bank to any one borrower shall not exceed five percent of its net worth; provided, that a savings bank may, in any event, make up to five thousand dollars (\$5,000) in unsecured loans to any one borrower.

Statutory Authority G.S. 54C-53; 54C-121.

.0405 LOANS TO ONE BORROWER

Upon a written determination by the Administrator that a savings bank is operating with unsafe and unsound lending practices, the Administrator may establish more restrictive limits on loans to any one borrower than the limits provided by G.S. 54C-130. These restrictive amounts shall be at such limits as the Administrator deems appropriate to protect the public.

Statutory Authority G.S. 54C-53; 54C-128.

SECTION .0500 - DEPOSIT ACCOUNTS

.0501 SIGNATURE CARDS

When a savings bank issues a deposit account, it should obtain and preserve in its records a card containing the signature of the account holder, or his duly authorized representative, for the comparison of signatures or for other purposes; provided however, it shall not be necessary to obtain more than one signature card for accounts held by an account holder in the same name or capacity.

Statutory Authority G.S. 54C-53; 54C-164.

.0502 HOLDING OF CERTIFICATE OR PASSBOOK

An unpledged savings certificate or passbook shall not be held by a savings bank for the convenience of an account holder or otherwise unless properly controlled.

Statutory Authority G.S. 54C-53; 54C-164.

SECTION .0600 - LIQUIDITY AND NET WORTH

.0601 LIQUIDITY

A savings bank shall maintain cash and readily marketable investments of not less than ten percent of its assets. The term "cash" shall include unpledged demand accounts in other federally insured depository institutions, a Federal Home Loan or Federal Reserve Bank, or the Bank for Savings and Loan Associations.

Statutory Authority G.S. 54C-53; 54C-162.

.0602 NET WORTH

(a) A savings bank shall maintain a net worth of not less than five percent of its assets. Any intangible assets shall be deducted from net worth and assets in computing this requirement.

(b) Any request pursuant to G.S. 54C-163 for a temporary suspension of this net worth requirement shall include a plan that demonstrates the manner in which net worth will exceed the minimum requirement by the end of the requested suspension period.

Statutory Authority G.S. 54C-53; 54C-163.

SECTION .0700 - INVESTMENTS

.0701 SECURITIES

A savings bank may invest in any security that has been rated at least BAA or equivalent by a nationally recognized rating service. In no case may investments in BAA or equivalent securities

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exceed in the aggregate 25 percent of net worth without the express written permission of the Administrator.

Statutory Authority G.S. 54C-53; 54C-141.

.0702 STOCK IN OTHER DEPOSITORY INSTITUTIONS

(a) No savings bank shall invest in the stock of another depository institution without giving prior written notice to the Administrator.

(b) No savings bank shall invest in the aggregate more than five percent of its net worth in the stock of other depository institutions without the prior written approval of the Administrator.

Statutory Authority G.S. 54C-53; 54C-141.

SUBCHAPTER 16F - SERVICE CORPORATIONS AND FINANCE SUBSIDIARIES

.0001 PERMITTED ACTIVITIES

The service corporation of ~~an association~~ a savings institution may engage in those activities which are approved by the federal regulatory authority for service corporations owned solely by federal associations which have principal offices in this State, and any investment authorized for state-chartered ~~associations~~ savings institutions and approved in advance in writing by the Administrator.

Statutory Authority G.S. 54B-55; 54B-194; 54C-53; 54C-144.

.0002 INVESTMENT LIMITATION

Investments in a service corporation include not only stock and other securities of a service corporation, such as notes, bonds and debentures, but also any loans, secured or unsecured, to the service corporation. The investment limitation established by G.S. 54B-194 and G.S. 54C-144 applies to the total investment that ~~an association~~ a savings institution can make in one or in any number of service corporations. ~~except an association may make a~~ A secured loan to a state-wide multi-owned service corporation ~~without affecting its ten percent of~~ shall not be included in the assets investment limitation.

Statutory Authority G.S. 54B-55; 54B-194; 54C-53; 54C-144.

.0003 DEBT LIMITATION FOR WHOLLY-OWNED SERVICE CORPORATIONS

The aggregate amount of secured and unsecured debt which a wholly-owned service corporation may have outstanding at any one time to the ~~association~~ savings institution and to non-stockholders shall not exceed:

- (1) ten times the total of the service corporation's net worth and unsecured debt to the ~~association;~~ savings institution; or
- (2) twenty times such total if the service corporation engages solely in originating, investing in, selling, purchasing, servicing, or otherwise dealing in (including brokerage or warehousing) loans, and participations in loans, on a prudent basis and secured by real estate or liens on mobile homes.

Statutory Authority G.S. 54B-55; 54B-194; 54C-53; 54C-144.

.0006 ESTABLISHMENT OF FINANCE SUBSIDIARIES

~~An association~~ A savings institution may establish a finance subsidiary whose sole purpose is to issue debt or equity securities that the ~~association~~ savings institution is authorized to issue directly (or, if the parent ~~association~~ is a mutual ~~association,~~ savings institution, would be authorized to issue if it converted to the stock form) and to remit the net proceeds of such issuance to the ~~association,~~ savings institution, subject to the provisions of this Subchapter as it relates to finance subsidiaries.

Statutory Authority G.S. 54B-55; 54B-77; 54B-195; 54C-53; 54C-144; 54C-146.

.0007 BOARD ACTION REQUIRED

Prior to the establishment of any subsidiary, the Board of Directors of the ~~association~~ savings institution shall, by resolution, vote to authorize the creation of a finance subsidiary in furtherance of a written business plan to reduce interest-rate risk and to control credit risk, and shall agree to make the books and records of its finance subsidiary available to the Administrator. The Board of Directors shall be responsible for monitoring the use of all proceeds obtained through the issuance of securities by the finance subsidiary and shall ensure compliance with the business plan pursuant to which the finance subsidiary was established.

Statutory Authority G.S. 54B-55; 54B-195; 54C-53; 54C-144; 54C-146.

.0008 FINANCE SUBSIDIARY TRANSACTIONS WITH PARENT

(a) ~~An association~~ A savings institution may provide the capital to establish one or more finance subsidiaries by transferring assets to one or more finance subsidiaries; Provided, that:

- (1) The aggregate book value of all assets transferred or made available to finance subsidiaries shall not, without the prior

written approval of the Administrator, exceed 30 percent of the book value of the ~~association's~~ savings institution's total assets determined as of the date any assets are transferred or made available;

- (2) The aggregate current market value of assets transferred or made available shall not, without the prior written approval of the Administrator, exceed the amount necessary and customary for the issuance of the type of securities to be issued by the subsidiary or 200 percent of the gross proceeds resulting from the offerings of securities by the finance subsidiary, whichever is less; and
- (3) For the purpose of calculating the limitations set forth in Subparagraphs (1) and (2) of Paragraph (a) of this Rule, assets which are considered to be transferred or made available to a finance subsidiary include assets to capitalize the finance subsidiary, to collateralize a securities offering by an established finance subsidiary, to maintain collateral levels for any security issued by the finance subsidiary, and the greater of the face amount of any guarantee issued by the parent ~~association~~ with respect to the obligations of the finance subsidiary or the market value of any collateral for such guarantee.

(b) Finance subsidiaries shall not be consolidated with their parent ~~association~~ for the purposes of calculating the net worth of the ~~association~~. savings institution.

(c) ~~An association~~ A savings institution may guarantee any obligation issued to its finance subsidiaries: Provided, that the face amount of the guarantee shall not exceed the unpaid principal balance of the obligation, and provided further, that the guarantee shall provide that the resources of the finance subsidiary issuing the obligation shall be exhausted before recourse shall be had to the guarantee. Such guarantee shall not be considered to be an outstanding loan for purposes of loans-to-one-borrower limitations. If such guarantee is collateralized, the greater of the face amount of the guarantee or the market value of the collateral shall be included in the total amount of assets that may be transferred by the parent ~~association~~ subject to the limitation of Subparagraphs (1) and (2) of Paragraph (a) of this Rule.

(d) Any funds constituting the capital of an off-shore finance subsidiary may be invested in liquid assets, ~~as defined in 4 NCAG 16D .0601,~~ or in the stock, bonds, debentures, notes, or other obligations (including deposit accounts) of an affiliate of the parent: ~~association~~ provided, that the earnings from such investments and the

proceeds of any sale of such investments are remitted to the parent. ~~association~~.

Statutory Authority G.S. 54B-55; 54B-77; 54B-195; 54C-53; 54C-144; 54C-146.

.0009 ISSUANCE OF SECURITIES BY FINANCE SUBSIDIARIES

(a) A finance subsidiary may issue any security which its parent ~~association~~ is authorized to issue (or, if the parent ~~association~~ is a mutual ~~association~~, savings institution, would be authorized to issue if it converted to the stock form), subject to the provisions of this Subchapter as it relates to finance subsidiaries.

(b) A finance subsidiary shall not issue or deal in the deposits and savings accounts of its parent. ~~association~~. A finance subsidiary shall not state or imply that securities issued by it are insured by the insurer of accounts of the parent. ~~association~~.

(c) A finance subsidiary shall not issue any security the payment, maturity, or redemption of which may be accelerated upon the condition that its parent ~~association~~ is insolvent or has been placed into receivership.

(d) ~~An association~~ A savings institution providing capital to a finance subsidiary shall own 100 percent of the finance subsidiary's outstanding voting common stock and may not transfer or otherwise assign any interest in such stock to any other person or entity, without the prior written approval of the Administrator.

(e) A finance subsidiary may provide for voting rights for holders of preferred stock, under such conditions and in such manner and to the extent customary to protect the rights of such holders of preferred stock, including but not limited to the following conditions (except that, upon the expiration of any event giving rise to the exercise of such voting rights, the voting rights shall be vested exclusively as provided in Paragraph (d) of this Rule):

- (1) The finance subsidiary fails to pay dividends for at least one dividend period;
- (2) Any merger, consolidation, or reorganization of the finance subsidiary or its parent ~~association~~ (except in a supervisory case) is sought to be authorized, where the issuing finance subsidiary or its parent ~~association~~ is not the survivor, provided that the net worth of the resulting finance subsidiary or parent ~~association~~ available for payment of any class of preferred stock is less than the net worth available for such class prior to the merger, consolidation, or reorganization;
- (3) Action is sought to be authorized which would create any class of preferred stock

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- having a preference or priority over an outstanding class or classes of preferred stock;
- (4) Any action is sought to be authorized which would adversely change the specific terms of any class of preferred stock;
 - (5) Action is sought to be authorized which would increase the number of shares of a class of preferred stock, or the number of shares of a class of preferred stock ranking prior to or in parity with another class of preferred stock; or
 - (6) Action is sought which would authorize the issuance of an additional class or classes of preferred stock without the finance subsidiary having met specific financial standards.

Statutory Authority G.S. 54B-55; 54B-77; 54B-195; 54C-53; 54C-144; 54C-146.

.0010 TRANSFER OF PROCEEDS

All proceeds from the issuance of any security by a finance subsidiary, net of the reasonable costs associated with the issuance of the securities and the organization of the finance subsidiary, shall be remitted to the finance subsidiary's parent. ~~association.~~

Statutory Authority G.S. 54B-55; 54B-77; 54B-195; 54C-53; 54C-144; 54C-146.

.0011 HOLDING COMPANY SUBSIDIARIES AND FINANCE SUBSIDIARIES

(a) ~~For purposes of Section 408(d) of the National Housing Act [12 U.S.C. Section 1730a(d)], if the parent association is a subsidiary of a holding company, the finance subsidiary shall not be considered to be an affiliate of its parent. association.~~

(b) A finance subsidiary shall make no investment in, or loan, discount, or extension of credit to, its parent ~~association~~ without the prior written approval of the Administrator, except as provided in this Subchapter as it relates to finance subsidiaries.

(c) If the parent ~~association~~ is a subsidiary of a holding company, a finance subsidiary shall make no investment in, or loan, discount or extension of credit to, any affiliate of its parent, ~~association~~, except as provided in Paragraph (d) of Rule .0008 of this Subchapter, without the prior written approval of the Administrator.

Statutory Authority G.S. 54B-55; 54B-77; 54B-195; 54C-53; 54C-144; 54C-146.

.0012 NOTIFICATION TO THE ADMINISTRATOR

(a) Prior to the establishment of any finance subsidiary, or prior to any transfer of assets to an existing finance subsidiary, the Board of Directors of the ~~association~~ savings institution shall send written notification to the Administrator, specifying:

- (1) the name of the finance subsidiary;
- (2) the amount of assets (market and book value as of date within 30 days) to be transferred or made available (including the terms of any guarantee to be issued by the ~~association~~ savings institution or any affiliate of the ~~association~~ savings institution), the book value of all assets previously transferred or made available, and the amount representing 30 percent of the book value of the ~~parent association's~~ parent's total assets as of such date;
- (3) when known and to the extent permitted by the Securities Act of 1933:
 - (A) a description of the securities to be issued, including the term thereof;
 - (B) the aggregate amount of the offer;
 - (C) the anticipated interest or dividend rates and yields or the range thereof, and the frequency of payments;
 - (D) the minimum denomination of the securities; and
 - (E) where the subsidiary intends to market the securities.

(b) Within ten days after the issuance of any security, a finance subsidiary shall notify, in writing, the Administrator and shall provide to the Administrator a copy of any prospectus, offering circular, or other similar document concerning an issuance.

Statutory Authority G.S. 54B-55; 54B-77; 54B-195; 54C-53; 54C-144; 54C-146.

SUBCHAPTER 16H - SUPERVISORY ACTIONS

.0001 DEFINITIONS

As used in this Subchapter, unless the context otherwise requires, the term:

- (1) "~~Association~~" "Savings institution" means all ~~associations~~ savings institutions converting, merging or consolidating pursuant to G.S. 54B-44 or G.S. 54C-45 and this Subchapter.
- (2) "Consolidation" means a supervisory consolidation pursuant to G.S. 54B-44 or G.S. 54C-45 and this Subchapter.
- (3) "Merger" means a supervisory merger pursuant to G.S. 54B-44 or G.S. 54C-45 and this Subchapter.
- (4) "Plan of conversion" means a detailed outline of the terms, conditions and proce-

ture of the short form conversion of ~~an association~~ a savings institution from mutual to stock form of ownership.

- (5) "Plan of merger" or "plan of consolidation" means a detailed outline of the terms, conditions and procedure of combining one ~~association~~, savings institution, by merger or consolidation, with another ~~association~~, savings institution.
- (6) "Short form conversion" means a supervisory conversion of ~~an association~~ a savings institution from mutual to stock form of ownership, pursuant to G.S. 54B-44 or G.S. 54C-45 and this Subchapter.
- (7) "Combination merger and conversion" mean a supervisory conversion of ~~an association~~ a savings institution from mutual to stock form of ownership combined with a supervisory merger, pursuant to G.S. 54B-44 or G.S. 54C-45 and this Subchapter.
- (8) "Plan of combination merger and conversion" means a detailed outline of the terms, conditions and procedures of the short form conversion of ~~an association~~ a savings institution from mutual to stock form of ownership and combining the ~~association~~, savings institution, by merger, with another ~~association~~, savings institution.

Statutory Authority G.S. 54B-44; 54C-45.

.0002 GROUNDS

Upon making a finding that ~~an association~~ a savings institution is unable to operate in a safe and sound manner, the Administrator may authorize or require a short form merger, consolidation, conversion, or combination merger and conversion of such ~~association~~ savings institution or any other action the Administrator deems appropriate.

Statutory Authority G.S. 54B-44; 54C-45.

.0003 NOTICE TO SAVINGS INSTITUTION

The Administrator shall give written notice to the Board of Directors of ~~an association~~ a savings institution as to which a finding is made pursuant to Rule .0002 of this Subchapter. Such notice shall set forth the basis for such finding and shall authorize or require the Board of Directors to adopt a plan of conversion, a plan of merger or consolidation, a plan of combination merger and conversion with another ~~association~~ savings institution or any other action specified by the Administrator. The Administrator may specify provisions which shall be included in the plan.

Statutory Authority G.S. 54B-44; 54C-45.

.0005 APPROVAL BY ADMINISTRATOR

The ~~association~~ savings institution shall submit to the Administrator for his review a certified copy of the ~~association's~~ savings institution's new certificate of incorporation, articles of merger or consolidation or evidence of such other action as the Administrator deems appropriate. Upon finding that all requirements of the short form conversion, merger, consolidation, combination merger and conversion or other action have been satisfied, the Administrator shall certify to the Secretary of State that he has approved the certificate of incorporation, articles of merger or consolidation or evidence of other action for filing in the Office of the Secretary of State. ~~and the office of the register of deeds of the county in which the principal office of the association is located. Upon such filing and recording, the rights and obligations of the association and its members or stockholders shall be set forth in G.S. 54B-35(5), with regard to a merger or consolidation, and G.S. 54B-33(e) with regard to a short form conversion.~~

Statutory Authority G.S. 54B-44; 54C-45.

.0006 SHORT FORM MUTUAL TO STOCK CONVERSION

In the case of a short form mutual to stock conversion, the Administrator shall approve the manner in which the appraisal shall be conducted; the manner in which shares of conversion stock shall be offered; and the requirements for completion of the short form conversion from mutual to stock form.

Statutory Authority G.S. 54B-44; 54C-45.

.0007 LIQUIDATION ACCOUNT

The Administrator may require that a plan of conversion, merger, consolidation or any other action provide for a liquidation account for the benefit of the withdrawable account holders of a converting mutual ~~association~~ savings institution or a mutual ~~association~~ savings institution which will not be the surviving ~~association~~ savings institution pursuant to a merger or consolidation or any other action.

Statutory Authority G.S. 54B-44; 54C-45.

.0008 WAIVER

The Administrator may waive or alter any requirements set forth in this Subchapter to promote the best interests of the public or the ~~association~~, savings institution.

Statutory Authority G.S. 54B-44; 54C-45.

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SUBCHAPTER 161 - ACQUISITION OF CONTROL

SECTION .0700 - GENERAL

.0702 DEFINITIONS AND OTHER TERMS

As used in this Subchapter, unless the context otherwise requires, the term:

- (1) "Acquisition" means a transaction in which a person or ~~savings and loan~~ holding company acquires control of a stock ~~association~~ savings institution by means of an exchange of its capital stock for the capital stock of the stock ~~association~~, savings institution, or by means of a purchase of the capital stock of the stock ~~association~~, savings institution.
- (2) "Applicant" means a person or ~~savings and loan~~ holding company which has filed with the Administrator any application under this Subchapter.
- (3) ~~"Control" means the power, directly or indirectly, to direct the management or policies of an association or to vote 25 percent or more of any class of voting securities for an association.~~
- (3) (4) "Person" means an individual or group of individuals acting in concert, a corporation, trust, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed in this Subdivision.
- (4) (5) "Plan of Conversion" means a plan duly adopted in accordance with the requirements of G.S. 54B-261 or G.S. 54C-195 and this Subchapter that, to the satisfaction of the Administrator, sets out all relevant terms and conditions pertaining to a mutual ~~association's~~ savings institution's reorganization of its ownership to provide for ownership by a ~~savings and loan~~ holding company.
- (5) (6) "Plan of Reorganization" means a plan duly adopted in accordance with the requirements of G.S. 54B-261 or 54C-195 and this Subchapter that, to the satisfaction of the Administrator, sets out all relevant terms and conditions pertaining to a stock ~~association's~~ savings institution's reorganization of its ownership to provide for ownership by a ~~savings and loan~~ holding company.
- (6) (7) "Registrant" means any ~~savings and loan~~ holding company which has filed a registration statement with the Administrator under this Subchapter.
- (7) (8) "~~Savings and Loan Holding Company~~" "Holding Company" means any company which directly or indirectly controls ~~an association~~ a savings institution or controls any other company which is a ~~savings and loan~~ holding company of a savings institution.

- (8) (9) "Tax Free Exchange" means an exchange of stock which would result in no tax consequences to the ~~savings and loan~~ holding company, the stock ~~association~~ savings institution and its stockholders under state or federal law.

Statutory Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196.

.0703 STANDARDS FOR APPROVAL OF ACQUISITION: DUTIES AND CONDUCT

(a) ~~An association~~ A savings institution may be controlled by a person or a ~~savings and loan~~ holding company. The Administrator shall determine that the person or savings and loan holding company is qualified by character, experience, and financial responsibility to control the ~~association~~ savings institution in a legal and responsible manner. The Administrator shall consider the applicant's financial and managerial resources, and the organizational structure and future prospects and plans of both the applicant and the ~~association~~, savings institution. The Administrator will consider whether the business and activities of the applicant, or its officers and directors, or any other person controlling, controlled by, or associated with the applicant by having a common controller, would create a material deterioration of confidence in the safety, soundness, and financial integrity of the ~~association~~ proposed to be controlled. When reference is made to the word "control" in this Rule, the word "control" has the meaning given in ~~Rule .0702 of this Subchapter~~, G.S. 54B-4 or G.S. 54C-4, and additionally shall have the meaning given by any other law or regulation under which the applicant is required to report and register as a holding company, parent corporation, or other similar entity.

(b) An applicant shall be solvent, and shall have a debt-to-equity ratio which compares favorably with the ratios of other persons in the same line of business.

(c) The approval of an application to acquire control of ~~an association~~ a savings institution shall in no way diminish the authority of the Administrator to regulate the activities of the controlled ~~association~~, savings institution.

(d) A controlled ~~association~~ savings institution shall not lend to, or invest in, its holding company or its affiliates, without the prior written approval of the Administrator.

Statutory Authority G.S. 54B-43; 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196.

.0704 INVESTMENT ACTIVITIES OF HOLDING COMPANIES

A ~~savings and loan~~ holding company may invest only in the stock of one or more stock ~~associations~~, savings institutions, deposits in financial institutions the principal offices of which are located in North Carolina, investments permitted by G.S. 54B-181 through -184, and -187 through -190 and Article 7 of Chapter 54C of the General Statutes, and such other investments approved in advance in writing by the Administrator. In no event shall a ~~savings and loan~~ savings institution holding company make any investment not specified by this Section or not permitted for ~~an association~~ a savings institution under the supervision of the Administrator.

Statutory Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196.

SECTION .0800 - ACQUISITIONS

**.0801 PRIOR WRITTEN APPROVAL
REQUIRED FOR ACQUISITIONS**

(a) A person or ~~savings and loan~~ holding company shall not acquire control of any ~~association~~ savings institution without having filed with the Administrator an Acquisition Application as prescribed by the Administrator, and without the written approval of the Administrator after consideration of the application and any amendments thereto.

(b) In addition to the filing of the Acquisition Application, the applicant shall file any other information requested by the Administrator, including copies of any filings, documents or reports mentioned in Rule .1105 of this Subchapter.

Statutory Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196.

.0803 CONFIDENTIAL INFORMATION

Should an applicant desire to submit any information it deems to be of a confidential nature regarding the answer to any item or a part of an exhibit included in any application for filing under this Subchapter, such information pertaining to such item or exhibit shall be separately bound and labeled "confidential", and a statement shall be submitted therewith briefly setting forth the grounds on which such information should be treated as confidential. Only general reference thereto need be made in that portion of the application which the applicant deems not to be confidential. Applications for filings under this Subchapter shall be made available for inspection by the public, except for portions which are bound and labeled "confidential" and which the Administrator determines to withhold from public availability because of their confidential nature

under the provisions of G.S. 54B-63 or 54C-60 unless the Administrator is compelled to release the information pursuant to G.S. 54B-63 or 54C-60.

Statutory Authority G.S. 54B-55; 54B-63; 54B-261; 54B-262; 54C-53; 54C-60; 54C-195; 54C-196.

**SECTION .0900 - REORGANIZING STOCK
ASSOCIATION INTO HOLDING COMPANY**

**.0901 REQUIRED ACQUISITION
APPLICATION**

A stock ~~association~~ savings institution may be controlled by a ~~savings and loan~~ holding company by means of a plan of reorganization. This may be accomplished by filing with the Administrator one manually signed ~~and one conformed~~ copy of an Acquisition Application. For the purposes of filing the application, the applicant shall be considered a holding company, even though it may not yet control a stock ~~association~~ savings institution.

Statutory Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196.

.0902 ACQUISITION PROCEDURE

(a) Upon determining that an Acquisition Application is properly executed and is not materially incomplete, the Administrator shall consider the application filed. If the Plan of Reorganization is not approved, the Administrator shall notify the applicant of such, and state the reasons for its disapproval. The Administrator may include advice to the applicant as to what may be required by way of amendment or other requirement to cause approval of the Plan of Reorganization.

(b) If the Administrator approves the Plan of Reorganization, the applicant shall be notified. Thereafter, a regular or special meeting of the stockholders of the subject ~~association~~ savings institution shall be called after advance written notice to the stockholders of not less than 20 days specifying the time, place, and purpose for calling of the meeting. Notice shall be published in one or more newspapers of general circulation in the county or counties where the ~~association~~ savings institution has its principal office and branch office(s). The applicant shall file publisher's affidavits with the Administrator to confirm the publication of notice.

(c) The results of the stockholder's meeting shall be confirmed to the Administrator by filing attested minutes of the meeting. If the stockholders approve reorganization of ownership of the ~~association~~ savings institution to provide for ownership by a ~~savings and loan~~ holding com-

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pany, the Administrator shall enter his final order approving the reorganization.

(d) The Administrator may waive or alter, for good cause, any requirements set forth in this Rule.

Statutory Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196.

SECTION .1000 - ACQUISITIONS OF STOCK ASSOCIATIONS

.1001 REQUIRED ACQUISITION APPLICATIONS

A person seeking to acquire control of any stock ~~association~~ savings institution shall file with the Administrator one manually signed ~~and one~~ enformed copy of an Acquisition Application.

Statutory Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196.

.1002 FOREIGN APPLICANTS

(a) If the applicant is a corporation for profit or having a capital stock, but not created under any general or special act of the State of North Carolina, then that corporation shall procure a Certificate of Authority from the Secretary of State under the provisions of Article ~~40~~ 15 of Chapter 55 of the North Carolina General Statutes, before it shall be approved by the Administrator to obtain control of a stock ~~association~~ savings institution. The applicant shall file a copy of the Certificate of Authority from the Secretary of State to evidence this. If the applicant foreign corporation has been certified to conduct business in this State under some provision of law of this State other than Chapter 55 of the General Statutes, then evidence of that certification shall be filed with the Administrator for his review and approval to meet the requirements of this Rule.

(b) If the applicant is a person other than a corporation, and not a resident of this State, then the applicant shall by a duly executed instrument filed with the Administrator, constitute as its true and lawful attorney the Secretary of State and his successors in office, or some other competent resident of this State, upon whom all original process in any action or legal proceedings against it may be served, and therein shall agree that any original process against it which may be served upon the Secretary of State or other competent person, shall be of the same force and validity as if served on the person, and the authority thereof shall continue in force irrevocable so long as the person continues to control a state ~~association~~ savings institution.

Statutory Authority G.S. 54B-55; 54C-53.

.1003 ACQUISITION PROCEDURE

(a) Upon determining that an Acquisition Application ~~CP~~ is properly executed and is not materially incomplete, the Administrator shall consider its approval. If the application is not approved, the Administrator will notify the applicant of such, and state the reasons for its disapproval. The Administrator may include advice to the applicant as to what may be required by way of amendment or other requirement, to cause approval of the application.

(b) If the Administrator approves the application, the applicant shall be notified. Such notice shall include any requirements or stipulations the Administrator may make as conditions of approval.

(c) The Administrator may waive or alter, for good cause, any requirements set forth in this Rule.

Statutory Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196.

SECTION .1100 - REGISTRATION: SUPERVISION: REPORTS: FILINGS: BOOKS AND RECORDS

.1101 REGISTRATION

(a) Not later than ten business days after becoming a ~~savings and loan~~ holding company, each ~~savings and loan~~ holding company shall register with the Administrator by filing a Registration Statement.

(b) The Administrator may at any time, upon his own motion or otherwise, release a holding company from registration, if the Administrator determines that such company or person no longer controls a stock ~~association~~ savings institution.

Statutory Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196.

.1102 SUPERVISION

(a) Officers, directors, and employees of ~~savings and loan~~ holding companies have the same duties and responsibilities, express or implied, as officers, directors, and employees of ~~associations~~ savings institutions.

(b) Each registrant shall be subject to such examinations as the Administrator may prescribe. The cost of such examinations shall be assessed against and paid by such registrant.

Statutory Authority G.S. 54B-55; 54B-57; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196.

.1104 FILING AND APPROVAL: AMENDMENTS TO ARTICLES

AND BYLAWS

(a) Prior to any filing with the Secretary of State of the State of North Carolina, a holding company will file with the Administrator copies of any proposed amendment to its articles of incorporation. The Administrator must give his approval to the content and form of such proposed amendments.

(b) Before any amendments to the bylaws of a ~~savings and loan~~ holding company can become effective, a certified copy of such amendments shall be filed with and approved by the Administrator. In the event of the failure of the Administrator to act upon the amendment within 25 days of receipt, the bylaws shall be deemed approved.

Statutory Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196.

.1105 REPORTS

(a) Each registrant shall file simultaneously with the Administrator copies of any filings, documents, statements or reports required to be filed with the appropriate federal regulatory authority.

(b) Each registrant shall file with the Administrator such reports or other filings as the Administrator may prescribe, to be made under oath or otherwise, and to be in such form and for such periods as the Administrator may prescribe. Each such report of filing shall contain such information concerning the operations of the ~~savings and loan~~ holding company, and any related persons, as the Administrator may require.

Statutory Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196.

.1106 BOOKS AND RECORDS

In addition to general corporate records maintained in the ordinary course of business as required by ~~Section 16D .0300~~ Sections 16D .0300 and 16K .0300 of this Chapter, each registrant shall maintain such books and records in such form as may be prescribed by the Administrator. The books and records of a controlled ~~association~~ savings institution or its holding company shall not be removed from this State without the prior written approval of the Administrator.

Statutory Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196.

SECTION .1200 - CONVERSION OF MUTUAL ASSOCIATION INTO HOLDING COMPANY

.1201 REQUIRED ACQUISITION APPLICATION

When it is proposed that a mutual ~~association~~ savings institution shall convert to a ~~savings and loan~~ holding company by means of a plan of conversion, the mutual ~~association~~ savings institution shall file with the Administrator one manually signed ~~and one conformed~~ copy of an Acquisition Application.

Statutory Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196.

.1202 CONVERSION PROCEDURE

(a) Upon determining that an Acquisition Application is properly executed and is not materially incomplete, the Administrator shall consider the application filed. If the Plan of Conversion is not approved, the Administrator shall notify the applicant of such, and state the reasons for its disapproval. The Administrator may include advice to the applicant as to what may be required by way of amendment or other requirement, to cause approval of the Plan of Conversion.

(b) If the Administrator approves the Plan of Conversion, the applicant shall be notified. Thereafter, a regular or special meeting of the members of the subject ~~association~~ savings institution shall be called after advance written notice to the members of not less than 20 days specifying the time, place and purpose for calling of the meeting. Notice shall be published in one or more newspapers of general circulation in the county or counties where the ~~association~~ savings institution has its principal office and branch office(s). The applicant shall file publisher's affidavits with the Administrator to confirm publication of notice.

(c) The results of the member's meeting shall be confirmed to the Administrator by filing attested minutes of the meeting. If the members approve conversion of the ~~association~~ savings institution to a mutual holding company, the Administrator shall enter his final order approving the conversion.

(d) The Administrator may waive or alter, for good cause, any requirements set forth in this Rule.

Statutory Authority G.S. 54B-55; 54B-261; 54B-262; 54C-53; 54C-195; 54C-196.

.1203 PLAN OF CONVERSION REQUIREMENTS

(a) The plan of conversion to a mutual holding company shall require the chartering of a stock subsidiary. At least 51 percent of the stock of this subsidiary shall be owned by the mutual holding company.

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(b) Share of the stock subsidiary may be issued to the holding company only after sufficient assets to match transferred deposit liabilities are transferred by the holding company to the stock subsidiary and only after written confirmation of continuation of insurance of accounts for the stock subsidiary is received from the federal insurer of accounts.

(c) Upon completion of the conversion, the mutual ~~association~~ savings institution shall become a mutual holding company and shall cease to be ~~an association~~ a savings institution or depository institution of any type.

Statutory Authority G.S. 54B-55; 54B-262; 54C-53; 54C-195.

SECTION .1300 - HOLDING COMPANY ACQUISITIONS

.1301 REQUIRED ACQUISITION APPLICATION

A person seeking to acquire control of any holding company shall file with the Administrator ~~on one~~ manually signed ~~and one~~ conformed copy of an Acquisition Application.

Statutory Authority G.S. 54B-55; 54B-262; 54C-53; 54C-195.

SUBCHAPTER 16J - MERGER OF STATE AND FEDERAL ASSOCIATIONS

.0001 MERGER OF A STATE INSTITUTION INTO A FEDERAL INSTITUTION

The procedure to effect a merger where a state ~~association~~ savings institution is merged into a federal ~~association~~ depository institution shall be as follows:

- (1) The state ~~association or associations~~ savings institution or savings institutions shall comply with ~~subsections (1), (2), (3) and (4) of G.S. 54B-35 relative to the merger agreement, the special meeting of members or stockholders to consider the merger agreement, the notice requirements of the special meeting, the requisite vote for member or stockholder approval, and the proper filings with the Administrator of the results of the special meeting. The notice as required by G.S. 54B-35(3) in addition to specifying the time, place and purpose for the special the merger procedure established in G.S. 54B-35 and 54C-35. The notice for the meeting of the members or stockholders shall also state that if the merger is approved by the members or stockholders and the proper regulatory authorities then the surviving association institution will be a federally~~

chartered ~~association~~ institution subject to federal law and regulation.

- (2) The state association or associations involved shall also comply with any applicable provisions of federal law and regulation regarding mergers.

- (3) ~~The federal association or associations involved shall comply with the provisions of federal law and regulation regarding mergers.~~

Statutory Authority G.S. 54B-39; 54C-39.

.0002 MERGER OF A FEDERAL INSTITUTION INTO A STATE INSTITUTION

The procedure to effect a merger when a federal ~~association~~ depository institution is merging into a state ~~association~~ savings institution shall be as follows:

- (1) The federal ~~association or associations~~ institution or institutions involved shall comply with the provisions of federal law and regulation regarding mergers.

- (2) The state ~~association or associations~~ institution or institutions involved shall comply with the provisions of G.S. 54B-35 or 54C-35 for the merger of state ~~associations~~ savings institutions.

Statutory Authority G.S. 54B-39; 54C-39.

.0003 WAIVER

The Administrator may waive or alter any or all of the requirements set forth in this Subchapter upon finding that such waiver would be in the best interest of the members or stockholders of the merging ~~associations~~ depository institutions consistent with G.S. 54B-35 ~~(6)~~ or 54C-35.

Statutory Authority G.S. 54B-39; 54C-39.

SUBCHAPTER 16K - TRUST POWERS

.0001 DEFINITIONS

For purposes of this Section:

- (1) "Account" means the trust, estate or other fiduciary relationship which has been established with ~~an association~~ a savings institution.

- (2) "Association" means a state chartered ~~savings and loan association~~ savings and loan association operating under the provisions of Chapter 54B of the North Carolina General Statutes.

- (3) ~~(3)~~ "Custodian Under the Uniform Gifts Transfers to Minors Act" means an account established pursuant to the North Carolina Uniform ~~Gifts Transfers~~ Gifts Transfers to Minors Act contained in ~~Article 12 of Chapter 33~~ Chapter 33A of the North Carolina General Statutes.

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- (3) ~~(4)~~ "Fiduciary" means ~~an association~~ a savings institution undertaking to act alone or jointly with others, primarily for the benefit of another in all matters connected with its undertaking and includes trustee, executor, administrator, guardian, receiver, managing agent, registrar of stocks and bonds, escrow, transfer, or paying agent, trustee of employee pension, welfare and profit sharing trusts, and any other similar capacity.
- (4) ~~(5)~~ "Fiduciary Records" means all matters which are written, transcribed, recorded, received or otherwise coming into the possession of ~~an association~~ a savings institution and are necessary to preserve information concerning the actions and events relevant to the fiduciary activities of the ~~association~~ savings institution.
- (5) ~~(6)~~ "Guardian" means the guardian, conservator, or committee of the estate of an infant, an incompetent individual, or a competent individual over whose estate a court has taken jurisdiction, other than under bankruptcy or insolvency laws.
- (6) ~~(7)~~ "Investment Authority" means the responsibility conferred by action of law or a provision of an appropriate governing instrument to make, select or change investments, review investment decisions made by others, or to provide investment advice or counsel to others.
- (7) ~~(8)~~ "Managing Agent" means the fiduciary relationship assumed by ~~an association~~ a savings institution upon the creation of an account which names the ~~association~~ savings institution as agent and confers investment discretion upon the ~~association~~ savings institution.
- (8) ~~(9)~~ "Trust Department" means that group or groups of officers and employees of ~~an association~~ a savings institution to whom are assigned the performance of fiduciary services by the ~~association~~ savings institution.
- (9) ~~(10)~~ "Trust Powers" means the power to act in any fiduciary capacity authorized under this Section.

Statutory Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146.

.0002 APPLICATIONS

(a) ~~An association~~ A savings institution desiring to exercise fiduciary powers shall file with the Administrator an application indicating which trust services it wishes to offer and providing the information necessary to make the determinations under Paragraph (b) of this Rule.

(b) In addition to any other facts or circumstances, the Administrator, in passing upon an application to exercise trust powers, will consider the following:

- (1) the financial condition of the ~~association~~ savings institution, provided that in no event shall trust powers be granted to ~~an association~~ a savings institution if its financial condition is such that the ~~association~~ savings institution does not meet the requirements of G.S. 54B-216; the appropriate federal regulatory authority;
- (2) the general character and ability of the management of the ~~association~~ savings institution;
- (3) the nature of the supervision to be given to the fiduciary activities; including the qualifications, experience and character of the proposed officer or officers of the trust department; and
- (4) whether the ~~association~~ savings institution has available legal counsel to advise and pass upon fiduciary matters when necessary.

(c) Approval by the Administrator of an application under this Section authorizes the applicant to exercise only those trust powers specified in the approval. Unless otherwise provided by the approval, fiduciary services based on those trust powers may be offered only in those offices listed in the application.

Statutory Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146.

.0003 CONSOLIDATION OR MERGER OF TWO OR MORE SAVINGS INSTITUTIONS

When two or more ~~associations~~ savings institutions consolidate or merge, and any one of such ~~associations~~ savings institutions has, prior to such consolidation or merger, received approval from the Administrator to exercise trust powers which approval is in force at the time of the consolidation or merger, the rights existing under such approval pass to the resulting ~~association~~ savings institution as provided in G.S. 36A-37 for other corporate trustees.

Statutory Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146.

.0004 ADMINISTRATION OF TRUST POWERS

(a) The Board of Directors is responsible for the proper exercise of fiduciary powers by the ~~association~~ savings institution. All matters pertinent thereto, including the determination of policies, the investment and disposition of property held in a fiduciary capacity, and the direction

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and review of the actions of all officers, employees, and committees utilized by the ~~association~~ savings institution in the exercise of its fiduciary powers, are the responsibility of the Board. In discharging this responsibility, the Board of Directors may assign, by action duly entered in the minutes, the administration of such of the ~~association's~~ savings institution's trust powers as it may consider proper to assign, to such directors, officers, employees, or committees as it may designate.

(b) No fiduciary account shall be accepted without the prior approval of the Board, or of the directors, officers, or committees to whom the Board may have assigned the performance of that responsibility. A written record shall be made of such acceptances and of the relinquishment or closing out of all fiduciary accounts. Upon the acceptance of an account for which the ~~association~~ savings institution has investment responsibilities, a prompt review of the assets shall be made. The Board shall also ensure that at least once during every calendar year thereafter, and within 15 months of the last review, all the assets in each fiduciary account for which the ~~association~~ savings institution has investment responsibilities are reviewed to determine the advisability of retaining or disposing of such assets. The Board of Directors shall act to ensure that all investments have been made in accordance with the terms and purposes of the governing instrument.

(c) The trust department may utilize personnel and facilities of other departments of the ~~association~~, savings institution, and other departments of the ~~association~~ savings institution may utilize personnel and facilities of the trust department only to the extent not prohibited by law.

(d) Every ~~association~~ savings institution exercising trust powers shall adopt written policies and procedures to ensure that the federal securities laws are complied with in connection with any decision or recommendation to purchase or sell any security. Such policies and procedures, in particular, shall ensure that the ~~association's~~ savings institution's trust department shall not use material inside information in connection with any decision or recommendation to purchase or sell any security.

(e) Every ~~association~~ savings institution exercising fiduciary powers shall designate, employ, or retain legal counsel who shall be readily available to pass upon fiduciary matters and to advise the ~~association~~ savings institution and its trust department.

(f) The directors, officers, and employees of ~~an~~ association a savings institution engaged in the operation of a trust department shall acquire

such additional bond coverage as the Administrator may require.

Statutory Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146.

.0005 BOOKS AND ACCOUNTS

(a) Every ~~association~~ savings institution exercising trust powers shall keep its fiduciary records separate and distinct from other records of the ~~association~~. savings institution. All fiduciary records shall be ~~so kept and retained in a manner~~ and for such time as is necessary to enable the association savings institution to furnish ~~such any~~ such any information or reports ~~with respect thereto~~ as may be required by the Administrator. The fiduciary records shall contain full information relative to each account.

(b) Every ~~association~~ savings institution shall keep an adequate record of all pending litigation to which it is a party in connection with its exercise of trust powers.

Statutory Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146.

.0006 AUDIT OF TRUST DEPARTMENT

At least once during each calendar year, the ~~association's~~ savings institution's trust department shall be audited by independent auditors. A copy of the report of the audit shall be promptly filed with the Administrator.

Statutory Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146.

.0007 FUNDS AWAITING INVESTMENT OR DISTRIBUTION

(a) ~~Funds held in a fiduciary capacity by an association awaiting investment or distribution shall not be held uninvested or undistributed any longer that is reasonable for the proper management of the account.~~

(a) ~~(b)~~ Funds held in trust by ~~an association, a~~ savings institution, including managing agency accounts, awaiting investment or distribution may, unless prohibited by the instrument creating the trust, be deposited in other departments of the ~~association, savings institution~~, savings institution, provided the ~~association~~ savings institution shall first set aside under control of the trust department collateral security of a kind and in an amount as specified in G.S. 36A-63(b) for funds held in trust by a bank, except that no such collateral shall be required to the extent that such funds are insured by an agency of the United States government.

(b) ~~(e)~~ Any funds held by ~~an association, a~~ savings institution as fiduciary awaiting investment or distribution and deposited in other de-

partments of the ~~association~~ savings institution shall be made productive.

Statutory Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146.

.0008 INVESTMENT OF FUNDS HELD AS FIDUCIARY

(a) Funds held by ~~an association~~ a savings institution in a fiduciary capacity shall be invested in accordance with the instrument establishing the fiduciary relationship. When such instrument does not specify the character or class of investments to be made and does not vest in the ~~association, savings institution~~, its directors, or its officers investment discretion in the matter, funds held pursuant to such instrument shall be invested in accordance with Article 1 of Chapter 36A of the North Carolina General Statutes.

(b) ~~An association~~ A savings institution appointed as a fiduciary by a court may invest funds of the account in any investment permitted to be made by fiduciaries by Article 1 of Chapter 36A of the North Carolina General Statutes, unless the appointing court limits the investment authority of the fiduciary. If the investment authority of the fiduciary is limited by the court, the ~~association~~ savings institution must make all investments of funds in such accounts by the terms of the order of that court. Such orders in either case shall be preserved with the fiduciary records of the ~~association, savings institution~~.

Statutory Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146.

.0009 SELF-DEALING

(a) ~~Unless lawfully authorized by the instrument creating the relationship, or by court order, funds held by an association as fiduciary shall not be invested in stock or obligations of, or property acquired from, the association or its affiliates, or the directors, officers, or employees of either of them, or individuals with whom there exists such a connection, or organizations in which there exists such an interest, as might affect the exercise of the best judgment of the association in acquiring the property.~~

(a) (b) Unless lawfully authorized by the instrument creating the relationship, or by court order, property held by ~~an association~~ a savings institution as fiduciary shall not be sold or transferred, by loan or otherwise, to the ~~association~~ savings institution or its affiliates, or the directors, officers, or employees of either of them, or to individuals with whom there exists such a connection, or organizations in which there exists such an interest, as might affect the exercise of the best judgment of the ~~association~~ savings in-

stitution in selling or transferring such property, except:

- (1) In cases in which the ~~association~~ savings institution has been advised by its counsel in writing that it has incurred as fiduciary a contingent or potential liability and desire to relieve itself from such liability, such a sale or transfer may be made with the approval of the Board of Directors and the Administrator, provided that, in all such cases, the ~~association, savings institution~~, upon the consummation of the sale or transfer, shall make reimbursement in cash at no loss to the account;
- (2) As provided in the laws and regulations governing collective investment;
- (3) When required by the Administrator.

(b) (e) If the purchase or retention of stock or obligations of the ~~association~~ savings institution is authorized by the instrument creating the relationship, or by court order, it may exercise rights to purchase its own stock, or securities convertible into its own stock, when offered pro rata to stockholders. When the exercise of rights or receipt of a stock dividend results in fractional share holdings, additional fractional shares may be purchased to complement the fractional shares so acquired. In elections of directors, ~~an association's~~ a savings institution's share held by the ~~association~~ savings institution as sole trustee, whether in its own name as trustee or in the name of its nominee, may not be voted by the registered owner unless, under the terms of the trust, the manner in which such shares shall be voted may be determined by a donor or beneficiary of the trust and the donor or beneficiary actually directs how the shares will be voted.

(d) ~~An association may sell assets held by it as fiduciary in one account to itself as fiduciary in another account if the transaction is not prohibited by the terms of any governing instrument. An association may make a loan to an account from the funds belonging to another such account, when the making of such loans to a designated account is authorized by the instrument creating the account from which such loans are made, and is not prohibited by North Carolina law, and the terms of the transaction are fair to all accounts. An association may make a loan to an account and may take as security therefor assets of the account, provided such transaction is fair to such account and is not prohibited by North Carolina law.~~

Statutory Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146.

.0010 CUSTODY OF INVESTMENTS

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(a) The investments of each account shall be kept separate from the assets of the ~~association~~, savings institution, and shall be placed in the joint custody or control of not fewer than two of the officers or employees of the ~~association~~ savings institution designated for that purpose either by the Board of Directors of the ~~association~~ savings institution or by one or more officers designated by the Board of Directors of the ~~association~~, savings institution, and all such officers and employees shall be adequately bonded. To the extent permitted by G.S. 53-159.1, ~~an association~~ a savings institution may permit the investments of a fiduciary account to be deposited elsewhere.

(b) The investment of each account shall be either:

- (1) kept separate from those of all other accounts, except as provided in Rule .0012 of this Section; or
- (2) adequately identified as the property of the relevant account.

Statutory Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146.

.0011 COMPENSATION OF SAVINGS INSTITUTION

(a) If the amount of the compensation for acting in a fiduciary capacity is not provided for in the instrument creating the fiduciary relationship, set forth in Chapter 36A of the General Statutes, or otherwise agreed to by the parties, ~~an association~~ a savings institution acting in such capacity may charge or deduct a reasonable compensation for its services. When the ~~association~~ savings institution is acting in a fiduciary capacity under appointment by a court, it shall receive such compensation as may be allowed or approved by the court.

(b) No ~~association~~ savings institution shall, except with the specific approval of its Board of Directors, permit any of its officers or employees, while serving as such, to retain any compensation for acting as co-fiduciary with the ~~association~~ savings institution in the administration of any account undertaken by it.

(c) No ~~association~~ savings institution shall permit an officer or employee engaged in the operation of its trust department to accept a bequest or gift of trust assets unless the bequest or gift is directed or made by a relative or is approved by the Board of Directors of the ~~association~~ savings institution.

Statutory Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146.

.0012 COLLECTIVE INVESTMENT

(a) Funds held as fiduciary may be held in:

- (1) A common trust fund maintained by the ~~association~~ savings institution exclusively for the collective investment and reinvestment of moneys contributed thereto by the ~~association~~ savings institution in its capacity as trustee, executor, administrator, guardian, or custodian under the North Carolina Uniform ~~Gifts~~ Transfers to Minors Act; or
- (2) A fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or other trusts which are exempt from Federal income taxation under the Internal Revenue Code.

(b) Collective investments of funds or other property by ~~an association~~ a savings institution under Paragraph (a) of this Rule shall be administered in accordance with Comptroller of the Currency Regulation 9.18, 12 C.F.R. 9.18; provided that any documents required to be filed with the Comptroller of the Currency under that regulation shall also be filed with the Administrator who may review such documents for compliance with all applicable laws and regulations.

Statutory Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146.

.0013 SURRENDER OF TRUST POWERS

(a) Any ~~association~~ savings institution which has been granted the right to exercise trust powers and which desires to surrender such rights shall file with the Administrator a certified copy of the resolution of its Board of Directors signifying such desire.

(b) Upon receipt of such resolution, the Administrator shall make an investigation and if he is satisfied that the ~~association~~ savings institution has been discharged from all fiduciary duties which it has undertaken, it shall issue a certificate to such ~~association~~ savings institution certifying that it is no longer authorized to exercise fiduciary powers.

(c) Upon issuance of such a certificate by the Administrator, ~~an association~~ a savings institution shall no longer be subject to the provisions of these Regulations, and shall not exercise thereafter any of the powers granted by this Section without first applying for and obtaining new authorization to exercise such powers.

Statutory Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146.

.0014 EFF. OF APPT.: CONSERVATOR/RECEIVER: VOLUNTARY DISSOLUTION

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(a) Whenever a conservator or receiver is appointed for ~~an association, a savings institution,~~ such receiver or conservator shall, pursuant to the instructions of the Administrator and the orders of ~~the any~~ court having jurisdiction, proceed to close such of the ~~association's savings institution's~~ trust accounts as can be closed promptly and transfer all other such accounts to substitute fiduciaries.

(b) Whenever ~~an association a savings institution~~ exercising trust powers is placed in voluntary dissolution, the liquidating agent shall, in accordance with North Carolina law, proceed at once to liquidate the affairs of the trust department as follows:

- (1) All trusts and estates over which a court is exercising jurisdiction shall be closed or disposed of as soon as practicable in accordance with the order or instruction of such court; and
- (2) All other accounts which can be closed promptly shall be closed as soon as practicable and final accounting made therefor, and all remaining accounts shall be transferred by appropriate legal proceedings to substitute fiduciaries.

Statutory Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146.

.0015 REVOCATION OF TRUST POWERS

(a) In addition to the other sanctions available, if, in the opinion of the Administrator, ~~an association a savings institution~~ is unlawfully or unsoundly exercising, or has unlawfully or unsoundly exercised, or has failed for a period of five consecutive years to exercise, the powers granted by this Section or otherwise fails or has failed to comply with the requirements of this Section, the Administrator may issue and serve upon the ~~association savings institution~~ a notice of intent to hold a hearing before the Commission concerning his recommendation to revoke the authority of the ~~association savings institution~~ to exercise the powers granted by this Section. The notice shall contain a statement of the facts constituting the alleged unlawful or unsound exercise of powers, or failure to exercise powers, or failure to comply, and shall fix a time and place at which such a hearing will be held to determine whether an order revoking authority to exercise such powers should issue against the ~~association savings institution.~~

(b) Unless the ~~association savings institution~~ so served shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the revocation order. In the event of such consent or if, upon the record made at any such hearing, the Com-

mission shall find that any allegation specified in the notice of charges has been established, the ~~Board Commission~~ may issue and serve upon the ~~association savings institution~~ an order prohibiting it from accepting any new or additional trust accounts and revoking authority to exercise any and all powers granted by this Section except that such order shall permit the ~~association savings institution~~ to continue to serve all previously accepted trust accounts pending their expeditious divestiture or termination.

(c) A revocation order shall become effective not earlier than the expiration of 30 days after service of such order upon the ~~association savings institution~~ so served (except in the case of a revocation order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable, except to such extent as it is stayed, modified, terminated, or set aside by action of the ~~Board Commission~~ or a reviewing court.

Statutory Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146.

.0016 APPLICABILITY OF GENERAL LAWS REGARDING TRUST OPERATIONS

~~Savings institutions Associations~~ exercising trust powers under the provisions of this Section shall comply with the provisions of Chapter 36A of the General Statutes.

Statutory Authority G.S. 54B-55; 54B-77; 54C-53; 54C-146.

.0017 REPORTS AND FEES

~~Savings institutions Associations~~ engaging in trust operations shall make such reports regarding those operations as the Administrator ~~shall~~ may, from time to time, require. In addition to any other fees, ~~associations savings institutions~~ acting as fiduciaries shall pay an examination fee for examination of its fiduciary activities, in an amount to be determined by the Administrator in accordance with G.S. 54B-57 or 54C-55.

Statutory Authority G.S. 54B-55; 54B-57; 54B-77; 54C-53; 54C-55; 54C-146.

SUBCHAPTER 16L - VOLUNTARY DISSOLUTION

.0002 DISPOSITION OF ASSETS

After approval of the plan of liquidation by the Administrator, the ~~association savings institution~~ shall, except in case of dissolution under ~~G.S. 55-116(a)(2), (3) and (4);~~ G.S. 54B-40 or 54C-40, immediately cause notice of the dissolution to be mailed to each known creditor of the ~~association savings institution~~, and to the Secretary of Re-

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venue, and such notice shall be published once a week for four successive weeks in a newspaper published in the county wherein the ~~association~~ savings institution has its principal office, and, if there be no newspaper published in such county, then in some newspaper of general circulation in such county. The ~~association~~ savings institution shall then proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its members or shareholders, pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, including the collection of unpaid subscriptions necessary to equalize the agreed payments by subscribers of its shares. After paying or adequately providing for the payment of all its obligations, the ~~association~~ savings institution shall distribute the remainder of its assets, either in cash or in kind, among its members or shareholders according to their respective rights and interests.

Statutory Authority G.S. 54B-42; 54B-55; 54C-42; 54C-53.

.0003 REVOCATION AND CANCELANON OF DISSOLUTION

(a) At any time after the filing of the plan of liquidation and prior to the filing of a certificate of dissolution, a voluntary dissolution may be revoked by filing of a statement of revocation of dissolution. The contents of such a statement and the proceedings taken so as to revoke a dissolution shall conform with such adaptations as are appropriate to revocation under either G.S. 54B-40 or 54B-41 or 54C-40 or 54C-41.

(b) Upon the filing of such statement of revocation of dissolution, the revocation of the voluntary dissolution proceedings shall become effective and the ~~association~~ savings institution may again carry on business.

Statutory Authority G.S. 54B-42; 54B-55; 54C-42; 54C-53.

.0004 WAIVER

The Administrator may waive or alter any requirements set forth in this Section to promote the best interests of the public or the ~~association~~ savings institution.

Statutory Authority G.S. 54B-42; 54B-55; 54C-42; 54C-53.

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the Savings Institutions Division

intends to adopt rules cited as 4 NCAC 16G .0103 - .0106, .0311 - .0316, .0404 - .0405, .0509 - .0516, .0606 - .0608, .0712 - .0722, .0822 - .0833, .0908 - .0912, .1203 - .1204; amend 4 NCAC 16D .0101, .0301, .0402 - .0403, .0407, .0902 and repeal 4 NCAC 16C .0303; 16D .0404, .0506.

The proposed effective date of this action is February 15, 1992.

The public hearing will be conducted at 10:00 a.m. on November 19, 1991 at the Hearing Room, Third Floor, 1110 Navaho Drive, Raleigh, NC.

Reason for Proposed Action: 4 NCAC 16G .0103 - .0106, .0311 - .0316, .0404 - .0405, .0509 - .0516, .0606 - .0608, .0712 - .0722, .0822 - .0833, .0908 - .0912, .1203 - .1204 - These rules are required by the adoption by the General Assembly of Chapter 54C of the General Statutes. 4 NCAC 16D .0101, .0301, .0402 - .0403, .0407, .0902 - Amendments to clarify the intent of these rules based on changes in the federal requirements. 4 NCAC 16C .0303 and 4 NCAC 16D .0404, .0506 - Repeal, these rules are duplicative of statutory requirements.

Comment Procedures: All requests to present testimony must be received at the Division's address at least 48 hours before the hearing. Written comments will be received for 30 days after publication of the notice of hearing.

CHAPTER 16 - SAVINGS INSTITUTIONS DIVISION: SAVINGS INSTITUTIONS COMMISSION

SUBCHAPTER 16C - APPLICATIONS

SECTION .0300 - APPLICATION TO CHANGE LOCATION OF BRANCH OFFICE OR PRINCIPAL OFFICE

.0303 LOCATION CHANGE

~~No association shall change the location of its principal office or a branch office without first obtaining the written approval of the administrator.~~

Statutory Authority G.S. 54B-23; 54B-55.

SUBCHAPTER 16D - OPERATION OF SAVINGS ASSOCIATIONS

SECTION .0100 - DIRECTORS: OFFICERS AND EMPLOYEES

.0101 COMPOSITION OF BOARD OF DIRECTORS

(a) The number of directors constituting the initial board of directors shall be not less than seven. Thereafter, the provisions of Chapter 55 of the General Statutes shall govern the numerical composition of boards of directors for both stock and mutual associations. Other guidelines for the composition of a board of directors are as follows:

- (1) No more than one-third of the board of directors shall be salaried officers or employees of the association, or of any subsidiary or (except in the case of an association having 80 percent or more of any class of voting shares owned by a holding company or controlling person) any holding company or controlling person affiliate thereof.
 - (2) No more than two directors shall be members of the same immediate family.
 - (3) No two directors who are attorneys may be members of the same law firm.
 - (4) No more than one-third of the board of directors shall be directors, officers or employees of a competing financial institution.
 - (5) The ~~chief~~ managing officer of the association shall be a member of the board of directors.
- (b) A director shall not vote on any matter in which he has a personal or financial interest.
- (c) When an association takes action resulting in the establishment of a new chief executive officer or director, the association shall notify the Administrator in writing in advance of such change, and shall provide the name of the new chief executive officer or director, the effective date of the appointment, and a statement of the person's past and current business and professional affiliations. The name of any departing chief executive officer or director shall also be provided.

Statutory Authority G.S. 54B-55.

SECTION .0300 - RECORDS

.0301 GENERAL POLICIES

(a) Records to be Kept at Principal Office. Every association shall keep at the principal office correct and complete books of account and minutes of the proceedings of members, shareholders, directors and committees. Complete records of all business transacted at the principal office shall be maintained at the principal office. Everything relating to the business of an association shall be examined and investigated by the Administrator on a regular and periodic basis. Every association and service corporation thereof shall be audited at least once in each calendar

year by independent auditors. The audit shall be done on the basis of generally accepted accounting principles, unless otherwise provided by this Chapter. The association shall file with the Administrator one copy of the audit report along with one copy of the auditor's management letter and any other letters regarding the audit within 90 days after the end of its fiscal year, unless extended in writing by the Administrator. The association shall also submit to the Administrator a copy of the association's written response to the auditor's management letter at the time such response is provided to the appropriate federal regulatory authority.

(b) Records to be Prepared at Branch Office. Each branch office shall prepare detailed records of all business transacted at such branch office, and shall furnish full control records to the principal office.

(c) Accounting Practices. ~~to be Approved by the administrator.~~ Every association shall observe such generally accepted accounting principles and practices as the administrator may require, unless otherwise required by regulations of the appropriate federal regulatory authority.

(d) Books to be Closed on December 31. Every association shall close its books at the close of business on December 31 of each year, or other dates if authorized by the administrator.

(e) Bonds and Other Obligations to be Carried at Actual Costs. The bonds or other investments of an association shall not be carried on its books at more than the actual costs thereof.

(f) Real Estate to be Carried at Amount Invested in Same. An association shall not carry any real estate on its books at a sum in excess of the total amount invested by such association on account of such real estate, including advances, costs, and improvements, but excluding accrued, uncollected interest.

(g) Appraisal of Real Estate Owned. Every association shall appraise each parcel of real estate at the time of acquisition thereof. The report of each such appraisal shall be submitted in writing to the board of directors and shall be kept in the records of the association.

(h) Maintenance of Membership Records. Every mutual association shall maintain membership records, which shall show the name and address of the member, the status of the member, status of the member as a withdrawable account holder, or an obligor, or a withdrawable account holder and obligor, and the date of the membership thereof.

(i) Maintenance of Stockholder Records. Every stock association shall keep at its principal office or at the office of its transfer agent or register, a record of its stockholders which contains the names and addresses of all stockholders, and

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the number, class and series of shares held by each. Whenever called upon by the administrator, a stock association shall file in the office of the administrator a correct list of all its stockholders, the resident address of each, the number of shares of stock held by each, and the dates of issue. When ~~20~~ 10 percent or more of the outstanding capital stock of the association shall be ~~owned~~ controlled by one owner, an association shall advise the administrator in writing, and shall include the resident address and number of shares held by the shareholder.

Statutory Authority G.S. 54B-21; 54B-55.

SECTION .0400 - LOANS

.0402 APPRAISALS

~~Except as exempted under the regulations of the appropriate federal regulatory agency, an association shall not grant, make, disburse any portion of, or invest its funds in any loan on the security of real estate, until at least one qualified person, whose compensation shall not be affected in any way by the approval or denial of the loan, has appraised the real estate security and the signed appraisal or appraisals have been approved in accordance with the bylaws of the association. Separate appraisals as to land and improvements shall be made and a separate appraisal shall be made on each property when a mortgage loan is secured by more than one property. in accordance with the regulations of the appropriate federal regulatory agency.~~

Statutory Authority G.S. 54B-55; 54B-161.

.0403 RECORDS WITH RESPECT TO LOANS

(a) Mortgage Loans. Each association shall maintain records with respect to each loan on the security of real estate which shall include:

- (1) An application signed by the borrower or his agent, containing adequate information which shall include the purpose of the loan, the identity of the property or properties securing the loan, and the purchase price of the property paid by or agreed to be paid by the applicant where the purpose of the loan is for the purchase of the real estate securing such loan;
- (2) The credit ability of the applicant shall be ascertained in the application or by a credit report, a financial report or by others at the request of the association;
- (3) A written appraisal report conforming to the written appraisal policy of the association, signed and dated prior to the approval of the application;
- (4) Evidence to show:

- (A) proper approval of the loan and the terms and conditions of such approval;
- (B) a loan settlement statement, signed by the borrower, showing the distribution of the loan proceeds;
- (C) the association's approved attorney's title opinion or a valid title insurance policy from a title insurance company authorized to do business in North Carolina;
- (D) hazard insurance coverage;
- (E) release or releases of any portion of the collateral, with a revised appraisal of the remaining security retained; and
- (F) the loan agreement, inspection reports, owner's and contractor's affidavits and other necessary procedures on construction loans, where applicable;
- (5) All loan modifications, properly executed and documented and recorded in the minutes;
- (6) Record of insurance expirations unless a master mortgagee insurance policy is held in full force and effect;
- (7) Tax records;
- (8) A mortgage loan register to show:
 - (A) account number;
 - (B) borrower's name;
 - (C) date of deed of trust;
 - (D) appraisal;
 - (E) interest rate;
 - (F) monthly payment and date of first payment;
 - (G) purpose of the loan and purchase price if for purchase of property securing the loan and the contract price if for purposes of construction; and
 - (H) hypothecation, if any, designating hypothecator, amount, and type of pledge collateral; all to be incorporated in the hypothecation agreement;
- (9) Records on acquisition of mortgaged security to include:
 - (A) a detailed record of the acquisition, whether through foreclosure or otherwise, and a description of the property or properties including the name of the former owner;
 - (B) maintenance of subsidiary ledger accounts for each separate acquisition, to record all items subject to capitalization or to income and expense during the period such property is owned by the association;
 - (C) designation of all fees, charges and commissions and to whom such were paid;
 - (D) a copy of the trustee's report relating to foreclosure, when applicable;

- (10) A review of 60 days or over delinquent mortgage loans by the association's board of directors or executive committee at least once a month and such review to be recorded in the minutes of the board of directors or executive committee meeting; ~~and~~
- (11) A "loans in process account" to support the undisbursed portion of the proceeds of each mortgage loan or unsecured construction loans; ~~and~~
- (12) A certification signed by the borrower indicating that the borrower has received the disclosure material required by the Federal Truth-In-Lending Act, 12 USC 1601 et seq.
- (b) Withdrawable Account Loans. Each association shall maintain records with respect to each loan secured by withdrawable accounts which shall include a withdrawable account loan register. Such loan register or registers shall include:
- (1) account number,
 - (2) borrower's name,
 - (3) date of loan,
 - (4) interest rate,
 - (5) payment schedule, ~~and~~
 - (6) ~~date of first payment.~~
- (c) Other Loan Register. Each association shall maintain adequate and appropriate records with respect to all other types of loans made by the association which shall include a loan register. Separate registers shall be maintained with respect to consumer loans and with respect to commercial loans. Such loan register or registers shall include:
- (1) ~~account number,~~
 - (2) ~~borrower's name,~~
 - (3) ~~date of loan,~~
 - (4) ~~interest rate,~~
 - (5) ~~payment schedule,~~
 - (6) ~~date of first payment,~~
 - (7) ~~purpose of loan, and~~
 - (8) ~~type of collateral, if secured.~~
- (c) Consumer Loans. Defined as loans for personal, family or household purposes and loans incident thereto, which may be made as either open end or closed end consumer credit, but not including credit extended in connection with credit cards or bona fide overdraft loans. Each institution shall maintain records with respect to each consumer loan which shall include:
- (1) An application signed by the borrower or his agent, containing adequate information which shall include the purpose of the loan, the identity of the collateral securing the loan and the purchase price of the collateral where the purpose of the loan is to purchase said collateral.
- (2) The credit ability of the applicant shall be ascertained in the application and supported by a written credit report and a complete financial statement, verified and analyzed by a qualified loan officer.
- (3) A written appraisal or value estimate of the collateral conforming to the written policies of the institution and dated prior to the approval of the application if the loan is to be secured.
- (4) An approved attorney's title opinion or valid title insurance policy issued by an insurance company authorized to do business in North Carolina if the loan is underwritten based on the value of real estate collateral.
- (5) Evidence to show:
- (A) proper approval of the loan and the terms and conditions of such approval;
 - (B) the distribution of the loan proceeds;
 - (C) proper insurance coverage on the collateral;
 - (D) perfection of liens or security interest by proper endorsement of automobile titles and/or UCC filings.
- (6) All loan modifications, extensions and renewals properly executed and documented and, if required by the association's consumer lending policy, recorded in the minutes.
- (7) A consumer loan register to show:
- (A) account number;
 - (B) borrower's name;
 - (C) date of loan;
 - (D) interest rate;
 - (E) payment schedule and date of first payment;
 - (F) purpose of loan;
 - (G) type and value of collateral, if secured.
- (d) Commercial Loans. Defined as any loan for commercial, corporate, business or agricultural purposes which would not otherwise qualify as a mortgage loan. Each institution shall maintain records with respect to each commercial loan which shall include:
- (1) An application signed by the borrower or his agent containing adequate information to include the purpose of the loan, and the collateral securing the loan (if applicable).
 - (2) The credit ability of the applicant shall be ascertained in the application and supported by a written credit report and a complete set of current financial statements, verified and analyzed by a qualified loan officer.
 - (3) A written appraisal report, if secured by real estate, or other written estimate of

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value conforming to the institution's policies if secured by other than real estate.

(4) Evidence to show:

(A) proper approval of the loan and the terms and conditions of such approval;

(B) a loan settlement statement, signed by the borrower, showing the distribution of the loan proceeds;

(C) adequate perfection of all liens and security interests including attorney's title opinion or valid title insurance policy from a title insurance company authorized to do business in North Carolina if secured by commercial real estate;

(D) appropriate insurance on all collateral;

(E) release or partial releases of collateral, with a revised appraisal of the remaining collateral;

(F) all loan modifications, extensions and renewals, properly executed and documented and recorded in the minutes.

(5) A commercial loan register to show:

(A) account number;

(B) borrower's name;

(C) date of note;

(D) appraisal or other estimate of value;

(E) interest rate;

(F) payment schedule and date of first payment;

(G) loan purpose and type of collateral, if secured.

Statutory Authority G.S. 54B-55; 54B-155.

.0404 ALTERNATIVE MORTGAGE INSTRUMENTS

(a) An association may use any alternative mortgage instrument agreed upon by the association and the borrower. The term "alternative mortgage instrument" shall include any type of mortgage instrument other than a conventional mortgage instrument with a fixed interest rate and fixed payments. An association is deemed to have complied with this Rule if it complies with similar requirements enforced by the federal regulatory authority. Paragraphs (b) and (c) of this Rule apply only to credit transactions where the borrower is a natural person and the intended use of the loan proceeds is for personal, family, or household purposes.

(b) An association using an alternative mortgage instrument shall maintain in the mortgage loan file a certification signed by the borrower indicating that the borrower has received the disclosure material specified in Paragraph (c) of this Rule before closing the loan.

(c) Prior to closing, the borrower shall be furnished disclosure material which shall include:

(1) an explanation of the alternative mortgage instrument; and

(2) an example of the operation of the alternative mortgage instrument.

(d) The borrower shall not be charged any costs or fees in connection with regularly scheduled adjustments to the interest rate, the payment, the outstanding principal loan balance, or the loan term.

Statutory Authority G.S. 54B-55; 54B-163.

.0407 LOANS TO ONE BORROWER

Upon a written determination by the Administrator that an association is operating with unsafe and unsound lending practices, the Administrator may establish such more restrictive limits on loans to any one borrower than the limits established by the appropriate federal regulatory authority. ~~that he~~ These restrictive amounts shall be at such limits as the administrator deems appropriate to protect the public. At no time shall the aggregate amount of loans of any type outstanding, granted by an association to any one borrower, exceed the lesser of the amount established by G.S. 54B-164 or by the federal regulatory authority.

Statutory Authority G.S. 54B-55; 54B-164.

SECTION .0500 - WITHDRAWABLE ACCOUNTS

.0506 CREDIT CARDS

An association may issue credit cards, extend credit in connection therewith, and otherwise engage in or participate in credit card operations.

Statutory Authority G.S. 54B-55; 54B-77.

SECTION .0900 - INVESTMENTS

.0902 STOCK IN OTHER DEPOSITORY ASSOCIATIONS

(a) No association shall invest in the stock of another association depository institution without giving prior written notice to the Administrator.

(b) No association shall invest in the aggregate more than five percent of its net worth in the stock of other associations depository institutions without the prior written approval of the Administrator.

Statutory Authority G.S. 54B-55; 54B-193.

SUBCHAPTER 16G - MUTUAL TO STOCK CONVERSIONS

SECTION .0100 - SCOPE

.0103 DEFINITIONS

As used in this Subchapter and in the forms prescribed under this Subchapter, the words and phrases defined by G.S. 54C-4 and the following definitions apply, unless the context otherwise requires:

- (1) "Affiliate," "an affiliate of," or "a person affiliated with" used in connection with another specified person shall mean a person that directly, or indirectly through one or more intermediaries, controls or is under common control with, the person specified.
- (2) "Amount," when used in regard to securities, shall mean the principal amount if relating to evidences of indebtedness, the number of shares if relating to shares of stock, and the number of units if relating to any other kind of security.
- (3) "Applicant" shall mean a savings bank which has applied to convert to stock ownership pursuant to this Subchapter.
- (4) "Broker" shall mean any person engaged in the business of effecting transactions in securities for the account of others.
- (5) "Capital stock" shall mean common stock, permanent stock, guaranty stock, permanent reserve stock, or any similar certificate evidencing nonwithdrawable capital.
- (6) "Dealer" shall mean any person who engages either for all or part of his time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.
- (7) "Deposit account" shall mean that part of the liability of the savings bank which is credited to the account of the holder thereof, including certificates of deposit.
- (8) "Eligibility record date" shall mean the record date for determining eligible account holders of a converting savings bank.
- (9) "Eligible account holder" shall mean any person holding a qualifying deposit as determined in accordance with Rule .0313 of this Subchapter.
- (10) "Employee" shall not mean a director or executive officer of a savings bank.
- (11) "Equity security" shall mean any stock or similar security, or any security convertible, with or without considerations, into such security, or carrying any warrant or right to subscribe to or purchase such security, or any such warrant or right.
- (12) "Executive Officer" shall mean any person performing a policy making function with respect to any organization whether incorporated or unincorporated.

- (13) "Investment representative" shall mean a professional investment advisor acting as agent for the purchaser and independent of the seller and not acting on behalf of the seller in connection with the transaction.
- (14) "Market maker" shall mean a dealer who, with respect to a particular security:
 - (a) regularly publishes a bona fide, competitive bid and offer quotations in a recognized inter-dealer quotation system; or
 - (b) furnishes bona fide competitive bid and offer quotations on request; and
 - (c) is ready, willing and able to effect transactions in reasonable quantities at his quoted prices with other brokers or dealers.
- (15) "Material," when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters as to which an average prudent investor ought reasonably to be informed before purchasing an equity security of the applicant, or matters as to which an average prudent savings bank member ought reasonably to be informed in voting upon the plan of conversion of the applicant.
- (16) "Negotiated transactions" shall mean transactions in which the securities are offered and the terms and arrangements relating to any sale of the securities are arrived at through direct communications between the seller or any person acting in its behalf, and the purchaser or his investment representative.
- (17) "Offer," "offer to sell," or "offer of sale" shall mean every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. These terms shall not include preliminary negotiations or agreements between an applicant and any underwriter or among underwriters who are or will be in privity of contract with an applicant.
- (18) "Person" includes an individual and entity as defined in G.S. 55-1-40.
- (19) "Proxy" shall mean every form of authorization by which a person is, or may be deemed to be, designated to act for a savings bank member in the exercise of his voting rights in the affairs of a savings bank.
Such an authorization may take the form of failure to dissent or object.
- (20) "Purchase" and "buy" shall mean every contract to purchase, buy, or otherwise acquire a security or interest in a security for value.

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(21) "Sale" and "sell" shall mean every contract to sell or otherwise dispose of a security or interest in a security for value.

(22) "Security" shall mean any note, stock, treasury stock, bond, debenture, transferable share, investment contract, voting-trust certificate, or in general, any instrument commonly known as a "security". It shall also include any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing.

(23) "Solicitation" and "solicit" shall mean:

(a) any request for a proxy whether or not accompanied by or included in a form of proxy;

(b) any request to execute, not execute, or revoke a proxy; or

(c) the furnishing of a form of proxy or other communication to savings bank members under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy. The terms do not apply, however, to the furnishing of a form of proxy to a savings bank member upon the unsolicited request of the member, the performance of acts required by Rule .0514 of this Subchapter, or to the performance by any person of ministerial acts on behalf of a person soliciting a proxy.

(24) "Subscription offering" shall mean the offering of shares of capital stock, through nontransferable subscription rights issued to:

(a) eligible account holders as required by Rule .0311(2) of this Subchapter;

(b) supplemental eligible account holders as required by Rule .0311(4) of this Subchapter;

(c) members entitled to vote at the meeting called to consider the conversion as required by Rule .0311(5) of this Subchapter;

(d) directors, officers, and employees, as permitted by Rule .0312(2) of this Subchapter; and

(e) eligible account holders, supplemental eligible account holders, and voting members as permitted by Rule .0312(3) of this Subchapter.

(25) "Subsidiary" of a specified person shall mean a person controlled, directly or indirectly, through one or more intermediaries by the specified person.

(26) "Supplemental eligible account holder" shall mean any person holding a qualifying deposit, except executive officers, directors, and their associates, as of the supplemental

eligibility record date required by Rule .0311 of this Subchapter.

(27) "Underwriter" shall mean any person who has purchased from an applicant with a view to, or offers or sells for an applicant in connection with, the distribution of any security, or participates or has a direct or indirect participation in the direct or indirect underwriting of any such undertaking. Such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission. The term "principal underwriter" shall mean an underwriter in privity of contract with the applicant or other issuer of securities as to which he is the underwriter.

Statutory Authority G.S. 54C-33; 54C-53.

.0104 GENERAL REQUIREMENTS

(a) No application for conversion shall be approved by the administrator unless:

(1) The conversion will be conducted as provided by law and this Subchapter and pursuant to a plan of conversion approved by the administrator.

(2) The conversion will not result in a taxable reorganization under the Internal Revenue Code.

(b) The corporate existence of a mutual savings bank converting to stock ownership shall not terminate. The converted savings bank shall be deemed to be a continuation of the savings bank so converted.

Statutory Authority G.S. 54C-33; 54C-53.

.0105 APPLICATION FOR CONVERSION

An applicant that desires to convert in accordance with this Subchapter shall file a copy of an Application for Conversion (Form AC). Form AC incorporates the statutory requirements and criteria and provides for the submission of required information. This form can be obtained from the Division at its mailing address. Such application shall be accompanied by a check in the amount of the appropriate application fee. Such fee is nonrefundable.

Statutory Authority G.S. 54C-33; 54C-53.

.0106 CONFIDENTIAL INFORMATION

Should the applicant desire to submit any information it deems to be of a confidential nature regarding the answer to any item or a part of any exhibit included in the Application for Conversion, such information pertaining to such item or exhibit shall be separately bound and labeled

"confidential," and a statement shall be submitted therewith briefly setting forth the grounds on which such information should be treated as confidential under G.S. 54C-60. Only general reference thereto need be made in that portion of the application which the applicant deems not to be confidential. Applications under this Subchapter shall be made available for inspection by the public, except for portions which are bound and labeled "confidential" and which the administrator determine to be of a confidential nature under G.S. 54C-60. The administrator will withhold the public availability of preliminary copies of proxy soliciting materials without the necessity of their being bound and labeled as "confidential". The applicant will be advised of any decision by the administrator to make public information designated as "confidential" by the applicant. Even though sections of the application are considered "confidential" as far as public inspection thereof is concerned, the administrator, to the extent deemed appropriate, may comment on such confidential submissions in any public statement in connection with any decision on the application without prior notice to the applicant.

Statutory Authority G.S. 54C-33; 54C-53.

SECTION .0300 - GENERAL PRINCIPLES FOR CONVERSIONS

.0311 REQUIRED PROVISIONS IN PLAN OF CONVERSION

The plan of conversion shall:

- (1) Provide that the converting savings bank shall issue and sell its capital stock at a total price equal to the estimated pro forma market value of such stock in the converted savings bank, based on an independent valuation, as provided in Rule .0706 of this Subchapter.
- (2) Provide that each eligible account holder shall receive without payment, nontransferable subscription rights to purchase capital stock. Subscription rights shall be allocated among the eligible account holders on an equitable basis in an amount not greater than the maximum purchase limitation established for the public offering or the direct community offering. The plan of conversion shall provide a comprehensive description of this allocation including a detailed description of the allocation in the event of an oversubscription of the capital stock. In the event of an oversubscription, shares shall be allocated on an equitable basis that is related to the amount of the subscriber's qualifying deposits.

- (3) Provide that nontransferable subscription rights to purchase capital stock received by executive officers and directors of the applicant and their associates based on their increased deposits in the applicant savings bank in the one-year period preceding the eligibility record date shall be subordinated to all other subscriptions involving the exercise of nontransferable subscription rights to purchase shares pursuant to Paragraph (2) of this Rule.
- (4) Provide that, in plans involving an eligibility record date that is more than 15 months prior to the date of the latest amendment to the application for conversion filed prior to the administrator's approval, a supplemental eligibility record date shall be determined whereby each supplemental eligible account holder of the applicant shall receive without payment, nontransferable subscription rights to purchase capital stock in an amount related to their respective qualifying deposits.
 - (a) Subscription rights received pursuant to this Subsection shall be subordinated to all rights received by eligible account holders to purchase shares pursuant to Paragraphs (2) and (3) of this Rule.
 - (b) Any nontransferable subscription rights to purchase shares received by an eligible account holder in accordance with Paragraph (2) of this Rule shall be applied in partial satisfaction of the subscription rights to be distributed pursuant to this Paragraph.
 - (c) In the event of an oversubscription for supplemental shares pursuant to this Paragraph, shares shall be allocated among the subscribing supplemental eligible account holders on such equitable basis, related to the amounts of their respective qualifying deposits, as may be provided in the plan of conversion.
- (5) Provide that voting members who are not either eligible account holders or supplemental eligible account holders shall receive, without payment, nontransferable subscription rights to purchase capital stock on an equitable basis defined in the plan of conversion. Subscription rights received pursuant to this Paragraph shall be subordinated to all rights received by eligible account holders and supplemental eligible account holders to purchase shares pursuant to Paragraphs (2), (3), and (4) of this Rule. In the event of an oversubscription of capital stock pursuant to this Paragraph, shares shall be allocated among the subscribing voting members on such equitable basis as

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- may be provided in detail in the plan of conversion.
- (6) Provide that any shares of the applicant not sold to persons with subscription rights shall either be sold in a public offering through an underwriter or directly by the applicant in a direct community offering, subject to the applicant demonstrating to the administrator the feasibility of the method of sale and to such conditions as may be provided in the plan of conversion. Such conditions shall include, but not be limited to:
- (a) A condition limiting purchases in the public offering or the direct community offering by any person together with any associate or group of persons acting in concert to a percentage of the total offering of shares not exceeding five percent; except that any one or more tax-qualified employee stock benefit plans may purchase in the aggregate not more than ten percent of the total offering of shares and shall be entitled to purchase such amount regardless of the number of shares to be purchased by other parties, and that shares held by one or more tax-qualified employee stock benefit plans and attributed to a person shall not be aggregated with other shares purchased directly by or otherwise attributable to that person.
- (b) A condition requiring that orders for stock in any public offering or direct community offering shall first be filled up to a maximum of two percent of the conversion stock and thereafter remaining shares shall be allocated on an equal number of shares basis per order until all orders have been filled.
- (c) A condition requiring the stock to be offered and sold in the public offering or the direct community offering to be offered and sold in a manner that will achieve the widest distribution of the stock.
- (d) A condition that any direct community offering by the applicant shall give a preference to natural persons residing in the counties in which the applicant has an office.
- (7) Provide that the number of shares which any person together with any associate or group of persons acting in concert may subscribe or purchase in the conversion shall not exceed five percent of the total offering of shares; except that any one or more tax-qualified employee stock benefit plans may purchase in the aggregate not more than 10 percent of the total offering of shares. Shares held by one or more tax-qualified or non-tax-qualified employee stock benefit plans and attributed to a person shall not be aggregated with shares purchased directly by or otherwise attributable to that person. For purpose of this Paragraph, the members of the converting savings bank's board of directors shall not be deemed to be associates or a group of persons acting in concert solely as a result of their board membership.
- (8) Provide that no executive officer or director or any associate of an executive officer or director shall purchase without the prior written approval of the administrator the capital stock of the converted savings bank except from a broker or dealer registered with the Secretary of State of North Carolina and/or the Securities and Exchange Commission for a period of three years following the conversion. This provision shall not apply to negotiated transactions involving more than one percent of the outstanding capital stock of the converted savings bank or to purchases of stock made by and held by any one or more tax qualified or non-tax-qualified employee stock benefit plan which may be attributable to executive officers or directors.
- (9) Provide that the sales price of the shares of capital stock to be sold in the conversion shall be a uniform price determined in accordance with Section .0700 of this Subchapter and specify the underwriting and/or other marketing arrangements to be made to assure the sale of all shares not sold in the subscription offering.
- (10) Provide that each deposit account holder of the converting savings bank shall receive, without payment, a deposit account or accounts in the converted savings bank equal in amount to the value of such account holder's deposit account or accounts in the converting savings bank.
- (11) Provide for the establishment and maintenance of a liquidation account for the benefit of eligible account holders and supplemental eligible account holders in the event of a subsequent complete liquidation of the converted savings bank, in accordance with the provisions of Rule .0315 of this Section.
- (12) Provide for an eligibility record date which shall be not less than 90 days prior to the date of adoption of the plan by the converting savings bank's board of directors.
- (13) Provide that the holders of the capital stock of the converted savings bank shall have exclusive voting rights.
- (14) Provide that the plan of conversion adopted by the applicant's board of directors

may be substantively amended by such board of directors prior to the solicitation of proxies from members to vote on the plan and at any time thereafter with the concurrence of the administrator; and that the conversion may be terminated by the board of directors at any time prior to the meeting of members called to consider the plan of conversion and at any time thereafter with the concurrence of the administrator.

- (15) Establish a time period within which the conversion must be completed prior to termination. This time period shall be not more than 12 months from the date the members approve the plan of conversion. This time period may be extended an additional 12 months with the written permission of the administrator.
- (16) Provide that all shares of capital stock purchased by directors and executive officers on original issue in the conversion either directly from the applicant (by subscription or otherwise) or from an underwriter of such shares, shall be subject to the restriction that such shares shall not be sold, without written permission of the administrator, for a period of not less than one year following the date of purchase, except in the event of death of the director or executive officer.
- (17) Provide that, in connection with shares of capital stock subject to restriction on sale under Paragraph (16) of this Rule:
 - (a) Each certificate for such stock shall bear a legend giving appropriate notice of the applicable restrictions;
 - (b) Appropriate instructions shall be issued to the transfer agent for the converted savings bank's capital stock with respect to applicable restrictions on transfer of any restricted stock; and
 - (c) Any shares issued as a stock dividend, stock split or otherwise with respect to any restricted stock shall be subject to the same restrictions as may apply to the restricted stock.
- (18) Provide that the converting savings bank shall:
 - (a) use its best efforts to encourage and assist a market maker to establish and maintain a market for the securities issued in connection with the conversion; and
 - (b) use its best efforts to list those shares issued in connection with the conversion on a national or regional securities exchange or on the NASDAQ system.
- (19) Provide that the expenses incurred in the conversion shall be reasonable.
- (20) Contain no provision which the administrator may determine to be inequitable or

detrimental to the applicant, its account holders or other savings banks or to be contrary to the public interest.

- (21) Contain no provision which the administrator finds will harm the community and public served by the savings bank.
- (22) Provide that the converting savings bank shall not loan funds or otherwise extend credit to any person to purchase the capital stock of the converting savings bank.
- (23) Provide that the savings bank may make scheduled discretionary contributions to a tax-qualified employee stock benefit plan provided such contributions do not cause the savings bank to fail to meet its net worth requirements.

Statutory Authority G.S. 54C-33; 54C-53.

.0312 OPTIONAL PROVISIONS IN PLAN OF CONVERSION

The plan of conversion may provide any or all of the following:

- (1) That the applicant may commence the direct community offering or the public offering, or both, concurrently with or at any time during the subscription offering. The subscription offering may be commenced concurrently with or at any time after the mailing to members pursuant to Rule .0607 of this Subchapter of the proxy statement authorized for use by the administrator. The subscription offering may be closed before the meeting of the members held to vote on the plan of conversion, provided that the offer and sale of capital stock shall be conditioned upon the approval of the plan of conversion by the members as provided in Section .0600 of this Subchapter.
- (2) That directors, officers, and employees of the converting association shall receive, without payment, nontransferable subscription rights to purchase shares of capital stock, to the extent that shares are available after satisfying the subscriptions of eligible account holders, supplemental eligible account holders, and voting members provided for under Paragraphs (2), (4) and (5) of Rule .0311 of this Section. The shares shall be allocated among directors, officers, and employees on an equitable basis such as by giving weight to period of service, compensation, and position, subject to the limitation in Paragraph (7) of Rule .0311 of this Section on the amount of shares which may be purchased by any person, associate thereof, or group of affiliated persons or group of persons otherwise acting in concert.

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- (3) That any account holder receiving rights to purchase stock in the subscription offering shall also receive, without payment, nontransferable subscription rights to purchase up to one percent of the total offering of shares of capital stock, to the extent that such shares are available after satisfying the subscriptions provided for under Paragraphs (2), (4), and (5) of Rule .0311 of this Section, subject to such conditions as may be provided in the plan of conversion. In the event of an oversubscription for such additional shares, the shares available shall be allocated among the subscribing eligible account holders, supplemental eligible account holders, and voting members on such equitable basis, related to the amounts of their respective subscriptions, as may be provided in the plan of conversion.
- (4) That the applicant may require members to return by a reasonable date certain a postage-paid written communication provided by the applicant requesting receipt of a subscription offering circular, or a preliminary or final offering circular in an offering pursuant to Paragraph (10) of this Rule, in order to be entitled to receive an offering circular from the applicant; provided, that the subscription offering or the offering pursuant to Paragraph (10) of this Rule shall not be closed until 30 days after the mailing by the applicant to members of the postage-paid written communication. If the subscription offering or the offering pursuant to Paragraph (10) of this Rule is not commenced within 45 days after the meeting of members, any converting savings bank adopting this optional provision shall transmit not more than 30 days prior to the commencement of the subscription offering or the offering pursuant to Paragraph (10) of this Rule to each member who had been furnished with proxy solicitation materials, written notice of the commencement of the offering which notice shall state that the converting savings bank is not required to furnish an offering circular to a member unless the member returns by a reasonable date certain the postage-paid written communication provided by the converting savings bank requesting receipt of an offering circular.
- (5) That the applicant may require eligible account holders and supplemental eligible account holders who are not voting members pursuant to Rule .0608 of this Subchapter to return by a reasonable date certain a postage-paid written communication in accordance with the procedure established in Paragraph (4) of this Rule.
- (6) That any insignificant residue of shares of the converting savings bank not sold in the subscription offering or in a public offering or direct community offering may be sold in such other manner as provided in the plan of conversion with the written consent of the administrator.
- (7) That the number of shares which any person or group of persons affiliated with each other or otherwise acting in concert may subscribe for in the subscription offering may be made subject to a limit of not less than one percent of the total offering of the shares.
- (8) That any person exercising subscription rights to purchase capital stock shall be required to purchase a minimum number of shares but the aggregate price for any minimum share purchase shall not exceed five hundred dollars (\$500.00).
- (9) That the converted savings bank shall issue and sell, in lieu of shares of its capital stock, units of securities consisting of capital stock and long-term warrants or other equity securities, in which event any reference in the provisions of this Subchapter to capital stock shall apply to such units of equity securities unless the context otherwise requires.
- (10) That, instead of a separate subscription offering, all subscription rights issued in connection with the conversion shall be exercisable by delivery of properly completed and executed order forms to the underwriters or selling group for the public offering or pursuant to any other procedure, subject to the applicant demonstrating to the administrator the feasibility of the method of exercising such right and to such conditions as shall be provided in the plan of conversion.
- (11) That the administrator may approve such other equitable provisions as necessary to avert imminent injury to the converting savings bank.
- (12) That the proxy statement required by Rule .0607 of this Subchapter may be in summary form, provided:
- (a) A statement is made in bold-faced type on the summary proxy statement that a more detailed description of the proposed transaction may be obtained by returning an attached postage-paid postcard or other written communication requesting a supplemental information statement which, together with the summary proxy statement, complies with the requirements

of Form PS contained in the Application for Conversion (Form AC).

- (b) The date on which the summary proxy statement is mailed to members will be deemed the date on which notice is given for purposes of Rule .0607 of this Subchapter. Without the prior written consent of the administrator, the meeting of members shall not be held less than 20 days after the date on which the supplemental information statement is mailed to requesting members.
- (c) The supplemental information statement required to be furnished to members pursuant to Subparagraph (a) of this Paragraph may be combined with Form OC, if the subscription offering is commenced concurrently with or during the proxy solicitation period pursuant to Paragraph (f) of this Rule.
- (d) The form of the summary proxy statement has been approved by the administrator.

Statutory Authority G.S. 54C-33; 54C-53.

.0313 RECORD DATES FOR QUALIFYING DEPOSITS

Unless otherwise provided in the plan of conversion, for the purposes of this Section, the amount of the qualifying deposit of an eligible account holder or supplemental eligible account holder shall be the total of the deposit balances in the eligible account holder's or supplemental eligible account holder's deposit accounts in the converting savings bank as of the close of business on the eligibility record date or supplemental eligibility record date. However, the plan of conversion may provide that any deposit accounts with total deposit balances of less than fifty dollars (\$50.00) or any lesser amount shall not constitute a qualifying deposit.

Statutory Authority G.S. 54C-33; 54C-53.

.0314 LIQUIDATION ACCOUNT

(a) Each converted savings bank shall, at the time of conversion, establish a liquidation account in an amount equal to the amount of net worth of the converting savings bank as of the latest practicable date prior to conversion. For the purpose of this Rule, the savings bank shall use the net worth figure set forth in its latest statement of financial condition contained in the final offering circular. The function of the liquidation account is to establish a priority on liquidation and, except as provided in Paragraph (f) of this Rule, the existence of the liquidation account shall not operate to restrict the use or ap-

plication of any of the net worth of the converted savings bank.

(b) The liquidation account shall be maintained by the converted savings bank for the benefit of eligible account holders and supplemental eligible account holders who maintain their deposit accounts in the savings bank. Each eligible account holder and supplemental eligible account holder shall, with respect to each deposit account held, have a related inchoate interest in a portion of the liquidation account balance ("subaccount").

(c) In the event of a complete liquidation of the converted savings bank and only in such event, each eligible account holder and supplemental eligible account holder shall be entitled to receive a liquidation distribution from the liquidation account, in the amount of the then current adjusted subaccount balances for deposit accounts then held, before any liquidation distribution may be made with respect to capital stock, except with respect to preferred stock issued in exchange for the surrender at the time of the conversion of mutual capital certificates issued by the savings bank prior to conversion. Preferred stock issued in exchange for mutual capital certificates may receive distributions in liquidation prior to those with respect to the liquidation account to the same extent that the holders of the mutual capital certificates would have been entitled to priority over the residual rights of depositors had the savings bank not been converted as of the date of liquidation. No merger, consolidation, purchase of bulk assets with assumption of deposit accounts and other liabilities, or similar transactions in which the converted savings bank is not the surviving depository institution is considered to be a complete liquidation for this purpose. In such transactions the liquidation account shall be assumed by the surviving depository institution.

(d) The initial subaccount balance for a deposit account held by an eligible account holder and/or supplemental eligible account holder shall be determined by multiplying the opening balance in the liquidation account by a fraction of which the numerator is the greater of the amount of qualifying deposits in such deposit account on the eligibility record date and/or the supplemental eligibility record date and the denominator is the total amount of qualifying deposits for all eligible account holders and supplemental eligible account holders in the converted savings bank. Such initial subaccount balance shall not be increased and shall be subject to downward adjustment as provided in Paragraph (e) of this Rule.

(e) If the balance in any qualifying deposit account of an eligible account holder or supple-

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mental eligible account holder at the close of business on any annual closing date subsequent to the date of conversion is less than the lesser of the deposit balance in the savings account at the close of business on any other annual closing date subsequent to the conversion date or the amount of qualifying deposit as of the eligibility record date or the supplemental eligibility record date, the subaccount balance for the savings account shall be adjusted by reducing the subaccount balance in an amount appropriate to the reduction in the deposit balance. In the event of a downward adjustment, the subaccount balance shall not be subsequently increased, notwithstanding any increase in the deposit balance of the related savings account. The converted savings bank shall not be required to recompute the liquidation account and subaccount balances provided the converted savings bank maintains records sufficient to make necessary computations in the event of a complete liquidation or such other events as may require a computation of the balance of the liquidation account. The liquidation subaccount of an account holder shall be maintained for as long as the account holder maintains an account with the same Social Security number.

(f) No converted saving bank shall declare or pay a cash dividend on, or repurchase any of, its capital stock if the effect thereof would cause the net worth of the converted savings bank to be reduced below the amount required for the liquidation account.

Statutory Authority G.S. 54C-33; 54C-53.

.0315 MANIPULATIVE AND DECEPTIVE DEVICES

In the offer, sale, or purchase of securities issued incident to its conversion, no savings bank, or any director, officer, attorney, agent or employee thereof shall:

- (1) employ any device, scheme, or artifice to defraud; or
- (2) obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (3) engage in any act, transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser or seller.

Statutory Authority G.S. 54C-33; 54C-53.

.0316 MERGER OF CONVERTED SAVINGS BANKS

When a converted savings bank merges with an existing stock savings institution the resulting savings institution will be treated as a converted savings institution and must comply with the provisions of Rules .0314 and .0315 of this Section and 4 NCAC 16A .0105.

Statutory Authority G.S. 54C-33; 54C-53.

SECTION .0400 - NOTICE OF FILING: PUBLIC STATEMENTS: CONFIDENTIALITY

.0404 INFORMATION PRIOR TO APPROVAL OF PLAN OF CONVERSION

(a) A savings bank which is considering converting pursuant to this Subchapter and its directors, officers, and employees shall keep such consideration in the strictest confidence and shall only discuss the potential conversion as would be consistent with the need to prepare information for filing an application for conversion. Should this confidence be breached the administrator may require remedial measures including:

- (1) a public statement by the savings bank that its board of directors is currently considering converting pursuant to this Subchapter;
- (2) providing for an eligibility record date which shall be as of such a date prior to the adoption of the plan by the converting association's board of directors as to assure the equitability of the conversion;
- (3) limitation of the subscription rights of any person violating or aiding the violation of this Section to an amount deemed appropriate by the administrator; and
- (4) any other action the administrator may deem appropriate and necessary to assure the fairness and equitability of the conversion.

(b) If it should become essential as a result of rumors prior to the adoption of a plan of conversion by the applicant's board of directors, a public statement limited to that purpose may be made by the applicant.

(c) Promptly after the adoption of a plan of conversion by not less than two-thirds of its board of directors, the savings bank shall:

- (1) Notify its members of such action by publishing a statement in a newspaper having general circulation in each community in which an office of the savings bank is located and/or by mailing a letter to each of its members; and
- (2) Have copies of the adopted plan of conversion available for inspection by its members at each office of the savings bank. The savings bank may also issue a press release with respect to such action.

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Copies of the statement, letter, and press release shall be filed with the administrator as a part of the application for conversion.

(d) The statement, letter, and press release, unless otherwise authorized by the administrator, shall be limited to, but need not contain all of, the following:

- (1) a statement that at least two-thirds of the board of directors has adopted a proposed plan to convert the savings bank from mutual to stock ownership;
- (2) a statement that the proposed plan of conversion must be approved by at least a majority of the votes eligible to be cast either in person or by proxy by members at a meeting at which the plan will be submitted for their approval;
- (3) a statement that new proxies will be solicited for voting on the proposed plan of conversion;
- (4) a statement that a proxy statement setting forth more detailed information with respect to the proposed plan of conversion will be sent to members prior to the meeting of members;
- (5) a statement that the proposed plan of conversion is subject to approval by the administrator, before such plan can become effective and that members of the applicant will have an opportunity to file written comments with the administrator, including any objections and materials supporting such objections;
- (6) a statement that the proposed plan of conversion is contingent upon obtaining favorable tax rulings or opinions;
- (7) a statement that there is no assurance that the approval of the administrator will be obtained, and also no assurance that favorable tax rulings or tax opinions will be received;
- (8) the proposed record date for determining the eligible account holders entitled to receive nontransferable subscription rights to purchase capital stock of the applicant;
- (9) a brief statement describing the circumstances that would require supplemental eligible account holders to receive nontransferable subscription rights to purchase capital stock of the applicant;
- (10) a brief statement as to the extent to which voting members will participate in the conversion;
- (11) a brief description of the proposed plan of conversion;
- (12) the approximate number of shares of capital stock to be issued and sold under the proposed plan of conversion;

(13) a brief statement as to the extent to which directors, officers, and employees will participate in the conversion;

(14) a statement that savings account holders will continue to hold accounts in the converted savings bank identical as to dollar amount, rate of return, and general terms, and that their accounts will continue to be insured by the Federal Deposit Insurance Corporation;

(15) a statement that borrower's loans will be unaffected by conversion, and that the amount, rate, maturity, security and other conditions will remain contractually as they existed prior to conversion;

(16) a statement that the normal business of the savings bank in accepting deposits and making loans will continue without interruption; that the converted savings bank will continue after conversion to conduct its present services to savings account holders and borrowers under current policies to be carried on in existing offices and by the present management and staff;

(17) a statement that the proposed plan of conversion may be substantively amended by the board of directors as a result of comments from the regulatory authorities or otherwise prior to the meeting, and that the proposed plan may also be terminated by the board of directors; and

(18) a statement that questions of members will be answered in the proxy material to be sent after the regulatory approvals of the proposed plan of conversion have been obtained and that any questions at this time may be answered by telephoning or writing to the savings bank.

(e) Such statement, letter, and press release shall not in any manner solicit proxies, include financial statements, or describe the benefits of conversion or the value of the capital stock of the savings bank upon conversion. In replying to inquiries, the savings bank should limit its answers to the matters listed in Paragraph (d) of this Rule.

Statutory Authority G.S. 54C-33; 54C-53.

.0405 NOTICE OF FILING

(a) Upon determination that an application for conversion is properly executed and is not materially incomplete, the administrator will advise the applicant, in writing, to publish a notice of the filing of the application. Promptly after receipt of such advice, the applicant shall prominently post the notice in each of its offices and publish a notice of such filing in a newspaper having general circulation in each community in

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which an office of the applicant is located, as follows:

NOTICE OF FILING OF AN APPLICATION FOR CONVERSION TO A STOCK SAVINGS BANK

Notice is hereby given that, pursuant to General Statute 54C-33,

(fill in name of applicant) has filed an application with the administrator of the Savings Institutions Division for approval to convert to the stock form of organization. Copies of the application have been delivered to the Savings Institutions Division, 1110 Navaho Drive, Suite 301, Raleigh, North Carolina, 27609.

Written comments, including any objections to the plan of conversion and materials supporting such objections, from any member of the applicant or any aggrieved person will be considered by the administrator if filed within 10 business days after the date of this notice. Failure to make such written comments or objections may preclude the pursuit of any administrative or judicial remedies. Any comments or objections should be sent to the administrator at the address noted above. The proposed plan of conversion and any comments thereon will be available for inspection by any member of the applicant at the office of the administrator. A copy of the plan may also be inspected at each office of the applicant.

(b) If a significant number of the applicant's members speak a language other than English and a newspaper in that language is published in the area served by the applicant, an appropriate translation of the notice shall also be published in that newspaper.

(c) Promptly after publication of the notice prescribed in Paragraph (a) of this Rule, the applicant shall file a copy of the notice with the administrator. The applicant shall also file a copy of an affidavit of publication from each newspaper publisher.

Statutory Authority G.S. 54C-33; 54C-53.

SECTION .0500 - SOLICITATION OF PROXIES: PROXY STATEMENT

.0509 SOLICITATIONS TO WHICH RULES APPLY

This Section applies to every solicitation of a proxy from a member of a savings bank for the meeting at which a plan of conversion will be voted upon, except the following:

- (1) any solicitation made otherwise than on behalf of the management of the savings bank where the total number of persons solicited is not more than 50;
- (2) any solicitation through the medium of a newspaper advertisement which informs members, following approval of the plan of conversion, of a source from which they may obtain copies of a proxy statement, form of proxy, or any other solicitation material and does no more than:
 - (a) name the savings bank,
 - (b) state the reason for the advertisement,
 - (c) identify the proposal or proposals to be acted upon by members, and
 - (d) urge members to vote at the meeting.

Statutory Authority G.S. 54C-33; 54C-53.

.0510 USE OF PROXY SOLICITING MATERIAL TO BE AUTHORIZED

No proxy solicitation material required to be filed with the administrator prior to use shall be furnished to members or otherwise released for distribution until the use of such material has been authorized in writing by the administrator. Proxy material authorized for use by the administrator shall be mailed to the members within 10 days of such authorization unless extended by the administrator in writing.

Statutory Authority G.S. 54C-33; 54C-53.

.0511 INFORMATION TO BE FURNISHED MEMBERS

No solicitation shall be made unless each person solicited is concurrently furnished, or has previously been furnished, a written proxy statement the use of which has been authorized in writing by the administrator.

Statutory Authority G.S. 54C-33; 54C-53.

.0512 REQUIREMENTS AS TO PROXY

- (a) The form of proxy shall:
 - (1) indicate in bold face type whether the proxy is solicited on behalf of management;
 - (2) provide specifically designated blank spaces for dating and signing the proxy;
 - (3) identify clearly and impartially each matter or group of related matters intended to be acted upon;

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- (4) be clearly labeled "Revocable Proxy" in bold face type of at least 18 point;
- (5) describe any charter or state law requirement restricting or conditioning voting by proxy;
- (6) contain an acknowledgement by the person giving the proxy that the person has received a proxy statement prior to signing the form of proxy;
- (7) contain the date, time, and place of meeting, if practicable;
- (8) provide, by a box or otherwise, a means whereby the person solicited is afforded an opportunity to specify by ballot a choice between approval or disapproval of each matter intended to be acted upon; and
- (9) indicate in bold face type how the proxy shall be voted on each such matter if no choice is specified.

(b) No proxy obtained pursuant to the conversion shall confer authority to vote at any meeting other than the meeting, or any adjournment thereof, to vote on the plan of conversion. A proxy may be deemed to confer authority to vote with respect to matters incident to the conduct of such meeting. If the plan of conversion is considered at an annual meeting, existing proxies may be voted with respect to matters not related to the plan of conversion.

(c) The proxy statement or form of proxy shall provide that the votes represented by the proxy will be voted. Where the person solicited specifies by means of a ballot provided pursuant to Subsection (a)(8) of this Rule a choice with respect to any matter to be acted upon, the votes will be voted in accordance with the specifications. If no choice is specified, the votes will be cast as indicated in bold face type on the form of proxy.

(d) Notwithstanding any other provisions of this Rule, the proxy may be in a form previously obtained from a voting member and conferring general authority to vote on any and all matters at any meeting of the members or other authority to vote on matters to be presented at the special meeting; provided, that such voting member has been furnished a proxy statement and the voting member does not grant a later-dated proxy to vote at the meeting to consider the plan of conversion or attend the meeting and vote in person.

Statutory Authority G.S. 54C-33; 54C-53.

.0513 MATERIAL REQUIRED TO BE FILED

(a) Applicants shall file a preliminary copy of the proxy materials required by Form AC.

(b) A preliminary copy of any additional solicitation material including press releases and

radio or television scripts, to be used or furnished to members subsequent to furnishing the proxy statement, shall be filed with the administrator at least five business days prior to the date on which the administrator is requested to authorize the use of such material. Speeches may, but need not, be filed with the administrator prior to use.

(c) A copy of the proxy statement and a copy of the form of proxy and all other solicitation material, in the form in which such material is furnished to members, shall be filed with or mailed for filing to the administrator not later than the date such material is first sent or given to members. All materials filed pursuant to this Paragraph shall be accompanied by a statement of the date on which copies of such materials are to be released to members.

(d) If the solicitation is to be made in whole or in part by personal solicitation, a preliminary copy of all written instructions or other material which discusses or reviews, or comments upon the merits of, any matter to be acted upon and which is to be furnished to the individuals making the actual solicitation for their use directly or indirectly in connection with the solicitation shall be filed with the administrator at least five business days prior to the date on which the administrator is requested to authorize the use of such material.

(e) All preliminary copies of material filed pursuant to Paragraphs (a), (b), and (d) of this Rule shall be clearly marked on the cover page "Preliminary Copy." Such preliminary copies shall be for the information of the administrator only and shall not be deemed available for public inspection except that such material may be disclosed to any department or agency of the United States government or appropriate state agency. The administrator may make such inquiries or investigation in regard to the material as may be necessary for an adequate review.

(f) Unless requested by the administrator, copies of replies to inquiries from members and copies of communications which do no more than request that forms of proxy theretofore solicited be signed and returned need not be filed pursuant to this Rule.

(g) Where any proxy statement, form of proxy or other material filed pursuant to this Rule is amended or revised, a copy of such amended or revised material filed with the administrator shall be marked to indicate clearly and precisely the changes effected subsequent to the previous filing.

Statutory Authority G.S. 54C-33; 54C-53.

.0514 MAILING COMMUNICATIONS FOR MEMBERS

PROPOSED RULES

If the applicant has adopted a plan of conversion, the applicant shall perform such of the following acts as may be duly requested in writing with respect to a matter to be considered at the meeting to vote on the plan of conversion by any member who will defray the reasonable expenses to be incurred by the applicant in the performance of the act or acts requested:

- (1) The applicant shall mail or otherwise furnish to such member the following information as promptly as practicable after the receipt of such request:
 - (a) a statement of the approximate number of members who have been or are to be solicited on behalf of management, or any group of members which the member shall designate;
 - (b) an estimate of the cost of mailing a specified proxy statement, form of proxy, or other communication to such members.
- (2) Copies of any proxy statement, form of proxy, or other communication furnished by the member and as approved by the administrator shall be mailed by the applicant to such of the members specified in Paragraph (1)(a) of this Rule as the member may designate.
- (3) Any such material which is furnished by the member shall be mailed with reasonable promptness by the applicant after receipt of the material to be mailed, including envelopes or other containers, and the appropriate postage or payment for postage.
- (4) Neither management nor the applicant shall be responsible for such proxy statement, form of proxy, or other communication.

Statutory Authority G.S. 54C-33; 54C-53.

.0515 FALSE OR MISLEADING STATEMENTS

(a) No solicitation of a proxy by the applicant, its management, or any other person for the meeting to vote on the plan of conversion shall be made by means of any proxy statement, form of proxy, notice of meeting, or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the meeting which has become false or misleading.

(b) The fact that a proxy statement, form of proxy, or other solicitation material has been filed with or examined by the administrator and authorized for use shall not be deemed a finding

by the Administrator that such material is accurate or complete or not false or misleading, or that the administrator has passed upon the merits of or approved any proposal contained therein. No representation to the contrary shall be made by any person.

(c) If a solicitation by management violates any provision of this Rule, the administrator may require remedial measures including:

- (1) correction of any such violation by means of a retraction and new solicitation,
- (2) rescheduling of the meeting for a vote on the plan of conversion, and
- (3) any other actions the administrator may deem appropriate under the circumstances in order to ensure a fair vote.

Statutory Authority G.S. 54C-33; 54C-53.

.0516 PROHIBITION OF CERTAIN SOLICITATIONS

No person soliciting a proxy from a member for the meeting to vote on the plan of conversion shall solicit:

- (1) any updated or post-dated proxy; or
- (2) any proxy which provides that it shall be deemed to be dated as of any date subsequent to the date on which it is signed by the members; or
- (3) any proxy which is not revocable at will by the member giving it; or
- (4) any proxy which is part of any other document or instrument, such as an account card.

Statutory Authority G.S. 54C-33; 54C-53.

SECTION .0600 - VOTE BY MEMBERS

.0606 VOTE AT MEMBERS MEETING

Following approval of the plan of conversion by the administrator, the plan of conversion shall be submitted for consideration to an annual or special meeting of members.

Statutory Authority G.S. 54C-33; 54C-53.

.0607 NOTICE TO MEMBERS

Notice of the meeting to consider a plan of conversion shall be given by means of the proxy statement authorized for use by the administrator.

Statutory Authority G.S. 54C-33; 54C-53.

.0608 ELECTIVE NOTICE TO NON-VOTING ACCOUNT HOLDERS

The applicant may give notice in accordance with this Subchapter of the proposed conversion and the meeting of the members by letter or

other written communication authorized for use by the administrator to eligible account holders and supplemental account holders who are not voting members.

Statutory Authority G.S. 54C-33; 54C-53.

SECTION .0700 - PRICING AND SALE OF SECURITIES

.0712 GENERAL

(a) No offer to sell securities of an applicant pursuant to a plan of conversion may be made prior to approval by the administrator of the plan of conversion and until the proxy statement has been authorized for use by the administrator. No sale of securities may be made except by means of a final offering circular which meets the requirements of this Section and which has been declared effective by the administrator. The provisions of this Rule shall not apply to preliminary negotiations or agreements between an applicant and any underwriter or among underwriters who are to be in privity of contract with the applicant.

(b) If the financial statements in a filing are in excess of 135 days prior to the date of the administrator's approval of the plan of conversion, an interim financial statement as of a date within 135 days of such approval shall be furnished. This interim financial statement shall be at least as current as the most recent quarterly financial statement filed with the administrator. This interim financial statement may be unaudited.

Statutory Authority G.S. 54C-33; 54C-53.

.0713 DISTRIBUTION OF OFFERING MATERIALS

Any preliminary offering circular which has been filed with the administrator may be distributed in connection with the offering at the same time as or after the proxy statement is mailed to members pursuant to Rule .0607 of this Subchapter. No final offering circular shall be distributed until it has been declared effective by the administrator. The declaration of the effectiveness of the final offering circular by the administrator shall not extend beyond the maximum time period specified for the completion of the sale of all the capital stock in Rule .0721 of this Section, or beyond such period of time the administrator shall establish upon a subsequent declaration of effectiveness in the event of the granting of an extension of time under Rule .0723 of this Section.

Statutory Authority G.S. 54C-33; 54C-53.

.0714 ESTIMATED PRICE INFORMATION:

PROXY STATEMENTS

If the offering is to commence prior to the meeting of the members held to vote on the plan of conversion, the proxy statement authorized for use by the administrator shall set forth the estimated price range. Any preliminary offering circular shall set forth the estimated price range. The maximum of such price range should normally be not more than fifty dollars (\$50.00) per share or 15 percent above the average of the minimum and maximum of such price range and the minimum should normally be no less than five dollars (\$5.00) per share or no more than 15 percent below such average.

Statutory Authority G.S. 54C-33; 54C-53.

.0715 PROHIBITED REPRESENTATIONS

The administrator will review the price information required under this Section in determining whether to give approval to the plan of conversion when the offering is to commence prior to the meeting of the members, and the administrator will review the information in determining whether to declare a final offering circular effective. No representations may be made in any manner that the price information has been approved by the administrator or that the shares of capital stock sold pursuant to the plan of conversion have been approved or disapproved by the administrator or that the administrator has passed upon the accuracy or adequacy of any offering circular covering such shares.

Statutory Authority G.S. 54C-33; 54C-53.

.0716 UNDERWRITING EXPENSES

Underwriting commissions shall not exceed an amount or percentage per share accepted as reasonable by the administrator. The term "underwriting commissions" includes underwriting discounts.

Statutory Authority G.S. 54C-33; 54C-53.

.0717 PRICING MATERIALS

(a) In considering the pricing information required under Rule .0714 of this Section, the administrator will apply the following guidelines:

- (1) The materials shall be prepared by persons independent of the applicant who are experienced and expert in the area of corporate appraisal.
- (2) The materials shall contain a brief summary of data that is sufficient to support the conclusions reached therein.
- (3) To the extent that the appraisal is based on the capitalization of the pro forma income of the converted savings bank, the

materials must indicate the basis for determination of the income to be derived from the proceeds of the sale of stock and demonstrate the appropriateness of the earnings multiple used, including assumptions made as to future earnings growth. To the extent that the appraisal is based on a comparison of the capital stock of the applicant with the outstanding capital stock of existing stock savings banks, the existing stock savings banks must be reasonably comparable to the applicant in terms of such factors as size, market area, competitive conditions, profit history, and expected future earnings.

(b) In addition to the information required in Paragraph (a) of this Rule, the applicant shall submit information demonstrating to the satisfaction of the administrator the independence and expertise of any person preparing materials under this Rule and the person must be acceptable in these respects to the administrator. A person will not be considered as lacking independence for the reason that such person will participate in effecting a sale of capital stock under the plan of conversion or will receive a fee from the applicant for services rendered in connection with such appraisal.

(c) In addition to the information required in Paragraphs (a) and (b) of this Rule, the applicant shall file with the administrator such additional information with respect to the pricing of the capital stock of the applicant as the administrator may request, including, without limitation, a full appraisal.

Statutory Authority G.S. 54C-33; 54C-53.

.0718 ORDER FORMS FOR PURCHASE OF CAPITAL STOCK

(a) Promptly after the administrator has declared effective the offering circular for the subscription offering, the applicant shall distribute order forms for the purchase of shares of capital stock in the offering to all eligible account holders, supplemental eligible account holders (if applicable), voting members and other persons who may subscribe for such shares of capital stock under the plan of conversion. If the applicant has adopted in its plan of conversion the optional provisions set forth in Paragraphs (4), (5) or (10) of Rule .0312 of this Subchapter, the applicant shall deliver order forms to the eligible account holders, supplemental eligible account holders and voting members who requested receipt of the offering circular.

(b) Each order form shall be accompanied or preceded by the final offering circular for the subscription offering or the public offering, as the

case may be, and a set of detailed instructions explaining how to properly complete the order forms. The offering circular and order form instructions may be included in the same document.

(c) The maximum subscription price stated on each order form shall be the amount to be paid when the order form is returned. The maximum subscription price and the actual subscription price shall be within the subscription price range stated in the administrator's approval and the offering circular. If either the maximum subscription price or the actual subscription price is not within such subscription price range, the applicant must obtain the written consent of the administrator. If appropriate, the administrator will condition the amended approval by requiring a resolicitation of proxies and/or order forms. If the actual public offering price is less than the maximum subscription price stated on the order form, the actual subscription price shall be correspondingly reduced and the difference shall be refunded to those who have paid the maximum subscription price, unless the subscribers affirmatively elect to have the difference applied to the purchase of additional shares of capital stock.

(d) Each order form shall be prepared so as to indicate to the person receiving it, in as simple, clear, and intelligible a manner as possible, the actions which are required or available to him with respect to the form and the capital stock offered for purchase thereby. Specifically, each order form shall:

- (1) indicate the maximum number of shares which may be purchased pursuant to the subscription offering;
- (2) indicate the period of time within which the subscription rights must be exercised, which period of time shall not be less than 20 days and no more than 45 days following the date of the mailing of the subscription offering order form;
- (3) state the maximum subscription price per share of capital stock;
- (4) indicate any requirements as to the minimum number of shares of capital stock which must be purchased;
- (5) provide a specifically designated blank space or spaces for indicating the number of shares of capital stock which the eligible account holder or other person wishes to purchase;
- (6) indicate the manner of required payment and, if such payment may be made by withdrawal from a certificate of deposit, indicate that such withdrawal may be made without penalty. If payment is to be made by a withdrawal from a deposit

account or certificate of deposit, a box to check should be provided;

- (7) provide specifically designated blank spaces for dating and signing the order form;
- (8) contain an acknowledgement by the account holder or other person signing the order form that the person has received the final offering circular for the subscription offering prior to signing the order form; and
- (9) indicate the consequences of failing to properly complete and return the order form, including a statement that the subscription rights are nontransferable and will become void at the end of the subscription period. The order form may, and the set of instructions shall, indicate the place or places to which the order forms are to be returned and when the order forms shall be deemed to be received.

(c) The order form may provide that it may not be modified without the applicant's consent after the order form has been returned to the applicant. If payment is to be made by withdrawal from a deposit account or certificate of deposit, the applicant may, but need not, cause such withdrawal to be made upon receipt of the order form. If such withdrawal is made at any time prior to the closing date of the public offering, the applicant shall pay interest to the account holder on the amount withdrawn as if such amount had remained in the account from which it was withdrawn until the closing date.

Statutory Authority G.S. 54C-33; 54C-53.

.0719 WITHDRAWAL FROM CERTIFICATE ACCOUNTS

Notwithstanding any regulatory provision regarding penalties for early withdrawal from certificate accounts, the applicant may allow payment for capital stock pursuant to the exercise of subscription rights by withdrawal from a certificate account without the assessment of such penalties. In the case of early withdrawal of only a portion of such account, the certificate evidencing such account shall be cancelled if the applicable minimum balance requirement ceases to be met. The remaining balance will earn interest at the passbook rate.

Statutory Authority G.S. 54C-33; 54C-53.

.0720 PERIOD FOR COMPLETION OF SALE

The sale of all shares of capital stock of the applicant to be made under the plan of conversion, including any sale in a public offering or direct

community marketing, shall be completed as promptly as possible and within 45 calendar days after the last day of the subscription period, unless extended in writing by the administrator.

Statutory Authority G.S. 54C-33; 54C-53.

.0721 INTEREST; SUBSCRIPTION/ COMMUNITY PURCHASE ORDERS

The applicant shall pay interest at not less than the passbook rate on all amounts paid in cash or by check or money order to the savings bank to purchase shares of capital stock in the subscription offering or direct community offering from the date payment is received by the applicant until the conversion is completed or terminated.

Statutory Authority G.S. 54C-33; 54C-53.

.0722 EXTENSIONS OF TIME TO COMPLETE OFFERINGS

(a) The administrator may grant one or more extensions of time required to complete the sale of all shares of capital stock under Rule .0721 of this Section, provided that no single extension of time shall exceed 90 days.

(b) Immediately upon the granting of an extension of time pursuant to Paragraph (a) of this Rule, the applicant shall distribute to each subscriber in the offering, and, if applicable, each person who has ordered stock in the direct community offering, a post-effective amendment to the offering circular filed under an amendment to the application for conversion and declared effective by the administrator pursuant to Paragraph (d) of this Rule which shall notify each subscriber and each ordering person of the granting of the extension of time, and of the right of each subscriber and each ordering person to increase, decrease, or rescind his subscription either at any time prior to 20 days before the end of the extension period or at any time prior to the date of the commencement of the public offering or the direct community offering, provided that if the public offering or the direct community offering is not completed within 20 days after its commencement, all instructions from subscribers and ordering persons to increase, decrease or rescind their subscriptions or orders received during the 20-day offering period shall be honored by the applicant.

(c) For the purpose of this Rule, the public offering shall be deemed to commence upon the filing with the administrator of the preliminary offering circular for the public offering. The direct community offering shall be deemed to commence upon the declaration of effectiveness by the administrator of the final offering circular.

(d) After the expiration of the subscription rights, the converting savings bank shall file with and have declared effective by the administrator a post-effective amendment to the offering circular upon the occurrence of any event, circumstance, or change of circumstance which would be material to the investment decision of a subscriber or, if applicable, a person who has ordered capital stock in the direct community offering.

(e) Any post-effective amendment to an offering circular shall be distributed by the converting savings bank immediately after the declaration of effectiveness. It shall be distributed to each subscriber, and, if applicable, each person who has ordered stock in the direct community offering. The converting savings bank shall grant to each subscriber and ordering person the right to increase, decrease, or rescind his subscription or order for a period which shall be the greater of 10 days from the date of the mailing of the post-effective amendment or the period remaining in an extension of time granted by the administrator pursuant to the provisions of Paragraph (b) of this Rule.

Statutory Authority G.S. 54C-33; 54C-53.

SECTION .0800 - PROCEDURAL REQUIREMENTS

.0822 IMPROPERLY EXECUTED OR MATERIALLY INCOMPLETE FILINGS

(a) Any application for conversion that is improperly executed shall not be accepted for filing and shall be returned to the applicant.

(b) Subject to the provisions of Paragraph (c) of this Rule, any application for conversion that does not contain copies of a plan of conversion, a preliminary proxy statement with signed financial statements, and a preliminary form of proxy, shall not be accepted for filing and shall be returned to the applicant. Any application for conversion containing a materially incomplete plan of conversion, proxy statement, or form of proxy may be returned to the applicant.

(c) Any application for conversion which contains, at a minimum, a materially complete plan of conversion shall be accepted for filing if the application is accompanied by the written request of the applicant that the application not be reviewed by the administrator until the applicant requests and the administrator consents to the filing of the additional materials set forth in Paragraph (b) of this Rule.

Statutory Authority G.S. 54C-33; 54C-53.

.0823 ADDITIONAL FILING REQUIREMENTS

An applicant whose plan of conversion has been approved by the administrator shall fulfill the following requirements:

(1) The applicant shall file with the administrator promptly after the meeting of members called to consider the plan of conversion a certified copy of each resolution adopted at the meeting relating to the plan of conversion, together with the following information:

- (a) the total number of votes eligible to be cast,
- (b) the total number of votes represented in person or by proxy at the meeting,
- (c) the total number of votes cast in favor of an against each such matter, and
- (d) the percentage of votes necessary to approve each such matter.

The compilation of the votes cast at the meeting may be prepared by an independent public accountant or by an independent transfer agent.

(2) The applicant shall file with the administrator, promptly after the meeting of members called to consider the plan of conversion, an opinion of counsel to the effect that:

- (a) the meeting of members was duly held in accordance with all requirements of applicable state and federal law and regulation;
- (b) all requirements of state and federal law applicable to the conversion have been complied with; and
- (c) if the savings bank has used proxies executed prior to the proxy solicitation required by Rule .0511 of this Subchapter, the authority conferred by such proxies includes authority to vote on this plan of conversion.

(3) Each offering circular for the offering shall be prepared in compliance with this Subchapter. The applicant shall file with the administrator a copy of each preliminary offering circular and a copy of each final offering circular.

Statutory Authority G.S. 54C-33; 54C-53.

.0824 NUMBER OF COPIES, PLACE OF FILING, BINDING, SIGNATURES

(a) Every application and every amendment thereto filed shall be manually signed by:

- (1) a duly authorized representative of the applicant on its behalf,
- (2) its principal executive officer,
- (3) its principal financial officer,
- (4) its principal accounting officer, and
- (5) at least two-thirds of its directors.

(b) If any name is signed to an application or any amendment thereto pursuant to a power of attorney, a manually signed copy of such power of attorney shall be filed with the application.

(c) Except as provided in Paragraph (d) of this Rule, the filing of any application or amendment thereto under this Subchapter shall constitute a representation of the applicant by its duly authorized representative, the applicant's principal executive officer, the applicant's principal financial officer, and the applicant's principal accounting officer, and each member of the applicant's board of directors (whether or not such directors has signed the application or any amendment thereto) severally that:

- (1) He or she has read such application or amendment;
- (2) In the opinion of each such person, he or she has made such examination and investigation as is necessary to enable him or her to express an informed opinion that such application or amendment complies, to the best of his or knowledge and belief, with the applicable requirements of this Subchapter and forms prescribed hereunder; and
- (3) Each such person holds such informed opinion.

(d) The representations specified in Paragraph (c) of this Rule shall not be deemed to have been made by any director of the applicant who did not sign the application or any amendment thereto, if an only to the extent that such director files with the administrator within 10 business days after the filing of the application or amendment a statement describing those portions of any filing with which there is no such representation.

Statutory Authority G.S. 54C-33; 54C-53.

.0825 REQUIREMENTS AS TO PAPER AND PRINTING

(a) Applications shall be filed on good quality, unglazed, white paper approximately 8-1/2 by 13 or 8-1/2 by 11 inches in size, insofar as practicable. However, tables, charts, maps, and financial statements may be on larger paper if folded to such sizes. Plan of conversion, proxy statement, and offering circular may be on smaller paper if the applicant so desires.

(b) Applications and, insofar as practicable, all papers and documents filed as part thereof shall be printed, lithographed, mimeographed, or typewritten. However, applications or any portion thereof may be prepared by any similar process which, in the opinion of the administrator, produces copies suitable for a permanent re-

cord. Irrespective of the process used, all copies of any such material shall be clear, easily readable, and suitable for repeated photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies.

Statutory Authority G.S. 54C-33; 54C-53.

.0826 METHOD OF PREPARATION

Every application shall furnish information in item-and-answer form in response to the items of the appropriate form and shall include the captions of the form but omit the text of all items and instructions. Every proxy statement and offering circular shall present information as provided in Rule .0829 of this Section in response to the items of the appropriate form in lieu of furnishing the information in item-and-answer form and shall omit the captions and text of all items and instructions. Every application shall include a cross reference sheet showing the location in the proxy statement and offering circular of the response to the items of the appropriate form. If any such item is inapplicable or the answer thereto is in the negative and is omitted, a statement to that effect shall be made in the cross reference sheet.

Statutory Authority G.S. 54C-33; 54C-53.

.0827 INFORMATION UNKNOWN OR NOT REASONABLY AVAILABLE

Required information need be given only insofar as it is known or reasonable available to the applicant. If any required information is unknown and not reasonably available to the applicant, either because obtaining it would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the applicant, the information may be omitted, subject to the following conditions:

- (1) The applicant shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense, together with the source thereof;
- (2) The applicant shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.

Statutory Authority G.S. 54C-33; 54C-53.

.0828 INCORPORATION OF CERTAIN INFORMATION BY REFERENCE

PROPOSED RULES

(a) Where an item in an application calls for information not required to be included in the proxy statement or offering circular, matter contained in any part of the application, including exhibits, may be incorporated by reference in answer, or partial answer, to such items. No information may be incorporated by reference in a proxy statement or offering circular, unless the document containing such information is attached thereto or is summarized or outlined. However, an offering circular may incorporate by reference the information contained in a proxy statement previously delivered without need of summary or outline.

(b) Material incorporated by reference shall be clearly identified in the reference. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the application where the information is required. Matter shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear, or confusing.

Statutory Authority G.S. 54C-33; 54C-53.

.0829 PRESENTATION OF INFORMATION

(a) The information required in a proxy statement or offering circular need not follow the order of the items or other requirements in the appropriate form. Such information shall not, however, be set forth in any fashion which obscures any of the required information or any information necessary to keep the required information from being incomplete or misleading. Where an item requires information to be given in tabular form, it shall be given in substantially the tabular form specified in the item.

(b) All information contained in a plan of conversion, proxy statement, or offering circular shall be set forth under appropriate captions or headings reasonable indicative of the principal subject matters set forth thereunder. Except as to financial statements and other tabular data, all information set forth in any form under this Subchapter shall be divided into reasonably short paragraphs or sections.

(c) Every proxy statement and offering circular shall include in the forepart a reasonably detailed table of contents showing the subject matter of its various sections or subdivisions and the page number on which each such section or subdivision begins.

(d) All information required to be included in a proxy statement or offering circular shall be clearly understandable without the necessity of referring to the particular form or to the regulations under this Subchapter. Except as to financial statements and information required in

tabular form, the information set forth in a proxy statement or offering circular may be expressed in condensed or summarized form.

(e) Financial statements are to be set forth in comparative form and shall include the notes thereto and the accountant's certificate or certificates.

Statutory Authority G.S. 54C-33; 54C-53.

.0830 CONSENTS OF EXPERTS

(a) If any accountant, attorney, investment banker, appraiser, or other persons whose professions give authority to a statement made in any application under this Subchapter is named as having prepared, received, passed upon, or certified any part thereof, or any report or valuation for use in connection therewith, the written consent of such person shall be filed with the application. If any portion of a report of an expert is quoted or summarized as such in any filing under this Subchapter, the written consent of the expert shall expressly state that the expert consents to such quotation or summarization.

(b) All written consents filed pursuant to this Rule shall be dated and signed manually. A list of such consents shall be filed with the application. Where the consent of the expert is contained in the report, a reference shall be made in the list to the report containing such consent.

Statutory Authority G.S. 54C-33; 54C-53.

.0831 CONSENTS OF PERSONS ABOUT TO BECOME DIRECTORS

If any person who has not signed an application is named in the proxy statement or offering circular as a potential director, the written consent of such person shall be filed with the appropriate form.

Statutory Authority G.S. 54C-33; 54C-53.

.0832 AMENDMENTS

All amendments to any application under this Subchapter shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which they are filed, and shall conform to all pertinent regulations applicable to the type of application which they amend.

Statutory Authority G.S. 54C-33; 54C-53.

.0833 POST-CONVERSION REPORTS

The applicant shall file such post-conversion reports concerning its conversion as the administrator may require.

PROPOSED RULES

Statutory Authority G.S. 54C-33; 54C-53.

SECTION .0900 - ACQUISITIONS OF SECURITIES OF CONVERTED ASSOCIATIONS

.0908 DEFINITIONS

(a) For the purpose of this Section, the term "offer" includes every offer to buy or acquire, solicitation of an offer to sell, tender offer for, or request or invitation for tenders of, a security or interest in a security for value.

(b) For the purpose of this Section, the term "person" means an individual, a group acting in concert, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization or similar company.

(c) Without limitation on the generality of its meaning, the term "security" includes nontransferable subscription rights issued pursuant to a plan of conversion.

(d) For purposes of this Section, the term "acquire" includes every type of acquisition, whether affected by purchase, exchange, operation of law, or otherwise.

Statutory Authority G.S. 54C-33; 54C-53.

.0909 PROHIBITED TRANSFERS

Prior to completion of a conversion, no person shall transfer or enter into any agreement or understanding to transfer the legal or beneficial ownership of conversion subscription rights or the underlying securities to the account of another.

Statutory Authority G.S. 54C-33; 54C-53.

.0910 PROHIBITION OF OFFERS AND CERTAIN ACQUISITIONS

Prior to completion of a conversion, no person shall make any offer, or any announcement of an offer, for any security of the converting savings bank issued in connection with the conversion nor shall any person knowingly acquire securities of the converted savings bank issued in connection with the conversion in excess of the maximum purchase limitations established in the approved plan of conversion.

Statutory Authority G.S. 54C-33; 54C-53.

.0911 EXCEPTIONS

(a) Rules .0909 and .0910 of this Section shall not apply to a transfer, agreement, or understanding to transfer, offer, or announcement of an offer or intent to make an offer which:

- (1) pertains only to securities to be purchased pursuant to Paragraph (6) of Rule .0311 and Paragraphs (6) and (11) of Rule .0312 of this Subchapter; and

(2) has the prior written approval of the administrator.

(b) Rule .0910 of this Section shall not apply to any offer with a view toward public resale made exclusively to the savings bank or its underwriters or selling group acting on the savings bank's behalf.

Statutory Authority G.S. 54C-33; 54C-53.

.0912 CRITERIA FOR DENIAL

The administrator shall not approve an application involving an offer for, or an announcement thereof, or an acquisition of any security of a converted savings bank submitted under 4 NCAC 16A .0105(d) if it finds that such offer frustrates the purpose of the provisions of this Subchapter, is manipulative or deceptive, subverts the fairness of the conversion, is likely to result in injury to the savings bank, or is otherwise violative of law or regulation.

Statutory Authority G.S. 54C-33; 54C-53.

SECTION .1200 - CONVERSION: MERGERS: ACQUISITIONS

.1203 CONVERSION IN CONNECTION WITH ACQUISITION

A savings bank may convert to the stock form as part of a transaction whereby an existing holding company acquires all its stock. The eligible account holders, supplemental eligible account holders, and voting members of the converting savings bank shall receive, without payment, the same nontransferable rights to purchase the capital stock of the existing holding company, as they would have to purchase capital stock of the converting savings bank in a standard conversion under the provisions of this Subchapter. Unless clearly inapplicable, all of the requirements of this Subchapter shall apply to a conversion under this Rule.

Statutory Authority G.S. 54C-33; 54C-53; 54C-195.

.1204 CONVERSION IN CONNECTION WITH MERGER

A savings bank may convert to the stock form by merging with an existing stock depository institution as part of a transaction in which the equity securities of the existing stock depository institution or its holding company are issued. The eligible account holders, supplemental eligible account holders, and voting members of the converting savings bank shall receive, without payment, the same nontransferable rights to purchase the capital stock of the existing stock depository institution, or its holding company,

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as they would have to purchase capital stock of the converting savings bank in a standard conversion under the provisions of this Subchapter. Unless clearly inapplicable, all of the requirements of this Subchapter shall apply to a conversion under this Rule.

Statutory Authority G.S. 54C-33; 54C-53; 54C-195.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Facility Services, Medical Care Commission intends to adopt rule(s) cited as 10 NCAC 3W .0101, .0201.

The proposed effective date of this action is March 1, 1992.

The public hearing will be conducted at 9:30 a.m. on December 6, 1991 at the Council Building, Room 201, 701 Barbour Drive, Raleigh, NC 27603. (Dorothea Dix Campus)

Reason for Proposed Action: To establish accreditation standards for facilities that provide mammogram and pap smear screening pursuant to House Bill 347.

Comment Procedures: Written comments should be submitted to Jackie Sheppard, 701 Barbour Drive, Raleigh, North Carolina 27603 by December 5, 1991. Oral comments may be given at the hearing.

Editor's Note: These Rules have been filed as temporary rules effective October 11, 1991 for a period of 141 days to expire on February 29, 1992.

CHAPTER 3 - DIVISION OF FACILITY SERVICES

SUBCHAPTER 3W - MAMMOGRAM AND PAP SMEAR CERTIFICATION

SECTION .0100 - PAP SMEAR CERTIFICATION

.0101 STATE CERTIFICATION FOR LABORATORIES CONDUCTING PAP SMEARS

(a) All laboratories evaluating Pap smears for which reimbursement will be requested from third party intermediaries as addressed in N.C.G.S. 58-51-57 shall be state certified by the Division of Facility Services, Department of Human Resources, in accordance with this Rule.

(b) To be state certified, all laboratories shall be licensed under the federal Clinical Laboratory Improvement Act as amended or certified by the Health Care Financing Administration for Medicare or Medicaid for the specialty of cytology.

(c) To be state certified, laboratories shall perform Pap smear examinations only on specimens submitted by a health care provider whose scope of practice includes the function of taking papsmears.

(d) An application for state certification shall be submitted to the Division of Facility Services listing the name and location of the laboratory requesting certification, the name of the laboratory director and evidence that the laboratory meets the requirements listed in Paragraphs (b) and (c) of this Rule. Laboratories will be notified in writing within 45 days of the receipt of the application that they have been certified or, if certification has been denied, of the reasons for denial.

(e) State certification must be renewed when licensing or certification renewal is required by the program that established state certification eligibility pursuant to Paragraph (b) of this Rule.

(f) If a laboratory's license or certification for one of these programs is suspended or revoked, the laboratory director shall immediately notify the Division of Facility Services and the laboratory's state certification under this Rule shall be revoked. The laboratory may apply for recertification when it can provide evidence that it meets the requirements listed in Paragraphs (a) - (e) of this Rule.

(g) Appeals of the Division's decisions regarding state certification shall be in accordance with the Administrative Procedures Act, G.S. 150B.

Statutory Authority G.S. 143B-165.

SECTION .0200 - MAMMOGRAPHY CERTIFICATION

.0201 STATE CERTIFICATION OF SCREENING MAMMOGRAPHY SERVICES

(a) All facilities performing screening mammograms for which reimbursement will be requested from third party intermediaries as addressed in N.C.G.S. 58-51-57 shall be state certified by the Division of Facility Services, Department of Human Resources in accordance with this Rule.

(b) To be state certified, all equipment used in the performance of screening mammography shall be dedicated to such use by manufacturer's design. Each piece of mammography X-ray equipment, whether located in a fixed or mobile facility, shall be maintained in a safe operating

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condition and shall be registered and used in accordance with the Rules in 15A NCAC 11.

(c) To be state certified, all facilities shall be certified by the Health Care Financing Administration for Medicare or Medicaid or shall be accredited by the American College of Radiology for the performance of mammography screening.

(d) An application for state certification shall be submitted to the Division of Facility Services listing the name and location of the facility requesting certification, the name of the owner, and evidence that the facility meets the requirements listed in Paragraphs (b) and (c) of this Rule. Facilities shall be notified in writing within 45 days of the receipt of the application that they have been certified or, if certification has been denied, of the reasons for denial.

(e) State certification must be renewed when certification or accreditation renewal is required by the program that established state certification eligibility pursuant to Paragraph (c) of this Rule.

(f) If a facility's certification or accreditation for one of these programs is suspended or revoked, the facility operator shall immediately notify the Division of Facility Services and the facility's state certification under this Rule shall be revoked. The facility may apply for recertification when it can provide evidence that it meets the requirements listed in Paragraphs (a) - (e) of this Rule.

(g) The North Carolina Medical Care Commission delegates the authority to grant waivers of this Rule to the Division of Facility Services. The Commission, however, shall review all waivers granted at its next regularly scheduled meeting and shall make any revisions to waivers deemed necessary at that time.

(h) In order to be granted a waiver of this Rule, a facility shall make a request for a waiver in writing to the Division of Facility Services providing the following:

- (1) justification that the rule should not be applied as written, because strict application would cause undue hardship;
- (2) justification that adequate standards assuring early detection of breast cancer and affording protection of health and safety exist and will be met in lieu of the exact requirements;
- (3) justification that the purpose of this Rule is met through equivalent standards affording equivalent protection of health and safety;
- (4) information on the number of screening mammograms performed monthly for the previous six months;
- (5) information proving that there is no state certified facility nearby by identifying the nearest state certified facility and provid-

ing information regarding the accessibility of mobile units in the area; and

(6) a plan for meeting standards necessary for certification, including the time required to meet standards.

(i) Appeals of the Division's decisions regarding state certification shall be in accordance with the Administrative Procedures Act, G.S. 150B.

Statutory Authority G.S. 143B-165.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Human Resources/Division of Medical Assistance intends to amend rule(s) cited as 10 NCAC 2611 .0102.

The proposed effective date of this action is April 1, 1992.

The public hearing will be conducted at 1:30 p.m. on January 17, 1992 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 132, Raleigh, N.C. 27603.

Reason for Proposed Action: The North Carolina General Assembly reduced the Medicaid budget in the Appropriations Act (Section 95 of Chapter 689 of the 1991 Session Laws).

Comment Procedures: Written comments concerning this amendment must be submitted by January 17, 1992, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, North Carolina 27603, ATTN.: Bill Hottel, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal impact statement is available upon written request from the same address.

Editor's Note: This Rule has been filed as a temporary rule effective October 1, 1991 for a period of 180 days to expire on March 31, 1992.

CHAPTER 26 - MEDICAL ASSISTANCE

SUBCHAPTER 2611 - REIMBURSEMENT PLANS

SECTION .0100 - REIMBURSEMENT FOR NURSING FACILITY SERVICES

.0102 RATE SETTING METHODS

(a) A rate for skilled nursing care and a rate for intermediate nursing care is determined annually for each facility to be effective for dates of service for a twelve month period beginning each October 1. Each patient will be classified in one of

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the two categories depending on the services needed. Rates are derived from either desk or field audited cost reports for a base year period to be selected by the state. Cost reports are filed and audited under provisions set forth in Rule .0104 of this Section. The criteria for determining the classification of each patient are presented in Appendix 1 of Attachment 3.1-A of the state plan. The minimum requirements of the 1987 OBRA are met by these provisions.

(b) Each prospective rate consists of two components: a direct patient care rate and an indirect rate - computed and applied as follows:

(1) The direct rate is based on the Medicaid cost per day incurred in the following cost centers:

- (A) Nursing,
- (B) Dietary or Food Service,
- (C) Laundry and Linen,
- (D) Housekeeping,
- (E) Patient Activities,
- (F) Social Services,
- (G) Ancillary Services (includes several cost centers).

(2) To compute each facility's direct rate for skilled care and intermediate care, the direct base year cost per day is increased by adjustment factors for price changes as set forth in Rule .0102(c).

(A) A facility's direct rates cannot exceed the maximum rates set for skilled nursing or intermediate nursing care. However, the Division of Medical Assistance may negotiate direct rates that exceed the maximum rate for ventilator dependent patients. Payment of such special direct rates shall be made only after specific prior approval of the Division of Medical Assistance.

(B) A standard per diem amount will be added to each facility's direct rate, including facilities that are limited to the maximum rates, for the projected statewide average per diem costs of the salaries paid to replacement nurse aides for those aides in training and testing status and other costs deemed by HCFA to be facility costs related to nurse aide training and testing. The standard amount is based on the product of multiplying the average hourly wage, benefits, and payroll taxes of replacement nurse aides by the number of statewide hours required for training and testing of all aides divided by the projected total patient days.

(3) If a facility did not report any costs for either skilled or intermediate nursing care in the base year, the state average direct rate will be assigned as determined in Rule

.0102(d) of this Section for the new type of care.

(4) The direct maximum rates are developed by ranking base-year per diem costs from the lowest to the highest in two separate arrays, one for skilled care and one for intermediate care. The per diem cost at the 80th percentile in each array is selected as the base for the maximum rate. The base cost in each array is adjusted for price changes as set forth in Rule .0102(c) of this Section to determine the maximum statewide direct rates for skilled care and intermediate care.

(5) Effective October 1, 1990, the direct rates will be adjusted as follows:

(A) A standard per diem amount will be added to each facility's skilled and intermediate rate to account for the combined expected average additional costs for the continuing education of nurses' aides; the residents' assessments, plans of care, and charting of nursing hours for each patient; personal laundry and hygiene items; and other non-nursing staffing requirements. The standard amount is equal to the sum of:

(i) the state average annual salary, benefits, and payroll taxes for one registered nurse position multiplied by the number of facilities in the state and divided by the state total of patient days;

(ii) the total costs of personal laundry and hygiene items divided by the total patient days as determined from the FY 1989 cost reports of a sample of nursing facilities multiplied by the annual adjustment factor described in Rule .0102(c)(4)(B) of this Section; and

(iii) the state average additional pharmacy consultant costs divided by 365 days and then divided by the average number of beds per facility.

(B) A standard amount will be added to the intermediate rate of facilities that were certified only for intermediate care prior to October 1, 1990. This amount will be added to account for the additional cost of providing eight hours of RN coverage and 24 hours of licensed nursing coverage. The standard amount is equal to the state average hourly wage, benefits and payroll taxes for a registered nurse multiplied by the 16 additional hours of required licensed nursing staff divided by the state average number of beds per nursing facility. A lower amount will be added to a facility only if it can be determined that the facility's intermediate rate prior to

October 1, 1990 already includes licensed nursing coverage above eight hours per day. The add-on amount in such cases would be equal to the exact additional amount required to meet the licensed nursing requirements.

- (C) The standard amounts in Subparagraphs (2)(B), (5)(A), and (5)(B) of this Rule, will be retained in the rates of subsequent years until the year that the rates are derived from the actual cost incurred in the cost reporting year ending in 1991 which will reflect each facility's actual cost of complying with all OBRA '87 requirements.
- (6) Upon completion of any cost reporting year any funds received by a facility from the direct patient care rates which have not been spent on direct patient care costs as defined herein are repaid to the State. This will be applied by comparing a facility's total Medicaid direct costs with the combined direct rate payments received for skilled and intermediate care. Costs in excess of a facility's total prospective rate payments are not reimbursable.
- (7) The indirect rate is intended to cover the following costs of an efficiently and economically operated facility:
 - (A) Administrative and General,
 - (B) Operation of Plant and Maintenance,
 - (C) Property Ownership and Use,
 - (D) Mortgage Interest.
- (8) Effective for dates of service beginning October 1, 1984 and ending September 30, 1985 the indirect rates are fourteen dollars and sixty cents (\$14.60) for each SNF day of care and thirteen dollars and fifty cents (\$13.50) for each ICF day of care. These rates represent the first step in a two step transition process from the different SNF and ICF indirect rates paid in 1983-84 and the nearly equal indirect rates that will be paid in subsequent years under this plan as provided in this Rule.
- (9) Effective for dates of service beginning October 1, 1985 and annually thereafter per diem indirect rates will be computed as follows:
 - (A) The average indirect payment to all facilities in the fiscal year ending September 30, 1983 [which is thirteen dollars and two cents (\$13.02)] will be the base rate.
 - (B) The base rate will be adjusted for estimated price level changes from fiscal year 1983 through the year in which the rates will apply in accordance with the procedure set forth in Rule .0102(c) of this

Section to establish the ICF per diem indirect rate.

- (C) The ICF per diem indirect rate shall be multiplied by a factor of 1.02 to establish the SNF per diem indirect rate. This adjustment is made to recognize the additional administrative expense incurred in the provision of SNF patient care.
- (10) Effective for dates of service beginning October 1, 1989, a standard per diem amount will be added to provide for the additional administrative costs of preparing for and complying with all nursing home reform requirements. The standard amount is based on the average annual salary, benefits and payroll taxes of one clerical position multiplied by the number of facilities in the state divided by the state total of patient days.
- (11) Effective for dates of service beginning October 1, 1990, the indirect rate will be standard for skilled and intermediate care for all facilities and will be determined by applying the 1990-91 indirect cost adjustment factors in Rule .0102(c) of this Section to the indirect rate paid for SNF during the year beginning October 1, 1989. Thereafter the indirect rate will be adjusted annually by the indirect cost adjustment factors.
 - (c) Adjustment factors for changes in the price level. The rate bases established in Rule .0102(b), are adjusted annually to reflect increases or decreases in prices that are expected to occur from the base year to the year in which the rate applies. The price level adjustment factors are computed using aggregate base year costs in the following manner:
 - (1) Costs will be separated into direct and indirect cost categories.
 - (2) Costs in each category will be accumulated into the following groups:
 - (A) labor,
 - (B) other,
 - (C) fixed.
 - (3) The relative weight of each cost group is calculated to the second decimal point by dividing the total costs of each group (labor, other, and fixed) by the total costs for each category (direct and indirect).
 - (4) Price adjustment factors for each cost group will be established as follows:
 - (A) Labor. The expected annual percentage change in direct labor costs as determined from a survey of nursing facilities to determine the average hourly wages for RNs, LPNs, and aides paid in the current year and projected for the rate year. The percentage change for indirect labor costs

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is based on the projected average hourly wage of N.C. service workers.

(B) Other. The expected annual change in the implicit price deflator for the Gross National Product as provided by the North Carolina Office of State Budget and Management.

(C) Fixed. No adjustment will be made for this category, thus making the factor zero.

(D) The weights computed in (c)(3) of this Rule shall be multiplied times the percentage change computed in (c)(4)(A),(B) and (C) of this Rule. These products shall be added separately for the direct and indirect categories.

(E) The sum computed for each category in (c)(4)(D) of this Rule shall be the price level adjustment factor for that category of rates (direct or indirect) for the coming fiscal year.

(F) However, for the rate period beginning October 1, 1991 through September 30, 1992 the forecast of the N.C. Service Wages percent applied to the 1991-92 Inpatient Hospital and Intermediate Care Facility for the Mentally Retarded rates is applied to the Labor component weight computed in (c)(4)(A) of this Rule.

(G) For the rate period beginning October 1, 1991 through September 30, 1992 the direct adjustment factor determined under (c)(4) of this Rule will be applied to the direct rate adjustments determined under (b)(2), (b)(5)(A) and (b)(5)(B) of this Rule.

(d) The skilled and intermediate direct patient care rates for new facilities are established at the lower of the projected costs in the provider's Certificate of Need application inflated to the current rate period or the average of industry base year costs and adjusted for price changes as set forth in Rule .0102(c) of this Section. A new facility receives the indirect rate in effect at the time the facility is enrolled in the Medicaid program. In the event of a change of ownership, the new owner receives the same rate of payment assigned to the previous owner.

(e) Each out-of-state provider is reimbursed at the lower of the appropriate North Carolina maximum rate or the provider's payment rate as established by the State in which the provider is located. For patients with special needs who must be placed in specialized out-of-state facilities, a payment rate that exceeds the North Carolina maximum rate may be negotiated.

(f) Rates:

(1) A single all-inclusive prospective per diem rate combining both the direct and indirect cost components can be negotiated

for nursing facilities that specialize in providing intensive services for head-injured or ventilator-dependent patients. The rate may exceed the maximum rate applicable to other Nursing Facility services. For head-injury services, a facility must specialize to the extent of staffing at least 50 percent of its Nursing Facility licensed beds for head-injury services. The facility must also be accredited by the Commission for the Accreditation of Rehabilitation Facilities (CARF). For ventilator services, the only facilities that are eligible for a combined single rate are small freestanding facilities with less than 21 Nursing Facility beds and that serve only patients requiring ventilator services. Ventilator services provided in larger facilities are reimbursed at higher direct rates as described in Rule .0102(b)(2)(A) of this Section.

(2) A facility's initial rate is negotiated based on budget projections of revenues, allowable costs, patient days, staffing and wages. A complete description of the facility's medical program must also be provided. Rates in subsequent years are determined by applying the average annual skilled nursing care adjustment factors to the rate in the previous year, unless either the provider or the State requests a renegotiation of the rate.

(3) Cost reports for these services must be filed in accordance with the rules in .0104 of this Section, but there will be no cost settlements for any differences between costs and payments. Since it is appropriate to include all financial considerations in the negotiation of a rate, a provider will not be eligible to receive separate payments for return on equity as defined in Rule .0105 of this Section.

Authority G.S. 108A-25(b); 108A-54; 108A-55; S. L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C; S. L. 1991, c. 689, s. 95.

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Social Services intends to amend rule(s) cited as 10 NCAC 24A .0606; 29C .0003; 41P .0006 - .0008; 42E .0903, .0905 - .0906, .1102, .1105 - .1108, .1207, .1406; 42S .0401; 42Z .0604, .0701, .0802 - .0803; and adopt rule(s) cited as 10 NCAC 42Z .0901 - .0909.

The proposed effective date of this action is March 1, 1992.

The public hearing will be conducted at 10:00 a.m. on December 4, 1991 at the Disability Determination Bldg., 322 Chapanoke Rd., Room 1, Raleigh, N.C.

Reason for Proposed Action: 10 NCAC 24A .0606 - To save money and meet the needs of clients. 10 NCAC 29C .0003 - Results from federal block grant funds being reduced. 10 NCAC 41P .0006 - .0008 - These rules are the result of a review of adoptions rules by the Adoptions Work Group as requested by the Social Services Commission. 10 NCAC 42E .0903, .0905 - .0906, .1102, .1105 - .1108, .1207 .1406; 42S .0401; 42Z .0604, .0701, .0802 - .0803 and .0901 - .0909 - To update rules to reflect current practices in adult day health care settings and to more effectively meet the needs of the participants.

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

CHAPTER 24 - SOCIAL SERVICES: GENERAL

SUBCHAPTER 24A - GENERAL

SECTION .0600 - HEARING POLICY

.0606 APPEAL DECISION

(a) The hearing officer shall make a tentative decision which shall be sent to the appellant by certified mail served upon the county department and the appellant by mail. Decisions reversing the county department's action shall be sent by certified mail to the county department while decisions affirming the county department's actions will be sent by certified mail to the appellant.

(b) The county and the appellant may present oral and written argument, for and against the decision. Written argument may be submitted to or contact made with the Chief Hearing Officer to request a hearing for oral argument.

(c) If the Chief Hearing Officer is not contacted within 10 calendar days of the date of the notice of the tentative decision, the tentative decision shall become final.

(d) If the party that requested oral argument fails to appear at the hearing for oral argument, the tentative decision becomes final.

(e) A decision upholding the appellant shall be put into effect within two weeks after receipt of the final decision.

Statutory Authority G.S. 108A-79; 143B-153.

CHAPTER 29 - INCOME MAINTENANCE: GENERAL

SUBCHAPTER 29C - CRISIS INTERVENTION PROGRAM

.0003 BENEFIT LEVELS

The maximum payment to a household is two hundred dollars (\$200.00) ~~per application not to exceed four hundred dollars (\$400.00)~~ in a state fiscal year. Payments may vary based upon the severity of the crisis and the services needed.

Statutory Authority G.S. 108A-25; 143B-153; 150B-13.

CHAPTER 41 - CHILDREN'S SERVICES

SUBCHAPTER 41P - CHILD-PLACING AGENCIES: ADOPTION

.0006 ADOPTIVE HOME RECRUITMENT

The agency shall have a written plan for ongoing recruitment of adoptive homes for the children it places or plans to place for adoption. The plan must include resources to be used, time-related goals for applicant recruitment, and any limitations or restrictions that may be inherent to its program. The plan must indicate designated staff and funding sources for implementation of the plan. ~~Agencies shall have a plan which actively recruits homes of the same race or ethnic category as that of the children it serves; but agencies shall not be limited to making adoptive placement of such children only with persons of the same race or ethnic category. A child's race and ethnic background must be considered in determining the most suitable adoptive placement, but the agency shall not limit the placement of a child for adoption only to persons of the same race or ethnic category.~~

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

.0007 ADOPTIVE HOME APPLICATION

The agency shall provide an application form for prospective adoptive parents and shall determine in response to the completed application whether, within the scope of the agency's program, it is appropriate to conduct an adoptive study with the applicants. While the age of ap-

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plicants is among the factors that should be considered in determining whether the agency should conduct an adoptive study with the applicants, there shall be no fixed chronological age at which applicants should be automatically rejected for study.

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

.0008 ADOPTIVE STUDY

(a) The agency shall conduct an adoptive study with its applicants. The study process must include at least one office visit with the adoptive applicants, one home visit, and separate face-to-face interviews with each member of the household above six years of age. The study process must be a joint effort of the adoption agency and the applicants to determine the kind of child the applicants can best parent. Any study that was completed one year or more before placement of a child occurs must be updated to include current information about the family. The updated study should focus on applicable items in Paragraph (b) of this Rule where change could be expected to have occurred. Physical examinations of family members must be current to within 12 months of the updated study.

(b) The agency shall study the following areas and shall record the information in the adoptive applicants' record:

- (1) the applicants' motivation for adoption;
- (2) the strengths and weaknesses of each member of the household;
- (3) the attitudes and feelings of the family, extended family, and significant others involved with the family toward accepting adoptive children, and parenting children not born to them;
- (4) the attitudes of the applicants toward the biological parents and in regard to the reasons the child is in need of adoption;
- (5) the applicants' attitudes toward child behavior and discipline;
- (6) the applicants' plan for discussing adoption with the child;
- (7) the emotional stability and maturity of applicants;
- (8) the applicants' ability to cope with problems, stress, frustrations, crises, and loss;
- (9) the applicants' ability to give and receive affection;
- (10) the applicants' child-caring skills and willingness to acquire additional skills needed for the child's development;
- (11) the applicants' ability to provide for the child's physical and emotional needs;
- (12) the applicants' record of criminal convictions;

- (13) the adjustment of birth children or previously adopted children, including school reports, if applicable;
- (14) report of a physical examination for members of the adoptive family living in the household within six months of the study that verifies no communicable disease, specific illness, or disabilities that would interfere with the family's abilities to parent a child;
- (15) the applicants' ability to provide financially for the child or children to be adopted with or without agency financial assistance through adoption subsidy;
- (16) the applicants' personal character references;
- (17) the applicants' religious orientation, if any;
- (18) the location and physical environment of the home;
- (19) the plan for child care if parents work; and
- (20) recommendations for adoption in regard to the number, age, sex, characteristics, and special needs of children who could be best served by the family.

(c) The adoptive home study must be prepared and typed for review by the agency's adoption review committee, and it must become part of the applicants' permanent record.

(d) Narrative dictation during the provisional period of licensure must be recorded by agency staff providing problem pregnancy services, conducting adoptive studies, and providing post-placement services following each contact with the child, biological parents, and adoptive parents and this dictation must become part of the permanent record.

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

CHAPTER 42 - INDIVIDUAL AND FAMILY SUPPORT

SUBCHAPTER 42E - ADULT DAY CARE STANDARDS FOR CERTIFICATION

SECTION .0900 - ADMINISTRATION

.0903 AGREEMENTS

~~(a) A statement of agreement shall be developed annually between the governing body of the day care program and the county department of social services specifying terms of service, reimbursement and operation of the day care program.~~

(b) When the day care program is located in a multiple-use facility (e.g., school, church) there must be a written agreement regarding the facility's cooperative use. The agreement shall con-

tain the following as they apply to the adult day care program: time of use, maintenance of space, use of equipment, security, liability, and insurance.

Statutory Authority G.S. 143B-153.

.0905 PERSONNEL: CENTERS: HOMES WITH OPERATOR AND STAFF

(a) General Requirements

- (1) Staff positions shall be planned and filled according to the goals of the program and the manpower needed to develop and direct the activities which meet these goals.
- (2) All staff of the program shall be competent, ethical, and qualified for the position held.
- (3) There shall be a written job description for each position, full-time or part-time. The job description shall specify qualifications of education, experience, and personal traits (including such characteristics as ability to relate to people, patience, positive mental attitude, ability to listen, sense of responsibility to the program, etc.); to whom employee is responsible; duties and responsibilities; and salary range.
- (4) References, including former employers, shall be required in recruitment of staff.
- (5) There shall be an established review process for each employee at least annually and following any probationary period.
- (6) Provision shall be made for orientation and staff development of new employees and volunteers and ongoing development and training of all staff.
- (7) At least one substitute staff person shall be available to provide direct care in the absence of a regular staff person in order to maintain the required staff-participant ratio. Such substitute staff shall have the same qualifications, training, and personal credentials as a regular staff person giving direct care. Trained volunteers may be used instead of paid substitutes.
- (8) Each employee must present medical evidence that he is free from communicable disease prior to beginning work and annually thereafter.

(b) Personnel Policies

- (1) Personnel policies and their content are the responsibility of each adult day care center. Each center is required to state its policies in writing. A copy of this statement of personnel practice shall be given to each employee and shall state the center's policy on the following:
 - (A) annual leave,
 - (B) educational opportunities,
 - (C) pay practices,
 - (D) employee benefits,
 - (E) grievance procedures,
 - (F) performance and evaluation procedures,
 - (G) criteria for advancement,
 - (H) termination procedures,
 - (I) hiring and firing responsibility,
 - (J) use of any probationary period,
 - (K) staff participation in reviews of personnel practices,
 - (L) maternity leave,
 - (M) military leave,
 - (N) civil leave (jury duty and court attendance).
- (2) All policies developed must conform to the wage and hour regulation.

(c) Staffing Pattern. The staffing pattern shall be dependent upon the enrollment criteria and the particular needs of the participants who are to be served. The ratio of paid staff to participants shall be adequate to meet the goals and objectives of the program. Whenever paid staff are absent, substitutes must be used to maintain the staff-participant ratio. The minimum ratios shall be as follows:

- (1) Adult Day Care Homes
One paid staff person for up to six participants;
- (2) Adult Day Care Centers
One paid staff person for each eight participants.

(d) Program Director

- (1) The program director shall have the authority and responsibility for the management of activities and direction of staff to insure that activities and services are provided appropriately and in accordance with established policies.
- (2) The program director shall meet all of the minimum qualifications and personal traits stated below:
 - (A) shall be of ~~majority age~~ at least 18 years of age;
 - (B) shall have completed at least two years of formal post secondary education from an accredited institution of education (including colleges, universities, technical institutes, and accredited correspondence schools) or shall have a high school education and a minimum of five years experience and training in services to elderly or handicapped adults;
 - (C) shall have at least two years of work experience in a human services area, and demonstrated ability in supervision and administration;
 - (D) shall provide a written medical statement from a physician, nurse practitioner, or physician's assistant certifying good

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health, including freedom from communicable disease prior to employment and annually thereafter;

(E) shall provide at least three current reference letters or the names of individuals with whom a reference interview can be conducted, including at least one former employer, if any. The individuals providing reference information must be knowledgeable of the applicant director's background and qualifications.

(3) In employing a program director, the governing body, agency or owner shall consider whether or not applicants exhibit the following characteristics. Only persons having these characteristics should be considered for the position of program director.

(A) maturity -- good judgment, emotional stability, ability to make decisions and set goals;

(B) knowledge and understanding of the needs of the aging and disabled;

(C) ability to design and implement a varied, structured program of group and individual activities.

(D) managerial and administrative skills - ability to supervise staff and to plan and coordinate meaningful staff training.

(4) The adult day care center shall have a full-time program director.

Statutory Authority G.S. 143B-153.

.0906 PERSONNEL: DAY CARE HOMES: ONLY STAFF PERSON IS OPERATOR

(a) The operator shall:

(1) be competent, ethical and qualified to carry out the responsibilities of providing a day care program;

(2) have a minimum of a high school education or the equivalent;

(3) be of majority age at least 18 years of age;

(4) have at least two years of full-time work experience and demonstrated ability to manage all aspects of a day care program;

(5) provide a written medical statement from a physician, nurse practitioner, or a physician's assistant certifying good health, including freedom from communicable disease prior to beginning the day care program employment and annually thereafter;

(6) have ability to work with people;

(7) provide references, including former employers, at least three current reference letters or the names of individuals with whom a reference interview can be conducted, including at least one former em-

ployer, if any. The individuals providing reference information must be knowledgeable of the applicant operator's background and qualifications.

(b) There shall be a minimum of one staff person for two-six participants.

(c) The day care home shall have substitute or relief staff to enable the day care home to remain open on days when the operator is not available to supervise the program.

Statutory Authority G.S. 143B-153.

SECTION .1100 - PROGRAM OPERATION

.1102 NUTRITION

(a) A midday meal shall be provided to each participant in attendance at the program during mealtime. The meal shall provide at least one-third of an adult's daily nutritional requirement. Meals shall be prepared and served in a sanitary manner using safe food handling techniques.

(b) A nutritious mid-morning and mid-afternoon snack shall be offered daily to participants. Snacks shall be planned to keep sugar, salt and cholesterol intake to a minimum.

(c) A therapeutic diet shall be provided, if prescribed in writing by a physician, for any participant. If therapeutic diets are prepared by program staff, such staff shall have training in planning and preparing therapeutic diets or shall provide documentation of previous training and education sufficient to assure ability to prepare meals in accordance with a physician's prescription.

(d) A ~~licensed~~ registered dietitian or certified nutritionist shall give consultation to the staff on basic and special nutritional needs and proper food handling techniques.

Statutory Authority G.S. 143B-153.

.1105 MEDICATIONS

(a) Medications shall be administered according to the participant's established medication schedule as defined in Rule .1108(1)(d)(v) of this Section or as authorized by the responsible caregiver.

~~(b) (a)~~ Participants may keep and administer their own medicines while attending the day care program. If a participant is determined to be unable to be responsible for his medication, it shall be kept for him during the time he is present at the program and given to him to take at the prescribed time and dosage. ~~Check sheets shall be kept to record such action by staff.~~ Documentation of whether or not the medications are kept by the program shall be included in each participant's file.

(c) A record of all medications given to each participant must be kept indicating each dose given and is to include the following:

- (1) participant's name;
- (2) name, strength, and quantity of the medication;
- (3) instructions for giving medication;
- (4) date and time medication is administered;
and
- (5) name or initials of person giving the medication. If initials are used, a signature equivalent to those initials is to be entered on this record.

(d) ~~(b)~~ Medications kept by the program shall be in containers in which they were dispensed. ~~from the pharmacy.~~ The containers shall be clearly labeled with the participant's full name, the name and strength of the medicine, and dosage and instructions for administration. Medicines kept by the program shall be kept locked in a safe place.

(e) ~~(c)~~ The program policy statement shall include the policy on medications, specifying that participants who are able to keep their medicines shall keep them safely and that the program will keep medicine of participants who are unable to be responsible for their own.

Statutory Authority G.S. 143B-153.

.1106 HOURS AND DAYS OF OPERATION

(a) The hours and days of operation shall be set to meet the needs of the participants and their families.

(b) Care and services shall be provided throughout all hours participants are present at the program.

(c) The program must operate for a minimum of six hours each day.

(d) Day care programs shall provide care and activities at least five days per week, except that a facility may be closed for designated holidays, for hazardous weather conditions, for vacations, and for other reasons as agreed by the director and the county department of social services. ~~in the annual statement of agreement [see .0003(a) of this Subchapter].~~ Late openings or early closures may be scheduled on days when hazardous weather conditions exist or when emergency situations arise.

(e) Attendance schedules for individual participants should be designed to accommodate the work schedules of participants' ~~caretakers.~~
caregivers.

Statutory Authority G.S. 143B-153.

.1107 POSTING OF PROGRAM POLICY STATEMENT

The day care program policy statement shall be posted in the facility during hours of operation and copies shall be available on request [.0901 ~~(c)(5)(A)~~ (b)(5)(A) or (c)(3)(A) of this Subchapter].

Statutory Authority G.S. 143B-153.

.1108 RECORDS

Each adult day care program shall maintain records to document the progress of each participant and to document program operation. The following records are required:

- (1) Individual Client Records. An individual folder for each participant shall be established and maintained, including:
 - (a) a signed application recording:
 - (i) client's full name;
 - (ii) address and telephone number;
 - (iii) date of birth, marital status and living arrangement of client;
 - (iv) time of day client will arrive and time of day client will leave the center, on the average;
 - (v) travel arrangements to and from the center for the client;
 - (vi) name, address and telephone number of at least two family members and/or friends who are responsible for the client and can be contacted in emergencies;
 - (vii) name, address and telephone number of a licensed medical service provider who will see the client on request;
 - (b) copies of signed authorizations for the day care program to receive and give out confidential information on the participant when necessary to maintain the participant's health and to help the participant improve; Such authorization shall include the name of the party from whom information is requested and to whom information is given. Such authorization must be obtained each time a request for client information is made;
 - (c) a signed authorization for the client to receive emergency medical care from any licensed medical practitioner, if such emergency care is needed by the client;
 - (d) a medical examination report signed by a licensed physician or physician's assistant; This report must be completed prior to enrollment and updated annually thereafter. The report shall include information on:
 - (i) current diseases and chronic conditions and the degree to which these diseases conditions require:
 - (A) special attention by day care staff,

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- (B) restriction of normal activities by the client;
 - (ii) presence and degree of psychiatric problems;
 - (iii) amount of direct supervision the client requires;
 - (iv) any limitations on physical activities, such as walking, exercises, etc.;
 - (v) listing of all medications with dosages and times medications are to be administered;
 - (vi) most recent date participant was seen by doctor;
 - (e) the written report of staff discussions, conferences, consultation with family or other interested parties, evaluation of a participant's progress and any other significant information regarding a participant's situation;
 - (f) all service plans for the participant;
 - (g) a signed authorization if the participant or his responsible party will permit photographs or slides of the participant to be made by the day care program and specifying the publicity efforts in which such photographs will be used. Such authorization must be obtained prior to taking photographs of the participant;
 - (h) a statement signed by a family member or other responsible person (when applicable) acknowledging receipt of the program's policy statement and agreeing to uphold program policies pertaining to their participant.
- (2) Program Records for Day Care Centers. Program records shall contain:
- (a) copies of program plans;
 - (b) monthly records of expenses and income, including fees collected, and fees to be collected;
 - (c) all bills, receipts and other pertinent information which document expenses and income, to be kept for a minimum of three years;
 - (d) a daily record of attendance of participants by name;
 - (e) accident reports;
 - (f) a record of staff absences, annual leave and sick leave, including dates and names of substitutes;
 - (g) reports on emergency and fire drills;
 - (h) individual personnel records on all staff members including:
 - (i) application for employment,
 - (ii) job description,
 - (iii) medical certification of absence of communicable disease,
 - (iv) written note or report on any personnel action taken with the employee;
 - (v) written report of annual employee review;
 - (i) a copy of all written policies, including:
 - (i) program policy statement,
 - (ii) personnel policies,
 - (iii) agreements,
 - (iv) plan for emergencies,
 - (v) evacuation;
 - (j) evaluation reports;
 - (k) control file of DSS-1360s for all participants for whom Social Services Block Grant (Title XX) reimbursement is claimed.
- (3) Program Records for Day Care Homes. Program records shall contain:
- (a) copies of program plans;
 - (b) a monthly record of the expenses and income of the day care program;
 - (c) all bills, receipts and other pertinent information which document expenses and income, to be kept for a minimum of three years;
 - (d) a daily record of attendance of participants;
 - (e) accident reports;
 - (f) a copy of all written policies, including:
 - (i) program policy statement,
 - (ii) personnel policies,
 - (iii) agreements,
 - (iv) plan for emergencies,
 - (v) evacuation plan;
 - (g) program evaluation reports;
 - (h) reports on emergency and fire drills;
 - (i) control file of DSS-1360s on all participants for whom Social Services Block Grant (Title XX) reimbursement is claimed.

Statutory Authority G.S. 143B-153.

SECTION .1200 - CERTIFICATION PROCEDURE

.1207 PROCEDURE

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

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

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

- (1) The program policy statement;

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- (2) Organizational diagram;
 - (3) Job descriptions;
 - (4) Documentation showing planned expenditures and resources available to carry out the program of service for a 12 month period;
 - (5) A floor plan of the facility showing measurements, restrooms and planned use of space;
 - (6) Form DSS-1498 (Fire Inspection Report) completed and signed by the local fire inspector no more than 30 days prior to submission with the certification package;
 - (7) Form DSS-1499 (Building Inspection Report for Day Care Services for Adults) completed and signed by the local building inspector, or fire inspector or fire marshall if a building inspector is not available, no more than 30 days prior to submission with the certification package;
 - (8) Form DSS-2386 (Sanitation Evaluation Report) completed and signed by a local sanitarian no more than 30 days prior to the submission with the certification package;
 - (9) Written notice and the effective date, if a variance of local zoning ordinances has been made in order for property to be utilized for an adult day care program;
 - (10) A copy of the articles of incorporation, bylaws and names and addresses of board members, for adult day care programs sponsored by a non-profit corporation;
 - (11) The name and mailing address of the owner if a proprietary program;
 - (12) A medical statement for each staff member certifying to freedom from communicable disease and to good health signed by a licensed physician, physician assistant or nurse practitioner no more than 30 days prior to submission with the certification package; and
 - (13) DSS-1500 (Adult Day Care Certification Report). This form must be submitted by the county department of social services with a copy to the program.
- (d) The following forms and materials make up a certification package for the renewal of a certification and must be submitted through the county department of social services, no more than 60 days prior to the end of the current period of certification, to the state Division of Social Services:
- (1) Form DSS-1498 (Fire Inspection Report) completed and signed by the local fire inspector no more than 30 days prior to submission with the certification package;
 - (2) Form DSS-1499 (Building Inspection Report for Day Care Services for Adults) or the equivalent completed and signed by the local building inspector, or fire inspector or fire marshall if a building inspector is not available, no more than 30 days prior to submission with the certification package when building modifications have been made during the previous 12 months;
 - (3) Form DSS-2386 (Sanitation Evaluation Report) completed and signed by a local sanitarian no more than 30 days prior to submission with the certification package;
 - (4) A medical statement for each staff member certifying to freedom from communicable disease and to good health signed by a licensed physician, physician assistant or nurse practitioner no more than ~~30 days~~ 12 months prior to submission with the certification package;
 - (5) An updated copy of the policy statement, organizational diagram, job descriptions, names and addresses of board members if applicable, and a floor plan showing measurements, restrooms, and planned use of space, if any changes have been made since the previous certification package was submitted;
 - (6) Documentation showing planned expenditures and resources available to carry out the program of service for a 12 month period; and
 - (7) DSS-1500 (Adult Day Care Certification Report). This form must be submitted with the certification package by the Department of Social Services to the Division of Social Services at least 30 days in advance of the expiration date of the certificate, with a copy to the program.
- (e) If during the study of the program it does not appear that all standards can be met, the county department will so inform the applicant, indicating in writing the reasons, and give the applicant an opportunity to withdraw the application. Upon the applicant's request, the application will be completed and submitted to the Division of Social Services for consideration.
- (f) Following review of the certification package, a pre-certification visit may be made by staff of state Division of Social Services.
- (g) The Division of Social Services will promptly notify in writing to the applicant and the county department of social services of the action taken after a review of the certification package and visit, if made.

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

SECTION 1400 - CERTIFICATION INFORMATION

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.1406 PROCEDURE FOR APPEAL

(a) When the program is notified by the Division of Social Services of a negative action, the program may ask for an informal review by division staff. If the review is not satisfactory, the program may request a hearing.

(b) The program may request a hearing within 60 days after receipt of written notification from the division of a negative action, by written notice through registered or certified mail to the Office of Administrative Hearings, 424 North Blount Street, Raleigh, NC 27601. In addition, at any time before the hearing, the Division of Social Services may rescind the notice of ~~denial or revocation~~ negative action upon being satisfied that the reasons for such action have been corrected.

(c) Except as provided for in Rule .1404(d) of this Subchapter, upon receipt of a request for a hearing, the enforcement of the negative action shall be suspended pending final agency decision.

(d) The petition for a hearing shall be filed with the Office of Administrative Hearings in accordance with G.S. 150B-23 and 26 NCAC 3 .0003. In accordance with G.S. 1A-1, Rule 4 (j) 4, the petition shall be served on a registered agent for service of process for the Department of Human Resources. A list of registered agents may be obtained from the Office of Legislative and Legal Affairs.

(e) Procedures for the processing of an appeal of an adverse certification action and for the final decision are specified in G.S. 150B, Article 3 and 10 NCAC 1B .0200.

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

SUBCHAPTER 42S - DAY CARE SERVICES FOR ADULTS

SECTION .0400 - PAYMENT METHODS FOR DAY CARE CENTERS/HOMES

.0401 GENERAL POLICY

(a) Day care services for adults may be provided directly by staff of county departments of social services or under a purchase contract with another provider.

(b) The purchase contract shall be developed annually between the governing body of the day care program and the county department of social services specifying the terms of service, reimbursement and operation of the day care program.

Statutory Authority G.S. 143B-153.

SUBCHAPTER 42Z - ADULT DAY HEALTH STANDARDS FOR CERTIFICATION

SECTION .0600 - ADMINISTRATION

.0604 STAFF REQUIREMENTS

(a) Program Director of Adult Day Health Centers:

(1) Adult day health centers with a capacity of more than 10 participants must have a full-time program director. Adult day health centers with a capacity of 10 or fewer participants must have a full time program director or a program director who also serves as the health care coordinator provided that the individual meets all the requirements set forth in (a) and (b) of this Rule and if requirements in Rule .0603 of this Section related to program capacity are met.

(2) The program director shall have the authority and responsibility for the management of activities and direction of staff to insure that activities and services are provided appropriately and in accordance with established policies.

(3) The program director must meet all of the following minimum qualifications and personal traits:

(A) shall be ~~of majority age~~ at least 18 years of age;

(B) shall have completed at least two years of formal post secondary education from an accredited institution of education (including colleges, universities, technical institutes, and accredited correspondence schools) or shall have a high school education and a minimum of two years experience and training in services to elderly or handicapped adults;

(C) shall have at least one year of work experience in a human services area, and demonstrated ability in supervision and administration;

(D) shall provide a written medical statement from a physician, nurse practitioner, or physician's assistant or health department certifying good physical health, including freedom from communicable disease prior to employment in the day health program and annually thereafter;

(E) shall provide at least three current reference letters or the names of individuals with whom a reference interview can be conducted, including at least one former employer, if any. The individuals providing reference information must be knowledgeable of the applicant director's background and qualifications.

(4) In employing a program director, the governing body, agency or owner shall

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consider whether or not applicants exhibit the following characteristics. Only persons having these characteristics shall be considered for the position of program director:

- (A) ability to design and implement a varied, structured program of group and individual activities;
 - (B) managerial and administrative skills - ability to supervise staff and to plan and coordinate meaningful staff training.
- (b) Health Care Coordinator of Adult Day Health Centers:

(1) Adult day health centers must have a health care coordinator to supervise coordinate the delivery of health care services and participate in direct care as specified in Subparagraph (b)(2) of this Rule. The health care coordinator shall be on-site a minimum of four hours per day and any additional hours necessary to meet the requirements for the provision of health care services as set forth in this Subchapter. The health care coordinator may assume responsibility for the position in Paragraph (a) of this Rule, if qualified for that position and if requirements in Rule .0603 of this Section related to program capacity are met.

(2) Responsibilities include but are not limited to the following:

(A) screen vital signs, weight, dental health, general nutrition and hygiene of participants periodically;

(B) monitor medical regimen;

(C) monitor provision of personal care;

(D) coordinate with other health care professionals and family members concerning health matters;

(E) educate other staff members to emergency procedures and educate staff and family members about health concerns and conditions of participants;

(F) provide minor first aid treatment as needed.

(2) The nursing responsibilities of the health care coordinator, consistent with the Nursing Practice Act, include but are not limited to:

(A) completing preadmission health assessment for initial acceptance into program, including problem-identification and care planning;

(B) implementing the health care components of the established service plan which may include, but is not limited to:

(i) medication administration;

(ii) wound care;

(iii) enteral or parenteral feedings;

(iv) bowel or bladder training and maintenance programs;

(v) tracheostomy care and suctioning;

(vi) delegating appropriate nursing care tasks to qualified unlicensed personnel;

(C) monitoring participant's response to medical treatment plan and nursing interventions and revising plan of care as necessary;

(D) reporting and recording results of the nursing assessment, care rendered and participant's response to care;

(E) collaborating with other health care professionals and caregivers regarding provision of participant's health care;

(F) educating other staff members to emergency procedures and providing information to staff and caregivers about health concerns and conditions of participants; and

(G) providing first aid treatment as needed.

(3) The health care coordinator must meet the following minimum qualifications:

(A) the successful completion of training as a registered nurse or as a licensed practical nurse when supervision is provided on site by a registered nurse during the hours spent in providing health care services.

(B) licensed to practice nursing in North Carolina.

(A) must be either a registered nurse or a licensed practical nurse currently licensed to practice in North Carolina;

(B) if the health care coordinator is a licensed practical nurse:

(i) supervision must be provided by a registered nurse consistent with the Nursing Practice Act and related Administrative Rules; and

(ii) on-site supervision by the registered nurse must occur no less frequently than every two weeks.

(4) In employing the health care coordinator, the governing body and administrator shall consider whether or not applicants exhibit the following characteristics. Only persons having these characteristics shall be considered for the position of health care coordinator:

(A) managerial and administrative skills - ability to supervise staff and to plan and coordinate meaningful staff training;

(B) knowledge and understanding of the physical and emotional aspects of aging, the resultant diseases and infirmities and related medications and rehabilitative measures;

(D) be at least 18 years of age;

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(E) provide a written medical statement from a physician, nurse practitioner, or physician's assistant certifying good physical health, including freedom from communicable disease prior to employment and annually thereafter;

(F) shall provide at least three current reference letters or the names of individuals with whom a reference interview can be conducted, including at least one former employer, if any. The individuals providing reference information must be knowledgeable of the applicant director's background and qualifications.

(c) Staff Responsible for Personal Care in Adult Day Health Centers. All day health center staff providing personal care must present evidence of meeting the following qualifications before assuming such responsibilities:

(1) successful completion of nurse's aide, home health aide or equivalent training course, or

(2) a minimum of one year of related experience.

(d) Personnel in Adult Day Health Homes:

(1) A minimum of one full-time equivalent staff person must be designated as having responsibility for direct participant care for two to five participants. The staff person with this responsibility may be the operator or other designated paid staff.

(2) The operator or designated paid staff shall meet the requirements for health care coordinators as set forth in Paragraph (b) of this Rule and:

(A) be competent and qualified to carry out the responsibilities of providing a day health program;

~~(B) at a minimum have successfully completed training as a registered nurse and be licensed to practice nursing in North Carolina;~~

~~(C) be of majority age (at least 18 years of age);~~

~~(B) (D) have at least two years of full-time related work experience and demonstrated ability to manage all aspects of a day health program; and~~

~~(E) provide a written statement from a physician or a health department certifying good physical health, including freedom from communicable disease prior to beginning the day health program and annually thereafter;~~

~~(C) (F) have ability to work with people.~~

~~(G) provide references, including former employer.~~

(3) The day health home shall have substitute or relief staff to enable the day health

home to remain open on days when the operator is not available to supervise the program. This substitute or relief staff shall meet the minimum qualifications requirements for health care coordinators as set forth in Paragraph (b) of this Rule.

Statutory Authority G.S. 131D-6.

SECTION .0700 - FACILITY REQUIREMENTS FOR CENTERS AND HOMES

.0701 REQUIREMENTS

(a) General requirements governing facilities, construction, equipment and furnishings for adult day care as set forth in 10 NCAC 42E .1000 shall apply to adult day health.

(b) Additional facility requirements are as follows:

(1) Facility space must be of sufficient dimension and size to allow for required program group activities. Notwithstanding the space requirements of 10 NCAC 42E .1001:

(A) day health centers and homes shall provide at least 60 square feet of indoor space excluding hallways, offices and restrooms for each participant;

(B) combination programs shall provide at least 50 square feet of indoor space excluding hallways, offices and restrooms for each participant;

(C) day health programs or combination programs which share space with other programs or activities in a multi-use facility must have a nucleus area separate from other activities in the rest of the building.

(i) The nucleus area must provide at least 40 square feet of indoor space per participant excluding hallways, offices and restrooms, and a minimum of 20 square feet per participant must be provided in other space in the facility designated for use by the day health program. When the other space is being used at the same time by individuals participating in other services provided in the multi-use facility, the 20 square feet per participant is in addition to any minimum square footage requirement for other use of such space. Shared facility space outside the nucleus area which may be used by the day health program and counted in meeting the 20 square feet per participant requirement includes craft, therapy and other activity areas. Dining space may be included if also used for activities. Offices, restrooms, hallways, kitchens and shared treatment

rooms may not be counted in meeting the 20 square feet per participant requirement.

- (ii) Participation is open only to persons enrolled in the program and to visitors on a planned basis. Depending on the nature of the other activities in the building, it may or may not be appropriate for day health participants to share in them on a planned basis. Such involvement must be as part of the day health program plan and must be supervised by a day health staff member.
- (iii) The Department will grant certification to programs operating in multi-use facilities, even though they are not otherwise in compliance with space requirements, if the integrity of the program and the health, safety, and well-being of the participants is determined to be at or above the level of the requirements of this Subchapter. No variance shall be allowed by the department to standards adopted by the Building Code Council and subject to the general supervision and enforcement of the Commissioner of Insurance, or to any standard adopted by the Health Services Commission. If certification is granted despite non-compliance with the space requirement, such certification may be renewed if the Department determines that the health, safety and well-being of the participants are not being threatened, and if the integrity of the program is not being compromised.
- (2) Facilities with a capacity of more than 12 adults, including staff, shall have separate restrooms for males and females. Each restroom shall contain a minimum of one toilet and one lavatory.
- (3) The facility shall include a treatment room which is enclosed and private from the rest of the facility. The treatment room must have a sink or have a door-way which connects it to a room containing a sink. The room shall contain a treatment table, storage cabinet for first aid and medical supplies and equipment, table or desk and two chairs. The storage cabinet shall be kept locked.
- (4) The facility shall have sufficient private offices for staff use, including use for conferences with individual participants and their families. Programs must have a minimum of one private office with sufficient equipment and furnishings for ad-

ministrative purposes and for conferences. Programs in multi-use facilities must have their own offices readily accessible to family members, staff and participants.

- (5) The facility shall have, at a minimum, the following medical supplies and equipment:
 - (A) standard first aid supplies adequate to meet the needs of participants,
 - (B) fever thermometer,
 - (C) blood pressure cuff,
 - (D) stethoscope,
 - (E) medical scales,
 - (F) privacy screen,
 - (G) emesis basin,
 - (H) bed pan,
 - (I) urinal,
 - (J) wash basin.

Statutory Authority G.S. 131D-6.

SECTION .0800 - PROGRAM OPERATION

.0802 ADDITIONAL ENROLLMENT AND PARTICIPATION REQUIREMENTS

(a) Adult day health programs may serve persons 18 years of age or older who ~~need some medical supervision and who~~ need day health services in order to maximize support their independence and who require one or more of the following during the hours of the day health program:

- (1) Monitoring of a medical condition;
- (2) Provision of assistance with or supervision of activities of daily living;
- (3) Administration of medication, special feedings or provision of other treatment or services related to health care needs.

(b) Day health programs shall not enroll or continue to serve persons whose needs exceed the capability of the program. ~~Persons who cannot be served in a day health setting include but are not limited to:~~

- (1) ~~persons who have intravenous tubes in place;~~
- (2) ~~persons who require tube feeding (on site);~~
- (3) ~~persons who need injections (except insulin) administered by program staff;~~
- (4) ~~persons who are non-ambulatory.~~

(c) Each individual's service plan, in addition to the requirements set forth in 10 NCAC 42E .1101, shall include the health needs and the goals for meeting the health needs of the individual.

(d) A minimum of 25 percent of the participants in daily attendance in a combination program must be enrolled for adult day care services. Enrollment criteria for adult day care participants shall be consistent with the following target populations:

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- (1) Adults who do not need nursing supervision but who require complete, full-time daytime supervision in order to live in their own home or the home of a relative; or
- (2) Adults who need help with activities of daily living in order to maintain themselves in their own homes; or
- (3) Adults who need intervention in the form of enrichment and opportunities for social activities in order to prevent deterioration that would lead to placement in group care; or
- (4) Individuals enrolled in an adult day care program who need time-limited support in making the transition from independent living to group care, or individuals who need time-limited support in making the transition from group care to independent living.

Statutory Authority G.S. 131D-6.

.0803 HEALTH AND PERSONAL CARE SERVICES

(a) The following health care and personal care services shall be provided:

- (1) ~~personal care~~ (assistance with activities of daily living including, but not limited to feeding, ambulation, or toileting as needed by individual participants;
- (2) ~~health care monitoring of all participants, each participant's general health and medical regimen.~~ This includes documenting the periodic assessment of the vital signs, weight, dental health, general nutrition, and hygiene of each participant. When significant changes occur, positive or negative, such changes shall be reported as soon as possible to the appropriate person (family member, caregiver, friend, physician or whomever is responsible for the participant). The change in health status and notification of the appropriate person shall be recorded in the participant's file;
- (3) ~~assistance to participants and caregivers with medical treatment plans, and diets, and referrals as needed;~~
- (4) ~~injection of insulin by licensed personnel for individual participants, as needed;~~
- (4) ~~(5) health education programs for all participants on a regular basis, at least once each week; monthly; and health care counseling tailored to meet the needs of participants and caregivers;~~
- (6) ~~counseling with individual participants, as needed, regarding health care.~~

- (5) providing first aid treatment as needed.
- (b) Specialized services, e.g. speech therapy, physical therapy, and counseling, shall be facilitated by the adult day health program as required by a physician and as available through community resources.

Statutory Authority G.S. 131D-6.

SECTION .0900 - CERTIFICATION INFORMATION

.0901 PROCEDURE

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

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

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

- (1) The program policy statement;
- (2) Organizational diagram;
- (3) Job descriptions;
- (4) Documentation showing planned expenditures and resources available to carry out the program of service for a 12 month period;
- (5) A floor plan of the facility showing measurements, restrooms and planned use of space;
- (6) Form DSS-1498 (Fire Inspection Report) completed and signed by the local fire inspector no more than 30 days prior to submission with the certification package;
- (7) Form DSS-1499 (Building Inspection Report for Day Care Services for Adults) completed and signed by the local building inspector, or fire inspector or fire marshall if a building inspector is not available, no more than 30 days prior to submission with the certification package;
- (8) Form DSS-2386 (Sanitation Evaluation Report) completed and signed by a local sanitarian no more than 30 days prior to the submission with the certification package;
- (9) Written notice and the effective date, if a variance of local zoning ordinances has been made in order for property to be utilized for an adult day health program;
- (10) A copy of the articles of incorporation, bylaws and names and addresses of board

- members, for adult day health programs sponsored by a non-profit corporation;
- (11) The name and mailing address of the owner if a proprietary program;
 - (12) A medical statement of each staff member certifying to freedom from communicable disease and to good health signed by a licensed physician, physician assistant or nurse practitioner no more than 30 days prior to submission with the certification package; and
 - (13) DSS-6205 (Adult Day Health Certification Report). This form must be submitted by the county department of social services with a copy to the program.
- (d) The following forms and materials make up a certification package for the renewal of a certification and must be submitted through the county department of social services, no more than 60 days prior to the end of the current period of certification, to the state Division of Social Services:
- (1) Form DSS-1498 (Fire Inspection Report) completed and signed by the local fire inspector no more than 30 days prior to submission with the certification package;
 - (2) Form DSS-1499 (Building Inspection Report for Day Care Services for Adults) or the equivalent completed and signed by the local building inspector, or fire inspector or fire marshall if a building inspector is not available, no more than 30 days prior to submission with the certification package when building modifications have been made during the previous 12 months;
 - (3) Form DSS-2386 (Sanitation Report) completed and signed by a local sanitarian no more than 30 days prior to submission with the certification package;
 - (4) A medical statement for each staff member certifying to freedom from communicable disease and to good health signed by a licensed physician, physician assistant or nurse practitioner no more than 12 months prior to submission with the certification package;
 - (5) An updated copy of the policy statement, organizational diagram, job descriptions, names and addresses of board members if applicable, and a floor plan showing measurements, restrooms, and planned use of space, if any changes have been made since the previous certification package was submitted;
 - (6) Documentation showing planned expenditures and resources available to carry out the program of service for a 12 month period; and

(7) DSS-6205 (Adult Day Health Certification Report). This form must be submitted with the certification package by the Department of Social Services to the Division of Social Services at least 30 days in advance of the expiration date of the certificate, with a copy to the program.

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

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

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

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

.0902 CHANGES IN PERSONNEL

The requirements in 10 NCAC 42E .1208 shall control for this Subchapter.

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

.0903 THE CERTIFICATE

The requirements in 10 NCAC 42E .1401 shall control for this Subchapter.

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

.0904 PROVISIONAL CERTIFICATE

The requirements in 10 NCAC 42E .1402 shall control for this Subchapter.

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

.0905 TERMINATION OF CERTIFICATION

The requirements in 10 NCAC 42E .1403 shall control for this Subchapter.

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

.0906 DENIAL OR REVOCATION OF CERTIFICATE

The requirements in 10 NCAC 42E .1404 shall control for this Subchapter.

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

.0907 PENALTY

The requirements in 10 NCAC 42E .1405 shall control for this Subchapter.

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

.0908 PROCEDURE FOR APPEAL

The requirements in 10 NCAC 42E .1406 shall control for this Subchapter.

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

.0909 CORRECTIVE ACTION

The requirements in 10 NCAC 42E .0705 shall control for this Subchapter.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Social Services intends to amend rule(s) cited as 10 NCAC 41M .0001 - .0005; and adopt rule(s) cited as 10 NCAC 41M .0006 - .0007.

The proposed effective date of this action is July 1, 1992.

The public hearing will be conducted at 10:00 a.m. on December 4, 1991 at the Disability Determination Bldg., 322 Chapanoke Rd., Room 1, Raleigh, N.C.

Reason for Proposed Action: To maximize the draw-down of federal funds.

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

CHAPTER 41 - CHILDREN'S SERVICES

SUBCHAPTER 41M - PAYMENT OF GRANTS-IN-AID TO PRIVATE CHILD-CARING INSTITUTIONS

.0001 PURPOSE

The purpose of this Subchapter is: to establish standards for the payment of grants-in-aid funds to private child-caring institutions and to establish a grant-in-aid formula to regulate the payment and distribution of such funds.

- (1) to establish standards and procedures for the payment of State funds by the Division of Social Services to private child placing

agencies and to private residential child care facilities for care and services provided to children who are in the custody or placement responsibility of a county department of social services;

- (2) to assure the equitable distribution of the available funds to the eligible agencies;
(3) to assure the purchase of the minimum sufficient level of care for foster children;
(4) to assure adequate accountability by the eligible agencies for the use of State funds.

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

.0002 DEFINITIONS

As used in this Subchapter, unless the context requires otherwise, the following terms shall have the meaning specified:

- (+) Grants-in-aid funds means social services funds appropriated to the Department of Human Resources by the North Carolina General Assembly for payment to private child-caring institutions.
(2) Private child-caring institutions means those non-state agencies identified by the General Assembly as recipients of grants-in-aid funds to private child-caring institutions.
(3) Grant-in-aid formula means the rule pursuant to which any appropriated grants-in-aid funds are apportioned and disbursed among private child-caring institutions.
(4) Eligible population means children for whom a county department of social services has placement responsibility and who would otherwise live in an arrangement supervised by a county department of social services except for the fact that they have been placed by a county department of social services in a living arrangement supervised by a private child-caring institution. Such children who are more than 17 years of age continue to be in the eligible population if they are less than 21 years of age and are full-time students or are accepted for enrollment as full-time students for the next school term pursuing a high school diploma or its equivalent, a course of study at the college level, or a course of vocational or technical training designed to fit them for gainful employment.
(5) The average cost of operating a private child-caring institution means the total cost of care in all private child-caring institutions divided by the number of private child-caring institutions. The average cost of operating a private child-caring institution does not include the cost of education and capital improvements.

- (6) The average eligible population means an annual average based on an actual quarterly census.
- (1) "State funds" means money appropriated by the General Assembly, including federal matching funds, to be paid to eligible private not-for-profit child placing agencies or private not-for-profit residential child care facilities.
- (2) "Child placing agency" means a private not-for-profit agency licensed by the Department of Human Resources to receive children for purposes of placement in residential child care facilities or family foster homes.
- (3) "Residential child care facility" means a private not-for-profit agency licensed or approved by the Department of Human Resources to operate a staffed premise with paid or volunteer staff where children receive continuing full-time foster care. Residential child care facility includes child-caring institutions, group homes, and children's camps which provide foster care.
- (4) "Eligible agency" means an agency which during the last State fiscal year before the pavement system described in this Subchapter is inaugurated, received a State grant-in-aid to a private child-caring institution, or any agency which has become eligible to receive State funds under Rule .0003(4) and .0003(5) of this Subchapter.
- (5) "Eligible population" means children placed by a county department of social services with a private not-for-profit child placing agency or in a private not-for-profit residential child care facility. Children who are 17, 18, 19 or 20 years old continue to be eligible if they are full-time students or are accepted for enrollment as full-time students for the next school term pursuing a high school diploma or its equivalent, a course of study at the college level, or a course of vocational or technical training designed to fit them for gainful employment.
- (6) "Allowable cost" for each type of care (institutional group care, group home care, family foster care, emergency shelter care, wilderness camping) for each State fiscal year means the expenditures of the eligible agency during the agency's last complete fiscal year to provide the essentials of daily living for eligible children in that type of care, less the standard foster care board payment, and limited to the cap described in Rule .0007(b) of this Subchapter. The essentials of daily living include shelter, meals, clothing, personal incidentals, school supplies, recreation, and individual supervision.

The per diem allowable cost for each agency for each type of care means that agency's annual allowable cost divided by the number of child care days provided by the agency in that type of care. When an eligible agency begins offering a type of care which it has not offered during the last fiscal year, the per diem allowable cost for that type of care for that agency during the current fiscal year will be equal to the average of the per diem allowable costs for all of the eligible agencies currently offering that type of care.

- (7) "Rate of reimbursement" means the percentage of each agency's per diem allowable cost for each type of care which is eligible for State and federal participation.

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

.0003 ADMINISTRATION OF STATE FUNDS

(a) The Division of Social Services shall have responsibility for administering grants-in-aid funds State and federal funds appropriated for this purpose in accordance with rules established by the Social Services Commission.

(b) The Division of Social Services will collaborate with the North Carolina Child Care Association to determine the amount of grants-in-aid funds which the Division recommends to the Secretary of the Department of Human Resources for inclusion in the Department's budget requests.

(c) The Division's budget recommendation will take into account the following factors:

- (1) the average cost of operating private child-caring institutions;
- (2) the receipt of foster care assistance payments by private child-caring institutions from county departments of social services on behalf of the eligible population;
- (3) the average eligible population in care of private child-caring institutions; and
- (4) the difference between the average cost of operating private child-caring institutions and the receipt of foster care assistance payments from county departments of social services.

(d) On the basis of the grant-in-aid formula, the Division of Social Services shall disburse grants-in-aid funds to private child-caring institutions on a quarterly basis, except that any institution which does not meet standards for payment specified in Rule .0004 of this Subchapter shall not receive its allocation for the quarter or quarters after the quarter such failure to meet standards is documented by the Division of Social Services.

(e) Any grants-in-aid funds which are not disbursed to a private child-caring institution be-

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cause of the failure to meet standards specified in Rule .0004 of this Subchapter shall be reallocated during the fourth quarter.

(b) The State funds administered under this Subchapter will be paid by the Division of Social Services directly to the eligible agencies.

(c) The Division of Social Services will collaborate with the North Carolina Child Care Association to develop the budget proposal for these funds to be recommended to the Secretary of Human Resources for inclusion in the Department's budget requests.

(d) The Division's budget recommendation will take into account the following factors:

- (1) the projected eligible population for the eligible agencies;
- (2) the allowable cost for each type of care offered by each eligible agency;
- (3) any proposed change in the reimbursement for each type of care;
- (4) any inclusion of additional eligible agencies;
- (5) State and federal funds required to make the requested appropriation, separated into three components:
 - (A) continuation funding for the eligible agencies;
 - (B) expansion funding to increase the rate of reimbursement to the eligible agencies;
 - (C) expansion funding to include additional eligible agencies.

(e) To be eligible for receipt of State funds under this Subchapter, an agency must have been licensed or approved by the Department of Human Resources for the three consecutive years immediately prior to the State fiscal year for which the funds are requested, except that an agency exercising its exemption from licensure under G.S. 131D-10.4 may apply as soon as it is licensed or approved by the Department.

(f) Private not-for-profit child placing agencies and residential child care facilities may request inclusion in the payment of State funds under this Subchapter by submitting to the Division of Social Services a written budget request, including the following:

- (1) certification that the agency has signed Civil Rights Compliance;
- (2) copy of the agency audit for the last complete fiscal year, including a listing of the amounts and sources of public funds received for each type of care provided;
- (3) documentation of the agency's allowable cost for each type of care offered;
- (4) documentation of the average eligible population in each type of care provided for the last complete fiscal year; and

- (5) the dollar amount required to include the agency at the current rate of reimbursement for eligible agencies.

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

.0004 PAYMENT OF FUNDS

(a) Private child-caring institutions which receive payment of grants-in-aid funds shall meet the following standards:

- (1) Each private child-caring institution will be providing care to children in the eligible population during the quarter in which they receive payment;
- (2) Each private child-caring institution will carry on its residential child care pursuant to appropriate licensure standards for the type of care provided;
- (3) Each private child-caring institution will have filed with the Division of Social Services a written statement of compliance with Title VI of the Civil Rights Act of 1964 and will have non-discriminatory admission practices;
- (4) Each private child-caring institution will annually submit to the Division of Social Services a report of its operations on forms provided for this purpose; and
- (5) Each private child-caring institution will annually submit to the Division of Social Services an independent audit of its financial records prepared by a certified public accountant or public accounting firm.

(b) The Division of Social Services will determine whether private child-caring institutions meet conditions specified in Paragraph (a) of this Rule.

(c) Any private child-caring institution which objects to the Division's determination concerning compliance with conditions specified in Paragraph (a) of this Rule will submit its objections to the Secretary of the Department of Human Resources within 30 working days of written receipt of the Division's determination. In such instances, the Secretary will then make within 60 days the final determination of whether payment will be made.

(a) The Division of Social Services will annually compute each agency's allowable cost for each type of residential care: institutional group care; group home care; family foster care; emergency shelter care; wilderness camping. For each type of care, the annual allowable cost will be divided by the number of child care days to determine the per diem allowable cost.

(b) The total annual State appropriation will be divided into 12 equal monthly appropriations. Each monthly appropriation will be distributed

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to the eligible agencies so that each month the rate of reimbursement will be the same for each type of care and for each eligible agency.

(c) The Division of Social Services will compute each eligible agency's monthly payment for each type of care based on the per diem rate of reimbursement times the number of days of care provided to children in the eligible population during the preceding month.

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

.0005 STANDARDS FOR PAYMENT

(a) The distribution of grants-in-aid funds shall be computed prior to the beginning of each fiscal year using most current information on the average eligible population.

(b) The following factors shall be used to compute the amount of payment to each private child-caring institution:

- (1) determine the average eligible population in all private child-caring institutions;
- (2) divide the total annual appropriation by the average eligible population; then
- (3) multiply the amount due each member of the eligible population by the average eligible population in each private child-caring institution.

(a) Each agency receiving State funds under this Subchapter shall meet the following standards:

- (1) the agency will provide care to children in the eligible population during the month in which it receives payment;
- (2) the agency will operate its residential child care pursuant to the appropriate licensure rules for the type of care provided;
- (3) the agency will file with the Division of Social Services a written statement of compliance with Title VI of the Civil Rights Act of 1964 and will have non-discriminatory admission policies;
- (4) the agency will annually submit to the Division of Social Services a report of its operations on forms provided for this purpose; and
- (5) the agency will annually submit to the Division of Social Services an independent audit of its financial records prepared by a certified public accountant or public accounting firm.

(b) The Division of Social Services will determine whether each agency meets the conditions specified in Subparagraph (a)(1) of this Rule.

(c) Any agency which objects to the Division's determination concerning compliance with conditions specified in Paragraph (a) of this Rule may submit its objections in writing to the Sec-

retary of Human Resources within 30 working days of the receipt of the Division's written determination. In such instances, the Secretary will make the final determination of compliance within 60 days.

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

.0006 PHASE IN

During the first 12 months after the payment system described in this Subchapter is inaugurated, each eligible agency will receive a monthly payment per eligible child at least equal to the monthly State grant-in-aid payment per child it received during the prior 12 months to the extent funds are available for this purpose by the General Assembly.

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

.0007 COST CONTAINMENT

(a) The Department will base the distribution of funds on payment of allowable foster care maintenance costs to the extent state and federal funds are available. The Department's financial obligation will be limited to the annual State appropriation as determined through the normal State budget process plus any federal receipts approved in the Department of Human Resources' budget for this purpose.

(b) For each annual budget recommendation, the Division of Social Services will consult with the North Carolina Child Care Association in establishing the cap to be placed on the per diem allowable cost for each type of care, taking into account the following factors:

- (1) the comparative cost data of the eligible agencies in providing the type of care;
- (2) the intensity of care required for children in the type of care;
- (3) the availability of alternative public funding for the type of care;
- (4) utilization rate of licensed capacity; and
- (5) the comparison of available space in the type of care to the need for placements by department of social services. The cap on the per diem allowable cost for each type of care will be expressed as a percentile of the eligible agencies offering that type of care, and the allowable cost for each agency will be limited to the maximum cost at the designated percentile.

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

TITLE II - DEPARTMENT OF INSURANCE

PROPOSED RULES

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to amend rule(s) cited as 11 NCAC 6A .0232, .0234, .0401, .0404 - .0405, .0802, .0804; repeal rule(s) cited as 11 NCAC 6A .0415; and adopt rule(s) cited as 11 NCAC 6A .0238 - .0240, .0416, .0508.

The proposed effective date of this action is March 1, 1992.

The public hearing will be conducted at 10:00 a.m. on December 3, 1991 at 430 N. Salisbury Street, Dobbs Building, 3rd Floor Hearing Room, Raleigh, N.C. 27611.

Reason for Proposed Action: To conform with recent legislation enacted by the 1991 General Assembly.

Comment Procedures: Written comments may be sent to Rick Johnson, Agent Services Division, P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Rick Johnson at (919) 733-7487, or Ellen Sprenkel at (919) 733-4529.

Editor's Note: These Rules have been filed as temporary rules effective October 3, 1991 for a period of 180 days to expire on March 30, 1992.

CHAPTER 6 - AGENT SERVICES DIVISION

SUBCHAPTER 6A - AGENT SERVICES DIVISION

SECTION .0200 - DESCRIPTION OF FORMS

.0232 APPLICATION FOR RESIDENT SURPLUS LINES LICENSE

The "Application for Resident License to Represent Surplus Lines Insurer (~~Form SL~~) (Form RSL)" shall include personal information and other pertinent information to aid the Division in determining if the applicant is qualified for that license, as well as conditions for the issuance of the license. It must be signed by the applicant and notarized and include three endorsements.

Statutory Authority G.S. 58-2-40; 58-21-65(b)(2),(f).

.0234 RESIDENT SURPLUS LINES LICENSE RENEWAL APPLICATION

The "Resident Renewal Application for License to Represent a Surplus Lines Insurer (~~Form SL-1~~) (Form RSL-1)" shall contain personal in-

formation and other pertinent information to aid the Division in determining if the applicant's license should be renewed. It must be signed by the applicant and notarized. The applicant must be a member of a professional association at the time of application for renewal.

Statutory Authority G.S. 58-2-40; 58-21-40(d); 58-21-65(d),(f).

.0238 RENTAL CAR COMPANY LICENSE APPLICATION

The "Application For A Limited License For A Rental Car Company" shall contain pertinent information concerning the rental car company and other information that is relevant in aiding the Division in determining if the applicant meets eligibility requirements for licensing. Each applicant must submit the proper application fee. The fee must be paid by a company check, certified check, money order, or cashier's check payable to the N.C. Department of Insurance.

Statutory Authority G.S. 58-2-40; 58-33-17.

.0239 NONRESIDENT SURPLUS LINES LICENSE APPLICATION

The "Application for Nonresident License to Represent Surplus Lines Insurer (Form NRSL)" shall include personal information and other pertinent information to aid the Division in determining if the applicant is qualified for that license, as well as conditions for the issuance of the license. It must be signed by the applicant, notarized, and include three endorsements.

Statutory Authority G.S. 58-2-40; 58-21-65(f).

.0240 NONRESIDENT SURPLUS LINES LICENSE RENEWAL

The "Non-Resident Renewal Application for License to Represent a Surplus Lines Insurer (Form NRSL-1)" shall contain personal information and other pertinent information to aid the Division in determining if the applicant's license should be renewed. It must be signed by the applicant and notarized. The applicant must be a member of a professional association at the time of application for renewal.

Statutory Authority G.S. 58-2-40; 58-21-40(d); 58-21-65(f).

SECTION .0400 - LICENSING PROCEDURES

.0401 LICENSES: GENERAL PROVISIONS

(a) All licenses shall specify the kinds of insurance for which the agent, adjuster, limited representative, motor vehicle damage appraiser or broker is licensed.

(b) All licensees must be able, upon request, to furnish evidence of their licensing authority.

(c) Licenses issued by the Division are:

- (1) resident or non-resident adjuster;
 - (A) company/firm,
 - (B) self-employed,
 - (C) hail;
- (2) resident or non-resident agent,
- (3) resident or non-resident limited representative,
- (4) resident or non-resident broker,
- (5) resident or non-resident motor vehicle damage appraiser,
- (6) resident or non-resident surplus lines agent, license,
- (7) corporate surplus lines license,
- (8) corporate/partnership, ~~agent, broker or limited representative,~~
- (9) purchasing group agent or broker,
- (10) risk retention agent or broker,
- (11) foreign military agent,
- (12) temporary license,
- (13) rental car company limited license.

(d) An agent, limited representative or broker may be licensed for any one or several of the kinds of insurance enumerated in G.S. 58-33-25 upon meeting all qualifications.

Statutory Authority G.S. 58-2-40; 58-21-65(f); 58-33-17; 58-33-25; 58-33-30(h).

.0404 LICENSING OF RESIDENT BROKER

(a) An applicant must be a duly licensed agent in North Carolina and have an appointment with at least one company for each kind of insurance to be brokered.

(b) A broker's license ~~shall give~~ gives the holder authority to broker only those kinds of insurance for which he holds an agent's license and company appointment. Brokering must be done through a licensed and appointed agent of the company with which the business is being placed. A broker's licenses does not confer binding authority; it only gives authority to share in commissions with a writing agent.

(c) In addition to all required forms, an applicant must submit a company check, certified check, cashier's check or money order, made payable to the N.C. Department of Insurance, in the amount set forth in G.S. 58-33-125(a).

(d) Each applicant shall file with his application ~~the bond required~~ a surety bond or cash, certificates of deposit, or securities as provided by statute. Any cash, certificate of deposit, or securities deposited in lieu of the surety bond shall be held in accordance with II NCAC 11B .0100.

Statutory Authority G.S. 58-2-40; 58-33-30(f),(h)(1).

.0405 LICENSING OF NONRESIDENT BROKER

(a) In addition to all required forms, an applicant must submit a company check, certified check, cashier's check or money order made payable to the N.C. Department of Insurance, in the amount set forth under G.S. 58-33-125(a).

(b) A nonresident broker's license shall give the holder authority to broker only those kinds of insurance for which he holds a license as an agent in his state of residency.

(c) Each applicant shall file with his application ~~the bond required~~ a surety bond or cash, certificates of deposit, or securities as provided by statute. Any cash, certificate of deposit, or securities deposited in lieu of the surety bond shall be held in accordance with II NCAC 11B .0100.

(d) A nonresident broker must submit an original home state certification with his application stating the kinds of insurance for which he is licensed in his state of residency, and whether he is in good standing in his state of residency. A letter of certification shall be valid for no more than 60 days from date of issuance.

(e) A nonresident broker may not solicit directly or indirectly, but he may participate in commissions of brokered business. Brokering must be done through a licensed and appointed agent of the company with which the business is being placed.

Statutory Authority G.S. 58-2-40; 58-33-30(f),(h)(2); 58-33-125(a).

.0415 LICENSING OF RENTAL CAR COMPANIES' EMPLOYEES/ REPRESENTATIVES

(a) ~~An employee or other representative of a rental car company who solicits or sells personal accident insurance (PAI) or personal effects coverage (PEC) in connection with a rental agreement shall be licensed as a limited representative for travel, accident and baggage insurance.~~

(b) ~~An employee or other representative of a rental car company who solicits or sells limited liability supplement insurance (LIS) in connection with a rental agreement shall be licensed as an agent for fire and casualty insurance.~~

Statutory Authority G.S. 58-2-40; 66-205.

.0416 LICENSING OF RENTAL CAR COMPANIES

(a) An applicant must meet the minimum qualifications in G.S. 58-33-17.

(b) An applicant must make application on a form prescribed by the Commissioner along with the appropriate fee.

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(c) An applicant must submit for approval a copy of any brochure as required in G.S. 58-33-17(f)(2). Any changes in the brochure must be submitted for approval at least 90 days before the proposed effective date of such changes.

(d) An applicant must submit for approval a copy of its employee training program. Any changes in the training program must be submitted for approval at least 90 days before the proposed effective date of such changes.

(e) Each employee of the licensee who sells insurance coverages in relation to a rental agreement must meet the minimum training requirements in the types of insurance authorized in G.S. 58-33-17(e).

(f) A list of all employees who have successfully completed the training course required in G.S. 58-33-17(h) and approved by the Commissioner must be maintained at each licensee's location and must be available for inspection upon request by the Commissioner at all times during normal business hours.

(g) The licensee must notify the Commissioner in writing of any changes, including changes of addresses or the addition of new rental locations, within 30 days after such changes.

(h) The licensee must provide the Commissioner with any changes of coverages being provided or insurers at least 30 days before the effective dates of such changes. If there is a change in insurer, the written notification must be accompanied by a newly executed certification executed by the insurer.

(i) The certification from the insurer providing coverage shall include the:

- (1) name of the licensee;
- (2) name of the insurer providing coverage;
- (3) types of coverage being offered;
- (4) policy form number; and
- (5) signature and title of the insurance company officer executing the certificate.

Statutory Authority G.S. 58-2-40; 58-33-17.

SECTION .0500 - RENEWAL AND CANCELLATION OF LICENSES

.0508 RENTAL CAR COMPANY LICENSE RENEWAL

(a) The Division will mail the appropriate renewal form to each licensee.

(b) Each licensee shall complete and return the form by the specified date and submit the proper renewal fee. The fee must be paid by a company check, certified check, money order, or cashier's check payable to the N.C. Department of Insurance.

(c) Any license that is not renewed by the specified renewal date will expire as of that date.

Statutory Authority G.S. 58-2-40; 58-33-17; 58-33-25(n); 58-33-125.

SECTION .0800 - CONTINUING EDUCATION

.0802 LICENSEE REQUIREMENTS

(a) Life, accident, and health licensees shall obtain 12 credit hours during each calendar year in approved life, accident, and health courses, including mandatory statute and rule update.

(b) Fire and casualty licensees shall obtain 12 credit hours during each calendar year in approved fire and casualty courses, including mandatory statute and rule update.

(c) Accident and health licensees shall obtain 12 credit hours during each calendar year in approved accident and health courses, including mandatory statute and rules update.

(d) Any person holding more than one license to which this Section applies shall ~~meet the requirements for each such license each calendar year.~~ obtain 18 credit hours during each calendar year, including the mandatory statute and rule update for each license; this includes a minimum of six credit hours for each kind of license.

(e) An instructor may receive up to twice the credit hours received by the students for some courses but may receive no credit hours for others, in the discretion of the Commissioner.

(f) Licensees shall not receive credit hours for instructing or taking or instructing and taking the same course more often than one time in any three calendar year period except when there are major revisions within the course. The Commissioner shall determine whether the revisions are substantial enough to allow licensees to re-take or reinstruct an approved course within a three calendar year period.

(g) Licensees do not have to obtain credit hours for the calendar year in which they are initially licensed.

(h) Licensees shall receive credit hours for a course only for the calendar year in which the course is completed. Any course requiring an examination shall not be considered completed until the licensee passes the examination.

(i) Licensees shall not receive credit hours for courses completed prior to January 1, 1991.

(j) Licensees shall maintain records of all credit hours for three years following the obtaining of such credit hours, which records shall be available for inspection upon the Commissioner's request.

(k) Nonresident licensees who meet continuing education requirements in their home states meet the continuing education requirements of this

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Section. Nonresident licensees whose home states have no continuing education requirements shall meet the credit hour requirements of this Section.

(l) Licensees will be required to complete only the mandatory statute and rule update each year if they:

- (1) are age 65 or older; and
- (2) have been continuously licensed in the line of insurance for at least 25 years; and
- (3) hold a nationally recognized professional designation for the line of insurance. Acceptable designations include those listed in 11 NCAC 6A .0803 (a) and (b); or
- (4) meet the requirements of ~~11 NCAC 6A .0802 (1)(1) and (2) of this Rule, Subparagraphs (1) and (2) of this Paragraph~~ and certify to the Department of Insurance annually they are inactive agency owners who neither solicit applications for insurance nor take part in the day to day operation of the agency.

(m) Courses completed prior to the issue date of a new license do not meet the requirements of this Section for that new license.

Statutory Authority G.S. 58-33-130.

.0804 CARRYOVER CREDIT

(a) No more than 75 percent of the credit hours required shall be carried forward from the previous year. ~~Example: If 12 credit hours are required, only nine credit hours may be carried over to the next calendar year.~~ Licensees holding one license shall carry over no more than nine credit hours. Licensees holding more than one license shall carry over no more than six credit hours for any one license.

(b) Only whole credit hours can be carried over.

Statutory Authority G.S. 58-33-130.

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to adopt rule(s) cited as 11 NCAC 16 .0201 - .0204.

The proposed effective date of this action is February 1, 1992.

The public hearing will be conducted at 10:00 a.m. on December 4, 1991 at 430 N. Salisbury Street, Dobbs Building, Rm. 4085, 4th Floor Conference Rm., Raleigh, N.C. 27611.

Reason for Proposed Action: To facilitate the individual accident and health rate revision process as promulgated by statute.

Comment Procedures: Written comments may be sent to Walter James, Actuarial Services Division, P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Walter James at (919) 733-3284, or Ellen Sprenkel at (919) 733-4529.

CHAPTER 16 - ACTUARIAL SERVICES DIVISION

SECTION .0200 - INDIVIDUAL ACCIDENT AND HEALTH INSURANCE

.0201 MINIMUM LOSS RATIO STANDARDS

For individual accident and health insurance policies and riders delivered in this State, the standard minimum guideline loss ratio for conditionally renewable, guaranteed renewable, and noncancelable medical expense and loss of income type coverages shall be as promulgated by the National Association of Insurance Commissioners for such coverages.

Statutory Authority G.S. 58-2-40; 58-51-95; 58-63-15(7)(b).

.0202 RENEWABILITY DEFINITIONS

(a) Conditionally Renewable - Renewal may be declined for stated reasons, except for the deterioration of health of an individual insured; provided that the declination applies to all insureds in this State insured under the same policy or rider.

(b) Guaranteed Renewable - Renewal may not be declined by an insurance company for any reason; but the insurance company may revise rates on a class basis.

(c) Noncancelable - Renewal may not be declined nor may rates be revised by an insurance company.

Statutory Authority G.S. 58-2-40; 58-51-95; 58-63-15(7)(b).

.0203 CONDITIONALLY RENEWABLE STATED REASON PROHIBITED

For policies or riders permitting the adjustment of premiums for which the insurer retains the right to nonrenew, the following reason or any synonymous reasons given for nonrenewal are no longer appropriate and are therefore disallowed:

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"The insurer is prevented by any law, or any regulation, or any ruling of a government agency from using a table of premium rates that the insurer has certified as being reasonable in relation to the benefits provided under the policy."

Statutory Authority G.S. 58-2-40; 58-51-20.

.0204 OPTIONALLY RENEWABLE PROHIBITED

The optionally renewable definition, as prescribed by the National Association of Insurance Commissioners, is not permitted in this State because policies or riders containing such a definition permit insurers to nonrenew an individual insured based upon the deterioration of health of an individual insured or based upon the claim experience of an individual insured.

Statutory Authority G.S. 58-2-40; 58-51-95; 58-63-15(7)(b).

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

Notice is hereby given in accordance with G.S. 150B-21.2 that EHNR - Division of Water Resources intends to amend rule(s) cited as 15A NCAC 2E .0107; and adopt rule(s) cited as 15A NCAC 2E .0301.

The proposed effective date of this action is April 1, 1992.

The public hearing will be conducted at 7:00 p.m. on November 21, 1991 at the Ground Floor Hearing Room, Archdale Bldg., 512 N. Salisbury St., Raleigh, N.C.

Reason for Proposed Action: To comply with Senate Bill 943 - An Act to Require the Registration of Water Withdrawals and Transfers of One Million Gallons or More Per Day.

Comment Procedures: All persons interested in this matter are invited to attend. Submittal of written comments or oral statements are requested. For more information contact: John D. Wray, Division of Water Resources, P.O. Box 27687, Raleigh, NC 27611, telephone (919) 733-4064. Written comments will be accepted after the hearing until December 6, 1991.

Editor's Note: These Rules have been filed as temporary rules effective October 14, 1991 for a period of 180 days to expire on April 11, 1992.

Fiscal Note: This Rule affects the expenditures or revenues of local funds. A fiscal note was submitted to the Fiscal Research Division on October 10, 1991, OSBM on October 10, 1991, N.C. League of Municipalities on October 11, 1991, and N.C. Association of County Commissioners on October 11, 1991.

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2E - CAPACITY USE AREA WATER WITHDRAWAL

SECTION .0100 - GENERAL PROVISIONS

.0107 DELEGATION

(a) The Director is delegated the authority to grant, modify, revoke or deny permits under G.S. 143-215.15 and G.S. 143-215.16.

(b) The Director may delegate any permitting function given by the rules of this Subchapter.

(c) The Director is delegated the authority to assess civil penalties and request the Attorney General to institute civil actions under G.S. 143-215.17.

(d) The Director of the Division of Water Resources is delegated the authority to process applications and collect fees for registration of surface water withdrawals and transfers under G.S. 143-215.22B and G.S. 143-215.3(1b).

(e) The Director of the Division of Water Resources may delegate any surface water withdrawal or transfer registration processing functions given by the rules of this Subchapter.

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

SECTION .0300 - REGISTRATION OF SURFACE WATER WITHDRAWALS AND TRANSFERS

.0301 APPLICATION; PROCESSING FEES

(a) Any person subject to G.S. 143-215.22B, shall complete, sign, and submit an application for registration, on a form provided by the Department, to the Director of the Division of Water Resources. The registration application and registration processing fee (if applicable) shall be mailed to the Division of Water Resources, North Carolina Department of Environment, Health, and Natural Resources, Post Office Box 27687, Raleigh, North Carolina 27611-7687.

(b) Except as otherwise provided in this Rule, a nonrefundable registration processing fee in the amount of fifty dollars (\$50.00) shall be paid

when the registration application form is submitted.

- (1) No registration application form is complete until the registration processing fee is paid.
- (2) Each facility from which a person withdraws or transfers one million gallons per day or more must be separately registered. The registration application for each facility to be registered must include the fee in the amount set forth in these Rules.
- (3) A late registration fee in the amount of 20 percent of the registration processing fee shall be assessed as a penalty for failure to register by the deadlines set forth in 1991 N.C. Sess. Laws, c. 712, Sec. 3.
- (4) Payment of the registration processing fee shall be by check or money order made payable to the "N.C. Department of Environment, Health, and Natural Resources". The check or money order should refer to the water withdrawal or transfer registration application.

(c) Except as otherwise provided in this Rule, upon receipt of a properly completed application form and the registration processing fee, the applicant will be issued a receipt of registration.

(d) Pursuant to G.S. 143-215.3(a) (1a), no fees are required to be paid under this Rule by a farmer who submits an application for registration of a withdrawal or transfer that pertains to farming operations. Upon receipt of a properly completed application from a farmer, the applicant will be issued a receipt of registration.

Statutory Authority G.S. 143-215.3 (a) (1a) (1b); 143-215.22B.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rule(s) cited as 15A NCAC 10D .0003.

The proposed effective date of this action is April 1, 1992.

The public hearing will be conducted at 10:00 a.m. on December 17, 1991 at Room 386, Archdale Building, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

Reason for Proposed Action: To establish an archery zone in portions of the New Hope Game Land.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from December 2, 1991 to January 1, 1992. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

Editor's Note: This Rule has been filed as a temporary rule effective October 3, 1991 for a period of 180 days to expire on March 30, 1992.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10D - GAME LANDS REGULATIONS

.0003 HUNTING ON GAME LANDS

(a) Safety Requirements. No person while hunting on any designated game land shall be under the influence of alcohol or any narcotic drug, or fail to comply with special restrictions regarding the use of the Blue Ridge Parkway where it adjoins game lands listed in this Rule.

(b) Traffic Requirements. No person shall park a vehicle on game lands in such a manner as to block traffic, gates or otherwise prevent vehicles from using any roadway.

(c) Tree Stands. It is unlawful to erect or to occupy, for the purpose of hunting, any tree stand or platform attached by nails, screws, bolts or wire to a tree on any game land designated herein. This prohibition shall not apply to lag-screw steps or portable stands that are removed after use with no metal left remaining in or attached to the tree.

(d) Time and Manner of Taking. Except where closed to hunting or limited to specific dates by these regulations, hunting on game lands is permitted during the open season for the game or furbearing species being hunted. On managed waterfowl impoundments, hunters shall not enter the posted impoundment areas earlier than 4:00 a.m. on the permitted hunting dates, and hunting is prohibited after 1:00 p.m. on such hunting dates; decoys may not be set out prior to 4:00 a.m. and must be removed by 3:00 p.m. each day. No person shall operate any vessel or vehicle powered by an internal combustion engine on a managed waterfowl impoundment.

No person shall attempt to obscure the sex or age of any bird or animal taken by severing the head or any other part thereof, or possess any bird or animal which has been so mutilated.

No person shall place, or cause to be placed on any game land, salt, grain, fruit, or other foods without prior written authorization of the com-

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mission or its agent and no person shall take or attempt to take any game birds or game animals attracted to such foods.

No live wild animals or wild birds shall be removed from any game land.

(e) Hunting Dates:

- (1) Doves may be taken on the following game lands and dove hunting is limited to Mondays, Wednesdays, Saturdays and to Thanksgiving, Christmas and New Year's Days within the federally-announced season:

Buncombe County--Browntown Farms Game Land

Guilford County--Guilford County Farm Game Land

Lenoir County--Caswell Farm Game Land

Wayne County--Cherry Farm Game Land

- (2) Any game may be taken during the open seasons on the following game lands and hunting is limited to Mondays, Wednesdays, Saturdays and Thanksgiving, Christmas and New Year's Days. In addition, deer may be taken with bow and arrow on the opening day of the bow and arrow season for deer. Raccoon and opossum hunting may continue until 7:00 a.m. on Tuesdays, until 7:00 a.m. on Thursdays, and until midnight on Saturdays. Additional restrictions apply as indicated in parentheses following specific designations:

Ashe County--Carson Woods Game Land

Bertie County--Bertie County Game Lands

Bladen County--Bladen Lakes State Forest Game Lands (Handguns may not be carried and, except for muzzle-loaders, rifles larger than .22 caliber rimfire may not be used or possessed. On the Breece Tract and the Singletary Tract deer and bear may be taken only by still hunting. Deer of either sex may be taken on the first Wednesday after Thanksgiving and on the second Saturday after Thanksgiving.)

Caswell County--Caswell Game Land (That part designated and posted as a "safety zone" is closed to all hunting and trapping, and entry upon such area for any purpose, except by authorized personnel in the performance of their duties, is prohibited. On areas posted as "restricted zones" hunting is limited to bow and arrow.)

Catawba and Iredell Counties--Catawba Game Land (No deer may be taken from the tracts known as Island Point or Molly's Backbone.)

Lenoir County--H.M. Bizzell, Sr., Game Land

Onslow County--White Oak River Impoundment Game Land (In addition to the dates above indicated, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons.)

Pender County--Holly Shelter Game Land (In addition to the dates above indicated, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons. Deer of either sex may be taken on the first Wednesday after Thanksgiving and on the second Saturday after Thanksgiving.)

Richmond, Scotland and Moore Counties--Sandhills Game Land (The regular gun season for deer consists of the open hunting dates from the second Monday before Thanksgiving to the third Saturday after Thanksgiving except on the field trial grounds where the gun season is from the second Monday before Thanksgiving to the Saturday following Thanksgiving. Deer may be taken with bow and arrow on all open hunting dates during the bow and arrow season, as well as during the regular gun season. Deer may be taken with muzzle-loading firearms on Monday, Wednesday and Saturday of the second week before Thanksgiving week, and during the regular gun season. Except for the deer seasons above indicated and the managed either-sex permit hunts, the field trial grounds are closed to all hunting during the period October 22 to March 31. In addition to the regular hunting days, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons.) Wild turkey hunting is by permit only.

Robeson County--Bullard and Branch Hunting Preserve Game Land

Stokes County--Sauratown Plantation Game Land

Yadkin County--Huntsville Community Farms Game Land

- (3) Any game may be taken on the following game lands during the open season, except that:

(A) Bears may not be taken on lands designated and posted as bear sanctuaries;

(B) Wild boar may not be taken with the use of dogs on such bear sanctuaries, and wild boar may be hunted only during the bow and arrow seasons, the muzzle-loading deer season and the regular gun season on male deer on bear sanctuaries located in and west of the counties of Madison, Buncombe, Henderson and Polk;

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- (C) On game lands open to deer hunting located in or west of the counties of Rockingham, Guilford, Randolph, Montgomery and Anson, the following rules apply to the use of dogs during the regular season for hunting deer with guns:
- (i) Except for the counties of Cherokee, Clay, Jackson, Macon, Madison, Polk, and Swain, game birds may be hunted with dogs.
 - (ii) In the counties of Cherokee, Clay, Jackson, Macon, Madison, Polk, and Swain, small game in season may be hunted with dogs on all game lands except on bear sanctuaries.
- (D) On Croatan, Goose Creek, New Hope and Shearon Harris Game Lands waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons; except that outside the posted waterfowl impoundments on Goose Creek Game Land hunting any waterfowl in season is permitted any week day during the last 10 days of the regular duck season as established by the U.S. Fish and Wildlife Service; On the Pamlico Point, Campbell Creek, and Spring Creek impoundments a special permit is required for hunting on those opening and closing days of the waterfowl season as well as on those Saturdays that fall after November 1 of the season and on Thanksgiving and New Year's day;
- (E) On the posted waterfowl impoundments of Gull Rock Game Land hunting of any species of wildlife is limited to Mondays, Wednesdays, Saturdays; Thanksgiving, Christmas, and New Year's Days; and the opening and closing days of the applicable waterfowl seasons;
- (F) On bear sanctuaries in and west of Madison, Buncombe, Henderson and Polk Counties dogs may not be trained or allowed to run unleashed between March 1 and October 11;
- (G) On Butner-Falls of Neuse and Person Game Lands waterfowl may be taken only on Tuesdays, Thursdays and Saturdays, Christmas and New Year's Days, and on the opening and closing days of the applicable waterfowl seasons;
- (H) On Angola Bay, Croatan, Goose Creek, Hofmann Forest and Tuscarora Game Lands deer of either sex may be taken from the first Wednesday after Thanksgiving through the following Saturday;
- (I) Horseback riding is allowed on the Caswell and Thurmond Chatham game lands only during June, July, and August and on Sundays during the remainder of the year except during open turkey and deer seasons. Horseback riding is allowed only on roads opened to vehicular traffic. Participants must obtain a game lands license prior to engaging in such activity;
- (J) On the posted waterfowl impoundments on the New Hope and Butner-Falls of Neuse game lands a special permit is required for all waterfowl hunting.
- (K) Additional restrictions or modifications apply as indicated in parentheses following specific designations:
- Alexander and Caldwell Counties--Brushy Mountains Game Lands
 - Anson County--Anson Game Land
 - Ashe County--Bluff Mountain Game Lands
 - Ashe County--Cherokee Game Lands
 - Ashe and Watauga Counties--Elk Knob Game Land
 - Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Jackson, Madison, McDowell, Mitchell, Transylvania, Watauga and Yancey Counties--Pisgah Game Lands (Harmon Den and Sherwood Bear Sanctuaries in Haywood County are closed to hunting raccoon, opossum and wildcat. Training raccoon and opossum dogs is prohibited from March 1 to October 11 in that part of Madison County north of the French Broad River, south of US 25-70 and west of SR 1319.)
 - Bertie and Washington Counties--Bachelor Bay Game Lands
 - Beaufort and Pamlico Counties--Goose Creek Game Land
 - Brunswick County--Green Swamp Game Land
 - Burke County--South Mountains Game Lands
 - Caldwell, Watauga and Wilkes Counties--Yadkin Game Land
 - Carteret, Craven and Jones Counties--Croatan Game Lands
 - Chatham County--Chatham Game Land
 - Chatham, Durham, Orange, and Wake Counties--New Hope Game Lands (On areas posted as "archery zones" hunting is limited to bow and arrow.)
 - Chatham and Wake Counties--Shearon Harris Game Land
 - Cherokee, Clay, Graham, Jackson, Macon, Swain and Transylvania Counties--

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Nantahala Game Lands. Raccoon and opossum may be hunted only from sunset Friday until sunrise on Saturday and from sunset until 12:00 midnight on Saturday on Fires Creek Bear Sanctuary in Clay County and in that part of Cherokee County north of US 64 and NC 294, east of Persimmon Creek and Hiwassee Lake, south of Hiwassee Lake and west of Nottely River; in the same part of Cherokee County dog training is prohibited from March 1 to October 11. It is unlawful to train dogs or allow dogs to run unleashed on Fires Creek Bear Sanctuary at any time, except that dogs may be used when hunting raccoon or opossum and for hunting grouse and rabbits during the open seasons. It is unlawful to train dogs or allow dogs to run unleashed on any game land in Graham County between March 1 and October 11.

Chowan County--Chowan Game Land
Cleveland County--Gardner-Webb Game Land

Craven County--Neuse River Game Land
Craven County--Tusearora Game Land
Currituck County--North River Game Land
Currituck County--Northwest River Marsh Game Land

Dare County--Dare Game Land (No hunting on posted parts of bombing range.)

Davidson, Davie, Montgomery, Rowan and Stanly Counties--Alcoa Game Land

Davidson County--Linwood Game Land
Davidson, Montgomery and Randolph Counties--Uwharrie Game Land

Duplin and Pender Counties--Angola Bay Game Land

Durham, Granville and Wake Counties--Butner-Falls of Neuse Game Land (On portions of the Butner-Falls of Neuse Game Land designated and posted as "safety zones" and on that part marked as the Penny Bend Rabbit Research Area no hunting is permitted. On portions posted as "restricted zones" hunting is limited to bow and arrow during the bow and arrow season and the regular gun season for deer.)

Franklin County--Franklin Game Lands
Gates County--Chowan Swamp Game Land

Henderson, Polk and Rutherford Counties--Green River Game Lands

Hyde County--Gull Rock Game Land
Hyde County--Pungo River Game Land
Hyde and Tyrrell Counties--New Lake Game Land

Jones and Onslow Counties--Hofmann Forest Game Land

Lee County--Lee Game Land

McDowell County--Hickory Nut Mountain Game Land

McDowell and Rutherford Counties--Dysartsville Game Lands

Moore County--Moore Game Land

New Hanover County--Sutton Lake Game Land

Person County--Person Game Land

Transylvania County--Toxaway Game Land

Vance County--Vance Game Land

Wilkes County--Thurmond Chatham Game Land

- (4) Deer of either sex may be taken on the hunt dates indicated by holders of permits to participate in managed hunts scheduled and conducted in accordance with this Subparagraph on the game lands or portions of game lands included in the following schedule:

Friday and Saturday of the first week after Thanksgiving Week:

Uwharrie and Alcoa southeast of NC 49

Third Saturday after Thanksgiving Day:

Carson Woods

Thurmond Chatham

Thursday and Friday of the week before Thanksgiving Week:

Sandhills east of US 1

Sandhills west of US 1

Fourth Saturday after Thanksgiving Day:

Dysartsville in McDowell County

Hickorynut Mountain in McDowell County

Pisgah in Avery County

Pisgah in Burke County

Pisgah in Caldwell County

Pisgah in McDowell County

Pisgah in Yancey County

South Mountains

Thurmond Chatham

Application forms for permits to participate in managed deer hunts on game lands, together with pertinent information and instructions, may be obtained from hunting and fishing license agents and from the Wildlife Resources Commission. Completed applications must be received by the Commission not later than the first day of October next preceding the dates of hunt. Permits are issued by random computer selection, are mailed to the permittees 30 days prior to the hunt, and are nontransferable. Each permit is accompanied by an appropriate big game tag. A hunter making a kill must tag the deer and report the kill to a wildlife cooperator agent.

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- (5) The following game lands and Federal Wildlife Refuge are closed to all hunting except to those individuals who have obtained a valid and current permit from the Wildlife Resources Commission: Bertie, Halifax and Martin Counties--Roanoke River Wetlands;
- Bertie County--Roanoke River National Wildlife Refuge.
- Caswell County--Caswell Game Land (That portion designated and posted as a "Safety Zone")
- Dare County--Dare Game Lands (Those parts of bombing range posted against hunting)
- Davie--Hunting Creek Swamp Waterfowl Refuge
- Gaston, Lincoln and Mecklenburg Counties--Cowan's Ford Waterfowl Refuge (except for youth either-sex deer hunts by permit only on the first and second Saturdays in October).

Statutory Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-305.

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rule(s) cited as 15A NCAC 10F .0354.

The proposed effective date of this action is February 1, 1992.

The public hearing will be conducted at 10:00 a.m. on December 2, 1991 at Room 386, Archdale Building, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

Reason for Proposed Action: A no wake zone in the described area must be established to address safety concerns of the public.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from November 18, 1991 to December 17, 1991. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

.0354 PITT COUNTY

(a) Regulated ~~Area~~. Areas. This Rule applies to the waters described in this Paragraph:

- (1) The entire inlet of Hardee Creek from the Tar River in Pitt County.
- (2) That portion of the Tar River beginning at the curve approaching Seine Beach to the East side of the Grimesland Bridge as marked at each end by appropriate markers.

(b) Speed Limit. No person shall operate a motorboat or vessel at greater than no-wake speed within the regulated ~~area~~ areas described in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The Board of Commissioners of Pitt County is designated a suitable agency for placement and maintenance of markers implementing this Rule.

Statutory Authority G.S. 75A-3; 75A-15.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. State Board of Cosmetic Art Examiners intends to adopt rule(s) cited as 21 NCAC 14J .0501 - .0502; and amend rule(s) cited as 21 NCAC 14L .0105, .0216.

The proposed effective date of this action is March 1, 1992.

The public hearing will be conducted at 1:00 p.m. on December 16, 1991 at the Grove Towers, Fifth Floor, 1110 Navaho Drive, Raleigh, N.C. 27609.

Reason for Proposed Action: 21 NCAC 14J .0501 - .0502 - To cite conditions by which credit is allowed for instruction taken in another state or country. 21 NCAC 14L .0105 - Grandfathering manicurists currently teaching manicuring. 21 NCAC 14L .0216 - Break down the total hours for training to clarify, leaving time spent on each section up to the instructor.

Comment Procedures: The record shall be open for 30 days to receive written comments. Written comments should be received by the N.C. State Board of Cosmetic Art Examiners by December 11, 1991, to be considered as part of the hearing

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record. Comments should be addressed to Vicky R. Goudie, Executive Secretary, N.C. State Board of Cosmetic Art Examiners, 1110 Navaho Dr., Raleigh, N.C. 27609. Requests to speak must be in writing and received by December 11, 1991 prior to hearing. Speaking time 10 minutes.

CHAPTER 14 - BOARD OF COSMETIC ART EXAMINERS

SUBCHAPTER 14J - COSMETOLOGY CURRICULUM

SECTION .0500 - CREDIT FOR COSMETOLOGY STUDY OUTSIDE OF NORTH CAROLINA

.0501 APPROVAL OF CREDIT FOR COSMETOLOGY INST TAKEN IN ANOTHER STATE

(a) A cosmetology student may receive credit for instruction taken in another state if the conditions set forth in this Rule are met.

(b) The cosmetology student's record shall be certified by the state agency or department that issues licenses to practice in the cosmetic arts. If this agency or department does not maintain any student records or if the state does not give license to practice in the cosmetic arts, then the records may be certified by any state department or state agency that does maintain such records and is willing to certify their accuracy. If no state department or board will certify the accuracy of the student's records, then this Board will not give any credit for the out-of-state instruction.

(c) If the requirements of Paragraph (b) of this Rule are met, then the Board will give credit for hours of course work and for mannequin and live model performances to the extent certified, up to the amount of credit that the student would receive for instruction in a school licensed by the Board. If the certification includes only total hours and does not specify what performances have been completed, this Board will not give any credit for performances completed as part of the out-of-state instruction.

Statutory Authority G.S. 88-10; 88-13.

.0502 APPROVAL OF CREDIT FOR COSMETOLOGY INST TAKEN IN ANOTHER COUNTRY

All approval for credit hours of instruction taken in another country shall be reviewed, approved or denied on a case-by-case basis.

Statutory Authority G.S. 88-10; 88-13.

SUBCHAPTER 14L - COSMETIC ART TEACHERS

SECTION .0100 - TEACHER QUALIFICATIONS AND EXAMINATIONS

.0105 QUALIFICATIONS - MANICURIST TEACHERS

(a) To be a manicurist teacher, an applicant must:

- (1) have a high school diploma or a high school graduation equivalency certificate;
- (2) be a registered manicurist in this State;
- (3) have either:

(A) practiced manicuring in a cosmetic art shop for a period equivalent to five years of full-time work; or

(B) completed a 320-hour teacher training course in manicuring as set forth in Rule 14L .0202(b) in an approved cosmetic art school and practiced manicuring in a cosmetic art shop for a period equivalent to six months of full-time work; and

(4) pass the manicurist teacher's examination.

(b) The required six months' experience may be gained while a manicurist is enrolled in a teacher trainee course, but it must consist of experience in a cosmetic art shop.

(c) Applicants who are registered manicurists in good standing in this State and who were regularly employed in a school in this State as a teacher of manicuring before January 1, 1991, may substitute the equivalent of three years of full-time teaching in lieu of the requirements of Paragraph (a) of this Rule if they apply for a license as a manicurist teacher on or before January 1, 1993. After January 1, 1993, such an applicant must also meet the requirements of Paragraphs (a)(1) and (4) of this Rule.

Statutory Authority G.S. 88-23.

SECTION .0200 - TEACHER PROGRAM AND CURRICULUM

.0216 TEACHER TRAINING CURRICULUM

(a) To meet the approval of the Board, a cosmetologist teacher training course must consist of at least 800 hours of instruction in theory and practical application, divided as follows:

(1) One hundred fifty hours of instruction on methods of teaching and the laws governing cosmetology, to include the following topics:

- (A) instruction in teaching techniques;
- (B) instruction in preparing lesson plans;
- (C) instruction in preparing class lectures and presentations;
- (D) instruction in preparing examinations; and

(E) Chapter 88 of the North Carolina General Statutes and the rules of the Board.

PROPOSED RULES

- (2) Six hundred fifty hours of practice teaching, to include the following:
- (A) conducting theory classes from prepared lesson plans;
 - (B) preparing and giving examinations; and
 - (C) giving practical demonstrations.
- (b) ~~To meet the approval of the Board, a manicurist teacher training course must extend over a period of at least three months and include 320 hours of training as follows:~~

- (1) ~~lesson planning and presentations - 50 hours;~~
- (2) ~~testing - 25 hours;~~
- (3) ~~education - 50 hours (vocabulary development);~~
- (4) ~~demonstration and lecturing - 25 hours;~~
- (5) ~~teaching aides - 15 hours;~~
- (6) ~~classroom management - 25 hours;~~
- (7) ~~rules and law - 5 hours;~~
- (8) ~~basic teaching methods - 60 hours;~~
- (9) ~~teaching principles - 30 hours;~~
- (10) ~~personality and teaching - 25 hours; and~~
- (11) ~~chemical usage - 40 hours.~~

(b) To meet the approval of the Board, a manicurist teacher training course must consist of at least 320 hours of instruction in theory and practical application, divided as follows:

- (1) One hundred and fifteen hours of instruction on methods of teaching and the laws governing manicuring, to include the following topics:
 - (A) instruction in teaching techniques;
 - (B) instruction in preparing lesson plans;
 - (C) instruction in preparing class lectures and presentations;
 - (D) instruction in preparing examinations;
 - (E) instruction in chemical usage; and
 - (F) Chapter 88 of the North Carolina General Statutes and the rules of the Board.

- (2) Two hundred and five hours of practice teaching, to include the following:
- (A) conducting theory classes from prepared lesson plans;
 - (B) preparing and giving examinations; and
 - (C) giving practical demonstrations.

Statutory Authority G.S. 88-23.

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Examiners in Optometry intends to amend rule(s) cited as 21 NCAC 42J .0001.

The proposed effective date of this action is February 1, 1992.

The public hearing will be conducted at 9:00 a.m. on December 2, 1991 at the offices of Womble Carlyle Sandridge and Rice, 227 Fayetteville Street Mall, 800 Wachovia Building, Raleigh, North Carolina.

Reason for Proposed Action: To raise fees to cover an increase in operational cost. These fees have not been raised since June 1989.

Comment Procedures: Written comments must be received by the Board no later than 5:00 p.m. on November 25, 1991; requests to make oral comments at the hearing must be received by 5:00 p.m. on November 25, 1991. Comments and requests should be addressed to John D. Robinson, O.D., Executive Director, 321 East Main Street, P.O. Drawer 609, Wallace, North Carolina 28466-0609. Oral comments may be limited to 3 minutes.

CHAPTER 42 - BOARD OF EXAMINERS IN OPTOMETRY

SUBCHAPTER 42J - FEE SCHEDULE

.0001 FEES

The Board hereby establishes the following fees:

(1) Each application for general optometry examinations	\$330.00	\$400.00
(2) Each general optometry license renewal	\$165.00	\$215.00
(3) Each certificate of license to a resident optometrist desiring to change to another state or territory		\$200.00
(4) Each license issued to a practitioner of another state or territory to practice in this state		\$250.00
(5) Each license to resume practice issued to an optometrist who has retired from the practice of optometry or who has removed <u>moved</u> from and returned to this state		\$250.00
(6) Each application for registration as an optometric assistant or renewal thereof		\$ 50.00
(7) Each application for registration as an optometric technician or renewal thereof		\$ 50.00
(8) Each duplicate license		\$ 50.00

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Table with 3 columns: Item number, Description, and Amount. (9) Each renewal license for each branch office \$ 35.00 \$ 45.00; (10) Each certificate of registration for a professional corporation \$ 50.00; (11) Each renewal certificate of registration for a professional corporation \$ 25.00

Statutory Authority G.S. 55B-10; 55B-11; 90-117.5; 90-123.

TITLE 24 - INDEPENDENT AGENCIES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Safety and Health Review Board of North Carolina intends to adopt rules cited as 24 NCAC 3 .0101 - .0111, .0201 - .0203, .0301 - .0309, .0401 - .0406, .0501 - .0516, .0601 - .0605, .0701 - .0710.

The proposed effective date of this action is February 1, 1992.

The public hearing will be conducted at 10:00 a.m. on December 2, 1991 at the N.C. State Bar Building, Council Chambers - Third Floor, 208 Fayetteville Street Mall, Raleigh, North Carolina.

Reason for Proposed Action: To adopt rules for the Safety and Health Review Board to use in conducting hearings.

Comment Procedures: Anyone wishing to comment on these proposed rules should send comments in writing to Doris Hinton at 121 West Jones Street, Raleigh, NC 27603 by December 1, 1991.

Editor's Note: These Rules have been filed as temporary rules effective October 2, 1991 for a period of 180 days to expire on March 30, 1992.

CHAPTER 3 - SAFETY AND HEALTH REVIEW BOARD OF NORTH CAROLINA

SECTION .0100 - GENERAL PROVISIONS

.0101 DEFINITIONS

As used herein:

- (1) "Act" means the Occupational Safety and Health Act of North Carolina, Article 16, Chapter 95 of the General Statutes.
(2) "Board," "person," "employer," and "employee" have their meanings set forth in G.S. 95-127 of the Act.
(3) "Commissioner" means the Commissioner of Labor of North Carolina; "Director" means the officer or agent appointed by the Commissioner for the purpose of assisting in the administration of the Act.
(4) "Affected employee" means an employee of a cited employer who is exposed to the

alleged hazard described in the citation, as a result of his assigned duties.

- (5) "Hearing examiner" is synonymous with the "Administrative Law Judge" and means a person appointed by the Chairman of the Review Board pursuant to G.S. 95-135(e).
(6) "Authorized employee representative" means a labor organization whether local or international which has a collective bargaining relationship with the cited employer and which represents affected employees. Such an organization may appear through an authorized representative. Affected employees may appear pro se (unrepresented by counsel) or through an attorney. See Rules .0202 and .0203 of this Chapter.
(7) "Authorized representative" means an owner or bona fide full-time officer or employee of a party when the party is an association, a partnership, a corporation, or other business entity.
(8) "Citation" means a written communication issued by the Commissioner to an employer pursuant to G.S. 95-137.
(9) "Notification of proposed penalty" means a written communication issued by the Commissioner to an employer pursuant to G.S. 95-137.
(10) "Day" means a calendar day.
(11) "Working day" means all days except Saturdays, Sundays, and legal holidays.
(12) "Proceeding" means any proceeding before the Review Board or hearing examiner.
(13) "Respondent" means an employer who has been issued a citation.
(14) "Complainant" means the Commissioner of Labor of North Carolina.
(15) Unless otherwise specified, definitions set forth in G.S. 95-127 are hereby adopted.

Statutory Authority G.S. 95-135.

.0102 SCOPE OF RULES: APPLICABILITY OF NORTH CAROLINA RULES

Civil Procedure.

- (1) These rules shall govern all proceedings before the Review Board and its hearing examiners.
(2) In the absence of a specific provision, procedure shall be in accordance with the North Carolina Rules of Civil Procedure.

Statutory Authority G.S. 95-135.

.0103 USE OF GENDER AND NUMBER

(a) Words importing the singular number may extend to and be applied to the plural and vice versa.

(b) Words importing one gender may be applied to the other.

Statutory Authority G.S. 95-135.

.0104 COMPUTATION OF TIME

(a) In computing any period of time prescribed or allowed in these Rules, the day from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

(b) Where service of a pleading or document is by mail pursuant to Rule .0107 of this Section, three days shall be added to the time allowed by these Rules for filing of a responsive pleading.

Statutory Authority G.S. 95-135.

.0105 EXTENSIONS OF TIME

Requests for extensions of time for the filing of any pleading or documents must be received in the Review Board office three days in advance of the date on which the pleading or document is due to be filed. Such requests may be oral or in writing. Oral requests shall be followed by a letter addressed to the Office of the Review Board, setting out the substance of the request.

Statutory Authority G.S. 95-135.

.0106 RECORD ADDRESS

The initial pleading filed by any person shall contain that person's name, address, and telephone number. Any change in such information must be communicated promptly in writing to the Review Board, and to all other parties and intervenors. A party or intervenor who fails to furnish such information shall be deemed to have waived his right to notice and service under these Rules.

Statutory Authority G.S. 95-135.

.0107 SERVICE AND NOTICE

(a) At the time of filing pleadings or other documents, a copy thereof shall be served by the filing party or intervenor on every other party or

intervenor by postage prepaid first-class or by personal delivery. If affected employees are represented by an authorized employee representative, the Complainant and the Respondent shall serve a copy of the Statement of Respondent's Position, and, where applicable under Rule .0304 of this Chapter, copies of the complaint and answer in this case on the authorized employee representative in accordance with Paragraph (c) of this Rule. Both the Complainant and the Respondent shall also serve on any authorized employee representative notice of any request for or proposed modification of abatement. In cases in which employees are represented by authorized employee representative, the Complainant and Respondent shall notify the Board of this fact within 10 days after filing of their Statement of Respondent's Position, and in such cases, the Board shall serve on the authorized employee representative notice of hearings and copies of any final order of the Board or hearing examiners in the manner prescribed by Paragraph (c) of this Rule.

(b) Service upon a party or intervenor who has appeared through an authorized representative or attorney need be made only upon such authorized representative or attorney.

(c) Unless otherwise ordered, service may be accomplished by postage prepaid first-class mail or by personal delivery. Service is deemed effected at the time of mailing (if by mail) or at the time of personal delivery (if by personal delivery).

(d) Proof of service shall be accomplished by a written statement attached to the document served which sets forth the date and manner of service. Such certificate of service shall be filed with the pleading or document.

(e) Service to employees shall be accomplished by posting in at least one location where all affected employees have an opportunity to read the notice or pleading. Proof of posting shall be filed not later than the first working day following the posting.

(f) The notice of contest, notice of hearing, notice of withdrawal, notice of settlement and any order or decision of a hearing examiner or of the Board other than a procedural order, as well as the notice informing affected employees of their right to elect party status in any proceedings pursuant to Rule .0201 of this Chapter and of their right to contest the provisions of the abatement period must be posted.

(g) The notice to affected employees in the following form shall be required to be posted to comply with the requirements pursuant to Paragraph (f) of this Rule and shall be as follows:

TO THE EMPLOYEES OF:
Your employer has been charged
with a violation of the Occupational

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Safety and Health Act of North Carolina and is contesting this alleged violation before the Safety and Health Review Board, an independent agency. If you want to have a say in this matter, you must write to:

Safety and Health Review Board of
North Carolina

121 West Jones Street

Raleigh, North Carolina 27603.

As an affected employee, you have a right to participate in this matter as a party. To participate as a party, you must request party status.

Write to:

Safety and Health Review Board of
North Carolina

121 West Jones Street

Raleigh, North Carolina 27603.

(h) The notice of settlement and notice for modification of abatement must be posted.

(1) Settlement. In any case where a settlement is proposed, a hearing shall be held on request of any party, intervenor, employee, or authorized employee representative. The employer must post a notice indicating that a settlement is proposed and that the settlement may be approved by a hearing examiner, without a hearing, unless objection is received from any party, intervenor, employee, or authorized employee representative within 15 working days of the date of the posting of the notice of proposed settlement. Such notice of proposed settlement shall be posted promptly after the parties agree on the proposed settlement, and in no case later than five days after the agreement on the proposed settlement. The notice must inform affected employees that they have a right to object to the settlement; to request and appear at any hearing to object to the proposed settlement; and that to protect such rights they must write to the Safety and Health Review Board of North Carolina, 121 West Jones Street, Raleigh, North Carolina 27603, stating objection to the proposed settlement and desire to participate.

(2) Modification of Abatement. In any case where a petition for modification of abatement is filed, the employer must post a notice in a conspicuous place of this fact, together with a notice that employees or authorized employee representatives have a right to object to the proposed modification of abatement. The notice must inform affected employees that they have a right to appear to object to the

proposed modification of abatement; and that to protect such a right they must file notice of their objection within 15 working days from the date of posting of such petition for modification of abatement and documents pertaining to the case may be inspected at the Review Board office. Such notice must be filed with the Safety and Health Review Board of North Carolina, 121 West Jones Street, Raleigh, North Carolina 27603.

(i) Where a notice of objection to an abatement period is filed by an employee or employee representative, it must be served on the Complainant, the Department of Labor, and on the employer in the manner described in Paragraph (c) of this Rule. The employer shall then post the notice.

(j) Where posting is required by this Rule, such posting shall be maintained until the commencement of a hearing or until earlier disposition unless otherwise provided in these Rules.

Statutory Authority G.S. 95-135.

.0108 FILING

(a) A notice of contest under the provisions of Rule .0303 of this Chapter or under the provisions of Rule .0306 of this Chapter shall be filed with the Director who issued the citation or amended citation at the address shown thereon.

(b) Unless otherwise required by these Rules, all other papers relating to the contest shall be filed with the Board at Raleigh, North Carolina.

(c) Except where inconsistent with other of these Rules, all filing may be accomplished by first-class mail.

(d) Filing is deemed effected at the time of mailing.

Statutory Authority G.S. 95-135.

.0109 CONSOLIDATION

Cases may be consolidated on the motion of any party, or on the Board's or hearing examiner's own motion where there exist common parties, common question of law or fact, or both, or in such other circumstances as justice and the administration of the Act require.

Statutory Authority G.S. 95-135.

.0110 SEVERANCE

Upon its own motion, or upon motion of any party or intervenor, the Board or the hearing examiner may, for good cause, order any proceeding severed with respect to some or all issues or parties.

PROPOSED RULES

Statutory Authority G.S. 95-135;

.0111 PROTECTION OF TRADE SECRETS: CONFIDENTIAL INFORMATION

Upon application by any person, in a proceeding where trade secrets or other matters may be divulged, the confidentiality of which is protected by law, the Board or hearing examiner shall issue such orders as may be appropriate to protect the confidentiality of such matters.

Statutory Authority G.S. 95-135.

SECTION .0200 - PARTIES AND REPRESENTATIVES

.0201 PARTY STATUS

Affected employees or their authorized employee representative may elect to participate as parties in an action concerning their employer. Such election must ordinarily be made within 30 days prior to the time the case is set for initial hearing on the merits. However, in cases where settlement is proposed or modification of abatement is proposed, such employees or their authorized employee representative shall have 15 days after notice, as required by these Rules, of the proposed settlement or proposed modification of abatement in which to seek or participate as parties in the case and to be heard on any questions, including the proposed settlement or modification of abatement.

Statutory Authority G.S. 95-135.

.0202 INTERVENTION: APPEARANCE BY NON-PARTIES

(a) A petition for leave to intervene may be filed at any stage of a proceeding before a commencement of the hearing.

(b) The petition shall set forth the interest of the petitioner in the proceeding and show that the participation of the petitioner will assist in the determination of the issues in question, and that the intervention will not unnecessarily delay the proceeding.

(c) The Board or the hearing examiner may grant a petition for intervention to such an extent and upon such terms as the Board or the hearing examiner shall determine.

Statutory Authority G.S. 95-135.

.0203 REPRESENTATION OF PARTIES AND INTERVENORS

(a) Any party or intervenor may appear in person, through an attorney, through an authorized representative as defined in Rule .0101(6) of this Chapter, or through a representative as defined in Rule .0101(7) of this Chapter. In ac-

cordance with rules of the North Carolina State Bar which govern the practice of law in North Carolina, an out-of-state attorney-at-law must be associated with a North Carolina attorney-at-law in order to appear before either the Review Board or its hearing examiners.

(b) An authorized representative or an attorney of a party or intervenor shall be deemed to control all matters respecting the interest of such party or intervenor in the proceeding.

(c) Withdrawal of appearance may be effected by filing a written notice of withdrawal and by serving a copy thereof on the Review Board and on all parties and intervenors.

Statutory Authority G.S. 95-135.

SECTION .0300 - PLEADINGS AND MOTIONS

.0301 FORM

(a) Except as provided herein, there are no specific requirements as to the form of any pleading. A pleading is simply required to contain a caption sufficient to identify the parties in accordance with Rule .0302 of this Section, which shall include the Board's docket number as assigned, and a clear and plain statement of the relief that is sought, together with the grounds therefor.

(b) Pleadings and other documents (other than exhibits) shall be typewritten and double-spaced.

(c) Pleadings shall be signed by the party filing or by his attorney or authorized representative. Such signing constitutes a representation by the signer that he has read the document or pleading; that to the best of his knowledge, information, and belief the statements made therein are true; and that it is not interposed for delay.

(d) The Board may refuse for filing any pleading or document which does not comply with the requirements of Paragraphs (a) through (c) of this Rule.

(e) Citations to unpublished hearing examiner or Review Board decisions on North Carolina OSHA cases should include the names of the Commissioner of Labor of North Carolina and the respondent-employer, the OSHANC case number and year assigned, the letters "RB" if a Review Board decision or last name if a hearing examiner decision, and the year decided, for example: Brooks v. Ace, Inc., OSHANC 85-1200 (RB 1985); or Brooks v. Ace, Inc., OSHANC 85-1200 (Jones 1985). Citation to the published North Carolina Occupational Safety and Health Decisions should follow the form specified therein.

Statutory Authority G.S. 95-135.

PROPOSED RULES

.0302 CAPTION: TITLES OF CASES

(a) Cases initiated by a notice of contest shall be titled "Commissioner of Labor, Complainant v. (Name of Contestant), Respondent."

(b) Cases initiated by a petition for modification of the abatement period shall be titled: "(Name of Employer), Petitioner v. Commissioner of Labor, Respondent."

(c) Cases initiated by employee objection to the abatement period shall be titled as provided in Paragraph (b) of this Rule, with the name of the employee or employee representative inserted as the third party: "(Name of Employer), Petitioner v. Commissioner of Labor, Respondent v. (Name of Employee/Employee Representative), Third Party."

(d) The titles listed in Paragraphs (a) and (b) of this Rule shall appear at the left upper portion of the initial page of any pleading or document (other than exhibits) files.

(e) The initial page of any pleading or document (other than exhibits) shall show, at the upper right of the page, opposite the title, the docket number, if known, assigned by the Board.

Statutory Authority G.S. 95-135.

.0303 CITATION

(a) The Commissioner shall serve on the Respondent a citation stating each standard, regulation, or section of the Act allegedly violated, a description of the alleged violation, and the date by which the violation must be corrected.

(b) A recipient of the citation shall have 15 working days from receipt of such citation to file his notice of contest with the Commissioner. Failure to file a notice of contest within a specified time shall be deemed waiver of Respondent's right to contest the citation.

(c) The Commissioner shall, within 10 working days of receipt of a notice of contest, transmit the original to the Board, together with copies of the citation and proposed penalty.

(d) After the notice of contest is filed, the Board shall send the employer a form entitled Statement of Respondent's (Employer's) Position. The form entitled "Statement of Respondent's (Employer's) Position" shall include a notice to the Respondent (Employer) and all interested persons that the North Carolina Department of Labor has issued a citation charging certain violations of OSHA standards by the Respondent (Employer) and shall include the date of the alleged violation and shall further include a statement that the purpose of the document is to find out whether the Respondent (Employer) admits or denies each of the charges or whether the Respondent admits the particular

violation, but wishes to contest the amount of the proposed penalty if any, for that violation. On the form, the Respondent (Employer) will be instructed to check the appropriate box beside each item and to return to:

Safety and Health Review Board of North Carolina

121 West Jones Street

Raleigh, North Carolina 27603.

A copy shall also be mailed to:

Labor Section

N.C. Attorney General's Office

P.O. Box 629

Raleigh, North Carolina 27602.

The Statement of Respondent's (Employer's) Position shall also contain a notice in bold type that:

IF YOU DO NOT RESPOND IN WRITING WITH EITHER THIS FORM OR YOUR OWN STATEMENT OF POSITION BY MAILING OR DELIVERING IT TO THE REVIEW BOARD, POSTMARKED, WITHIN 20 DAYS FROM THE DAY YOU RECEIVED THIS FORM, YOUR RIGHT TO CONTEST THE DEPARTMENT OF LABOR'S ALLEGATIONS IS LOST.

Both notice of contest and Statement of Respondent's (Employer's) Position shall include employer's name, address, and telephone number.

(e) Any notice of contest shall be deemed to adequately raise any issue as to the alleged violation or proposed penalty but the employer will be limited to the specifics set out in the Statement of Respondent's (Employer's) Position.

(f) In the Statement of Respondent's (Employer's) Position the employer must request formal pleadings under Rule .0303 of this Section if desired. If the Complainant desires formal pleadings, he must file a complaint within 20 days of receipt of the Statement of Respondent's (Employer's) Position.

(g) The form for Statement of Respondent's (Employer's) Position shall be mailed to the employer with the Notice of Docketing.

(h) Failure to set out the reasons for objecting to the citation on the back of the Statement of Respondent's (Employer's) Position form shall not be grounds for dismissing the notice of contest, but may be grounds for a continuance in the discretion of the hearing examiner.

Statutory Authority G.S. 95-135.

.0304 COMPLAINT AND ANSWER

(a) This section shall only apply where either party has, within the time specified in Rule .0303 of this Section requested formal pleadings. If

formal pleadings are demanded by either party then:

- (1) The Commissioner shall file a complaint with the Board no later than 20 days after formal pleadings are demanded or after receipt of the Statement of Respondent's (Employer's) Position. The complaint shall contain a notice in bold type that: WITHIN 20 DAYS OF RECEIPT OF THE COMPLAINT, RESPONDENT MUST FILE AN ANSWER WITH THE REVIEW BOARD.
 - (2) The complaint shall set forth all alleged violations and proposed penalties which are contested, stating with particularity:
 - (A) the basis for jurisdiction;
 - (B) the time, location, place, and circumstances of each violation; and
 - (C) the consideration upon which the period for abatement and proposed penalty on each such alleged violation is based. The complaint shall not incorporate the citation by reference.
 - (3) Where the Commissioner seeks in his complaint to amend his citation or proposed penalty, he shall set forth the reasons for amendment and shall state with particularity the change sought.
- (b) Answer.
- (1) Within 20 days after service of the complaint, the party against whom the complaint was issued shall file an answer with the Review Board.
 - (2) The answer shall contain a short and plain statement denying each of those allegations in the complaint which the party intends to contest and stating the reasons therefor. Any allegations not denied shall be deemed admitted. Any affirmative defense must be set out in the answer. The Respondent shall not be deemed to waive affirmative defense at the hearing by failing to request formal pleadings.

Statutory Authority G.S. 95-135.

.0305 PETITION FOR MODIFICATION OF ABATEMENT PERIOD

(a) An employer may file a petition for modification of abatement date when he has made a good faith effort to comply with the abatement requirements of a citation, but such abatement has not been completed because of factors beyond his reasonable control.

(b) A petition for modification of abatement date shall be in writing and shall include the following information:

- (1) All steps taken by the employer and the dates of such action, in an effort to

achieve compliance during the prescribed abatement period.

- (2) The specific additional abatement time necessary in order to achieve compliance.
 - (3) The reasons such additional time is necessary including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.
 - (4) All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.
 - (5) A certification that a copy of the petition has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with Subparagraph (c)(1) of this Rule and a certification of the date upon which such posting and service was made.
- (c) A petition for modification of abatement date shall be filed with the Director of the Office of Occupational Safety and Health no later than the close of the working day on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

- (1) A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted in accordance with Rule .0107(j) of this Chapter. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.
- (2) Affected employees or their representative may file an objection in writing to such petition with the Director. Failure to file such objection within 15 working days of the date of posting of such petition and of service upon an authorized representative, where required, shall constitute a waiver of any further right to object to said petition.
- (3) The Commissioner or his duly authorized agent shall have the authority to approve any petition for modification of abatement date filed pursuant to Paragraphs (b) and (c) of this Rule. Such uncontested petitions shall become final orders pursuant to N.C.G.S. Section 95-137(b)(1) and (4).
- (4) The Commissioner or his authorized representative shall not exercise his approval power until the expiration of 15 working

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days from the date the petition was posted or served pursuant to Subparagraphs (c)(1) and (2) of this Rule by the employer.

(d) Where any petition is objected to by the Commissioner or affected employees, the petition, citation, and any objections shall be forwarded to the Review Board within seven working days after the expiration of the 15 working-day period set out in Subparagraph (c)(4) of this Rule.

(1) The Review Board shall docket and process such objections as expedited proceedings as provided for in Rule .0702 of this Chapter.

(2) An employer petitioning for modification of abatement period shall have the burden of proving in accordance with the requirements of N.C.G.S. Section 95-137(b)(4) that such employer has made a good faith effort to comply with the abatement requirements of the citation and that abatement has not been completed because of factors beyond the employer's reasonable control.

(3) Within 10 working days after receipt of notice of docketing by the Review Board of any objection to the Petition for Modification of Abatement Date, each objecting party shall file a response setting forth the reasons for opposing the granting or not granting of a modification date different from that requested in the petition.

Statutory Authority G.S. 95-135.

.0306 EMPLOYEE OBJECTIONS TO PERIODS OF ABATEMENT

(a) An affected employee or authorized employee representative may at any time within 15 working days after the employer posts a citation, file with the issuing Director a notice of contest in which objections are made to the period of abatement. Upon receipt of the notice of contest, the Director shall within 10 working days notify the Board thereof. The Director shall within 20 days from his receipt of the notice of contest, file a clear and concise statement of the reasons the period of abatement is not unreasonable.

(b) Not later than 20 days after receipt of the Director's statement referred to in Paragraph (a) of this Rule, the objecting employee or authorized employee representative shall file a response containing a clear and concise statement of the reasons why the abatement period is considered improper. The Board shall then afford an opportunity for a hearing in accordance with Rule .0702 of this Chapter.

Statutory Authority G.S. 95-135.

.0307 STATEMENT OF POSITION

At any time prior to the commencement of the hearing, any person entitled to appear as a party, or any person who has been granted leave to intervene, may file a statement of position with respect to any or all issues to be heard.

Statutory Authority G.S. 95-135.

.0308 MOTIONS

(a) All motions filed with the Review Board prior to hearing before the hearing examiner or prior to argument before the Review Board shall be in writing, shall be served on the parties, and shall set forth reasons supporting the motion. All parties upon whom a motion is served shall have 10 days from service to file a response.

(b) If oral argument is requested on any motion, the request for oral argument should be contained in a motion and set out reasons why oral argument is requested. Oral argument should be granted on a showing of good cause as to why such oral argument is required.

(c) Motions shall, in the ordinary course of proceedings, be heard and disposed of by hearing examiners to whom the case is assigned or by the Review Board when the case is before the Review Board as a whole.

(d) Any party may request an expedited hearing on a motion or a hearing on a motion before the Review Board. Such motions shall only be granted by a showing of good cause. Appeal from denial of motion may be heard by the full Review Board in its discretion.

Statutory Authority G.S. 95-135.

.0309 FAILURE TO FILE OR SERVE

Failure to file or serve any pleading pursuant to these Rules when due, may in the discretion of the Board or the hearing examiner, constitute a waiver of the right to further participation in the proceedings.

Statutory Authority G.S. 95-135.

SECTION .0400 - PRE-HEARING PROCEDURES AND DISCOVERY

.0401 WITHDRAWAL OF NOTICE OF CONTEST

At any stage of a proceeding, a party may enter a notice of withdrawal of contest when the citation contested has been fully complied with, and the proposed penalty is paid in full. Any additions, amendments, or deletions from the contested citation, proposed by the Director, must

be stated in a notice of settlement. This is subject to the approval of the Board under the provisions of Rule .0701 of this Chapter.

Statutory Authority G.S. 95-135.

.0402 PRE-HEARING CONFERENCE

(a) At any time before a hearing, the Board or the hearing examiner, on its or the hearing examiner's motion or on motion of a party, may direct the parties or their representatives to exchange information and to participate in a pre-hearing conference for the purpose of considering matters which will tend to simplify the issues or expedite the proceedings.

(b) The Board or the hearing examiner may issue a pre-hearing order which includes the agreements reached by the parties. Such order shall be served on all parties and shall be part of the record.

Statutory Authority G.S. 95-135.

.0403 REQUEST FOR ADMISSIONS

(a) At any time after the filing of responsive pleadings, any party may request of any other party admissions of facts to be made under oath. Each admission requested shall be set forth separately. The party upon whom the request is made shall serve a response thereto on the requesting party and the Review Board no later than 15 days after service of the request. The request for admissions shall conspicuously state that failure to timely respond may subject the party to sanctions as provided in Rule .0405 of this Section.

(b) Copies of all requests and responses shall be served on all parties in accordance with the provisions of Rule .0107(a) of this Chapter and filed with the Board within the time allotted and shall be a part of the record.

Statutory Authority G.S. 95-135.

.0404 DISCOVERY DEPOSITIONS AND INTERROGATORIES

(a) Except by order of the Board or the hearing examiner, discovery depositions of parties, intervenors, or witnesses, discovery inspections by parties or intervenors, and interrogatories directed to parties or intervenors shall not be allowed.

(b) In the event the Board or the hearing examiner grants an application for the conduct of such discovery proceedings, the order granting the same shall set forth appropriate time limits governing the discovery.

Statutory Authority G.S. 95-135.

.0405 FAILURE TO COMPLY WITH ORDERS FOR DISCOVERY

If any party or intervenor fails to timely respond to a request for admissions filed pursuant to Rule .0403 of this Section, or fails to comply with any order of the Board or hearing examiner to permit discovery in accordance with the provisions of these Rules, the Board or the hearing examiner may, in its, his, or her discretion, issue appropriate orders, including, but not limited to:

- (1) Striking the pleadings or notice of contest of the defaulting party and entering judgment by default;
- (2) Taxing attorney fees against the defaulting party to be awarded to the opposing party;
- (3) In the case of failure to respond to request for admissions, order that the matters requested are deemed admitted; and
- (4) Such other sanctions justified by the particular circumstances.

Statutory Authority G.S. 95-135.

.0406 SUBPOENAS ISSUED: MODIFY SUBPOENAS: INSPECT AND COPY DATA

(a) Any member of the Board or the hearing examiner shall, on the application of any party directed to the Board, forthwith issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including relevant books, correspondence, or documents, in his possession or under his control. Applications for subpoenas may be ex parte. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued.

(b) Any person served with a subpoena, or a subpoena to produce documents shall, within five days after the date of service of the subpoena upon him, move in writing to revoke or modify the subpoena if he does not intend to comply. All motions to revoke or modify shall be served on the party of whose request the subpoena was issued. The Board or hearing examiner shall revoke or modify the subpoena if, in its, his, or her opinion, the evidence of which production is required does not relate to any matters under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence of which production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid. The Board or hearing examiner shall make a simple statement of procedural or other grounds for the ruling on the motion to revoke or modify. The motion to revoke or modify, any answer filed

PROPOSED RULES

thereto, and any ruling thereon, shall become a part of the record.

(c) Persons compelled to submit data or evidence at a public proceeding are entitled to retain, or on payment of lawfully prescribed costs, to procure copies of transcripts of the data or evidence submitted by them.

(d) Upon the failure of any person to comply with a subpoena issued on the request of a party, the party, on approval of the Board, may initiate proceedings in the appropriate court for the enforcement thereof. The Board shall approve proceedings for the enforcement of the subpoena if in its judgment enforcement of such subpoena would be consistent with the law and policies of the Act. Failure to comply with a subpoena may result in imposition of sanctions set out in Rule .0405 of this Section.

Statutory Authority G.S. 95-135.

SECTION .0500 - HEARINGS

.0501 NOTICE OF HEARING

Notice of the time, place, and nature of a hearing shall be given to the parties and intervenors at least 15 days in advance of such hearing, except as otherwise provided in Rule .0702 of this Chapter.

Statutory Authority G.S. 95-135.

.0502 POSTPONEMENT OF HEARING

(a) Postponement of a hearing ordinarily will not be allowed.

(b) Except in the case of an extreme emergency, unusual circumstances, for good cause shown, or upon consent by all parties, no such request will be considered unless received in writing at least three days in advance of the time set for the hearing.

Statutory Authority G.S. 95-135.

.0503 FAILURE TO APPEAR

(a) Subject to the provisions of Paragraph (c) of this Rule, the failure of a party to appear at a hearing shall be deemed to be a waiver of all rights to participate and be heard in the hearing. Such parties shall be served with a copy of the decision of the Board.

(b) Requests for rehearing based on justifiable failure to appear must be made, in the absence of extraordinary circumstances, within five days after the scheduled hearing date.

(c) The Board or the hearing examiner, upon a timely showing of good cause, may excuse such failure to appear. In such event, the hearing may be re-scheduled.

Statutory Authority G.S. 95-135.

.0504 PAYMENT OF FEES AND MILEAGE TO WITNESSES: COURT REPORTERS

Witnesses summoned before the Board or hearing examiner shall be paid the same fees and mileage that are paid witnesses in the State courts, and witnesses whose depositions are taken, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the State court. Witness fees and mileage shall be paid by the party at whose instance the witness appears, and the person taking a deposition shall be paid by the party at whose instance the deposition is taken.

Statutory Authority G.S. 95-135.

.0505 REPORTER'S FEES

The basic reporter's fees shall be borne by the Board, except as provided in Rule .0504 of this Section. Parties or intervenors desiring copies of a transcript of a hearing shall be responsible for the entire cost of preparation of the transcript when such transcript has not been requested by the hearing examiner pursuant to Rule .0506 of this Section or for the Board in cases on appeal. Such cost will be determined and set from time to time by the Review Board.

Statutory Authority G.S. 95-135.

.0506 TRANSCRIPT OF TESTIMONY

(a) Hearings, including testimony and argument (on request) shall be transcribed verbatim. After a decision has been rendered by the hearing examiner and appeal has been taken, three copies of the transcript of testimony taken at the hearing, duly certified by the reporter, shall be filed with the Board.

(b) The public proceedings conducted by the Review Board and by its hearing examiners may be recorded by an audio-tape recorder by any person in attendance. The Chairman of the Review Board, or the hearing examiner shall control the manner of any tape recording process to ensure that it is not disruptive to the proceeding.

(c) When desired by the hearing examiner or required by appeal, a transcript of the testimony shall be prepared for the hearing examiner and copies shall be available to any party at a cost of ninety cents (\$.90) per page. If not ordered by the hearing examiner or required by appeal, copies of the transcript shall be available to any party at a cost of two dollars (\$2.00) per page. Should it become impossible or extremely impractical for the court reporter to prepare a transcript of the evidence because of mechanical

failure, loss or destruction of tapes or notes, or for any other reason, it shall become the duty of the parties to prepare a summary of evidence from their trial notes and best recollection. The prevailing party, or the party designated by the hearing examiner, shall have 30 days from the date notice is sent to him by the hearing examiner or the Review Board in which to prepare and serve upon opposing party his proposed summary of evidence. The opposing party shall review it and if he disagrees with any portion thereof, or believes that the summary is not complete, he shall have 20 days in which to serve upon the prevailing party any proposed revisions, including any deletions and additions. If the prevailing party agrees to such revisions, the two parties shall sign a certification that the summary of evidence is agreed by them to accurately reflect the substance of the testimony and other evidence presented at the hearing. If the parties cannot agree, their respective versions of the summary shall be submitted to the hearing examiner and he or she shall review the proposals, together with the hearing examiner's trial notes, and thereafter enter a ruling as to what constitutes the summary of evidence, which shall thereafter be treated for all purposes as the transcript of the proceedings.

Statutory Authority G.S. 95-135.

.0507 DUTIES AND POWERS OF BOARD AND HEARING EXAMINER

It shall be the duty of the Board or its hearing examiner to conduct a fair and impartial hearing, to assure that the facts are fully elicited to adjudicate all issues and avoid delay. The Board or hearing examiner shall have authority to:

- (1) administer oaths and affirmations;
- (2) issue authorized subpoenas;
- (3) rule upon motions to revoke subpoenas;
- (4) rule upon offers of proof and receive relevant evidence;
- (5) take or cause depositions to be taken whenever the needs of justice would be served;
- (6) regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;
- (7) hold conferences for the settlement or simplification of the issues;
- (8) dispose of procedural requests or similar matters, including motions to amend or dismiss pleadings, to dismiss complaints or portions thereof, and to order hearings re-

opened or, upon motion, consolidated prior to issuance of the decision;

- (9) hear and examine witnesses and to receive into the record documentary or other evidence;
- (10) request the parties at any time during the hearing to state their respective positions concerning any issues in the case or theory in support thereof;
- (11) adjourn or continue the hearing as the needs of justice and good administration require; and
- (12) take any other action necessary under the foregoing and authorized by the published rules and regulations of the Board or the General Statutes.

Statutory Authority G.S. 95-135.

.0508 DISQUALIFICATION OF MEMBER OF BOARD OR HEARING EXAMINER

(a) A member of the Board or the hearing examiner may withdraw from a proceeding whenever the Board member or hearing examiner deems himself or herself to be disqualified.

(b) Any party may request a Review Board member or hearing examiner, before or at the time of the hearing, to withdraw on the grounds of personal bias or disqualification, by filing a motion. Such motion shall set forth in detail the matters alleged to constitute grounds for disqualification.

(c) If, in the opinion of the Review Board member or hearing examiner, the motion referred to in Paragraph (b) of this Rule is filed with reasonable cause and is sufficient on its face, the Review Board member or hearing examiner shall forthwith be disqualified and withdraw from the proceeding.

(d) If the Review Board member or hearing examiner denies the request for disqualification and does not withdraw from the proceeding, the Review Board member or hearing examiner shall so rule upon the record, stating the grounds for ruling and shall proceed with the hearing, or, if the hearing has closed, the Review Board member or hearing examiner shall proceed with the issuance of a decision and the provisions of Rule .0601 of this Chapter shall thereupon apply.

Statutory Authority G.S. 95-135.

.0509 EXAMINATION OF WITNESSES

Witnesses shall be examined under oath. Opposing parties shall have the right to cross-examine any witness whose testimony is introduced by an adverse party.

Statutory Authority G.S. 95-135.

.0510 AFFIDAVITS

An affidavit may be admitted as evidence in lieu of oral testimony if the matters therein contained are otherwise admissible and the parties agree to its admission.

Statutory Authority G.S. 95-135.

**.0511 GENERAL PROCEDURES:
DEPOSITIONS IN LIEU OF ORAL
TESTIMONY**

(a) A motion to take the deposition of a witness in lieu of oral testimony shall be in writing and shall set forth the reasons such deposition should be taken, the name and address of the witness, the matters concerning which it is expected he will testify, and the time and place proposed for the taking of the deposition, together with the name and address of the person before whom it is desired that the deposition be taken (for purposes of this Section, hereinafter referred to as "the officer"). Such application shall be filed with the Board or hearing examiner and shall be served on all parties and intervenors not less than 30 days prior to the time when it is desired that the deposition be taken. Any party or intervenor may file a response prior to the ruling of the Board, as provided in Rule .0308 of this Chapter. Where good cause has been shown, the Board or the hearing examiner shall make and serve on the parties and intervenors an order which specifies the name of the witness whose deposition is to be taken and the time, place, and designation of the officer before whom the witness is to testify. Such officer may or may not be the officer specified in the application.

(b) Such deposition may be taken before any officer authorized to administer oaths by the laws of the United States of the place where the examination is held. If the examination is held in a foreign country, it may be taken before any secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States.

(c) At the time and place specified in the order, the officer designated to take such deposition shall permit the witness to be examined and cross-examined under oath by all parties appearing, and the testimony of the witness shall be reduced to typewriting by the officer or under the officer's direction. All objections to questions or evidence shall be deemed waived unless made at the examination. The officer shall not have power to rule upon any objection, but shall note them upon the deposition. The testimony shall be subscribed by the witness in the presence of the officer, who shall attach a certificate stating that the witness was duly sworn, that the depo-

sition is a true record of the testimony and exhibits given by the witness, and that the officer is not of counsel or attorney to any of the parties nor interested in the proceeding. If the deposition is not signed by the witness because of illness, death, or because the witness cannot be found, or waives signing, such facts shall be included in the certificate of the officer and the deposition may be used as fully as though signed. The officer shall immediately deliver one copy of the transcript, together with certificate, in person or by registered mail, to the Board.

(d) The Board or hearing examiner shall rule upon the admissibility of the deposition or any part thereof.

(e) All errors or irregularities in compliance with the provision of this Rule shall be deemed waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, discovered.

(f) If the parties so stipulate in writing, depositions may be taken before any person at any time or place, upon any notice and in any manner, and when so taken may be used as other depositions.

Statutory Authority G.S. 95-135.

.0512 EXHIBITS

(a) All exhibits offered in evidence shall be numbered and marked with a designation identifying the party or intervenor by whom the exhibit is offered.

(b) In the absence of objection by another party or intervenor, exhibits shall be admitted into evidence as part of the record, unless excluded by the Board or hearing examiner pursuant to Rule .0513 of this Section.

(c) Unless the Board or hearing examiner finds it impractical, a copy of such exhibit shall be given to the other parties and intervenors.

(d) All exhibits offered, but denied admission into evidence, shall be identified as in Paragraph (a) of this Rule and shall be placed in a separate file designated for rejected exhibits.

Statutory Authority G.S. 95-135.

.0513 RULES OF EVIDENCE

Hearings before the Board or its hearing examiner shall, insofar as practicable, be governed by the rules of evidence applicable in the State courts. Provided, however, that the Board or hearing examiner may exercise the right at all times to receive and give due regard to hearsay evidence if the interests of justice so require.

Statutory Authority G.S. 95-135.

.0514 BURDEN OF PROOF

(a) In all proceedings commenced by the filing of a notice of contest, the burden of proof shall rest with the Commissioner to prove each element of the contested citation by the greater weight of the evidence. The burden of proof as to all affirmative defenses shall be upon the Respondent to prove each element of the affirmative defense by the greater weight of the evidence.

(b) In proceedings under Rule .0305 of this Chapter for modification of the abatement period, the burden of proof shall rest with the petitioner.

Statutory Authority G.S. 95-135.

.0515 OBJECTIONS

(a) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence or a ruling by the Board or the hearing examiner, may be stated orally or in writing, accompanied by a short statement of the grounds for the objection, and such objection shall be included in the record. No such objection shall be deemed waived by further participation in the hearing.

(b) Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record of the proceeding.

Statutory Authority G.S. 95-135.

.0516 FILING OF BRIEF: ORAL ARGUMENTS

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the record on request of any party. Any party may, at the discretion of the hearing examiner, be permitted to file a post-hearing brief, proposed findings of fact and conclusions of law, or both. The Board or the hearing examiner may fix a reasonable period of time for such filing, but such initial period may not exceed 30 days, except for good cause, from the receipt by the party of the transcript of the hearing. Any party shall be entitled to file a memorandum of additional authority with the hearing examiner or Review Board, within ten days after the date of the hearing.

Statutory Authority G.S. 95-135.

SECTION .0600 - POST HEARING PROCEDURES

.0601 DECISIONS OF HEARING EXAMINER

(a) The decision of the hearing examiner shall be in writing and shall include findings of fact, conclusions of law, and an order.

(b) The hearing examiner shall sign the decision, and said decision shall be effected from the date it is filed with the offices of the Review Board. Upon filing of the decision, jurisdiction shall rest solely in the Board, and all motions, petitions, and other pleadings filed subsequent to such issuance shall be addressed to the Board.

Statutory Authority G.S. 95-135.

.0602 REVIEW

(a) Any member of the Board may direct that a decision of a hearing examiner be reviewed by the entire Board as a whole. Any party may request review within 30 days. If no direction for review or request for review is given within 30 days of the filing of the hearing examiner's order with the Board, such order shall become a final order of the Review Board.

(b) A petition for review shall contain a concise statement of the order or orders of which review is sought. The original and three copies of the petition shall be filed with the Board.

(c) A petition for review, timely filed, shall be deemed granted upon receipt by the Review Board. All interested parties to the original hearing shall be notified of the date and the time and place of such hearing and shall be allowed to appear in person or by representative as previously defined. Parties on appeal to the Review Board shall file a brief of reasons and supporting authorities relied on. Failure to file a brief may result in judgment against the parties for failure to comply with these Rules. The original and three copies of the brief shall be filed with the Board. A party shall, prior to the statement of facts, designate in his brief those pages of the transcript relevant to each portion of the decision and order of the hearing examiner to which exception is taken. The purpose of this Rule is to require parties to notify the Review Board of any pages or parts of the transcript which are irrelevant to the decision before the Review Board, as well as to notify the Review Board of those pages and parts of the transcript which are relevant.

(d) Upon review of any decision of a hearing examiner, the Board may adopt, modify, or vacate the decision of the hearing examiner and notify the interested parties. The report, decision, or determination of the Board upon review shall be final unless further appeal is made to the court as provided in Rule .0605 of this Section.

Statutory Authority G.S. 95-135.

PROPOSED RULES

.0603 STAY OF FINAL ORDER

(a) Any party aggrieved by a final order or other final determination of the Board or hearing examiner, may, in cases where the order or determination is not automatically stayed by operation of law, file a motion for a stay.

(b) Such motion shall set forth the reasons a stay is sought and the length of the stay requested.

(c) The Board or hearing examiner may order such stay for the period requested or for such longer or shorter period as is appropriate.

Statutory Authority G.S. 95-135.

.0604 ORAL ARGUMENT BEFORE THE BOARD

The Board or hearing examiner shall have the right to limit the time used by any party for oral argument.

Statutory Authority G.S. 95-135.

.0605 JUDICIAL REVIEW

Any person who is or may be adversely affected by a final order or other final determination of the Board in a contested case may, within 30 days from the date such order or determination is entered, seek judicial review in accordance with and subject to the provisions of G.S. 95-141 and G.S. 150B. The order shall be deemed entered on the date filed and mailed to all parties. In addition to the copy filed with the court, a copy of the petition for judicial review shall be filed with the Review Board office and served on the opposing party.

Statutory Authority G.S. 95-135.

SECTION .0700 - MISCELLANEOUS PROVISIONS

.0701 SETTLEMENT

(a) Settlement is encouraged at any stage of the proceedings where such settlement is consistent with the provisions and objectives of the Act.

(b) A notice of settlement submitted by the parties shall be accompanied by a clear and concise explanation of the reasons justifying a settlement and the assurance of future compliance. This settlement shall be deemed effective and final only upon approval of the Board or hearing examiner.

(c) Notice of proposed settlement and the settlement agreement shall be posted in accordance with the provisions of Rule .0107(e) of this Chapter. As provided in Rule .0107(f) of this Chapter, the notice of proposed settlement shall be given to affected employees. Upon timely receipt of any objection to a proposed settlement,

the Board shall schedule the matter for hearing before a hearing examiner.

Statutory Authority G.S. 95-135.

.0702 EXPEDITED PROCEEDING

(a) Upon application of any party or intervenor, or upon his own motion, any member of the Board or the hearing examiner may order an expedited proceeding.

(b) The Board or hearing examiner in an expedited proceeding shall make necessary rulings with respect to time for filing of pleadings and with respect to all matters, without reference to times set forth in these Rules, and shall do all other things necessary to complete the proceeding in the minimum time consistent with fairness. All parties and intervenors shall be notified of any expedited proceedings.

Statutory Authority G.S. 95-135.

.0703 STANDARDS OF CONDUCT

All persons appearing in any proceeding shall conform to the standards of ethical conduct required in the State courts.

Statutory Authority G.S. 95-135.

.0704 EX PARTE COMMUNICATION

(a) There shall be no ex parte communication, with respect to the merits of any case not concluded, between the Board, including any member, officer, employee, or agent of the Board who is employed in the decisional process, and any of the parties or intervenors.

(b) In the event such ex parte communication occurs, the Board or the hearing examiner may make such orders to take such action as fairness requires. Upon notice and hearing, the Board may take such disciplinary action as is appropriate in the circumstances against any person who knowingly and willfully makes or solicits the making of a prohibited ex parte communication.

Statutory Authority G.S. 95-135.

.0705 RESTRICTION ON PARTICIPATION BY COMMISSIONER AND BOARD MEMBERS

The Commissioner or his agent shall not discuss any contested case with the Review Board or hearing examiners. Review Board members shall not be present at or participate in a hearing of any matter before a hearing examiner. No hearing examiner, law clerk, or member of the Review Board shall at any time during that person's tenure in office appear at any level, either administrative or judicial, in any proceeding which originated before the Board.

Statutory Authority G.S. 95-135.

.0706 INSPECTION AND REPRODUCTION OF DOCUMENTS

(a) Subject to provisions of law restricting public disclosure of information, any person, may, at the offices of the Board, inspect and copy any document filed in any proceeding.

(b) Costs shall be borne by such person.

Statutory Authority G.S. 95-135.

.0707 RESTRICTIONS WITH RESPECT TO FORMER EMPLOYEES

No former employee of the Board or the Commissioner (including a member of the Board or the Director) shall appear before the Board as an attorney or other representative for any party in any proceeding or other matter, formal or informal, in which he participated personally and substantially during the period of his employment.

Statutory Authority G.S. 95-135.

.0708 AMENDMENTS TO RULES

The Board may, at any time upon its own motion or initiative, or upon written suggestion of any interested person setting forth reasonable grounds therefor, amend or revoke any of the rules contained herein. Such suggestions should be addressed to the Board at Raleigh, North Carolina.

Statutory Authority G.S. 95-135.

.0709 SPECIAL CIRCUMSTANCES: WAIVER OF RULES

In special circumstances not contemplated by the provisions of these Rules, or for good cause shown, the Board or hearing examiner may, upon application by any party or intervenor, or on its own motion, after due notice to all parties and intervenors, waive any rules or make such orders as justice or the administration of the Act requires.

Statutory Authority G.S. 95-135.

.0710 PENALTIES

(a) All penalties assessed by the Board are civil.

(b) The Board has no jurisdiction under G.S. 95-139 and will conduct no proceedings thereunder.

Statutory Authority G.S. 95-135.

TITLE 25 - OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of State Personnel intends to amend rule(s) cited as 25 NCAC 1D .0303, .0308, .1001, .1003, .1006; 1L .0201 - .0203; repeal rule(s) cited as 25 NCAC 1D .1004, .1007; and adopt rule(s) cited as 25 NCAC 1D .1010.

The proposed effective date of this action is March 1, 1992.

The public hearing will be conducted at 9:00 a.m. on December 4, 1991 at the Personnel Development Center, 101 W. Peace Street, Raleigh, North Carolina.

Reason for Proposed Action: 25 NCAC 1D .0303 - To establish effective date for promotions and explain situations when appropriate not to give promotional increases on the effective date. 25 NCAC 1D .0308 - To provide clarification and guidance to agencies in implementing the policies on salary increases. 25 NCAC 1D .1001 - To refine and clarify the definition of reinstatement and to outline available agency options upon such reinstatement. 25 NCAC 1D .1003 - Changes definition of break in service from 31 calendar days to more than one-half the work days in the month. 25 NCAC 1D .1004 - Repeal outdated policies no longer utilized. 25 NCAC 1D .1006 - Changes period of time when benefits reinstated following separation from employment and reemployed, from three years to five years. 25 NCAC 1D .1007 - Repeal policy no longer utilized. 25 NCAC 1D .1010 - To provide guidance to agencies in salary administration where an employee is reinstated. 25 NCAC 1L .0201 - To provide guidance and clarification to agencies on training policies and establish that agencies implement a method for documenting attendance to training of employees. 25 NCAC 1L .0202 - To provide guidance and clarification to agencies in implementing the policy on education and training. 25 NCAC 1L .0203 - To clarify agency responsibility in identifying training modules and resources.

Comment Procedures: Interested persons may present statements either orally or in writing at the Public Hearing or in writing prior to the hearing by mail addressed to Barbara Coward, Office of State Personnel, 116 W. Jones Street, Raleigh, North Carolina 27603.

CHAPTER 1 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 1D - COMPENSATION

PROPOSED RULES

SECTION .0300 - PROMOTION

.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, unless a specific salary limitation is published in advance.

(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 after the initial promotional increase and must be awarded within 24 months of the original effective date of the action. If a subsequent promotion, reallocation up or down, demotion or reassignment 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 dollar amount of the allowable increase, the amount given, and the balance that may be given later. The personnel actions submitted later must state "Promotional Increase" in the description of action block, which will denote that this is a delayed increase.

(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.

.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) Salaries at the hiring rate shall be increased to the new hiring rate.

(b) Salaries at the minimum rate or within the range shall be increased to the new minimum rate of the grade to which promoted or by five percent, whichever is larger. Exceptions:

(i) A promotional increase is not required if a specific salary rate or limitation is published in advance of a promotional offer because of internal salary equity or budget considerations in the receiving work unit or agency. If this occurs, a salary increase above the salary rate posted may not be paid. ~~and no salary increase may be requested at a later date.~~ If conditions change that eliminate the equity problem or if additional funds become available that can be used for this purpose, agency management may consider an additional increase in accordance with the provisions outlined under Rule .0303 of this Section.

(ii) 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.

(c) If the employee is promoted to a position within the same class series or occupational group that is two pay grades or more above the current position, the salary may be increased by up to ten percent. An increase of more than ten percent, the total not to exceed five percent for each grade provided by the promotion, may be considered if the employee has directly related training and/or experience above the minimum requirements to qualify for the salary requested.

(d) ~~(e)~~ If the employee being is promoted to a position in a different occupational area, the salary may be increased by more than five percent, the total not to exceed five percent for each grade provided by the promotion, if the employee has had directly related training and and/or experience above the minimum requirements to qualify for the salary requested, which exceeds the minimum qualifications for the position, the salary may be increased by more than five percent commensurate with the related training and experience, 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 salary decisions. Agency management is responsible for assuring that inequities are not created. If such requests. However, if an employee has been reduced to a lower salary grade through demotion, reassignment, reallocation or salary range revision, but without a corresponding reduction in salary,

and the employee is later promoted to a position with a higher grade, the number of grades in the original reduction shall be considered to have been compensated and shall not be considered in the salary setting procedure in this Rule. If the reduction in grade occurred as much as 24 months previously, the agency may give consideration to granting a salary increase within the provisions of this policy. Factors to be considered are the nature of the change in jobs and the need to maintain equity of salaries within the work unit.

- (e) Only with the prior approval of the State Personnel Director and only in well-documented cases which involve circumstances such as severe labor market conditions, unusual change in the scope of work, extraordinary qualifications, or resolution of serious equity problems 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) ~~(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.
 - (g) ~~(e)~~ 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 .1000 - REINSTATEMENT

.1001 DEFINITION

Reinstatement is:

- (1) the reemployment in permanent status of a former permanent full-time or permanent part-time employee with a break in service and within a ~~specified time period based on length of continuous service; if the continuous period of service was less than three years, the employee shall be eligible for consideration for reinstatement within the three years following the date of separation; if the continuous period of service was three years or longer, the time for eligibility for reinstatement is unlimited.~~ For reinstatement under competitive service, the individual must have been in good standing at the time of separation. five years following the date of separation. Although the employee is eligible for reinstatement to permanent status, the agency head may choose to offer reemployment with a probationary appointment. The employee will meet all requirements of the probationary period the same as for original appointments;
- (2) the return to a ~~non-exempt nonpolicy-making~~ position of an employee who transferred to or occupied a position designated as policy-making exempt. ~~An employee with five or more continuous years of service in a non-exempt position shall, upon leaving the exempt position, have priority to any non-exempt position available for which he is qualified.~~

Statutory Authority G.S. 126-4.

.1003 BREAK IN SERVICE

A break in service occurs when an employee is in non-pay status for more than ~~31 calendar days.~~ one-half the workdays in the month. (An employee is in pay status when working, when on paid leave or when on workers' compensation leave. An employee is not in pay status after the last day of work when separated because of res-

PROPOSED RULES

ignation, dismissal, death, retirement or reduction in force.) Periods of leave without pay do not constitute a break in service.

Statutory Authority G.S. 126-4.

.1004 SALARY RATE UPON REINSTATEMENT

There are alternatives for determining the salary rate that an appointing authority may request for an employee being reinstated. These alternatives are:

- (1) The same salary rate the employee was receiving at the time of separation, if it is within the salary range for the class to which he is being reinstated or any lower salary rate in that range;
- (2) A salary relative to what it would have been had the employee not separated from service, if it is within the salary range for the class to which he is being reinstated; the relative salary is computed from his salary rate at time of separation plus legislative increases and any increases resulting from salary range revisions since his separation;
- (3) A salary in accordance with the policy on new appointments;
- (4) A salary in accordance with promotional policy if the reinstatement is to a class at a higher level than the one from which the employee separated;
- (5) Upon reinstatement from military leave, an employee's salary shall be based on the last salary plus any general salary increases due while on leave. The addition of annual salary increases may be considered by the agency head. If the employee was in a trainee status at the time of military leave, the addition of trainee adjustments may be considered if it can be determined that the military experience directly related to the development in the area of work to be performed.

Statutory Authority G.S. 126-4.

.1006 BENEFITS REINSTATED

(a) Sick leave shall be reinstated when an employee returns from authorized leave without pay or when reinstated within three five years from any type of separation.

(b) Employees who enter the armed services or who engage in active military service and who return to state employment within a period of two years after being separated or released, or becoming entitled to be separated or released, from active military service under other than dishonorable conditions shall be entitled to full retirement membership service credit for the period of such active service in the armed services.

Under this provision, credit is received for such service upon furnishing an acceptable copy of a military discharge to the Teachers' and State Employees' Retirement System.

Statutory Authority G.S. 126-4.

.1007 PERFORMANCE INCREASE ANNIVERSARY DATE

Anniversary dates do not apply to employees whose salaries are at step three or higher. For employees whose salaries are at step one or two, the following shall apply:

- (1) When reinstated from resignation, dismissal, or retirement, the increase anniversary date will be the first day of the month in which the employee completes at least half the workdays in a month.
- (2) When reinstated from leave without pay or reduction in force, the anniversary date will be established on the first day of the month when the employee completes 12 months in pay status since the last increase that established an anniversary date; this includes time before and after the leave or break in service. If the employee is on leave without pay for less than one-half the scheduled workdays in any month, service credit toward the next anniversary date will be granted for the whole month.
- (3) When an employee is on military leave, educational leave, or worker's compensation leave, the anniversary date does not change.

Statutory Authority G.S. 126-4.

.1010 SALARY RATE UPON REINSTATEMENT

(a) When an employee is reinstated within one year from the separation date to the same classification level, the new salary is determined by adjusting the previous salary of that individual by any legislative increase or other general adjustment in level which has occurred since the separation.

(1) If the employee is reinstated to a higher or lower classification level, the adjusted previous salary becomes the basis for determining the new starting salary in accordance with the policies on promotion or demotion as is appropriate.

(2) A salary lower than allowed under Subparagraph (a)(1) of this Rule may be paid; however a higher salary may not be paid unless it is justified by intervening employment.

(b) When an employee is reinstated after one year from the separation date, the new salary may be determined as outlined under Subparagraphs

(a)(1) and (2) of this Rule or as a new appointment and justified accordingly when required.

(c) Upon reinstatement from military leave, an employee's salary shall be based on the last salary plus any general increases due while on leave. The addition of performance salary increases may be considered by the agency head if appropriate. If the employee was in trainee status at the time of military leave, the addition of trainee adjustments may be considered if it can be determined that the military experience directly related to the development in the area of work to be performed.

Statutory Authority G.S. 126-4.

SUBCHAPTER 1L - AFFIRMATIVE ACTION

SECTION .0200 - ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS) IN THE WORKPLACE

.0201 EDUCATION AND TRAINING

(a) All agencies and institutions of State government will undertake an education and training program. This program will have two components: a basic education and training component for all employees and an advanced education and training component for employees who perform tasks that have a greater potential for exposure of the employee to the HIV virus.

(b) Each agency and institution shall implement a method for documenting employee attendance under either training component. This documentation will preserve the agency or institution's authority to administer the Complaints and Discipline provision of this policy.

Statutory Authority G.S. 126-4.

.0202 BASIC EDUCATION AND TRAINING COMPONENT

(a) To insure program consistency the Office of State Personnel with guidance from the State Public Health Director, will identify or develop basic education and training programs which agencies are required to provide for all their employees. developed and published in January, 1991 an AIDS Education Program for NC State Employees Manual which agencies may use to provide education and training for all of their employees.

(b) Through the WISE program coordinators in each agency or other appropriate resources designated by the The agency head shall designate a coordinator and appropriate resources, and with the assistance of professional health educators, all employees will be offered training within three years from the adoption of this policy, and thereafter for new employees within six months of initial employment. Each agency and institution is required to complete an AIDS Education Program Implementation Plan which includes the method for documenting attendance. This plan shall be submitted to the State WISE Office, Office of State Personnel for review for compliance with this Rule.

Statutory Authority G.S. 126-4.

.0203 SPECIALIZED EDUCATION AND TRAINING COMPONENT

(a) The Office of State Personnel Agencies will identify training modules and resources as approved by the State Public Health Director which will address the special education and training needs of employees who perform work related tasks that have a potential for exposure to the employee to the HIV virus. Each agency shall adopt these resources to their own work force needs.

(b) Each agency with employees requiring specialized training will provide such training by November 1, 1991, in accordance with the Center for Disease Control (CDC) requirements. Agencies must provide training for new employees during their work orientation period. The agency shall appropriately document the employees' compliance with this policy.

(c) All employees shall periodically be provided updated general public health information issued by the State Public Health Director or the U.S. Centers for Disease Control. Such educational literature shall be distributed as appropriate after further approval by the State Personnel Director in consultation with the State WISE Director. Appropriate records are to be maintained by the agency as proof of completion of any periodic update of employee education.

Statutory Authority G.S. 126-4.

LIST OF RULES CODIFIED

The List of Rules Codified is a listing of rules that were filed with OAH in the month indicated.

Key:

- Citation* = Title, Chapter, Subchapter and Rule(s)
- AD* = Adopt
- AM* = Amend
- RP* = Repeal
- With Chgs* = Final text differs from proposed text
- Eff. Date* = Date rule becomes effective
- Temp. Expires* = Rule was filed as a temporary rule and expires on this date

NORTH CAROLINA ADMINISTRATIVE CODE

SEPTEMBER 1991

TITLE	DEPARTMENT	TITLE	DEPARTMENT
4	Economic and Community Development	17	Revenue
5	Correction	19A	Transportation
9	Governor	21	Occupational Licensing Boards
10	Human Resources		2 - Architecture
11	Insurance		8 - CPA Examiners
12	Justice		32 - Medical Examiners
15A	Environment, Health, and Natural Resources		48 - Physical Therapy
16	Public Education	25	54 - Practicing Psychologists
			State Personnel

Citation	AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
4 NCAC 16D .0801 - .0817 Recodified to 4 NCAC 16K .0001 - .0017					09/06/91	
.1001 - .1004 Recodified to 4 NCAC 16L .0001 - .0004					09/06/91	
16K .0001 - .0017 Recodified from 4 NCAC 16D .0801 - .0817					09/06/91	
16L .0001 - .0004 Recodified from 4 NCAC 16D .1001 - .1004					09/06/91	
5 NCAC 2A .0101 - .0103			•		11/01/91	
.0201 - .0202			•		11/01/91	
.0301 - .0303			•		11/01/91	

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5	NCAC	2A	.0401 - .0402			•		11 01 91	
			.0501 - .0510			•		11 01 91	
		2B	.0101 - .0104		•			11,01,91	
			.0201 - .0206		•			11 01 91	
		2C	.0504		•			11 01 91	
		2D	.0301 - .0305			•		11 01 91	
			.0306 - .0310	•				11 01 91	
		2E	.0202 - .0209			•		11 01 91	
			.0211 - .0220			•		11 01 91	
			.0222			•		11 01 91	
			.0224 - .0225			•		11 01 91	
			.0230 - .0233			•		11 01 91	
			.0236 - .0240			•		11 01 91	
			.0703		•			11 01 91	
			.1304 - .1305			•		11 01 91	
			.1307 - .1309			•		11 01 91	
			.1501 - .1503			•		11 01 91	
		2F	.0101		•			11 01 91	
			.0102			•		11 01 91	
			.0103 - .0107	•				11 01 91	
			.0501 - .0503		•			11 01 91	
			.0701 - .0704			•		11 01 91	
			.0801 - .0802			•		11 01 91	
			.0901 - .0903			•		11 01 91	
			.1001 - .1002			•		11 01 91	
			.1101 - .1102			•		11 01 91	
			.1201 - .1202			•		11 01 91	
			.1301 - .1303			•		11 01 91	
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			.1701 - .1703			•		11 01 91	
			.1801 - .1809			•		11 01 91	
			.1901 - .1907			•		11 01 91	
			.2401 - .2404			•		11 01 91	
			.2601 - .2604	•				11 01 91	
9	NCAC	2B	Executive Order 149					08 15 91	

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9	NCAC 2B Executive Order 150					08/21/91	
	Executive Order 151					09/11/91	
	Executive Order 152					09/11/91	
10	NCAC 3U .0604		•		•	11/01/91	
	.0804		•		•	11/01/91	
	14K .0103		•		•	11/01/91	
	.0312		•			11/01/91	
	.0313 - .0315		•		•	11/01/91	
	.0316			•		11/01/91	
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	.0320		•		•	11/01/91	
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	.0337		•		•	11/01/91	
	.0348		•			11/01/91	
	.0349			•		11/01/91	
	.0351		•		•	11/01/91	
	.0354		•		•	11/01/91	
	.0366 - .0367			•		11/01/91	
	14L .0309			•		11/01/91	
	.0407		•			11/01/91	
	.0506		•			11/01/91	
	.0507			•		11/01/91	
	.0607 - .0608			•		11/01/91	
	.0610			•		11/01/91	
	.0710			•		11/01/91	
	14M .0110		•			11/01/91	
	.0113		•		•	11/01/91	
	.0206		•		•	11/01/91	
	.0208			•		11/01/91	
	.0209		•		•	11/01/91	
	.0210			•		11/01/91	
	.0409 - .0410		•		•	11/01/91	
	.0613			•		11/01/91	
	.0616			•		11/01/91	
	14N .0810		•			11/01/91	
	14O .0105 - .0106		•			11/01/91	
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	.0207			•		11/01/91	

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	Citation	AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
10	NCAC 140 .0310		•		•	11/01/91	
	.0407 - .0409		•			11/01/91	
	.0410			•		11/01/91	
	.0610			•		11/01/91	
	.0616			•		11/01/91	
	.0619			•		11/01/91	
	14P .0101 - .0102		•		•	01/01/92	
	14Q .0101 - .0104		•		•	01/01/92	
	.0201		•		•	01/01/92	
	.0202 - .0203		•			01/01/92	
	.0204		•		•	01/01/92	
	.0301 - .0303		•		•	01/01/92	
	.0304			•		01/01/92	
	.0305		•		•	01/01/92	
	.0306			•		01/01/92	
	14R .0101 - .0105		•		•	01/01/92	
	.0106			•		01/01/92	
	.0107		•		•	01/01/92	
	.0201		•		•	01/01/92	
	.0301 - .0303			•		01/01/92	
	14S .0101		•		•	01/01/92	
	.0104 - .0106		•		•	01/01/92	
	18I .0120		•		•	11/01/91	
	18L .0433 - .0434		•		•	01/01/92	
	.0505 - .0510			•		11/01/91	
	.0512			•		11/01/91	
	.0603		•		•	11/01/91	
	.0701 - .0702		•			11/01/91	
	.0706			•		11/01/91	
	.0802			•		11/01/91	
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	.1102		•		•	11/01/91	
	.1104			•		11/01/91	
	.1502		•		•	11/01/91	
	.1507		•			11/01/91	
	18M .0308			•		11/01/91	
	.0704		•		•	11/01/91	
	.0707			•		11/01/91	

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10	NCAC 18M .0710		•			11/01/91	
	.0818		•			11/01/91	
	.1105		•			11/01/91	
	.1403		•			11 01 91	
	.1405		•			11/01/91	
	18N .0212		•			11 01 91	
	.0307			•		11 01 91	
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	.0523		•			11/01/91	
	18P .0903		•			11 01 91	
	18Q .0541		•			11 01 91	
	.0713			•		01/01/92	
	.0808 - .0809		•		•	11 01 91	
	.0812			•		01 01 92	
	22K .0101	•				11/01/91	
	.0201 - .0204	•				11 01 91	
	22L .0101	•				11 01 91	
	.0201 - .0204	•				11 01 91	
	22M .0201 - .0202	•				11 01 91	
	.0205 - .0206	•				11 01 91	
	22N .0201 - .0204	•				11 01 91	
	.0206 - .0207	•				11 01 91	
	.0209 - .0212	•				11 01 91	
	26H .0106		•		•	11 01 91	
11	NCAC 11C .0130	•				09 12 91	03 10 92
12	NCAC 4A .0101			•		11 01 91	
	.0104 - .0105			•		11 01 91	
	.0306 - .0308			•		11 01 91	
	4B .0101 - .0105			•		11 01 91	
	.0201 - .0202			•		11 01 91	
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	.0201 - .0203			•		11 01 91	
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	4E .0101	•			•	11 01 91	
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	.0201 - .0202	•				11 01 91	

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			.0403	•				11/01/91	
		4F	.0101 - .0102	•			•	11/01/91	
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			.0301	•			•	11/01/91	
			.0302 - .0303	•				11/01/91	
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			.0406 - .0407	•				11/01/91	
			.0408	•			•	11/01/91	
			.0501	•			•	11/01/91	
			.0502	•				11/01/91	
			.0601	•				11/01/91	
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			.0102	•			•	11/01/91	
			.0201	•			•	11/01/91	
			.0301	•			•	11/01/91	
		7D	.0807		•		•	11/01/91	
			.0809		•			11/01/91	
			.0901		•		•	11/01/91	
15A	NCAC	3I	.0001		•		•	11/01/91	
			.0004		•		•	11/01/91	
		7H	.0206		•			11/01/91	
		7J	.0204		•			11/01/91	
			.0602		•			11/01/91	
		9C	.1007	•			•	11/01/91	
		10A	.1001		•		•	11/01/91	
		10C	.0107		•			11/01/91	
			.0305		•			11/01/91	
		10D	.0002		•		•	11/01/91	
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		13A	.0003		•			11/01/91	

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15A	NCAC	18A	.2804		•			01/01/92	
			.2833		•			01/01/92	
16	NCAC	6B	.0002		•			11/01/91	
17	NCAC	1C	.0323	•				11/01/91	
		4D	.0908		•			11/01/91	
		5B	.0104		•			11/01/91	
		5C	.0908	•				11/01/91	
			.2101 - .2102		•			11/01/91	
			.2601	•				11/01/91	
		8	.0504		•			11/01/91	
19A	NCAC	1A	.0204 - .0206			•		11/01/91	
			.0404			•		11/01/91	
			.0406 - .0408			•		11/01/91	
			.0501 - .0508			•		11/01/91	
			.0601 - .0611			•		11/01/91	
			.0701		•			11/01/91	
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			.0705 - .0711		•			11/01/91	
			.0901 - .0902		•			11/01/91	
		2A	.0102		•			11/01/91	
			.0202			•		11/01/91	
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			.0104		•			11/01/91	
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			.0109			•		11/01/91	
			.0111			•		11/01/91	
			.0114		•			11/01/91	
			.0121		•			11/01/91	
			.0122			•		11/01/91	
			.0123		•			11/01/91	
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			.0145		•			11/01/91	
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			.0164 - .0165	•				11/01/91	

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Citation	AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
19A NCAC 2B .0202 - .0203		•			11/01/91	
.0235			•		11/01/91	
.0306		•			11/01/91	
.0313		•			11/01/91	
.0401 - .0431			•		11/01/91	
.0441 - .0466	•				11/01/91	
.0503		•			11/01/91	
.0515	•				11/01/91	
2C .0105		•			11/01/91	
.0110		•			11/01/91	
.0112		•			11/01/91	
.0114 - .0115	•				11/01/91	
2D .0401			•		11/01/91	
.0407			•		11/01/91	
.0410		•			11/01/91	
.0416			•		11/01/91	
.0417		•			11/01/91	
.0426 - .0429	•				11/01/91	
.0501		•			11/01/91	
.0503		•			11/01/91	
.0509		•			11/01/91	
.0519 - .0520		•			11/01/91	
.0524 - .0525		•			11/01/91	
.0532		•			11/01/91	
.0538 - .0539		•			11/01/91	
.0801		•			11/01/91	
.0803		•			11/01/91	
.0808 - .0811		•			11/01/91	
.0813 - .0824		•			11/01/91	
.0826			•		11/01/91	
.0828 - .0829	•				11/01/91	
.0902			•		11/01/91	
.1001 - .1008	•				11/01/91	
2E .0213		•			11/01/91	
.0421		•			11/01/91	
.0424 - .0425			•		11/01/91	
.0426	•				11/01/91	
.0602 - .0604		•			11/01/91	

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19A NCAC 3A .0101		•			11/01/91	
.0201 - .0218			•		11/01/91	
3B .0103		•			11/01/91	
.0119		•			11/01/91	
.0301		•			11/01/91	
.0403		•			11/01/91	
.0601		•			11/01/91	
3C .0102		•			11/01/91	
.0202		•			11/01/91	
.0224		•			11/01/91	
.0232		•			11/01/91	
.0236		•			11/01/91	
.0303 - .0304		•			11/01/91	
.0417			•		11/01/91	
.0427		•			11/01/91	
.0436	•				11/01/91	
.0601 - .0603			•		11/01/91	
3D .0603			•		11/01/91	
.0701 - .0703		•			11/01/91	
.0801		•			11/01/91	
.0804		•			11/01/91	
.0808 - .0809		•			11/01/91	
.0815		•			11/01/91	
.0817		•			11/01/91	
.0823 - .0824		•			11/01/91	
.0827			•		11/01/91	
3E .0302 - .0304		•			11/01/91	
.0401		•			11/01/91	
.0402			•		11/01/91	
.0403	•				11/01/91	
3F .0101		•			11/01/91	
.0102			•		11/01/91	
.0201 - .0203		•			11/01/91	
.0301			•		11/01/91	
.0601 - .0602	•				11/01/91	
3G .0101		•			11/01/91	
.0301		•			11/01/91	
.0401 - .0402		•			11/01/91	

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Citation			AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
19A	NCAC	3G .0601		•			11/01/91	
		3H .0101 - .0102		•			11/01/91	
		.0201		•			11/01/91	
		.0202 - .0203			•		11/01/91	
		.0205		•			11/01/91	
		.0206			•		11/01/91	
		.0207 - .0208		•			11/01/91	
		.0209 - .0210			•		11/01/91	
		.0211		•			11/01/91	
		.0301 - .0303		•			11/01/91	
		.0401 - .0404		•			11/01/91	
		.0501 - .0502			•		11/01/91	
		.0504			•		11/01/91	
		3I .0302 - .0303		•			11/01/91	
		.0307		•			11/01/91	
		.0501		•			11/01/91	
	5A	.0002		•			11/01/91	
	5B	.0101		•			11/01/91	
		.0105		•			11/01/91	
		.0201 - .0202		•			11/01/91	
		.0205 - .0206			•		11/01/91	
		.0301		•			11/01/91	
		.0302 - .0303			•		11/01/91	
		.0501		•			11/01/91	
		.0502 - .0503			•		11/01/91	
	6B	.0102 - .0103			•		11/01/91	
		.0203 - .0204		•			11/01/91	
		.0205	•				11/01/91	
		.0302 - .0304		•			11/01/91	
	6C	.0107		•			11/01/91	
		.0109 - .0110		•			11/01/91	
		.0112		•			11/01/91	
		.0123 - .0134	•				11/01/91	
		.0703 - .0706	•				11/01/91	
21	NCAC	2 .0217	•			•	11/01/91	
		.0601		•		•	11/01/91	
	8G	.0313	•				09/25/91	03/22/92
	32F	.0003		•			11/01/91	

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	Citation	AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
21	NCAC 48A .0005		•			11/01/91	
	48B .0002		•			11/01/91	
	48D .0005		•			11/01/91	
	48E .0110		•			11/01/91	
	48F .0002		•			11/01/91	
	54 .1701		•		•	11/01/91	
	.2103		•		•	11/01/91	
25	NCAC 1B .0432		•			11/01/91	
	1C .0405		•		•	11/01/91	
	.0407		•		•	11/01/91	

ARRC OBJECTIONS

The Administrative Rules Review Commission (ARRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to ARRC as provided in G.S. 143B-30.2(d).

Temporary Rules are noted by "*". These Rules have already gone into effect.

ECONOMIC AND COMMUNITY DEVELOPMENT

Employment and Training

- | | |
|---|-----------------------------------|
| * 4 NCAC 20B .0903 - Allocation of Grants
No Response from Agency | ARRC Objection 8/22/91
9/19/91 |
| * 4 NCAC 20B .0905 - Eligibility
No Response from Agency | ARRC Objection 8/22/91
9/19/91 |
| * 4 NCAC 20B .0907 - Cost Limitations/Categories
No Response from Agency | ARRC Objection 8/22/91
9/19/91 |
| * 4 NCAC 20B .0908 - Reporting
No Response from Agency | ARRC Objection 8/22/91
9/19/91 |
| * 4 NCAC 20B .0909 - Performance Standards
No Response from Agency | ARRC Objection 8/22/91
9/19/91 |
| * 4 NCAC 20B .0911 - Fund Availability
No Response from Agency | ARRC Objection 8/22/91
9/19/91 |

EDUCATION

Elementary and Secondary Education

- | | |
|--|-----------------------------------|
| 16 NCAC 6B .0001 - School Bus Drivers | ARRC Objection 9/19/91 |
| 16 NCAC 6D .0103 - Graduation Requirements | ARRC Objection 9/19/91 |
| * 16 NCAC 6E .0301 - Driver Training
Agency Responded | ARRC Objection 8/22/91
9/19/91 |

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Adult Health

- | | |
|---|-----------------------------------|
| 15A NCAC 16A .0804 - Financial Eligibility
No Response from Agency | ARRC Objection 1/18/91
2/25/91 |
| Agency Responded | No Action 3/21/91 |
| No Response from Agency | No Action 4/18/91 |
| 15A NCAC 16A .0806 - Billing the HIV Health Services Program
No Response from Agency | ARRC Objection 1/18/91
2/25/91 |
| Agency Responded | No Action 3/21/91 |
| No Response from Agency | No Action 4/18/91 |

Coastal Management

- | | |
|---|------------------------|
| 15A NCAC 7J .0301 - Who is Entitled to a Contested Case Hearing | ARRC Objection 9/19/91 |
| 15A NCAC 7J .0302 - Petition for Contested Case Hearing | ARRC Objection 9/19/91 |

Environmental Management

- | | |
|-----------------------------------|---|
| 15A NCAC 2D .1102 - Applicability | ARRC Objection 8/22/91
No Action 9/19/91 |
|-----------------------------------|---|

ARRC OBJECTIONS

<i>15A NCAC 2D .1203 - Test Methods and Procedures</i>	<i>ARRC Objection</i>	<i>8/22/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>8/22/91</i>
<i>15A NCAC 2D .1208 - Operator Training Requirements</i>	<i>ARRC Objection</i>	<i>8/22/91</i>
	<i>No Action</i>	<i>9/19/91</i>
<i>15A NCAC 2D .1209 - Compliance Schedules</i>	<i>ARRC Objection</i>	<i>8/22/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>8/22/91</i>
Forest Resources		
<i>15A NCAC 9C .1007 - America the Beautiful Grant Program</i>	<i>ARRC Objection</i>	<i>9/19/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>9/19/91</i>
Wildlife		
<i>15A NCAC 10A .1001 - Particular Offenses</i>	<i>ARRC Objection</i>	<i>9/19/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>9/19/91</i>
<i>15A NCAC 10K .0001 - Course Requirements</i>	<i>ARRC Objection</i>	<i>7/18/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>8/22/91</i>
HUMAN RESOURCES		
Aging		
<i>10 NCAC 22M .0101 - Scope of Care Management</i>	<i>ARRC Objection</i>	<i>9/19/91</i>
<i>10 NCAC 22M .0102 - Definitions</i>	<i>ARRC Objection</i>	<i>9/19/91</i>
<i>10 NCAC 22M .0103 - Target Population</i>	<i>ARRC Objection</i>	<i>9/19/91</i>
<i>10 NCAC 22M .0203 - Assessment and Reassessment</i>	<i>ARRC Objection</i>	<i>9/19/91</i>
<i>10 NCAC 22M .0204 - Care Planning</i>	<i>ARRC Objection</i>	<i>9/19/91</i>
<i>10 NCAC 22N .0101 - Definitions for Confidentiality of Client Data</i>	<i>ARRC Objection</i>	<i>9/19/91</i>
<i>10 NCAC 22N .0205 - Security of Records</i>	<i>ARRC Objection</i>	<i>9/19/91</i>
<i>10 NCAC 22N .0208 - Client Access to Records</i>	<i>ARRC Objection</i>	<i>9/19/91</i>
Children's Services		
<i>10 NCAC 411 .0406 - Responsibility for Training of Team Members</i>	<i>ARRC Objection</i>	<i>7/18/91</i>
<i>Pending Correction</i>		<i>8/22/91</i>
Economic Opportunity		
<i>* 10 NCAC 51F .0102 - Definitions</i>	<i>ARRC Objection</i>	<i>8/22/91</i>
<i>No Response from Agency</i>		<i>9/19/91</i>
<i>* 10 NCAC 51F .0202 - Ineligible Activities</i>	<i>ARRC Objection</i>	<i>8/22/91</i>
<i>No Response from Agency</i>		<i>9/19/91</i>
<i>* 10 NCAC 51F .0402 - Eligibility Requirements</i>	<i>ARRC Objection</i>	<i>8/22/91</i>
<i>No Response from Agency</i>		<i>9/19/91</i>
<i>* 10 NCAC 51F .0501 - Grant Agreement</i>	<i>ARRC Objection</i>	<i>8/22/91</i>
<i>No Response from Agency</i>		<i>9/19/91</i>
Facility Services		
<i>10 NCAC 3U .0604 - General Safety Requirements</i>	<i>ARRC Objection</i>	<i>8/22/91</i>
<i>Agency Revised Rules</i>	<i>Obj. Removed</i>	<i>9/19/91</i>
<i>10 NCAC 3U .0804 - Infectious and Contagious Diseases</i>	<i>ARRC Objection</i>	<i>8/22/91</i>
<i>Agency Revised Rules</i>	<i>Obj. Removed</i>	<i>9/19/91</i>
Individual and Family Support		

ARRC OBJECTIONS

10 NCAC 42B .1201 - Personnel Requirements	ARRC Objection	1/18/91
No Response from Agency		2/25/91
Agency Returned Rule Unchanged	No Action	3/21/91
Agency Filed Rule with OAH	Rule Eff.	8/01/91
10 NCAC 42C .2001 - Qualifications of Administrator	ARRC Objection	1/18/91
No Response from Agency		2/25/91
Agency Returned Rule Unchanged	No Action	3/21/91
Agency Filed Rule with OAH	Rule Eff.	8/01/91
10 NCAC 42C .2002 - Qualifications of Supervisor-in-Charge	ARRC Objection	1/18/91
No Response from Agency		2/25/91
Agency Returned Rule Unchanged	No Action	3/21/91
Agency Filed Rule with OAH	Rule Eff.	8/01/91
10 NCAC 42C .2006 - Qualifications of Activities Coordinator	ARRC Objection	1/18/91
No Response from Agency		2/25/91
Agency Returned Rule Unchanged	No Action	3/21/91
Agency Filed Rule with OAH	Rule Eff.	8/01/91

Medical Assistance

10 NCAC 50B .0305 - Deprivation	ARRC Objection	8/22/91
Agency Revised Rule	Obj. Removed	8/22/91

Mental Health: General

10 NCAC 14K .0103 - Definitions	ARRC Objection	9/19/91
Agency Revised Rule	Obj. Removed	9/19/91
10 NCAC 14K .0320 - Incident Reporting	ARRC Objection	9/19/91
Agency Revised Rule	Obj. Removed	9/19/91
10 NCAC 14K .0337 - Emergency Care Permission	ARRC Objection	9/19/91
Agency Revised Rule	Obj. Removed	9/19/91
10 NCAC 14K .0351 - Administration of Medication	ARRC Objection	9/19/91
Agency Revised Rule	Obj. Removed	9/19/91
10 NCAC 14M .0206 - Day Services	ARRC Objection	9/19/91
Agency Revised Rule	Obj. Removed	9/19/91
10 NCAC 14M .0209 - Community Resources	ARRC Objection	9/19/91
Agency Revised Rule	Obj. Removed	9/19/91
10 NCAC 14M .0409 - Community Resources	ARRC Objection	9/19/91
Agency Revised Rule	Obj. Removed	9/19/91
10 NCAC 14O .0310 - Provision of Appropriate Activities	ARRC Objection	9/19/91
Agency Revised Rule	Obj. Removed	9/19/91
10 NCAC 14P .0101 - Scope	ARRC Objection	9/19/91
Agency Revised Rule	Obj. Removed	9/19/91
10 NCAC 14P .0102 - Definitions	ARRC Objection	9/19/91
Agency Revised Rule	Obj. Removed	9/19/91
10 NCAC 14Q .0101 - Policy/Rights Restrictions/Interventions	ARRC Objection	9/19/91
Agency Revised Rule	Obj. Removed	9/19/91
10 NCAC 14R .0104 - Seclusion/Restraint/Isolation Time Out	ARRC Objection	9/19/91
Agency Revised Rule	Obj. Removed	9/19/91
10 NCAC 14R .0105 - Protective Devices	ARRC Objection	9/19/91
Agency Revised Rule	Obj. Removed	9/19/91
10 NCAC 14S .0102 - Communication Rights	ARRC Objection	9/19/91
10 NCAC 14S .0103 - Living Environment	ARRC Objection	9/19/91

Mental Health: Other Programs

ARRC OBJECTIONS

10 NCAC 18L .0603 - Svc Purpose/Eligibility Requirements Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91
10 NCAC 18M .0704 - Staff Requirements Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91
10 NCAC 18Q .0809 - Agreement Between Resident and Program Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91

INSURANCE

Engineering and Building Codes

11 NCAC 8 .0815 - Final Board Order Agency Revised Rule	ARRC Objection 7/18/91 Obj. Removed 8/22/91
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JUSTICE

Criminal Information

12 NCAC 4E .0103 - Advisory Policy Board Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91
12 NCAC 4E .0104 - Definitions Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91
12 NCAC 4E .0106 - Manuals Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91
12 NCAC 4E .0203 - Non-Terminal Access Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91
12 NCAC 4E .0301 - User Agreement Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91
12 NCAC 4E .0302 - User Access Fee Agreement Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91
12 NCAC 4E .0401 - DCI Terminal Operator Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91
12 NCAC 4E .0403 - Suspension/Revocation of Operator Certification Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91
12 NCAC 4F .0203 - Hit Confirmation Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91
12 NCAC 4F .0301 - Arrest Fingerprint Card Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91
12 NCAC 4F .0404 - Ind's Right/Review/His/Her/Crim History Record Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91
12 NCAC 4F .0405 - Use/CCH/Lic/Non-Criminal Justice Emp Purposes Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91
12 NCAC 4F .0501 - Expungements Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91
12 NCAC 4G .0102 - Penalty Provisions Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91
12 NCAC 4G .0201 - Notice of Violation Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91
12 NCAC 4G .0301 - Informal Hearing Procedure Agency Revised Rule	ARRC Objection 9/19/91 Obj. Removed 9/19/91

LICENSING BOARDS AND COMMISSIONS

Architecture

ARRC OBJECTIONS

21 NCAC 2 .0601 - Committee on Investigations
Agency Revised Rule

ARRC Objection 9/19/91
Obj. Removed 9/19/91

Cosmetic Art Examiners

21 NCAC 14F .0010 - Sanitary Rules
No Response from Agency
Agency Requested Additional Time
Agency Responded Will Repeal Rule

ARRC Objection 5/16/91
No Action 7/18/91
7/18/91
Obj. Removed 8/22/91

Practicing Psychologists

21 NCAC 54 .1701 - Information Required
Agency Revised Rule

ARRC Objection 8/22/91
Obj. Removed 9/19/91

21 NCAC 54 .1704 - Review Procedure
Agency Revised Rule

ARRC Objection 8/22/91
Obj. Removed 8/22/91

21 NCAC 54 .2103 - Reinstatement
Agency Revised Rule

ARRC Objection 8/22/91
Obj. Removed 9/19/91

RULES INVALIDATED BY JUDICIAL DECISION

This Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.

15A NCAC 21D .0802(b)(2) - AVAILABILITY

Robert Roosevelt Reilly Jr., Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 21D .0802(b)(2) void as applied in *Wilson's Supermarket #12, Petitioner v. Department of Environment, Health, and Natural Resources, Respondent* (91 EHR 0795).

NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

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

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3	Auditor	Barber Examiners	6
4	Economic and Community Development	Certified Public Accountant Examiners	8
5	Correction	Chiropractic Examiners	10
6	Council of State	General Contractors	12
7	Cultural Resources	Cosmetic Art Examiners	14
8	Elections	Dental Examiners	16
9	Governor	Electrical Contractors	18
10	Human Resources	Foresters	20
11	Insurance	Geologists	21
12	Justice	Hearing Aid Dealers and Fitters	22
13	Labor	Landscape Architects	26
14A	Crime Control and Public Safety	Landscape Contractors	28
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16	Public Education	Medical Examiners	32
17	Revenue	Midwifery Joint Committee	33
18	Secretary of State	Mortuary Science	34
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23	Community Colleges	Optometry	42
24	Independent Agencies	Osteopathic Examination and Registration (Repealed)	44
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26	Administrative Hearings	Physical Therapy Examiners	48
		Plumbing, Heating and Fire Sprinkler Contractors	50
		Podiatry Examiners	52
		Practicing Counselors	53
		Practicing Psychologists	54
		Professional Engineers and Land Surveyors	56
		Real Estate Commission	58
		Refrigeration Examiners	60
		Sanitarian Examiners	62
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Note: Title 21 contains the chapters of the various occupational licensing boards.

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- AO - Administrative Order
- AG - Attorney General's Opinions
- C - Correction
- FR - Final Rule
- GS - General Statute
- JO - Judicial Orders or Decision
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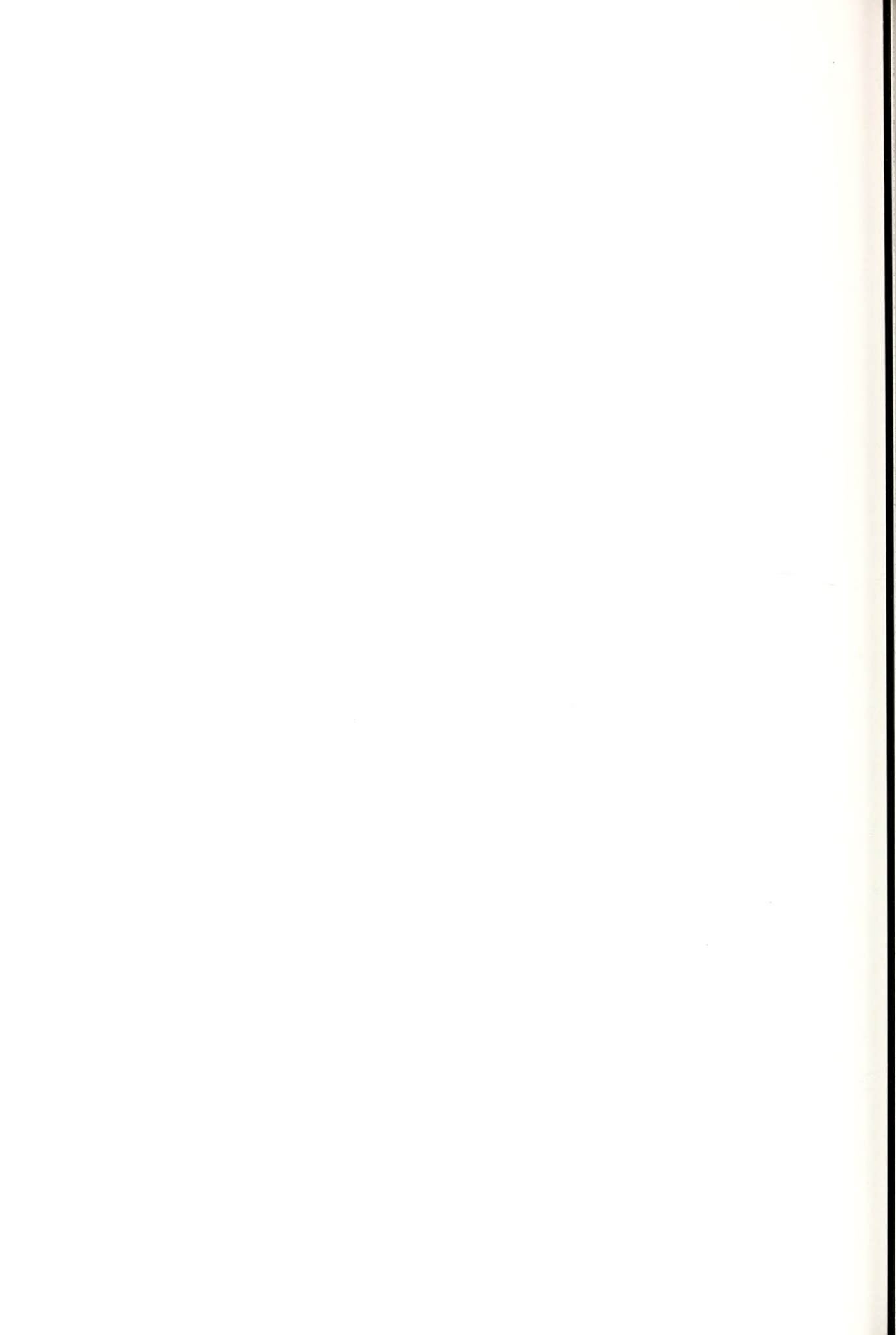
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