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# *The* **NORTH CAROLINA REGISTER**

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**PROPOSED RULES**

**Administration**

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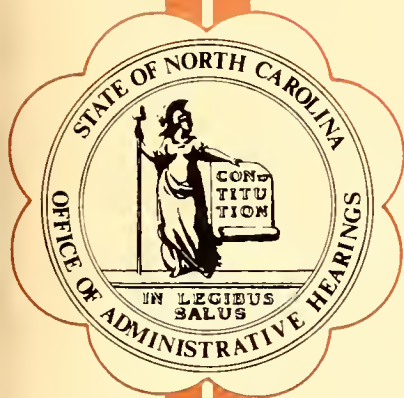
**NRCD**

**Secretary of State**

**LIST OF RULES AFFECTED**

**ISSUE DATE: OCTOBER 14, 1988**

**Volume 3 • Issue 14 • Pages 607-686**



# 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 ninety-five dollars (\$95.00) for 24 issues.

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

## ADOPTION, AMENDMENT, AND REPEAL OF RULES

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

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

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

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

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

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

## TEMPORARY RULES

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

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

## NORTH CAROLINA ADMINISTRATIVE CODE

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

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

The NCAC is available in two formats.

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

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

## NOTE

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

## CITATION TO THE NORTH CAROLINA REGISTER

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

**North Carolina Register.** Published bi-monthly by the Office of Administrative Hearings, P.O. Drawer 11666, Raleigh, North Carolina 27604, pursuant to Chapter 150B of the General Statutes. Subscriptions ninety-five dollars (\$95.00) per year.

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

# NORTH CAROLINA REGISTER



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**NORTH CAROLINA REGISTER**  
*Publication Deadlines and Schedules*  
*(September 1988 - March 1989)*

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

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



**CORRECTION TO NOTICE AS PUBLISHED IN THE NORTH CAROLINA REGISTER AT 3:13 NCR 598 SHOULD READ:**

**TITLE 13 - DEPARTMENT OF LABOR**

*Notice is hereby given in accordance with G.S. 150B-12 that the Department of Labor intends to re-adopt rule cited as 13 NCAC 7C .0103(a)(12) and amend rule 13 NCAC 7C .0103(c).*

*The proposed effective date of this action is February 1, 1989.*

*The public hearing will be conducted at 10:00 a.m. on November 9, 1988 at Auditorium, Highway Building, 1 South Wilmington Street, Raleigh, N. C.*

*Comment Procedures: People wanting to present oral testimony at the hearing or who want to have written testimony read at the hearing should provide a written summary of the proposed testimony to the department by November 4, 1988. Oral presentations will be limited to 15 minutes each. Written statements not presented at the hearing will be accepted by the department until November 9, 1988. All correspondence should be directed to Bobby Bryan, N. C. Department of Labor, 4 West Edenton Street, Raleigh, NC 27601. Interpreters for the hearing impaired will be made available if requested 24 hours in advance.*

*Notice is hereby given in accordance with G.S. 150B-12 that the Department of Labor intends to amend rule(s) cited as 13 NCAC 13 .0401, .0402 and adopt rule 13 NCAC 15 .0503.*

*The proposed effective date of this action is February 1, 1989.*

*The public hearing will be conducted at 2:00 p.m. on November 14, 1988 at Auditorium, Highway Building, 1 South Wilmington Street, Raleigh, N. C.*

*Comment Procedures: People wanting to present oral testimony at the hearing or who want to have written testimony read at the hearing should provide a written summary of the proposed testimony to the department by November 4, 1988. Oral presentations will be limited to 15 minutes each. Written statements not presented at the hearing will be accepted by the department until November 9, 1988. All correspondence should be directed to Bobby Bryan, N. C. Department of Labor, 4 West Edenton Street, Raleigh, NC 27601. Interpreters for the hearing impaired will be made available if requested 24 hours in advance.*

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

U.S. Department of Justice  
Civil Rights Division

WBR:LLT:TGL:ivp:dvs  
DJ 166-012-3  
W3810-3811  
W6903

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

September 15, 1988

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

Dear Mr. Rose:

This refers to the two annexations [Annexation Nos. 174 and 175 (1988)] and the designation of the annexed areas to single-member districts for the City of Rocky Mount in Edgecombe and Nash Counties, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on July 18, 1988.

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

Sincerely,

Wm. Bradford Reynolds  
Assistant Attorney General  
Civil Rights Division

By:

Gerald W. Jones  
Chief, Voting Section

## TITLE 1 - DEPARTMENT OF ADMINISTRATION

*Notice is hereby given in accordance with G.S. 150B-12 that the Department of Administration intends to adopt rules cited as 1 NCAC 11 .2201 - .2204; amend rules cited 1 NCAC 11 .2102 - .2105, .2111, .2116 and repeal rules cited as 1 NCAC 11 .2119 - .2121 and .2123.*

*The proposed effective date of this action is February 1, 1989.*

*The public hearing will be conducted at 10:00 a.m. on Tuesday, November 15, 1988 at Policy and Planning Conference Room, Administration Building, 5th Floor, 116 West Jones Street, Raleigh, North Carolina 27603-8003.*

*Comment Procedures: Any interested person may present his or her comments either in writing prior to or at the hearing or orally at the hearing. Any person may request information, permission to be heard or copies of proposed regulations by writing or calling Becky Barbee, Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27603-8003 (919) 733-7232.*

### CHAPTER 11 - HUMAN RELATIONS COUNCIL

#### SECTION .2100 - FAIR HOUSING

##### .2102 DEFINITIONS

*As used in this Section:*

*When used in this Section, the following terms shall have the following meanings unless the context clearly requires a different meaning:*

- (1) "Act" means shall mean the State Fair Housing Act, S.L. 1983, c. 522, North Carolina General Statutes 41A.
- (2) "Complainant" means shall mean any person who files a complaint with the council, council alleging injury as a result of an illegal discriminatory housing practice.
- (3) "Complaint" means shall mean a sworn statement filed with the council, council, either on the a form provided for this purpose by the slash council council, or otherwise containing the information required by Rule .2103(c) of this Section, which alleges that an unlawful discriminatory housing practice has occurred or is going to occur.
- (4) "Conciliation Agreement" means a written agreement between the complainant and the respondent resolving the dispute outlined in the complaint and setting forth remedies for relief due the complainant.

- (5) "Conciliator" means a member of the council staff designated by the director to seek voluntary conciliation of a complaint.
- (6) (4) "Council" means shall mean the North Carolina Human Relations council.
- (7) (5) "Director" means shall mean the executive director of the council, council or, in his or her absence or inability to serve, the assistant director of the council, council.
- (8) "Investigator" means a member of the council staff designated by the director to investigate the allegations contained in the complaint and make a preliminary determination of whether there are reasonable grounds to believe that an unlawful discriminatory housing practice occurred.
- (9) (6) "Records" means shall mean any written, printed, taped, photographic, stenographic, microfilmed, computerized or other form or document used in for the storage of information.
- (10) (7) "Respondent" means shall mean any person who is alleged to have committed an unlawful discriminatory housing practice, against whom a complaint has been filed with the council.

Statutory Authority G.S. 41A-1; 41A-2.

##### .2103 COMPLAINTS: FORM: CONTENTS: FILING

(a) Any person claiming to be injured by an unlawful discriminatory housing practice may file a written, sworn complaint with the council. Assistance in drafting and filing complaints shall be available to complainants at the council's office.

(b) Each complaint, which shall be written, signed, and sworn before a notary public or other person duly authorized by law to administer oaths and take acknowledgements, shall be on a form provided by the council or otherwise containing the information required in Paragraph (c) of this Rule. Notarial service shall be furnished without charge by the council.

(c) A complaint shall contain the following information:

- (1) the full name, address and telephone number of the complainant;
- (2) the name and address of the respondent;
- (3) a concise statement of the facts constituting the alleged unlawful discriminatory housing practice; and
- (4) the date or dates and time of day of the alleged unlawful discriminatory housing practice if known, and if the alleged unlawful discriminatory housing practice is of a continuing nature, the dates between



which the continuing unlawful discriminatory housing practice is alleged to have occurred, if known.

(d) The complaint must be filed within 180 days after the alleged unlawful discriminatory housing practice occurred. If the alleged practice is continuous, the date of the occurrence of the practice shall be any date after the practice commenced, up to and including the date on which the practice shall have ceased, or the date on which the complaint is filed if the unlawful practice continues.

(e) The complaint must be filed with the council at its office at 121 West Jones Street, Raleigh, North Carolina 27611.

(f) The complaint may be filed by personal delivery, by mail, or by delivery to a member of the council or the council staff.

(g) Each complaint must be made in writing and must be on a form provided by the council.

(h) Each complaint must contain the following:

- (1) the name and address of the complainant;
- (2) the name and address of the respondent, if known;
- (3) a statement of the facts upon which the allegations of an unlawful discriminatory housing practice is based;
- (4) the latest date on which the alleged unlawful discriminatory housing practice occurred, or a statement that the unlawful housing practice is presently continuing; and
- (5) the notarized signature of the complainant.

(i) Each complaint must be filed with 180 days after the date on which the alleged discriminatory housing practice occurred. In the case of an alleged discriminatory practice which is continuous, the complaint must be filed within 180 days after the last day on which the alleged discriminatory practice took place.

(j) A complaint will be considered filed with the council when it has been received and date-stamped at the council's office at 121 West Jones Street, Raleigh, North Carolina 27603.

Statutory Authority G.S. 41A-7.

#### .2104 AMENDMENT OF COMPLAINT

(a) With the approval of the director, a complaint may be amended by the complainant to correct typographical errors and errors of fact, to clarify and amplify allegations contained in the complaint, and to add other allegations of unlawful discriminatory housing practices related to or growing out of the subject matter of the original complaint and to add the names of respondents discovered during the course of processing of the complaint.

(b) Amendments must be filed on forms provided by the council.

(c) Amendments will be considered filed with the council when they are received and date-stamped in the council's office at 121 West Jones Street, Raleigh, North Carolina 27603.

(d) Within ten days after the filing of an amendment, the council shall notify all the original respondents of the filing and provide each respondent with a copy of the amendment. Each respondent shall be given an appropriate amount of time to respond to the amendment.

(e) If the amendment includes new respondents, within ten days after the amendment is filed each new respondent shall be notified of the filing of the complaint and the amendment, and shall be given the same opportunity to answer the complaint as was provided to the original respondents after the filing of the original complaint.

(f) Amendments need not contain a restatement of the entire text of the original complaint. Amendments may adopt the original complaint by reference and include a statement of the additions or corrections being made by the amendment.

(g) All claims asserted in an amendment are deemed to have been made at the time the original complaint was filed. All new respondents named in an amendment are deemed to have been named at the time the original complaint was filed.

Statutory Authority G.S. 41A-7.

#### .2105 WITHDRAWAL OF COMPLAINT

A complaint may be withdrawn upon the written request of the complainant, and with the written consent of the director. The reasons for the withdrawal shall be stated within the request. When a case is withdrawn, it shall be without prejudice to the rights of the complainant.

Statutory Authority G.S. 41A-7.

#### .2111 INVESTIGATION: SUBPOENAS

(a) At any reasonable time, an investigator may request access to premises, records, documents, and other evidence or possible sources of evidence for allegations contained in the complaint.

(b) At any reasonable time, and after 10 days notice, the investigator may depose witnesses or other individuals whose testimony is necessary for the furtherance of the investigation. Depositions shall be taken before a person authorized to administer oaths by the laws of the State of North Carolina, who shall certify on the written



record of the deposition that the deponent was duly sworn prior to the taking of the deposition. The complainant and the respondent may be present with or without an attorney and may examine and cross-examine the deponent at the time of the deposition, or they may submit written questions which will be read to the deponent and which the deponent shall answer. The written record of the deposition, which shall be transcribed, shall be submitted for review to the deponent, who shall make any changes and shall sign the written record, or upon failure to sign, shall state the reason for the failure.

(c) If a request by the investigator for access to premises, records, or documents or other evidence is denied, or if witnesses or individuals refuse to be deposed, the director may issue a subpoena compelling access to premises, production of documents, or appearance of witnesses or other individuals, and may issue interrogatories. Interrogatories shall be delivered by certified mail, shall be answered fully and in writing, shall be signed by the party or witness to whom it is directed, and shall be notarized. If the interrogatory or any part thereof is objected to, the reason for the objection shall be stated in writing, signed by the person to whom the interrogatory is directed, and shall be notarized. Answers to interrogatories, or reasons for objecting to the answers, shall be delivered to the council office by certified mail or in person within 10 days after receipt of the interrogatory.

(d) Upon the filing of a written application to the director, a reasonable number of subpoenas shall be issued on behalf of the respondent. These subpoenas shall state the name and address of the respondent and shall state that they were issued at the respondent's request.

(a) In conducting an investigation, council employees may at any reasonable time request access to individuals for questioning, and may request access to premises, records, documents, and other evidence, or possible sources of evidence, relevant to the complaint, for inspection and copying.

(b) If a request pursuant to Paragraph (c) of this Rule is denied, the director may issue a subpoena or subpoena duces tecum compelling an individual to appear before a council employee for questioning, and the director may issue a subpoena or subpoena duces tecum compelling a person or persons to provide access to premises or production of evidence.

(a) If, as a result of the informal conciliation endeavors, the conciliator is able to achieve a just resolution of the complaint, and to obtain assurances, where appropriate, that the respondent will remedy satisfactorily any violations of the protected rights under this Act of the complainant and will assure the elimination of unlawful discriminatory housing practices of the prevention of their occurrence in the future, then a written conciliation agreement shall be prepared.

(b) The conciliation agreement shall set forth all measures to be taken by any party, may include provisions for compliance reports as described in Rule .2119 of this Section, and shall be signed and notarized by the complainant, the respondent, and the director.

(c) A copy of the signed and notarized conciliation agreement shall be delivered to the complainant and the respondent.

(a) Any or all parties to a complaint, including the council, may agree to resolve a complaint at any time. The council shall consider a complaint resolved, and shall close its processing of the complaint if:

- (1) the terms of the agreement are reduced to a written conciliation agreement;
- (2) all parties to the agreement have signed the written agreement; and
- (3) the council is a party to the agreement and the director has signed the written agreement.

(b) If a complainant and a respondent agree to resolve a complaint without including the council as a party to the agreement, the council shall continue to process the complaint unless:

- (1) the director determines that the terms of the agreement are consistent with the goals and purposes of the Act;
- (2) the complainant withdraws the complaint.

(c) In a complaint involving multiple complainants or multiple respondents, any one or more complainants may agree to resolve the complaint with any one or more respondents. If such an agreement is reached between some, but not all, of the complainants and respondents, and if the council is a party to the agreement, the council shall consider the complaint resolved and shall close its processing of the complaint as it concerns the differences and allegations between the parties to the agreement. The council shall continue to process the complaint as it concerns differences and allegations between parties who have not reached an agreement.

Statutory Authority G.S. 41A-8.

Statutory Authority G.S. 41A-7.

.2116 CONCILIATION AGREEMENTS

.2119 COMPLIANCE REVIEW (REPEALED)

**.2120 NOTICE OF COMPLIANCE REVIEW  
(REPEALED)**

**.2121 DECLARATION OF NON-COMPLIANCE  
(REPEALED)**

**.2123 CIVIL ACTIONS BY THE  
COUNCIL (REPEALED)**

*Statutory Authority S.L. 1983, c. 522, s. 1.*

**SECTION .2200 - FAIR EMPLOYMENT**

**.2201 DEFINITIONS**

As used in this Section, the following terms shall have the following meanings unless the context clearly requires a different meaning:

- (1) "Complainant" shall mean any person who files a complaint with the council;
- (2) "Complaint" shall mean a sworn statement filed with the council, on a form provided for this purpose by the council, which alleges that a discriminatory employment practice has occurred;
- (3) "Council" shall mean the North Carolina Human Relations Council;
- (4) "Director" shall mean the director of the council, or in his or her absence or inability to serve, the assistant director of the council;
- (5) "Investigator" shall mean a member of the council staff designated by the director to investigate the allegations contained in the complaint and to seek voluntary conciliation of the complaint;
- (6) "Respondent" shall mean any person, group, organization, or company who is alleged to have committed a discriminatory employment practice.

*Statutory Authority G.S. 143-422.3.*

**.2202 FILING OF COMPLAINT**

(a) Within 90 days after the occurrence of a discriminatory employment practice, any person claiming to be injured by such practice may seek to file a complaint with the council at the council's office, 121 West Jones Street, Raleigh, North Carolina 27603. A member of the council staff shall interview each prospective complainant and determine whether or not the facts stated by the prospective complainant alleges a discriminatory employment practice within the jurisdiction of the council.

(b) Complaints shall be written on a form provided by the council and signed by the complainant. A member of the council staff shall assist complainants in reducing complaints to writing and shall assist in setting forth such information as may be required by the council.

*Statutory Authority G.S. 143-422.3.*

**.2203 NOTICE TO RESPONDENT**

After a complaint has been filed with the council, the director shall assign an investigator to the complaint. Within a reasonable time after the filing of a complaint, the investigator shall notify the respondent that a complaint has been filed against it by the complainant, and the investigator shall inform the respondent of the allegations made in the complaint.

*Statutory Authority G.S. 143-422.3.*

**.2204 INVESTIGATION: OPINION:  
AND CONCILIATION**

(a) After a complaint has been filed with the council, the investigator assigned to the complaint shall investigate the matter to determine whether or not a discriminatory employment practice has occurred.

(b) After completing the investigation, the investigator shall report the findings to the director. Based upon the findings, the director shall issue an opinion as to whether or not a discriminatory employment practice occurred. The director shall inform the complainant and the respondent of this opinion.

(c) If the director finds that no discriminatory employment practice has occurred, he or she shall dismiss the complaint and inform the complainant and the respondent of the dismissal. If the director finds that a discriminatory employment practice occurred, he or she may direct the investigator or some other member of the council staff to seek to resolve the dispute and remedy the discriminatory employment practice by conference, conciliation, and persuasion.

(d) Notwithstanding any other provisions in this Section, any party, including representatives of the council, may initiate conciliation discussions, and the complaint may be resolved, at any time after the complainant first informs the council of an allegation of a discriminatory employment practice. If the parties resolve the complaint before the investigation is completed but before the director issues an opinion, the director shall issue no opinion.

*Statutory Authority G.S. 143-422.3.*

**TITLE 4 - DEPARTMENT OF COMMERCE**

*Notice is hereby given in accordance with G.S. 150B-12 that the Department of Commerce intends to amend rule(s) cited as 4 NCAC 1E .0303.*

*The proposed effective date of this action is February 1, 1989.*

*The public hearing will be conducted at 10:00 a.m. on November 16, 1988 at Room 6168, Dobbs Building, 430 N. Salisbury Street, Raleigh, NC 27611.*

*Comment Procedures: Any person interested in this rule may present oral comments to the action proposed at the public rule-making hearing or deliver written comments to the Commerce Finance Center not later than November 21, 1988. Anyone planning to attend the hearing should notify Bruce Strickland, Jr., Commerce Finance Center, by November 15, 1988.*

## CHAPTER 1 - DEPARTMENTAL RULES

### SUBCHAPTER 1E - INDUSTRIAL AND POLLUTION CONTROL REVENUE BONDS

#### SECTION .0300 - REVIEW CRITERIA

##### .0303 MANUFACTURING WAGE TEST

(d) Where the industrial project does not meet the requirements in (a) of this Rule, a project may nonetheless be approved by the secretary if:

- (1) The governing body of the county submits a resolution to the effect that the project be approved notwithstanding the fact that the operator will not pay an average weekly manufacturing wage which is above the average weekly manufacturing wage paid in the county; and
- (2) The Labor Resources Section of the Department of Commerce, or its successor, makes a finding from various labor statistics available to the department that unemployment in the county is especially severe. For the purpose of this Section, "especially severe unemployment" will be defined as:

(A) when unemployment in the county has averaged, for the most recent 6 month period for which unemployment statistics are available from the Employment Security Commission, either:

- (i) at least 10 percent, or
- (ii) at least ~~40~~ 125 percent of the average unemployment rate for the State of North Carolina, and is at least 6 percent, and in the case of (i) and (ii) only where the rate of unemployment in the county for the last month of that 6 month period is at least ~~6~~ 5 percent; or

*Statutory Authority G.S. 159C-7.*

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Seafood Industrial Park Authority intends to adopt rule(s) cited as 4 NCAC 17 .0204 and .0205.*

*The proposed effective date of this action is February 1, 1989.*

*The public hearing will be conducted at 7:30 P.M. on November 14, 1988 at Administration Building, Wanchese Seafood Industrial Park, Wanchese, North Carolina.*

*Comment Procedures: Interested persons may present statements orally or in writing at the hearing or in writing prior to the hearing by mail addressed to: Ms. Nina Johnson, Director, Wanchese Seafood Industrial Park, P. O. Box 549, Wanchese, N. C. 27981.*

## CHAPTER 17 - SEAFOOD INDUSTRIAL PARK AUTHORITY

### SECTION .0200 - REGULATION OF DOCKAGE

#### .0204 DEFINITIONS

Dockage is the charge assessed against a vessel or other water craft for berthing or making fast to any wharf, mooring device or other facility of the Authority or for mooring to a vessel so berthed.

*Statutory Authority G.S. 113-315.29(10).*

#### .0205 RATES: FEES AND PENALTIES

(a) Dockage will be computed on the basis of overall length of vessel.

(b) An annual fee of two dollars and fifty cents (\$2.50) per lineal foot or fractional part thereof shall be charged all commercial fishing vessels using the Wanchese Seafood Industrial Park docks, tie-up space alongside the concrete dock and for second or third boat abreast mooring.

(c) A annual fee of five dollars and fifty cents (\$5.50) per lineal foot or fractional part thereof shall be charged all vessels or other water craft other than commercial fishing vessels using the Wanchese Seafood Industrial Park docks, tie-up space alongside the concrete dock and for second or third boat abreast mooring.

(d) The fee shall be paid, in advance, on an annual or semiannual basis for docking privileges.



(e) Checks should be made payable to the NC Seafood Industrial Park Authority and mailed to: Administrator, Wanchese Seafood Industrial Park, P. O. Box 549, Wanchese, N. C. 27981, or payment may be delivered to the Office of Administration, Wanchese Seafood Industrial Park, Harbor Road, Wanchese, N. C.

(f) A permit will be issued upon payment of annual or semiannual dockage fees, and a decal will be provided which must be displayed on the vessel so as to be seen from the dock.

(g) Payment of annual or semiannual fees shall entitle a vessel to docking privileges for normal turnaround time between trips, using any available dock space under the jurisdiction of the park authority on a first come, first served basis. Normal turnaround time shall mean not more than 14 days between trips.

(h) Any extra time beyond 14 days must be specifically authorized by Dock Security or the park administrator and will be assessed at a per diem rate of twenty-five cents (\$0.25) per linear foot for commercial fishing vessels and fifty cents (\$0.50) per linear foot for recreational vessels and all other water craft.

(i) A commercial fishing vessel without an annual or semiannual permit desiring to dock for any portion of a 24-hour period, or on a daily basis, will be assessed at a daily rate of twenty-five cents (\$0.25) per foot (LOA). The daily rate for all other vessels meeting authorization criteria for dockage will be fifty cents (\$0.50) per foot (LOA). Daily fees must be paid in advance upon tying up or at the earliest time that park staff is on hand to collect payment.

(j) During periods of storm in the area or offshore, the docks may be used as a harbor of refuge. In this event, all vessels requiring refuge from the elements may dock at the facility on a first come, first served basis and no fee will be charged any vessel during such period. When the necessity for the use of the facilities as a harbor of refuge no longer exists, vessels must leave the premises within 24 hours or be subject to the normal fee provisions contained in this Section in Rule .0202.

(k) A fee in the amount of twenty-five dollars (\$25.00) will be assessed against any vessel leaving refuse on the dock. In addition, a fine of up to fifty dollars (\$50.00) may be assessed against any vessel departing the premises and leaving behind trash, debris, equipment, or other material requiring cleanup by the park administrator.

(l) A service fee of twenty-five dollars (\$25.00) will be charged any vessel taking on water by means of a metered fire hydrant along with charges for actual water usage according to the

water rate schedule established by the authority for all users within the Seafood Park.

(m) A fine of up to fifty dollars (\$50.00) shall be assessed against any vessel whose crew is found to have thrown trash, debris, or fish into the harbor while berthed at the authority dock.

(n) Dockage fees shall not include payment for water, electricity or other ancillary services.

*Statutory Authority G. S. 113-315.29(8), (9), (10); 113-315.34.*

## TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

*Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources intends to adopt, amend rule(s) cited as 10 NCAC 3M .0101, .0104, .0107, .0203 -.0205, .0207, and .0501.*

*The proposed effective date of this action is March 1, 1989.*

*The public hearing will be conducted at 9:30 a.m. on December 9, 1988 at Hearing Room, Council Building, 701 Barbour Drive, Raleigh, NC 27603.*

*Comment Procedures: Address Comments To:*

*Lynda McDaniel  
Division of Facility Services  
701 Barbour Drive  
Raleigh, NC 27603*

*Comments will also be received orally at the hearing.*

## CHAPTER 3 - FACILITY SERVICES

### SUBCHAPTER 3M - MINIMUM STANDARDS FOR MOBILE INTENSIVE CARE UNITS

#### SECTION .0100 - DEFINITIONS

##### .0101 AMBULANCE

"Ambulance" means any privately or publicly owned motor vehicle, aircraft, or vessel that is especially designed, constructed, or modified and equipped and is intended to be used for and is maintained or operated for the transportation on the streets or highways, waterways, or airways of this state of persons who are sick, injured, ~~wounded~~, convalescent, or otherwise incapacitated or helpless.



*Statutory Authority G.S. 131E-157(a).*

**.0104 ADVANCED LIFE SUPPORT  
NONTRANSPORTING UNIT**

"ALS Advanced Life Support nontransporting unit" means a vehicle used to transport advanced life support equipment and personnel to the scene of a medical or traumatic emergency. It is not to be used for the transport of sick, ill, or injured patients. The vehicle must be staffed at a minimum by one person certified at a level equal to or greater than the level of service the vehicle is permitted to operate.

*Statutory Authority G.S. 131E-157(a).*

**.0107 MOBILE INTENSIVE CARE UNIT IV**

"Mobile Intensive Care Unit IV" means a Category I Ambulance staffed at a minimum by at least one emergency medical technician - defibrillation as defined in 21 NCAC 32H .0102 (p) and one certified ambulance attendant and equipped in accordance with the standards established by the Medical Care Commission for providing remote intensive care or cardiac care to sick and injured persons at the scene of a medical emergency and during transport to a health care facility.

*Statutory Authority G.S. 131E-156.*

**SECTION .0200 - EQUIPMENT**

**.0202 MOBILE INTENSIVE CARE UNIT I**

In addition to equipment required in .0201 of this Section, ~~ambulances~~ an ambulance permitted identified as a mobile intensive care unit I shall carry the following equipment and medical supplies in amounts concurrent with the medical protocols in effect for the ALS Advanced Life Support program which the ambulance provider is affiliated:

- (1) two-way radio capable of continuous voice communications with the sponsor ~~of resource~~ hospital;
- (2) dextrose 5 percent in water (D5W);
- (3) normal saline solution;
- (4) lactated ringer's solution;
- (5) ~~butterfly needles;~~
- (6) (5) angiocath needles;
- (7) (6) vacutainers;
- (8) (7) I.V. administration sets appropriate to solution containers and needles;
- (9) (8) esophageal obturator airway or esophageal gastric tube airway;
- (10) (9) antishock trousers;
- (11) (10) ~~premeasured and prepackaged administration kit of 1:1000~~ epinephrine 1:100 to treat systemic allergic reactions.

*Statutory Authority G.S. 131E-157(a).*

**.0203 MOBILE INTENSIVE CARE UNIT III**

An ambulance ~~ambulances permitted identified~~ as a mobile intensive care unit III shall carry the equipment and supplies required in .0201, ~~.0202, and .0204~~ of this Section and the following equipment list and medical supplies, as well as drugs contained on the EMT-paramedic Minimum Drug List approved by the ~~N.C.~~ North Carolina Board of Medical Examiners for use by EMT-paramedics in amounts/concentrations concurrent with the medical protocols in effect for the ALS Advanced Life Support program with which the ambulance provider is affiliated:

- (1) two-way radio capable of continuous voice communications with the sponsor hospital;
- (2) angiocath needles;
- (3) vacutainers;
- (4) I.V. administration sets appropriate to solution containers and needles;
- (5) esophageal obturator airway or esophageal gastric tube airway;
- (6) antishock trousers;
- (7) sterile syringes;
- (8) endotracheal tube;
- (9) laryngoscope (handle and blade);
- (10) cardiac monitor and accessories; and
- (11) defibrillator.

A vehicle ~~Vehicles permitted identified~~ as a mobile intensive care unit III may also as an option of the program medical director carry additional drugs contained on the EMT-paramedic Drug Formulary approved by the ~~N.C.~~ North Carolina Board of Medical Examiners as addressed in the medical protocols in effect for the ALS program which the ambulance provider is affiliated.

Copies of the EMT-paramedic Minimum Drug List and the EMT-paramedic Drug Formulary may be obtained from the Office of Emergency Medical Services, 701 Barbour Drive, Raleigh, North Carolina 27603.

*Statutory Authority G.S. 131E-157(a).*

**.0204 ADVANCED LIFE SUPPORT  
NONTRANSPORTING UNIT**

A vehicle ~~Vehicles permitted identified~~ as ALS an Advanced Life Support nontransporting units shall carry equipment and supplies in accordance with the level of ALS Advanced Life Support care offered by the provider with which the vehicle is affiliated. These requirements are defined in Rules .0202, .0203, .0205, and .0207 of this Subchapter. These vehicles shall also comply with requirements and criteria set forth in North

Carolina General Statutes 20-125, dealing with horns and audible warning devices; 20-130.1, dealing with the use of red lights and other visual warning devices; and 20-183.2, dealing with vehicle equipment safety inspections.

Statutory Authority G.S. 131E-157(a).

**.0205 MOBILE INTENSIVE CARE UNIT II**

An ambulance permitted identified as a mobile intensive care unit II shall carry the equipment and supplies required in .0201 and .0202 of this Section and the following equipment list, as well as the following drugs contained on the EMT-advanced intermediate Minimum Drug List approved by the North Carolina Board of Medical Examiners for use by EMT-advanced intermediates in amounts/concentrations concurrent with the medical protocols in effect for the ALS Advanced Life Support program which the ambulance provider is affiliated:

- (1) two-way radio capable of continuous voice communications with the sponsor hospital;
- (2) angiocath needles;
- (3) vacutainers;
- (4) I.V. administration sets appropriate to solution containers and needles;
- (5) esophageal obturator airway or esophageal gastric tube airway;
- (6) antishock trousers;
- (7) sterile syringes;
- (8) endotracheal tube;
- (9) laryngoscope (handle-blade);
- (10) cardiac monitor and accessories;
- (11) defibrillator.

A vehicle identified as a Mobile Intensive Care Unit II may also as an option of the program medical director carry additional drugs contained on the EMT-advanced intermediate Drug Formulary approved by the North Carolina Board of Medical Examiners as addressed in the medical protocols in effect for the ALS program with which the ambulance provider is affiliated.

Copies of the EMT-advanced intermediate Minimum Drug List and the EMT-advanced intermediate Drug Formulary may be obtained from the Office of Emergency Medical Services, 701 Barbour Drive, Raleigh, North Carolina 27603.

- (1) syringes (basic - prepackaged);
- (2) drugs;
  - (a) 50% dextrose;
  - (b) naloxone;
  - (c) lidocaine;
  - (d) sodium bicarbonate;
  - (e) atropine;
  - (f) epinephrine (1:1000);
  - (g) epinephrine (1:10,000);

~~(h) sublingual nitroglycerin.~~

Statutory Authority G.S. 131E-157(a).

**.0207 MOBILE INTENSIVE CARE UNIT IV**

An ambulance identified as a Mobile Intensive Care Unit-IV shall carry, in addition to the equipment referenced in Rule .0201 of this Section, an automatic or semi-automatic defibrillator.

Statutory Authority G.S. 131E-157(a).

**SECTION .0500 - COMMUNICATION**

**.0501 TWO-WAY RADIO**

A mobile intensive care vehicle must contain a two-way radio capable of establishing effective voice communication between the mobile intensive care personnel and the sponsor ~~resource~~ hospital personnel from any geographical point within the service area of the program.

Statutory Authority G.S. 131E-157(a).

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-12 that the Division of Health Services intends to adopt, amend, repeal rule(s) cited as 10 NCAC 4C .0203, .0303, .0306, .0406; 7B .0335, .0344, .0345, .0350 - .0353; 7C .0601 - .0603; 8A .0901 - .0907; 8B .0901 - .0906; 9D .0303, .0309, .0327 - .0330; 10A .0487; 10D .0702, .0901, .1622, .1625, .1627; 10G .0103, .0508, .0509 and .0901 - .0914.*

*The proposed effective date of this action is March 1, 1989.*

*The public hearing will be conducted at 1:30 p.m. on November 16, 1988 at Archdale Building, Hearing Room (Ground Floor), 512 North Salisbury Street, Raleigh, North Carolina.*

*Comment Procedures: Any person may request information or copies of the proposed rules by writing or calling John P. Barkley, Agency Legal Specialist, Division of Health Services, P.O. Box 2091, Raleigh, North Carolina 27602-2091, (919) 733-3134. Written comments on these rule changes may be sent to Mr. Barkley at the above address. Written and oral comments (no more than ten minutes for oral comments) on these rule changes may be presented at the public hearing. Notice should be given to Mr. Barkley at least three days prior to the public hearing if you desire to speak.*

**CHAPTER 4 - HEALTH SERVICES: OFFICE OF THE DIRECTOR**

**SUBCHAPTER 4C - PAYMENT PROGRAMS**

**SECTION .0200 - ELIGIBILITY DETERMINATIONS**

**.0203 ANNUAL NET FAMILY INCOME**

(b) The time period to be used as the basis for computing annual net family income is the 12 month period immediately preceding the date a patient or his representative makes application for eligibility to a particular payment program. However, if any of the family's wage earners were unemployed at any time during this 12 month period, that wage earner's portion of the annual net family income shall be computed on the basis of income and deduction for the six month period immediately preceding the date of application plus a projection of income and deductions (excluding medical expenses) for the six month period immediately succeeding the date of application based upon the current employment or benefit situation. Medical expenses from the 12-month period immediately preceding the date of application may be deducted from income.

(d) Any of the following expenses which are paid or incurred by a member of the patient's family shall be allowed as deductions in determining annual net family income:

- (1) state, federal, and social security taxes and any deductions from pay required as a condition of employment such as mandatory retirement contributions;
- (2) work related expenses incurred by the individual which are required as a condition of employment such as uniforms, tools, and professional liability insurance, but excluding items such as transportation to and from work, personal clothing and cleaning costs, and food expenses;
- ~~(2)~~ (3) medical and dental expenses not covered by a third party payor, including the reasonable costs of transportation required to obtain the medical and dental services;
- ~~(3)~~ (4) health insurance premiums;
- ~~(4)~~ (5) child care expenses for any child 14 years of age and under and any handicapped child 15 years of age and over if both parents of a two parent family or a single parent work or are disabled;
- ~~(5)~~ (6) expenses for the care of a spouse who is physically or mentally unable to take care of himself or herself while the other spouse is at work;

- ~~(6)~~ (7) child support and alimony payments paid to support someone outside of the family household; and
- ~~(7)~~ (8) educational expenses incurred for the purpose of managing the disability of any member of the patient's family.

*Statutory Authority G.S. 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-177; 130A-205.*

**SECTION .0300 - ELIGIBILITY PROCEDURES**

**.0303 PAYMENT LIMITATIONS**

(e) If the division requests a refund of a payment made to a provider, the refund must be made to the division within 45 days after the date of the refund request.

*Statutory Authority G.S. 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-177; 130A-205.*

**.0306 DISQUALIFICATION**

A provider shall be disqualified from all division payment programs upon disqualification from Medicaid, Medicare, or the Title V program for a period not to exceed that of the disqualification from the other program.

*Statutory Authority G.S. 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-177; 130A-205.*

**SECTION .0400 - REIMBURSEMENT**

**.0406 REIMBURSEMENT RATES FOR JOBS BILL HEALTH PROJECT (REPEALED)**

*Statutory Authority G.S. 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-177; 130A-205.*

**CHAPTER 7 - HEALTH: EPIDEMIOLOGY**

**SUBCHAPTER 7B - HIGHWAY SAFETY**

**SECTION .0300 - BLOOD ALCOHOL TEST REGULATIONS**

**.0335 BREATH-TESTING INSTRUMENTS: REPORTING OF SEQUENTIAL TESTS**

(a) The standards for the approval of breath-testing instruments are as follows:

- (1) The commission approves the method of performing chemical analyses through the use of breath-testing instruments of a design and of a model specifically approved by the commission as meeting, to its satisfaction, nationally accepted high standards of accuracy, reliability, convenience and efficiency of operation.
- (2) The succeeding rules of this Section establish operational and preventive main-



tenance procedures for breath-testing instruments approved by the commission.

- (3) Pending reassessment of the criteria for approval of breath-testing instruments that utilize infrared technology, there is a moratorium on the placing of new instruments utilizing that technology into service on or after January 1, 1986. Individual infrared instruments placed into service before January 1, 1986, may continue to be used in accordance with the succeeding rules of this Section applicable to them. Unless this Paragraph is earlier amended or repealed, the moratorium lasts until January 1, 1989. The models of instruments subject to the moratorium are:

- (A) Intoxilyzer, Model 4011A5, Modified (Rules .0344 and .0345);
- (B) Breathalyzer, Model 2000 (Rules .0348 and .0349);
- (C) Intoximeter, Model 3000 (Rules .0348 and .0349);
- (D) Intoxilyzer, Model 5000 (Rules .0350 and .0351);
- (E) BAC Verifier (Rules .0352 and .0353).

Statutory Authority G.S. 20-139.1(b).

.0344 INTOXILYZER: MODEL 4011A5  
MODIFIED (REPEALED)

.0345 PREVENTIVE MAINTENANCE:  
INTOXILYZER: MODEL 4011A5  
MODIFIED (REPEALED)

Statutory Authority G.S. 20-139.1(b).

.0350 INTOXILYZER: MODEL 5000

The operational procedures to be followed in using the Intoxilyzer, Model 5000 (~~approved for use only with the Toxitest alcoholic breath simulator~~) are:

- (1) Insure observation period requirements have been met;
- (2) Insure alcoholic breath simulator thermometer shows proper operating temperature and insure simulator is properly connected to instrument;
- (3) Press "START TEST";
- (4) When "INSERT CARD" appears, insert test record;
- (5) Insure instrument displays proper time and date;
- (6) Insure instrument displays expected results from the alcoholic breath simulator;
- (7) When "PLEASE BLOW" appears, collect breath sample;
- (8) When "PLEASE BLOW" appears, collect breath sample;

- (9) When test record ejects, remove and record times and results.

If the alcohol concentrations differ by more than 0.02, a third or subsequent test shall be administered as soon as feasible by repeating steps (1) through (9).

Statutory Authority G.S. 20-139.1(b).

.0351 PREVENTIVE MAINTENANCE:  
INTOXILYZER: MODEL 5000

The preventive maintenance procedures for the Intoxilyzer Model 5000 (~~approved for use only with the Toxitest alcoholic breath simulator~~) to be followed at least once during every 30 days are:

- (1) Verify alcoholic breath simulator thermometer shows proper operating temperature and insure simulator is properly connected to instrument;
- (2) Press "START TEST";
- (3) When "INSERT CARD" appears, insert test record;
- (4) Verify instrument displays proper time and date;
- (5) Verify instrument displays expected results from the alcoholic breath simulator;
- (6) When "PLEASE BLOW" appears, collect breath sample;
- (7) When "PLEASE BLOW" appears, collect breath sample;
- (8) When test record ejects, remove and record simulator results;
- (9) Repeat steps (1) through (8);
- (10) Verify ~~alcohol~~ alcoholic breath simulator solution is being changed every 14 days or after 25 tests, whichever occurs first.

A signed copy of the preventive maintenance checklist shall be kept on file for at least three years.

Statutory Authority G.S. 20-139.1(b).

.0352 BAC VERIFIER (REPEALED)  
.0353 PREVENTIVE MAINTENANCE:  
BAC VERIFIER (REPEALED)

Statutory Authority G.S. 20-139.1(b).

## SUBCHAPTER 7C - OCCUPATIONAL HEALTH BRANCH

### SECTION .0600 - ASBESTOS IN BUILDINGS PROGRAM

#### .0601 GENERAL

The Asbestos in Buildings Program (AIBP), Division of Health Services, has been designated by the Governor to implement the Asbestos



Hazard Emergency Response Act (AHERA) P.L. 99-519 and the Environmental Protection Agency (EPA) rules 40 CFR Part 763 and accompany in appendices, which have been adopted by reference in accordance with G.S. 150B-14(c).

*Statutory Authority G.S. 130A-5(3); P.L. 99-519.*

**.0602 ACCREDITATION**

(a) No person shall commence or continue to engage in the business of performing inspections, writing management plans, designing abatement actions, performing abatement work or supervising abatement work related to asbestos in schools until they have accredited by the program in the specific discipline for the activity being performed.

(b) An applicant for accreditation shall meet the provisions of the "EPA Model Contractor Accreditation Plan" contained in 40 CFR 763 (Subpart E, appendix C).

(c) In addition to the requirements in (b), an applicant shall meet the following:

- (1) an applicant shall have successfully completed an approved initial training course within twelve months immediately preceding application;
- (2) an inspector shall have a bachelor's degree and at least three months experience or an associate degree or two-year college degree and at least six months experience or a high school degree or equivalent and at least twelve months experience; for purposes of this Subparagraph, experience shall mean work as or under direct supervision of an accredited inspector or employment as a supervisor or worker;
- (3) A management planner shall have a bachelor's degree and at least six months experience, or an associate degree or two-year college degree and at least 12 months experience or a high school degree or equivalent and at least 24 months experience; for purposes of this Subparagraph, experience shall mean asbestos related work as of under direct supervision of a management planner, an accredited inspector or employment as a supervisor, except that at least three months of the work must have been as or under the direct supervision of a management planner;
- (4) An abatement designer shall be an architect, engineer, or certified industrial hygienist (CIH); an abatement designer shall complete the Environmental Protection Agency course developed specifically for abatement designers; and

- (5) A contractor or supervisor shall have a high school degree or equivalent and at least three months experience as or under the direct supervision of an accredited supervisor or employment as an asbestos worker.

(d) To obtain accreditation, the applicant shall submit or cause to be submitted the following information to the Asbestos in Buildings Program:

- (1) full name of applicant;
- (2) name, address and telephone number of employer;
- (3) discipline(s) applied for;
- (4) date(s) of training course(s) for each discipline;
- (5) name and location (city and site) of course attended;
- (6) training agency name and address;
- (7) confirmation of completion of an approved initial or refresher training course from the training agency, sent directly to the program; the confirmation shall be in the form of a certified copy of the certificate of completion of the approved training course, or a letter confirming completion of the course on training agency letterhead, or a list of names of persons who have successfully completed the training course, with the applicant's name included, on the training agency letterhead;
- (8) a copy of the diploma or other written documentation from the educational institution; and
- (9) work history documenting asbestos related experience, including employer name, address, and phone number; positions held; and when positions were held.

(e) All accreditations, including accreditations issued prior to October 10, 1988, shall expire at the end of the 12th month following completion of required initial or refresher training. To be reaccredited, an applicant shall annually complete the required refresher training course. The refresher training course must be completed before accreditation expires. An applicant for reaccreditation shall also submit information specified in (d)(1)-(d)(7). If a person fails to obtain reaccreditation prior to expiration of accreditation, that person may be accredited only by meeting the requirements of Paragraphs (b), (c), and (d).

(f) Pursuant to the requirements for refresher training courses in 40 CFR 763, Subpart E, Appendix C, the state has determined that refresher training course shall include a review of the following key aspects of the initial training course:

- (1) the refresher training course for all disciplines shall include a review of health effects of asbestos, respiratory protection, and personal protective equipment;
  - (2) the refresher training course for inspector shall include a review of record keeping, writing the inspection report, inspecting for friable and non-friable asbestos-containing material, and assessing the condition of asbestos-containing material building materials;
  - (3) the refresher training course for management planner shall include a review of record keeping, management plan content, hazard assessment, determining an operations and maintenance plan, and selection of control options;
  - (4) the refresher training course for abatement project designer shall include a review of designing abatement solutions, budgeting cost estimation, considerations for work in occupied buildings and writing abatement specifications;
  - (5) the refresher training course for contractor supervisor shall include a review of state of the art work practices, air monitoring and supervisory techniques; and
  - (6) the refresher training course for abatement workers shall include a review of state of the art work practices, personal hygiene, and additional safety hazards.
- (g) All accredited persons shall be assigned an accreditation number by the program.
- (h) A list of approved training courses may be obtained from the program.
- (i) Upon request, a person accredited by another state shall be automatically accredited by the program if that state's accreditation program is at least as stringent and as comprehensive as the accreditation program established by these rules.
- (j) The program may revoke accreditation upon a finding that its issuance was based upon incorrect or inadequate information that materially affected the decision to issue accreditation. The program may also revoke accreditation upon a finding that the accredited person has violated a generally accepted industrywide standard or practice, and the violation creates a significant public health hazard. A person whose accreditation is revoked because of fraudulent misrepresentations or because of violations that create a significant public health hazard shall not be authorized to reapply for accreditation before three months after the revocation.

*Statutory Authority G.S. 130A-5(3); P.L. 99-519.*

#### **.0603 ASBESTOS MANAGEMENT PLANS**

(a) All Local Education Agencies shall submit Asbestos Management Plans for school buildings to the program on forms provided by the program. Asbestos Management Plans shall meet the requirements contained in 40 CFR 763.

(b) In addition to the requirements in Paragraph (a), the management plan shall comply with the following:

- (1) All asbestos containing building materials shall be identified, located, classified and assessed;
- (2) The local education agency shall notify the program of asbestos removal projects 10 working days before removal is to begin and within 10 working days after the removal area has been cleared for occupancy;
- (3) For asbestos removal projects, an accredited abatement designer, a certified industrial hygienist, or a person classified as an industrial hygienist in training (by the American Board of Industrial Hygiene) with at least three months asbestos experience and working under the direct supervision of a certified industrial hygienist, shall perform the initial inspection prior to beginning removal;
- (4) For asbestos removal projects, a certified industrial hygienist in training (by the American Board of Industrial Hygiene) with at least three months asbestos experience and working under the direct supervision of a Certified Industrial Hygienist, shall perform final visual inspection and final air sampling for clearance and occupancy;
- (5) Industrial hygienists and laboratories performing analytical services shall be employed by or under contract with the local education agency and shall not be supervised by the contractors who are furnishing asbestos services; and
- (6) Contractors, including inspectors, management planners, abatement designers, contractors or supervisors and workers, who perform Asbestos Hazard Emergency Response Act activities shall be accredited in North Carolina by the program prior to performing such activities.

*Statutory Authority G.S. 130A-5(3); P.L. 99-519.*

### **CHAPTER 8 - HEALTH: PERSONAL HEALTH**

#### **SUBCHAPTER 8A - CHRONIC DISEASE**

**SECTION .0900 - JOBS BILL HEALTH PROJECTS**

- .0901 GENERAL (REPEALED)**
- .0902 DEFINITIONS (REPEALED)**
- .0903 JOBS BILL PROJECT LIAISONS (REPEALED)**
- .0904 ELIGIBILITY (REPEALED)**
- .0905 JOBS BILL HEALTH SERVICES PROJECT FUNDS (REPEALED)**
- .0906 JOBS BILL FEE-FOR-SERVICE HOME HEALTH AIDE SERVICES (REPEALED)**
- .0907 JOBS BILL HEALTH PROJECT HOME HEALTH AIDE SERVICES (REPEALED)**

*Statutory Authority G.S. 130A-223.*

**SECTION .0900 - RURAL OBSTETRICAL CARE INCENTIVE FUNDS**

**.0901 GENERAL**

Rural Obstetrical Care Incentive Funds are administered by the Maternal and Child Health Branch. The funds are used to reimburse physicians for a portion of malpractice insurance premiums as an incentive to physicians to practice obstetrics in underserved counties.

*Statutory Authority S. L. 1987, c. 1100, s. 39.3.*

**.0902 APPLICATION FOR FUNDS**

(a) Local health departments in counties that are underserved with respect to obstetrical care may apply to the Maternal and Child Health Branch for rural obstetrical care incentive funds. A physician may request a local health department to apply for the funds.

(b) A county is considered underserved with respect to obstetrical care if the county meets one or more of the following criteria, listed in order of priority:

- (1) there are no public or private prenatal services available within the county;
- (2) there is no public prenatal clinic available within a health department, hospital or primary care center that serves low income pregnant women within the county;
- (3) there is a public prenatal clinic, but no physician to staff the clinic or to provide physician back-up for physician extenders;
- (4) the county has inadequate obstetrical coverage, demonstrated by such factors as a waiting list of 28 calendar days or more for an appointment at the public prenatal clinic or 50 percent or more of resident live-births occurring outside of the county;

(5) implementation of these rules would preserve county obstetrical services threatened with discontinuation.

(c) The Maternal and Child Health Branch shall send a request for applications to local health departments that includes a deadline for receipt of applications.

(d) Local health departments that apply for rural obstetrical care incentive funds shall include in the application:

- (1) a coverage plan, developed in cooperation with eligible physicians, that addresses prenatal and delivery care for low income women in the county, and quality of care;
- (2) contracts with eligible physicians who agree to participate in the local health department's coverage plan and provide the services required by Rule .0906; the contracts may be contingent upon the availability of rural obstetrical care incentive funds; and
- (3) evidence that receipt of these funds will improve or rectify the problems with obstetrical coverage in the county.

*Statutory Authority S. L. 1987, c. 1100, s. 39.3.*

**.0903 PHYSICIANS ELIGIBLE TO PARTICIPATE**

(a) A physician is eligible to receive rural obstetrical care incentive funds if the physician:

- (1) is licensed to practice medicine in North Carolina; and
- (2) carries malpractice liability insurance that is not being totally or partially paid for the physician as an employee of the federal government or by an institution of higher learning or an affiliate of the institution.

(b) A physician does not have to reside in the underserved county to be eligible to participate.

*Statutory Authority S. L. 1987, c. 1100, s. 39.3.*

**.0904 DISBURSEMENT OF FUNDS**

(a) Subject to the availability of funds, the Maternal and Child Health Branch shall disburse rural obstetrical care incentive funds to local health departments that have submitted an approved application as follows:

- (1) first priority shall be given to those counties that meet the criteria in Rule .0902(b)(1), second priority shall be given to those counties that meet the criteria in Rule .0902(b)(2), third priority shall be given to those counties that meet the criteria in Rule .0902(b)(3), fourth priority shall be given to those counties that meet the criteria in Rule .0902(b)(4), and fifth



- priority shall be given to those counties that meet the criteria in Rule .0902(b)(5);
- (2) the Maternal and Child Health Branch shall rank and disburse funds to underserved counties within each priority group according to the anticipated improvement in obstetrical coverage that will result from funding; and
  - (3) Counties funded during FY 1988-89 shall receive ongoing funding based upon a renewal application which continues to meet the requirements of Rule .0902.

(b) For each eligible physician with whom the local health department contracts, the department will be paid either the difference between the physician's premiums with obstetrical care coverage and without obstetrical care coverage, or six thousand five hundred dollars (\$6,500), whichever is less. Payment shall be based upon a maximum of one million/one million dollars (\$1,000,000/\$1,000,000) coverage. The local health department will then pay this amount to the physician to cover a portion of the physician's annual malpractice insurance premiums. The total payments to one physician cannot exceed the above amount.

(c) No more than nineteen thousand five hundred dollars (\$19,500) may be disbursed to any underserved county.

(d) No funds may be disbursed to a health department in the absence of a contract with an eligible physician.

*Statutory Authority S. L. 1987, c. 1100, s. 39.3.*

#### **.0905 PARTICIPATION REQUIREMENTS FOR LOCAL HEALTH DEPARTMENTS**

A local health department that receives rural obstetrical care incentive funds shall:

- (1) maintain statistical and fiscal information required by the Maternal and Child Health Branch to document participation by eligible physicians under the contract; and
- (2) assure that physicians participate in the coverage plan for the duration of the contract period.

*Statutory Authority S. L. 1987, c. 1100, s. 39.3.*

#### **.0906 PARTICIPATION REQUIREMENTS FOR PHYSICIANS**

- (a) A participating physician shall:
  - (1) provide prenatal care to low-income women by:
    - (A) staffing a public prenatal clinic or providing medical back-up for and supervision of physician extenders providing services in a public prenatal clinic; or

- (B) providing prenatal care in the physician's office.
- (2) take part in an on-call arrangement for coverage of obstetrical care, including deliveries, for low income women who are residents of the underserved county;
- (3) not refuse to provide prenatal or delivery care for any patient based on economic status or ability to pay; and
- (4) participate in data collection efforts required by the Maternal and Child Health Branch.

(b) No participating physician shall be required to assume management of the care of any obstetrical patient if the level of care required for that patient is beyond the professional competence of that physician.

(c) No participating physician shall be required to provide delivery services if the underserved county does not have a facility for obstetrical delivery.

*Statutory Authority S. L. 1987, c. 1100, s. 39.3.*

### **CHAPTER 9 - HEALTH: LABORATORY**

#### **SUBCHAPTER 9D - CERTIFICATION AND IMPROVEMENT**

##### **SECTION .0300 - LABORATORY CERTIFICATION**

##### **.0303 CERTIFICATION: CERTIFICATION RENEWAL: AND FEES**

(b) A laboratory ~~shall~~ may renew its certification every year by payment of the certification fee by December 1 of the preceding year. If the fee has not been paid by December 31 of each year, the laboratory's certification ~~will~~ shall not be renewed for the next year, and the laboratory ~~must~~ shall apply for recertification pursuant to Rule .0328 of this Section. Notwithstanding the above, the first certification renewal fee after the effective date of these rules shall be due on February 1, 1988 and must be paid on or before March 1, 1988 or the laboratory's certification ~~will~~ shall not be renewed. ~~Every two years, the laboratory shall renew its certification based upon~~ In addition to payment of the certification fee, an on-site evaluation by a laboratory certification evaluator and compliance with the minimum requirements of this Section are required for renewal.

(d) The certification fee shall be twenty dollars (\$20.00) per analyte. The minimum and maximum fee per analyte group shall be as set out in G.S. 130A-326(7). The analyte groups are as follows:

- (1) ~~Inorganic Chemistry~~ inorganic chemistry;



- (2) Organic Chemistry I (Synthetic Organic Chemicals) organic chemistry I (synthetic organic chemicals);
- (3) Organic Chemistry II (Volatile Organic Chemicals) organic chemistry II (volatile organic chemicals);
- (4) Total Coliforms (total coliforms); and
- (5) Radio Chemistry radio chemistry.

The certification fee shall not be prorated nor refunded.

Statutory Authority G.S. 130A-315; 130A-326.

#### .0309 CHEMISTRY QUALITY CONTROL

Requirements for quality control data of chemical analyses are as follows:

- (4) (a) All quality control data shall be available for inspection.
- (2) (b) A laboratory shall analyze an unknown performance samples sample (when available) once per year for parameters measured. Results must be within the control limits established by EPA for each analysis for which the laboratory is or wishes to be certified. If results are not within the control limits, a follow-up performance sample shall be analyzed and results must be within control limits established by EPA. as follows:

- (1) at least one United State Environmental Protection Agency (EPA) performance evaluation sample pair per year for parameters measured, results shall be within control limits established by EPA for each analysis for which the laboratory is or wishes to be certified, if results are not within control limits, a follow-up EPA performance evaluation sample shall be analyzed and results shall be with control limits established by EPA;
- (2) double-blind samples shall be analyzed when submitted to a certified laboratory and results shall be within established control limits, these data shall be of equal importance to the EPA performance evaluation sample data in determining the laboratory's certification status;
- (3) on-site quality control samples shall be analyzed when presented to the laboratory during the on-site visit of the laboratory certification evaluator and results shall be within established control limits, these data shall be of equal importance to the EPA performance evaluation sample data and the double-blind sample data in determining the laboratory's certification status;
- (4) an acceptable performance level of 75 percent shall be maintained for each

analyte for which a laboratory is or wishes to be certified, this 75 percent average shall be calculated from the 10 most recent performance sample data points from the EPA water study, double-blind, blind, and on-site samples.

- (e) In addition, analysis for regulated volatile organic chemical under 10 NCAC 10D .1624(e) shall only be conducted by laboratories that have received conditional approval by EPA or the department according to 40 C.F.R. 141.24(G)(10) and (11) which is hereby adopted by reference pursuant to G.S. 150B-14(c).

(f) Analysis for unregulated volatile organic chemicals under 10 NCAC 10D .1638 shall only be conducted by laboratories approved under Paragraph (d) of this Rule. In addition to the requirements of (d), each laboratory analyzing for EDB and DBCP shall achieve a method detection limit for EDB and DBCP of 0.00002 mg/l, according to the procedures in Appendix B of 40 C.F.R. Part 136 which is hereby adopted by reference pursuant to G.S. 150B-14(c).

Statutory Authority G.S. 130A-315.

#### .0327 REVOCATION: DOWNGRADING OR DENIAL

(a) The Department of Human Resources or its delegate may revoke or deny laboratory certification when there is substantial evidence that a laboratory or its employees have done any of the following:

- (5) Failed to correctly analyze performance evaluation samples, including United States Environmental Protection Agency water study, double-blind, blind, and on-site samples, or failed to report the results within 45 the specified time;

Statutory Authority G.S. 130A-315.

#### .0328 RECERTIFICATION

(a) A laboratory is eligible for recertification six months after revocation or nonrenewal of its certificate, except in the following instances:

- (2) A laboratory which lost certification for failure to correctly analyze performance evaluation samples is eligible for recertification after correctly analyzing a two make-up performance evaluation sample samples;
- (3) A laboratory for which certification was not renewed for failure to pay the certification fee by the date required in Rule .0303 of this Section is eligible for recertification 60 days after paying the overdue certification fee; a laboratory applying for

recertification on this basis shall not be required to pay an additional certification fee with the application.

*Statutory Authority G.S. 130A-315; 130A-326.*

**.0329 CONTRACT LABORATORIES**

(a) A laboratory may sub-contract analytical work to another laboratory if the sub-contracting laboratory has been certified by the Department of Human Resources, ~~by another state's certification program or by the EPA for the appropriate parameters.~~ as required in Rule .0330 of this Section.

(b) ~~Laboratory reports must indicate the laboratory which performs the analysis, including the name of the sub-contracting laboratory. Any data generated through a sub-contract shall be reported on the report form of the laboratory which performed the sub-contracted analyses and shall be signed by the responsible person.~~

*Statutory Authority G.S. 130A-315.*

**.0330 CERTIFICATION OF OUT-OF-STATE LABORATORIES**

~~Laboratories which have been certified under equivalent programs in other states or by the EPA are eligible for reciprocal certification in North Carolina. A notarized copy of the certificate and a copy of the program, if requested, must be received by the Department of Human Resources with the application for certification.~~

(a) An out-of-state laboratory shall meet all the following conditions to obtain North Carolina certification to perform analyses for compliance with 10 NCAC 10D .1600:

- (1) The laboratory shall be certified under a similar program administered by the state in which the facility is located or must be certified by the United States Environmental Protection Agency (EPA);
- (2) The laboratory shall provide this office with its EPA performance evaluation data within 30 days of the receipt of those data;
- (3) An initial on-site inspection will be conducted by one or more laboratory certification evaluators at the requesting laboratory's expense. Follow-up inspections will be conducted as frequently as once per year at the requesting laboratory's expense;
- (4) The laboratory shall pay certification fees as prescribed in Rule .0326 of this Section; and
- (5) The laboratory shall notify the North Carolina Department of Human Resources within 30 days of any changes in

its certification status pursuant to the actions of another agency.

(b) The laboratory's failure to comply with any or all of the conditions in (a) of this Rule will prevent the laboratory from obtaining certification in North Carolina or result in downgrading or revocation of its certification in North Carolina.

*Statutory Authority G.S. 130A-315.*

**CHAPTER 10 - HEALTH SERVICES:  
ENVIRONMENTAL HEALTH**

**SUBCHAPTER 10A - SANITATION**

**SECTION .0400 - SANITATION OF  
RESTAURANTS AND OTHER  
FOODHANDLING ESTABLISHMENTS**

**.0487 REQUIREMENTS FOR CATERED  
ELDERLY NUTRITION SITES**

Catered Elderly Nutrition Sites where food is served, but not prepared, operated under the guidelines of the North Carolina Department of Human Resources, Division of Aging, shall comply with all the requirements provided in Rules .0444 to .0475 of this Section with the following exceptions:

- (1) sites responsible for the washing and sanitizing of coffee and tea preparation pitchers and related utensils shall have at least a two-compartment domestic sink for these purposes that shall not be required to meet the standards in Rules .0459(d) and .0460(i); the sink shall be constructed of non-toxic, corrosion-resistant materials which are smooth and durable under conditions of actual use; and under this provision, all other service utensils shall be returned to the caterer for washing and sanitizing;
- (2) if refrigerated storage is limited to foods that do not require cooling or reheating, long-term refrigeration equipment shall not be required to meet the standards on Rule .0459(d);
- (3) the following shall apply in place of the requirements in Rule .0468(b), (c), (d) and (e):
  - (a) garbage receptacles shall be kept clean and in good repair, with tight-fitting lids;
  - (b) can liners shall be required for all garbage receptacles unless the site has approved can-wash facilities;
  - (c) mop or can-cleaning water shall not be disposed of in the utensil sink, and all waste water from mopping and can-cleaning operations shall be disposed of in an approved manner in accordance with Rule .0468(a) of this Section; and



- (d) dumpster lids shall be kept closed.

*Statutory Authority G.S. 130A-248.*

#### SUBCHAPTER 10D - WATER SUPPLIES

#### SECTION .0700 - PROTECTION OF PUBLIC WATER SUPPLIES

##### .0702 DEFINITIONS

- (2) "Adjacent Water System" means two or more water systems that are adjacent and are owned or operated by the same supplier of water and that together serve 15 or more service connections or 25 or more persons daily at least 60 days out of the year.
- (30) (31) "Public water system"
- (a) "Public Water System" means a system, including an adjacent water system, for the provision to the public of piped water for human consumption if such the system has at least serves 15 or more service connections or regularly serves an average of at least 25 individuals or more persons daily at least 60 days out of the year. Such The term includes:
- (i) any collection, treatment, storage, and distribution facility under control of the operator of such system and used primarily in connection with such system; and
  - (ii) any collection or pre-treatment storage facility not under such control which is used primarily in connection with such system.

*Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.*

#### SECTION .0900 - SUBMISSION OF PLANS: SPECIFICATIONS: AND REPORTS

##### .0901 APPLICABILITY: PRIOR NOTICE

- (a) All persons, including units of local government, intending to construct, alter, or expand a community water system, including an adjacent water system constructed, altered or expanded after March 1, 1989, shall give written notice thereof, including submission of applicable plans, specifications and engineering reports, to the environmental health section, division of health services, as required by the rules of this section.

*Statutory Authority G.S. 130A-315; 130A-317; P. L. 93-523.*

#### SECTION .1600 - WATER QUALITY STANDARDS

#### .1622 MICROBIOLOGICAL CONTAMINANT SAMPLING AND ANALYSIS

- (i) An adjacent water system shall conform to the following sampling schedule rather than the schedule set forth in Paragraphs (b), (c), and (e) of this Rule. A water supplier shall submit samples monthly from each section of the water system supplied from a separate source.

*Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.*

#### .1625 INORGANIC CHEMICAL SAMPLING AND ANALYSIS

- (g) An adjacent water system shall conform to the following sampling schedule rather than the schedule set forth in Paragraph (a) of this Rule. A water supplier shall submit samples every three years from each section of the watersystem supplied from a separate source.

*Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.*

#### .1627 MONITORING FREQUENCY FOR RADIOACTIVITY

- (c) An adjacent water system shall conform to the following sampling schedule rather than the schedule set forth in Paragraphs (a) and (b) of this Rule. A water supplier shall take samples for gross alpha particle activity, radium-226 and radium-228, and for man-made radioactivity from the water system when the secretary determines that the system is in an area subject to radiological contamination. When the sampling is required, a water supplier shall submit samples every four years from each section of the water system supplied from a separate source.

*Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.*

#### SUBCHAPTER 10G - SOLID WASTE MANAGEMENT

#### SECTION .0100 - GENERAL PROVISIONS

##### .0103 GENERAL CONDITIONS

- (f) No person shall dispose or cause the disposal of solid waste in or on waters in a manner that results in solid waste entering waters or being deposited upon lands of the state.

*Statutory Authority G.S. 130A-294.*

#### SECTION .0500 - DISPOSAL SITES

##### .0508 APPLICATION REQUIREMENTS FOR INCINERATORS

(a) Two permits are required for each incinerator; a permit to construct an incinerator and a permit to operate an incinerator.

(b) This Rule Section contains the information required for a permit application for to construct each incinerator. Where applicable, compliance with the North Carolina Environmental Policy Act (SEPA), N.C.G.S. 113A and the rules adopted thereunder in 10 NCAC 25, is a prerequisite to the issuance of a construction permit. A minimum of two four sets of plans will be required for each application.

(1) Site and operation plans of the proposed incinerator;

(2) operational performance specifications, including all air emissions, for the proposed facility, and a predictive model of air emissions approved by the Division;

(2) (3) A copy of the air quality permit application to the division of environmental management, Department of Natural Resources and Community Development;

(3) (4) An approval letter from the unit of local government having zoning authority over the area where the facility is to be located; and

(4) (5) The type, quantity and source of waste for disposal ; and

(6) any other information pertinent to the proposed construction plan.

(c) This Subsection contains the information required for a permit application to operate an incinerator:

(1) a showing that the facility has been constructed in accordance with plans and specifications, and other conditions of the construction permit;

(2) a showing that the facility can be operated to meet performance specifications;

(3) a showing of compliance with the operational requirements in Rule .0509;

(4) an air quality permit issued by the Division of Environmental Management, Department of Natural Resources and Community Development, shall be obtained prior to operation; and

(5) any other information pertinent to the proposed operation plan.

*Statutory Authority G.S. 130A-294.*

#### **.0509 OPERATIONAL REQUIREMENTS FOR INCINERATORS**

Any person who maintains or operates an incinerator shall maintain and operate the site in conformance with the following practices, unless otherwise specified in the permit:

(7) An air quality permit issued by the division of environmental management, Department of Natural Resources and Community Development shall be obtained prior to operation; the operator shall perform stack tests as required by the division for evaluation of incinerator performance;

*Statutory Authority G.S. 130A-294.*

### **SECTION .0900 - SEPTAGE MANAGEMENT**

#### **.0901 PREAMBLE**

Whereas the North Carolina General Assembly has enacted G.S. 130A-291.1 which requires the Commission for Health Services to establish criteria for septage management in North Carolina; and whereas Senate Bill 701 requires the Commission for Health Services to establish such criteria by January 1, 1989; and whereas the commission finds that additional time is needed to develop comprehensive rules in the area of septage management, now, therefore, be it resolved that the Commission for Health Services adopts the rules of this Section as an interim measure to assure implementation of a septage management program on January 1, 1989.

*Statutory Authority G.S. 130A-291.1.*

#### **.0902 DEFINITIONS**

The following definitions shall apply throughout this Section:

(1) Department means the Department of Human Resources;

(2) Septage means septage as defined in G.S. 130A-290(16a);

(3) Septage management firm means septage management firm as defined in G.S. 130A-290(16b).

*Statutory Authority G.S. 130A-291.1*

#### **.0903 SEPTAGE MANAGEMENT FIRM PERMITS**

(a) No septage management firm shall commence or continue operation or or after July 1, 1989 unless the firm has a permit issued by the department.

(b) If a county in which a septage management firm operates has adopted an ordinance that establishes standards for septage management, the septage management firm must meet those standards until July 1, 1989.

(c) To apply for a permit, a septage management firm shall submit the following information to the department:

(1) the owner's name, address and phone number;



- (2) the business name, address and phone number;
- (3) the number and capacity of pumper trucks;
- (4) the type of pumping equipment used;
- (5) vehicle license and serial numbers;
- (6) the hazardous waste hauler number;
- (7) the counties in which the firm operates;
- (8) the disposal method for septage;
- (9) the location of all septage disposal sites;
- (10) the disposal method for washings from the interior of septage hauling containers; and
- (11) the location of the disposal site for washings from the interior of septage hauling containers.

*Statutory Authority G.S. 130A-291.3*

**.0904 FEES**

Every septage management firms shall pay an annual fee by January 1 of each year in accordance with G.S. 130A-291.1(e). Fees shall be paid to the Septage Management Program, Solid Waste Branch, P.O. Box 2091, Raleigh, N.C. 27602.

*Statutory Authority G.S. 130-291.1*

**.0905 SITE PERMITS**

(a) No septage disposal site shall be used for the disposal of septage unless the site is permitted by the department.

(b) All septage disposal sites in operation on January 1, 1989 are deemed permitted until January 1, 1991, under the following conditions:

- (1) if a country has an ordinance that established standards for septage disposal sites, a site must meet those standards; and
- (2) this site is operated in such a manner that a public health hazard is not created.
- (3) To continue disposal of septage on site on or after January 1, 1991, the owner or the person in control of the site must have applied for and received a permit from the department.

(c) To commence disposals of septage on a site not in operation on January 1, 1989, the owner or the person in control of the site must have applied for and received a permit from the department.

(d) To apply for a permit for a septage in disposal site, the owner or the person in control of the site shall submit the following information to the department:

- (1) the location of the site;
- (2) the name, address, and phone number of the owner or person in control of the site;
- (3) the size of the site;

- (4) the estimated annual application of septage in gallons;
- (5) the uses of the site for other than septage disposal;
- (6) the substances other than septage previously disposed of at this location, and the amounts of other substances;
- (7) the method of storage or disposal of septage during adverse weather conditions;
- (8) the method of incorporation, and any pretreatment methods, used for septage disposal; and
- (9) the equipment used at the site.

*Statutory Authority G.S. 130A-291.1.*

**.0906 STANDARDS**

The standards in Rules .0907 - .0911 shall be met at all septage disposal sites on and after January 1, 1991.

*Statutory Authority G.S. 130A-291.1.*

**.0907 LOCATION OF LAND APPLICATION SITES FOR THE DISPOSAL OF SEPTAGE**

(a) Sandy soils overlying an unconfined aquifer shall not be used for the disposal of septage if the aquifer is a principal source of potable water unless a minimum of three feet of separation exists between the point of septage application and the naturally occurring seasonally high water table.

(b) Septage land application sites shall be prohibited from location in the watershed of a Class I or Class II reservoir or in the watershed of the portion of a Class II stream extending from a Class I reservoir to a downstream intake at a water purification plant. This requirement becomes effective whenever funds have been appropriated either for purchase of land or construction of a Class I or Class II reservoir. This prohibition does not apply to those portions of a water supply reservoir watershed which are drained by Class C streams.

(c) All septage disposal sites shall be located at least the minimum distance specified for the following:

- (1) individual potable water supply well, 100 feet;
- (2) community supply well, 250 feet;
- (3) waters classified AII, AIIB, or SA, 500 feet; and
- (4) any other stream, canal, marsh, coastal water, lake or impoundment, 100 feet.

(d) No septage disposal site shall be located upslope of a potable water supply spring.

*Statutory Authority G.S. 130A-291.1.*

**.0908 MANAGEMENT OF SEPTAGE LAND DISPOSAL SITES**

Untreated septage shall be added to a wastewater treatment plan, disked, plowed or otherwise incorporated in the soil, or treated by a means to reduce pathogens or further reduce pathogens within 24 hours of removal from a ground absorption sewage disposal system unless placed in a temporary detention system which is part of a registered disposal site or method:

- (1) Each septage disposal site shall be posted with "NO TRESPASSING" signs. Access roads or paths crossing or leading to the disposal area shall be posted "NO TRESPASSING" and a legible sign of at least two feet by two feet stating "SEPTAGE DISPOSAL AREA" shall be maintained at each entrance to the disposal area;
- (2) Septage shall be applied in such a manner as to have no standing surface collection of liquid or solid wastes shall be deposited on the site without prior approval of the appropriate permitting agency;
- (3) No hazardous wastes shall be permitted on the site;
- (4) No industrial or solid wastes shall be deposited on the site without prior approval of the appropriate permitting agency;
- (5) The pH of the soil-septage mixture shall be maintained at 6.5 or greater at all times.

*Statutory Authority G.S. 130A-291.1.*

**.0909 SEPTAGE DETENTION SYSTEMS**

All land application systems for septage disposal shall have an alternate plan for detention or disposal of septage during periods of adverse weather conditions:

- (1) The use of septage detention systems shall be acceptable only as a temporary method during periods of adverse weather conditions;
- (2) Each septage detention system shall prevent the flow of septage out of the system and into the seasonally high water table, onto the ground surface or into any of the surface waters of the state;
- (3) Septage management firms utilizing detention systems shall control odors from such systems; and
- (4) Septage shall be removed from the detentions system at the earliest favorable weather.

*Statutory Authority G.S. 130A-291.1*

**.0910 SOIL TESTING**

(a) The soil in the disposal area shall be tested annually during the operation of the site and the results submitted to the local health department and to the department. The sample for testing shall be taken in the presence of an authorized representative of the department.

(b) Only results from certified wastewater testing laboratories will be accepted.

(c) The annual application of cadmium shall not exceed 0.5 kg/hectare/yr. as measured from the soil test.

(d) The pH of the soil in the disposal area shall not fall below 6.5 as measured in the soil test.

*Statutory Authority G.s. 130A-291.1.*

**.0911 LAND USE AFTER SEPTAGE DISPOSAL**

After septage has been applied to a site, the following restrictions shall apply:

- (1) The pH of the septage-soil mixture shall be maintained at 6.5 or greater during application and immediately following closure;
- (2) food crops for human consumption or silage crops for dairy animals shall not be grown until 18 months after the last application of septage;
- (3) The grazing of animals grown for meat shall be prohibited for 60 days after the last application of septage;
- (4) Public access is to be controlled until 18 months after the last application of septage;
- (5) The grazing of dairy animals shall be prohibited for three years following the last application of septage;
- (6) Prior to final closure of septage disposal site, the owner or operator of the site shall notify the department in order that a site inspection may be made to determine compliance with the Section;
- (7) The lifetime addition of cadmium to a soil shall not exceed the following:

	Soil Cation Exchange Capacity		
	< 5 (sands) 5-15 (loans) > 15 (clays)		
(Cd content			
lbs./acre	5	9	18

*Statutory Authority G.S. 130A-291.1.*

**.0912 TRANSPORTATION**

All septage shall be transported in a safe, sanitary manner that prevents leaks or spills of septage.

*Statutory Authority G.S. 130A-291.1.*

**.0913 REVOCATION OF PERMITS**

The department may suspend or revoke permits, including those under Rule .0905(b), in accordance with G.S. 130A-23.

*Statutory Authority G.S. 130-291.1.*

**.0914 APPEALS**

Appeals shall be made in accordance with G.S. 150B.

*Statutory Authority G.S. 130A-291.1.*

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-12 that the Commission/Director for the Division of Mental Health, Mental Retardation and Substance Abuse Services intends to adopt rule(s) cited as 10 NCAC 14K .0365; 15A .0114 - .0129; 18F .0312 - .0320; 18M .1203 - .1204; and repeal rule(s) cited as 10 NCAC 15A .0104 - .0113.*

*The proposed effective date of this action is February 1, 1989.*

*The public hearing will be conducted at 1:00 p.m. on November 16, 1988 at Days Inn - Woodlawn, 122 W. Woodlawn Road, Charlotte, N.C. 28210.*

*Comment Procedures: Any interested person may present his/her comments by oral presentation or by submitting a written statement. Persons wishing to make oral presentations should contact Jan Warren, Division of Mental Health, Mental Retardation and Substance Abuse Services, 325 N. Salisbury St., Raleigh, N.C. 27611, (919) 733-7971 by November 16, 1988. The hearing record will remain open for written comments from October 14, 1988 through November 16, 1988. Written comments must be sent to the above address and must state the rule/rules to which the comments are addressed. Fiscal information on these rules is also available from the same address.*

**CHAPTER 14 - MENTAL HEALTH: GENERAL**

**SUBCHAPTER 14K - CORE LICENSURE RULES FOR MENTAL HEALTH: MENTAL RETARDATION AND OTHER DEVELOPMENTAL DISABILITIES: AND SUBSTANCE ABUSE FACILITIES**

**SECTION .0300 - FACILITY AND PROGRAM MANAGEMENT**

**.0365 DWI SUBSTANCE ABUSE ASSESSMENTS**

Any facility licensed as an alcoholism and substance abuse treatment facility in accordance with the provisions of 10 NCAC 14N .0100 through .0500 and 10 NCAC 14N .0700 may provide DWI assessments. If the facility wishes to provide DWI assessments, the assessments shall be carried out in accordance with the provisions of 10 NCAC 18F .0312 through .0320.

*Statutory Authority G.S. 20-179(m); 122C-26; 143B-147.*

**CHAPTER 15 - MENTAL HEALTH HOSPITALS**

**SUBCHAPTER 15A - GENERAL RULES FOR HOSPITALS**

**SECTION .0100 - VOLUNTARY ADMISSIONS: INVOLUNTARY COMMITMENTS AND DISCHARGES OF ADULTS FROM REGIONAL PSYCHIATRIC HOSPITALS**

- .0104 PURPOSE (REPEALED)**
- .0105 SCOPE (REPEALED)**
- .0106 EXPLANATION OF TERMS (REPEALED)**
- .0107 EVALUATION FOR VOLUNTARY ADMISSION (REPEALED)**
- .0108 GENERAL CRITERIA FOR VOLUNTARY ADMISSION TO HOSPITALS (REPEALED)**
- .0109 CRITERIA FOR VOLUNTARY ADMISSION OF ADULTS (REPEALED)**
- .0110 ADMISSION CRITERIA FOR MINORS OR PERSONS NON COMPOS MENTIS (REPEALED)**
- .0111 AREA/REGIONAL/HOSPITAL PLANNING FOR CHILDREN AND YOUTH (REPEALED)**
- .0112 CRITERIA FOR ADMISSIONS OF GERIATRIC CLIENTS (REPEALED)**
- .0113 CONTINUITY OF CLIENT CARE (REPEALED)**

*Statutory Authority G.S. 122C-3; 122C-201; 122C-211; 122C-212; 122C-221; 122C-222; 122C-223; 122C-224; 122C-231; 122C-232; 122C-233; 143B-147.*

**.0114 PURPOSE**

The rules in this Section establish standard procedures and uniform criteria for voluntary admissions, involuntary commitments and discharges of adults from the regional psychiatric hospitals within the provisions of Article 5 of Chapter 122C of the General Statutes. The purpose of the criteria is to promote coordination of client care by providing a clear uniform basis



for clinical determination of appropriate hospital admissions, treatment and discharges by hospital and area program staff.

*Statutory Authority G.S. 122C-211; 122C-212; 143B-147.*

**.0115 SCOPE**

The rules in this Section apply to admissions, commitments and discharges of all adult clients to the regional psychiatric hospitals of the division. The criteria and procedures shall be followed by staff of the hospitals and by area program staff making referrals to the hospitals.

*Statutory Authority G.S. 122C-211; 122C-212; 143B-147.*

**.0116 EXPLANATION OF TERMS**

For the purposes of the rules in this Section the following terms shall have the meanings indicated:

- (1) "Area program staff" means a mental health professional who is an employee of the area authority or who contracts with the area authority or is employed by an agency which contracts with the area authority and is clinically privileged by the area authority.
- (2) "Chronic, fixed organic conditions" means changes in the central nervous system which are not susceptible to corrective intervention.
- (3) "Dangerous to himself or others" has the meaning specified in G.S. 122C-3(11).
- (4) "Geriatric clients" means persons 65 years old or over who present themselves or are referred for hospital admission.
- (5) "Hospital" means one of the regional psychiatric hospitals of the division.
- (6) "Mental illness" has the meaning specified in G.S. 122C-3(21).

*Statutory Authority G.S. 122C-3; 143B-147.*

**.0117 ADMISSIONS FROM SINGLE PORTAL AREAS**

When an individual from a single portal area presents himself or is presented directly at the hospital for voluntary admission or involuntary commitment, such admissions or commitments shall be handled in accordance with G.S. 122C-211(e) and 122C-261(f) unless 122C-262 applies.

*Statutory Authority G.S. 122C-211(e); 122C-261(f); 122C-262; 143B-147.*

**.0118 WRITTEN REQUEST FOR**

**VOLUNTARY ADMISSION**

The individual or his legally responsible person as defined in G.S. 122C-3(20) shall sign a written request for voluntary admission before the client is evaluated for admission.

*Statutory Authority G.S. 122C-3; 122C-211; 143B-147.*

**.0119 WRITTEN EVALUATION BY AREA PROGRAM**

(a) Area program staff in a single portal area shall evaluate each individual prior to referral to the hospital unless G.S. 122C-262 applies. The written evaluation shall comply with Paragraph (c) of this Rule.

(b) Area program staff not in a single portal area shall use best efforts to evaluate each individual prior to referral to the hospital unless G.S. 122C-262 applies. The written evaluation shall comply with Paragraph (c) of this Rule.

(c) The evaluation shall be in writing and shall include the following:

- (1) identifying information, eg., name, address, age, race, etc.;
- (2) referral source;
- (3) presenting problem;
- (4) medications and pertinent medical/ psychiatric information;
- (5) name, address and phone number of legally responsible person, if applicable;
- (6) legal charges pending, if applicable; and
- (7) name of the area program staff member to contact for further information.

(d) The written evaluation shall accompany the individual to the hospital.

*Statutory Authority G.S. 122C-211; 122C-261; 122C-262; 143B-147.*

**.0120 ADDITIONAL INFORMATION FOR TREATMENT PLAN**

(a) The following client information, if available, shall be sent to the appropriate hospital admissions office within three working days of the client's admission or commitment to the hospital. This information shall include but not be limited to the following:

- (1) name of client's mental health center therapist and psychiatrist;
- (2) full name of client, including maiden name if applicable;
- (3) legal county of residence;
- (4) birthdate;
- (5) previous admissions to any state facility;
- (6) name, address and telephone number of the legally responsible person or next of kin;

- (7) any medical problems, including pertinent laboratory data and treatment;
- (8) current psychiatric and other medications;
- (9) history of compliance with medications and after care instructions;
- (10) alternatives attempted or considered prior to referral to hospital;
- (11) goal of hospitalization specifying the treatment problem(s) that the hospital should address;
- (12) specific suggestions for programming and other treatment planning recommendations; and
- (13) release plans, which include the information relevant to placement and other special considerations of the client upon discharge from the hospital.

(b) The information required in Paragraph (a) of this Rule shall be used by hospital staff in developing the client's treatment plan.

(c) When there are differences of opinion between area program staff and hospital staff regarding the area program's treatment recommendations, the hospital staff shall notify the area program staff. Together the hospital and area program staff shall attempt to resolve these differences according to the procedures specified in Rule .0129 of this Section.

*Statutory Authority G.S. 122C-53(a); 122C-55(a); 143B-147.*

**.0121 EVALUATION BY HOSPITAL FOR INVOLUNTARY COMMITMENT**

Any individual brought to a hospital pursuant to Part 7 of Article 5 of G.S. 122C shall be evaluated for commitment.

*Statutory Authority G.S. 122C-261 through 122C-277; 143B-147.*

**.0122 NOTIFICATION OF ADMISSION/DENIAL TO AREA PROGRAM**

(a) In those instances where the individual has not been referred by an area program, the hospital shall notify the referring agent and the appropriate area program regarding the hospital's decision to admit or deny admission to the individual. Such notifications shall be made within the limitations specified in G.S. 122C-53(a) and 122C-55(a).

(b) In all instances where area program staff has evaluated and referred the individual to a hospital with a recommendation for involuntary commitment or voluntary admission, if the opinion of the examiner at the hospital is that the individual does not meet inpatient criteria, the examiner shall make reasonable efforts to contact

area program staff to discuss the individual's condition prior to releasing the individual. Provided, however, that unreasonable delay shall not occur as a result of the foregoing and in no event shall the individual be detained by the hospital for more than 24 hours.

*Statutory Authority G.S. 122C-132; 122C-221; 122C-261; 143B-147.*

**.0123 GENERAL CRITERIA FOR ADMISSION/COMMITMENT**

(a) Admission staff shall evaluate the individual to determine that:

- (1) there is the presence or probable presence of mental illness;
- (2) the individual is in need of treatment or further evaluation at the facility; and
- (3) admitting the individual to the hospital is an appropriate treatment modality.

(b) The individual shall be a resident of the region served by the hospital unless one or more of these exceptions occurs:

- (1) A transient resident of another state who requires hospitalization shall be admitted to the hospital serving the region in which the client is found.
- (2) A defendant who is committed to a state mental health facility for determination of capacity to proceed to trial (G.S. 15A-1002) may be admitted to the regional hospital that serves the defendant's region of residence, or the defendant may be admitted to the Forensic Unit at Dorothea Dix Hospital.
- (3) An individual whose treatment needs have necessitated a cross regional admission from the hospital in their region. Cross regional admissions shall be arranged by the deputy director for mental health programs or his designee.
- (4) In case of emergency, a client may be admitted to a hospital outside of the region of residence. Subsequent transfer to the appropriate regional hospital may be initiated in accordance with G.S. 122C-206.
- (5) A client from any catchment area of the state may be considered for admission to the Clinical Research Unit of Dorothea Dix Hospital. In the case of a client of another regional hospital, application shall be made in accordance with G.S. 122C-206.

(c) An individual shall not be admitted to a hospital if:

- (1) the person has chronic fixed organic conditions for which no psychiatric treatment exists and who is primarily in need of

custodial care pending rest home or nursing home placement. However, such an individual may be admitted for a period not to exceed 60 days for observation or diagnostic evaluation;

- (2) the person's treatment needs can be met locally;
- (3) the person's admission is sought primarily because of a lack of living space or financial support; and
- (4) the person's primary medical or surgical problem can be more appropriately treated in a general hospital.

*Statutory Authority G.S. 122C-3; 122C-206; 122C-261 through 122C-264; 143B-147.*

**.0124 ADMISSION CRITERIA FOR INCOMPETENT ADULTS**

The guardian of an incompetent adult may apply for the admission of the incompetent adult to a hospital with or without the consent of the incompetent adult. If the incompetent adult is admitted, a court hearing and judicial determination will be scheduled according to the procedures set forth in G.S. 122C-232. In the initial evaluation, admission staff shall determine that:

- (1) there is the presence or probable presence of mental illness; and
- (2) less restrictive treatment measures are likely to be insufficient. In making this judgment, the admission staff shall determine that:
  - (a) outpatient treatment or less intensive residential treatment measures would not alleviate the mental illness;
  - (b) there is no treatment program locally outside of the hospital that meets the needs of the individual; and
  - (c) the individual's primary need is not foster care or correctional placement.

*Statutory Authority G.S. 90-21.1; 122C-3; 122C-221; 122C-223; 143B-147.*

**.0125 SPECIAL PROVISIONS FOR GERIATRIC INDIVIDUALS**

Prior to admitting a geriatric individual to the hospital, the area program shall:

- (1) carefully prepare the geriatric individual and his family for the admission, because of the increased risk involved in moving elderly individuals;
- (2) seek an agreement from referring rest homes, nursing homes and boarding homes to readmit the geriatric individual when he improves; and

- (3) make appropriate arrangements for returning the geriatric individual to his caretaker, family or friend.

*Statutory Authority G.S. 122C-3; 122C-261 through 122C-264; 143B-147.*

**.0126 COORDINATION OF CLIENT CARE**

(a) Each hospital in conjunction with each area program shall develop a process to assure ongoing communication between the hospital and area program regarding clients in treatment at the hospital. The process shall include provisions for case consultation, particularly around issues related to discharge planning. The process may include but is not limited to the following:

- (1) specifically designated staff at both the hospital and area program to facilitate communication;
- (2) routinely scheduled case management contact at hospital site;
- (3) hospital staff visitation to area programs; and
- (4) telephone conferences.

(b) The process for ongoing communication shall be incorporated into each area program's written agreement with the state hospital as required by 10 NCAC 18J .0603 (Written Agreements with State Facilities).

*Statutory Authority G.S. 122C-132; 143B-147.*

**.0127 NOTIFICATION OF CLIENT DISCHARGE**

The hospital shall give the referring area program 72 hours notice of planned discharge of all clients except that such notice may not be possible when the client is released by the court. If there is a disagreement between the hospital and area program regarding the planned discharge, the disagreement shall be resolved by the procedures specified in Rule .0129 of this Section.

*Statutory Authority G.S. 122C-112; 143B-147.*

**.0128 PLACEMENT OF CLIENTS OUTSIDE THEIR COUNTY OF RESIDENCE**

(a) When a client of a hospital is to be placed in a facility outside his county of residence, hospital staff shall consult with staff of the area program which serves the county in which the client is to be placed prior to making such a placement. Consultation should include such issues as:

- (1) the client's characteristics;
- (2) the area program's knowledge of the facility being considered; and



- (3) the area program's assessment of the facility's ability to manage the client being considered for placement.

(b) When a client discharged from a hospital is placed outside his county of residence, the hospital shall send, at the time of discharge, the following records to the area program in whose catchment area the client is placed:

- (1) hospital's psychiatric evaluation;
- (2) social history; and
- (3) post-institutional plan.

In addition, the hospital discharge summary shall be sent to that area program when it becomes available.

(c) Hospital staff shall notify the area program that serves the client's county of residence of the client's placement site within 72 hours of all planned discharges. That area program shall send to the area program in whose county the client will be placed a copy of the client's most recent treatment plans, medication sheets and other pertinent evaluation information in accordance with G.S. 122C-53(a) and 122C-55(a).

(d) The area program in whose county the client is placed shall provide services to that client on the same basis as services are provided to other residents of the catchment area.

*Statutory Authority G.S. 122C-3; 122C-112; 122C-117; 143B-147.*

#### **.0129 RESOLUTION OF DIFFERENCES OF OPINION**

(a) Except as provided in Rule .0122(b) of this Section, differences of opinion between area program staff and hospital staff regarding admission, treatment or discharge issues shall be resolved through negotiation involving appropriate hospital and area program staff up to and including the area program's director and the hospital's director.

(b) If resolution cannot be reached by the directors of the two organizations, the issue(s) in dispute may be taken by either party to the appropriate regional director.

(c) The regional director may choose to function as mediator of the dispute or he may choose to refer the matter to the division director for resolution.

*Statutory Authority G.S. 143B-147.*

### **CHAPTER 18 - MENTAL HEALTH: OTHER PROGRAMS**

#### **SUBCHAPTER 18F - PROGRAM SUPPORT STANDARDS**

### **SECTION .0300 - SUBSTANCE ABUSE ASSESSMENTS FOR INDIVIDUALS CHARGED WITH OR CONVICTED OF DRIVING WHILE IMPAIRED (DWI)**

#### **.0312 INTRODUCTION**

The purpose of the rules of this Section is to establish specific procedures for scheduling, conducting and reporting DWI substance abuse assessments. Such assessments may be sought either voluntarily on a pre-trial basis or by order of the presiding judge. These rules apply to all facilities licensed by the State as an alcoholism and substance abuse treatment facility or a facility excluded from licensure under G.S. 122C-22 which wish to perform DWI substance abuse assessments. In addition, all DWI substance abuse assessments shall be implemented as required by the provisions of G.S. 20-179(m).

*Statutory Authority G.S. 20-179(e)(6) and (m).*

#### **.0313 DEFINITIONS**

For the purpose of the rules in this Section, the following terms shall have the meanings indicated:

- (1) "Alcohol and Drug Education Traffic School (ADETS)" means a prevention/intervention service which provides an educational program primarily for first offenders convicted of driving while impaired. This service is designed to reduce the recidivism rate for the offense of driving while impaired.
- (2) "Clinical Interview" means the face-to-face interview with a substance abuse professional intended to gather information on the client, including, but not limited to the following: demographics, medical history, legal history, social and family history, substance abuse history, vocational background and mental status.
- (3) "DMH Form 508 (DWI Services Certificate of Completion)" means the four-page form which is used in documenting the offenders completion of the DWI substance abuse assessment and/or compliance or non-compliance of ADETS as appropriate.
- (4) "DWI" means driving while impaired as defined in G.S. 20-138.1.
- (5) "DWI Substance Abuse Assessment" means a service provided to persons charged with or convicted of DWI to determine the presence of chemical dependency. The assessment involves a clinical interview as well as the use of a standardized test.
- (6) "Standardized Test" means a written test approved by DHR, with documented reliability and validity, which serves to assist the

assessment agency or individual in determining if the client is chemically dependent.

- (7) "Substance Abuse Handicap" means a moderate to severe degree of dysfunctionality directly related to the recurring use/abuse of an impairing substance.

*Statutory Authority G.S. 20-138.1; 20-179.*

#### **.0314 WRITTEN NOTICE OF INTENT**

Written notice of intent to provide DWI substance abuse assessments is required per G.S. 20-179(m). The assessor shall send such notification to both the area authority in that particular catchment area and the Department of Human Resources at the following address: DWI Criminal Justice Branch, Division of Mental Health, Mental Retardation and Substance Abuse Services, 325 N. Salisbury Street, Raleigh, NC 27611. The notice of intent shall be documented on agency letterhead and shall include at a minimum the following:

- (1) declaration of intent;
- (2) statement of willingness to follow rules for conducting such assessments as adopted by the Department of Human Resources;
- (3) license number issued by the Division of Facility Services, or by licensing boards as referenced in 122C-22; and
- (4) signature of the administrator in charge.

*Statutory Authority G.S. 20-179(m); 122C-22.*

#### **.0315 DWI SUBSTANCE ABUSE ASSESSMENT ELEMENTS**

(a) DWI substance abuse assessments shall only be provided by a facility licensed by the state as an alcoholism and substance abuse treatment facility as specified in 10 NCAC 14K .0365 or a facility excluded from licensure under G.S. 122C-22.

(b) A clinical interview shall be conducted with the individual to collect information regarding his/her use of alcohol and other drugs.

(c) In addition to the clinical interview, the agency or individual performing the assessment shall administer to the individual a standardized test approved by the Department of Human Resources to determine alcohol and/or drug dependency.

(d) The agency or individual performing the assessment shall have the individual execute the appropriate release of information form per 42 CFR, Part 2 giving the assessing agency permission to report its findings to the Division of Mental Health, Mental Retardation and Substance Abuse Services, the Division of Motor Vehicles, the Court, the Department of Cor-

rection and the agency providing the recommended treatment and/or education.

*Statutory Authority G.S. 20-179(m); 122C-22.*

#### **.0316 QUALIFICATIONS OF INDIVIDUALS PERFORMING ASSESSMENTS**

Staff members of agencies or individuals in private practice performing DWI substance abuse assessments shall have the following qualifications:

- (1) certification as a certified alcoholism, drug abuse or substance abuse counselor as defined by the Department of Human Resources;
- (2) graduation from high school or equivalent and three years of supervised experience in the profession of alcohol and drug abuse counseling, or graduation from a four-year college or university and two years of supervised experience in the profession of alcohol and drug abuse counseling; or
- (3) licensure by the N.C. Board of Medical Examiners or the N.C. Board of Examiners of Practicing Psychologists.

*Statutory Authority G.S. 20-179(m).*

#### **.0317 RESPONSIBILITIES OF ASSESSING AGENCY**

(a) Following the completion of the assessment, the agency or individual performing the assessment shall inform the individual if treatment, education or both is recommended.

(b) If treatment, education or both is recommended the individual shall be made aware of the available treatment and education facilities, both private and public, which provide the type of treatment or education recommended.

(c) In addition, the agency or individual performing the assessment shall inform the individual of the possible consequences of failing to comply with recommended treatment and/or education.

*Statutory Authority G.S. 20-179(m).*

#### **.0318 RESPONSIBILITIES OF TREATMENT/ EDUCATION PROVIDERS**

(a) A written plan shall be developed by the facility providing the recommended treatment or education to insure that the individual understands the requirements of the particular treatment or education service(s) in which they are enrolled.

(b) Individuals shall not be denied the opportunity to complete the service(s) recommended by the assessing agency.

(c) The facility providing the recommended treatment or education shall have the individual execute the appropriate release of information giving that facility permission to report the client's progress to the Division of Mental Health, Mental Retardation, and Substance Abuse Services, the Division of Motor Vehicles, the Court and the Department of Correction.

(d) Identification of a substance abuse handicap shall be considered indicative of the need for treatment. In such instances, educationally-oriented and/or support group services shall only be provided as a supplement to a more extensive treatment plan.

(e) If treatment is recommended and required per the court's judgement, such treatment shall be provided by a facility licensed by the state for the provision of such services. In addition, a client record shall be opened on each client receiving treatment.

*Statutory Authority G.S. 20-179(m); 122C-26; 143B-147.*

#### **.0319 REPORTING REQUIREMENTS**

(a) The assessment portion of the DMH Form 508 shall be completed on each client who receives a DWI substance abuse assessment. An initial supply of this form may be obtained from the DWI/Criminal Justice Branch of the Division of Mental Health, Mental Retardation, and Substance Abuse Services, 325 N. Salisbury Street, Raleigh, N.C. 27611.

(b) The assessment portion of DMH Form 508 shall be signed by a certified alcoholism, drug abuse or substance abuse counselor, as defined by the Department of Human Resources. The date of expiration of that professional's certification shall be indicated on the client's Certificate of Completion.

(c) If treatment, education or both is recommended, all four pages of the DMH Form 508 shall be forwarded to the facility providing the recommended treatment or education.

(d) In the event that no substance abuse handicap is identified and no treatment or education recommendations are made, the assessing agency shall forward the copies of DMH Form 508 as specified in Paragraph (g) of this Rule.

(e) The facility providing the recommended treatment or education shall have the client sign the appropriate release of information, and progress reports shall be filed with the court or the Department of Correction at intervals not to exceed six months.

(f) If treatment and ADETS have been recommended, and the individual does not successfully complete the requirements of the ADETS, a

copy of the top sheet of DMH Form 508 showing non-compliance shall be forwarded to the DWI/Criminal Justice Branch, the Division of Mental Health, Mental Retardation, and Substance Abuse Services. All four pages of the DMH Form 508 shall be retained by the facility providing the recommended treatment service(s) until such service(s) are completed.

(g) Upon completion of the recommended treatment or education service(s), the top page of the completed DMH Form 508 shall be forwarded to the DWI/Criminal Justice Branch, the Division of Mental Health, Mental Retardation, and Substance Abuse Services. The agency shall also retain the appropriate page of the form and distribute the remaining pages to the offender and the court as specified on the bottom of the form. The agency providing the service(s) shall retain their copy of this form for a period of not less than five years.

(h) In the event that an assessment or treatment agency ceases providing DWI related services, it shall be the responsibility of that agency to notify the DWI Criminal Justice Branch in writing to assure that all DMH Form 508 forms and other related documents specified in G.S. 20-179(m) are properly processed.

*Statutory Authority G.S. 20-179(m).*

#### **.0320 PRE-TRIAL ASSESSMENTS**

(a) A DMH Form 508 shall be completed on each individual who voluntarily refers himself or herself for a DWI assessment, under the provisions of G.S. 20-179(e)(6). However, the DMH Form 508 shall not be used to report the results of the pre-trial assessment to the court or attorney. The results shall be summarized in a concise, easy to interpret fashion on agency letterhead and signed by the individual who performed the assessment. The DMH Form 508 shall be retained by the assessor and completed as specified in (b) and (c) of this Rule.

(b) The individual shall be made aware that it is his/her responsibility to notify the agency or individual that performed the assessment of the outcome of his/her trial so that the DWI Form 508 can be forwarded to the appropriate party.

(c) In the event that the individual is found not guilty of DWI or the individual fails to notify the agency or individual that performed the assessment within 12 months of the assessment, the assessing agency shall forward the DMH Form 508 to the Division of Mental Health, Mental Retardation, and Substance Abuse Services' DWI/Criminal Justice Branch Chief at the address specified in Rule .0315 of this Section.



Statutory Authority G.S. 20-179(e)(6) and (m).

## SUBCHAPTER 18M - REQUIRED SERVICES

### SECTION .1200 - PROVISIONS OF SOCIAL SETTING: NONHOSPITAL MEDICAL OR OUTPATIENT DETOXIFICATION SERVICES FOR INDIVIDUALS WHO ARE ALCOHOLICS

#### .1203 INTRODUCTION

Detoxification is a basic service of the alcohol and drug abuse treatment system. Certain individuals in need of alcohol or other drug abuse detoxification can be safely withdrawn from alcohol or other drugs in a setting other than a hospital such as on a social setting, nonhospital medical or an outpatient basis. These are individuals who do not have psychiatric problems or physical conditions either of which may become life threatening during the course of detoxification.

Statutory Authority G.S. 143B-147.

#### .1204 PROVISION OF SERVICES

Each area program shall provide or secure at least one of the models of social setting, nonhospital medical or outpatient detoxification services as delineated in 10 NCAC 14N .0200, .0300 and .0400.

Statutory Authority G.S. 143B-147.

## TITLE 11 - DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Insurance intends to adopt rules cited as 11 NCAC 6A .0220 - .0237, .0412, .0413, .0506, .0507, and .0701 - .0706; amend rules cited as 11 NCAC 6A .0101, .0201, .0210 - .0217, .0219; .0301 - .0306, .0401 - .0408, .0410, .0501 - .0505, and .0601 - .0604; and repeal rules cited as 11 NCAC 6A .0202 - .0207, .0409, .0411, and .0605.

The proposed effective date of this action is February 1, 1989.

The public hearing will be conducted at 10:00 a.m. on November 14, 1988 at Third Floor Hearing Room, Dobbs Building, 430 N. Salisbury Street, Raleigh, N.C. 27611.

**Comment Procedures:** Written comments may be sent to Cynthia O'Daniel, 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 Cynthia O'Daniel at (919) 733-7487, or Linda Stott at (919) 733-4700.

## CHAPTER 6 - AGENT SERVICES DIVISION

### CHAPTER 6A - AGENT SERVICES DIVISION

#### SECTION .0100 - GENERAL PROVISIONS

##### .0101 DEFINITIONS

In this Chapter, unless the context otherwise requires:

- (1) "Agent Licensing Services Division" or "~~the division~~ Division" shall mean the Agent Services Division of the North Carolina Department of Insurance, the ~~division~~ Division responsible for the licensing, education and regulation of agents and other licensees, matters dealing with insurance agents and agencies.
- (2) "Company" shall mean any insurance company properly licensed to do business in this state and shall further be defined as in G.S. 58-2 (3).
- (3) "~~Local agent~~" shall mean an agent whose sole responsibility is for himself in the direct solicitation of insurance business. "Home State" or "State of Residency" shall mean the state in which the licensee is responsible for payment of state income tax, would be under judicial authority in event of criminal action or would be eligible to vote in a general election.
- (4) "~~Agent~~" shall mean a local agent as defined in 11 NCAC 6 .0101 or a general agent as defined in G.S. 58-39.4. "Professional Testing Service" shall mean the organization specializing in the development and administration of licensing examinations on a contract basis.
- (5) "State Licensing Examination" or "Examination" shall mean a collection of questions designed to test the applicant's knowledge of the basic concepts, principles and laws relevant to the insurance profession to determine the competence to be licensed in North Carolina.
- (6) The singular shall include the plural and the masculine shall include the feminine wherever appropriate.

Statutory Authority G.S. 58-615(e)(h).

#### SECTION .0200 - DESCRIPTION OF FORMS

##### .0201 GENERAL INFORMATION

All forms for application for examination for license, application for license, pertaining to licen-

sure including applications bonds, appointments, termination of appointments ~~renewal of license, cancellation of license~~, permits for examinations and other forms necessary for the daily operation of the division in fulfilling its purpose shall be supplied by the division. In addition, the division will supply provide instructions for proper completion of all forms.

- (1) Forms shall be completed in full and must contain necessary signatures in order to be accepted. Companies and applicants shall submit all forms or complete other requirements within time schedules established by the division.
- (2) Companies or applicants that are authorized to duplicate forms must do so without alteration or modification thereto.
- (3) If any additional supporting documents, information or fees are required, they shall be submitted with the appropriate forms or applications.

*Statutory Authority G.S. 58-9.*

- .0202 FORM A-1 (REPEALED)
- .0203 FORM A-2 (REPEALED)
- .0204 APPLICATION FOR BROKER'S LICENSE (REPEALED)
- .0205 LICENSE APPLICATION FOR MOTOR VEHICLE DAMAGE APPRAISERS (REPEALED)
- .0206 EXAMINATION PERMIT (REPEALED)
- .0207 FAILURE LETTER-PERMIT (REPEALED)

*Statutory Authority G.S. 58-9; 58-40; 58-40.2; 58-40.6; 58-41.1; 58-44.2; 58-268.*

**.0210 N. C. RESIDENT BROKER'S INSURANCE BOND**

The "North Carolina Resident Broker's Insurance Bond" ~~Insurance Brokers' form~~ shall include the name of the principal, name of the surety, date and conditions of bond, bond number, ~~the amount of the bond, (single and aggregate claim amounts)~~, appropriate signatures and other pertinent information and must be accompanied by a power of attorney.

*Statutory Authority G.S. 58-615(f)(1).*

**.0211 N. C. NON-RESIDENT BROKER'S INSURANCE BOND**

The "North Carolina Insurance Non-Resident Broker's Insurance Bond" ~~form~~ shall include the name of the principal, name of the surety, ~~amount of bond~~, date and conditions of the bond, bond number, amount of the bond, amount of total aggregate liability, appropriate

signatures and other pertinent information and must be accompanied by a power of attorney.

*Statutory Authority G.S. 58-615(f)(1).*

**.0212 LICENSES**

All licenses license forms shall include the name of the licensee ~~agent, broker, adjuster or motor vehicle damage appraiser~~, type of license, ~~being issued~~, kind of insurance covered by the license, date of issuance, ~~date of expiration, amount of license fee~~ name of company represented, where applicable, and terms of the license. In addition, all licenses shall bear the signature of the commissioner.

*Statutory Authority G.S. 58-9; 58-614(1).*

**.0213 SELF-EMPLOYED ADJUSTER RENEWAL APPLICATION**

The "Self-Employed Adjuster Renewal Application" shall ~~state~~ include the year for which the license is being renewed, the date the license will be cancelled if the renewal application is not received by the division, amount of license renewal fee, signature, personal information, name of the adjuster, address ~~and birthdate of the adjuster~~, instructions for proper completion and return of the application and other pertinent information.

*Statutory Authority G.S. 58-614(n); 58-615(a).*

**.0214 MOTOR VEHICLE DAMAGE APPRAISER RENEWAL APPLICATION**

The "Motor Vehicle Damage Appraiser Renewal Application" shall include the year for which the license is being renewed, the date the license will be cancelled if the renewal application is not received by the division, amount of license renewal fee, signature, personal information, name and address of the appraiser, instructions for proper completion and return of the application and other pertinent information.

*Statutory Authority G.S. 58-614(n); 58-615(a); 58-634.*

**.0215 RESIDENT BROKERS APPLICATION**

A The "Resident Broker's ~~Renewal~~ Application" shall include the personal information, name and address of the broker, license fee, signature of the applicant and other information to aid the division in determining the qualification of the applicant. ~~date of cancellation of present license if the application is not received by the division, the amount of license fee, instructions for proper completion and return of the application, and other pertinent information.~~ This form is used for both new and renewal applicants.

Statutory Authority G.S. 58-614(n); 58-615(a); 58-615(h)(1).

**.0216 NON-RESIDENT BROKERS APPLICATION**

The "~~Renewal Application for Non-Resident Brokers' License form shall include the individual's name, name of firm, mailing address, type license applied for, amount of license fee, conditions of holding the license, and other pertinent information.~~ Application" shall include personal information, license fee, signature of the applicant and other information to aid the division in determining the qualification of the applicant and must be accompanied by a Home State Certification. This form is used for both new and renewal applicants.

Statutory Authority G.S. 58-614(n); 58-615(a); 58-615(h)(2).

**.0217 NORTH CAROLINA CANCELLATION FORM**

"The North Carolina Notice of Cancellation" A "~~Request for Cancellation of Agents or Adjuster(s)~~" form shall include name of the company, address of the company licensing office, name of the Limited Representative or Adjuster, the effective date of cancellation of license, the name of the insurance company and address of the company licensing office, name of agent or adjuster, type of license to be being cancelled, company ID# number, and signature of authorized company representative as well as other and other pertinent information.

Statutory Authority G.S. 58-620(a)(b).

**.0219 APPLICATION TO DETERMINE ELIGIBILITY DESIGNATED AGENT**

The "Application to Determine Eligibility for Designated Agent" ~~designated agent application form~~ shall include the name and address of the agent ~~and his agency~~ and evidence that the agent has satisfied the statutory requirements set out in G.S. 58-248.33(g)(6). This form must be signed by the applicant and notarized.

Statutory Authority G.S. 58-9; 58-248.33(g)(6).

**.0220 DESIGNATED AGENT BOND**

The "Designated Agent Bond" shall include the name of the principal, name of the surety, date and conditions of the bond, bond number, amount of the bond, appropriate signatures and other pertinent information and must be accompanied by a power of attorney.

Statutory Authority G.S. 58-248.33(g)(6).

**.0221 CANDIDATE GUIDE**

The "Candidate Guide Application" shall require the applicant to provide personal information, type of examination to be taken, signature of authorized company representative when applicable, and other information to aid the division in determining if the applicant is qualified to take the examination for which he is applying.

Statutory Authority G.S. 58-615(a).

**.0222 NORTH CAROLINA INSURANCE LICENSE APPLICATION**

The "North Carolina Insurance License Application" for an agent shall include personal information, type of license applied for, signature of applicant, and other information to aid the division in determining what license should be issued and if the applicant is qualified for that license.

Statutory Authority G.S. 58-615(a).

**.0223 NORTH CAROLINA LIMITED INSURANCE REPRESENTATIVE APPLICATION**

The "North Carolina Limited Insurance Representative Application" shall include personal information, type of license applied for, company number, signature of the applicant and the authorized company representative, and other information to aid the division in determining what license should be issued and if the applicant is qualified for that license.

Statutory Authority G.S. 58-615 (a).

**.0224 ADJUSTER AND APPRAISER N. C. LICENSE APPLICATION**

The "Adjuster and Appraiser N.C. License Application" shall include the personal information, type of license applied for, company number and signature of authorized company representative when applicable, signature of applicant, and other information to aid the division in determining what license should be issued and if the applicant is qualified for that license.

Statutory Authority G.S. 58-615(a).

**.0225 APPOINTMENT OF NORTH CAROLINA AGENT**

The "Appointment of North Carolina Agent" form shall include personal information, insurance authority for which appointed, company number, effective date of the appointment, signature of authorized company official and other



information to aid the division in the recording of the appointment.

*Statutory Authority G.S. 58-617(b)(c).*

**.0226 TERMINATION OF NORTH CAROLINA AGENT APPOINTMENT**

The "Termination of North Carolina Agent Appointment" form shall include personal information, insurance authority being terminated, signature of authorized company official, company number, effective date of termination, and other information to aid in the recording of the termination of authority.

*Statutory Authority G.S. 58-617(e).*

**.0227 APPLICATION FOR LICENSE TO REPRESENT A PURCHASING GROUP**

An "Application for License to Represent a Purchasing Group" shall include the name of the purchasing group, personal information about the applicant, conditions of license, signature of applicant and other information to aid the division in determining the qualification of the applicant and must be accompanied by a Home State Certification.

*Statutory Authority G. S. 58-516; 58-615(a).*

**.0228 BOND (FORM B) PG-2**

This form is used only in licensing a representative for a Purchasing Group. The "Bond (Form B)" shall include the name of the principal, bond number, the name of the surety, the amount of the bond, conditions of the bond, appropriate signatures and other pertinent information. A power of attorney must accompany this bond.

*Statutory Authority G. S. 58-433(b)(4).*

**.0229 NORTH CAROLINA INSURANCE AGENT - LICENSE APPLICATION RISK RETENTION**

The "North Carolina Insurance Agent - License Application Risk Retention" shall include personal information, type of license, signature of applicant and other information to aid the division in determining if the applicant is qualified for that license and must be accompanied by a Home State Certificate.

*Statutory Authority G. S. 58-516.*

**.0230 APPOINTMENT OF NORTH CAROLINA AGENT - RISK RETENTION**

The "Appointment of North Carolina Agent - Risk Retention" shall include personal informa-

tion, insurance authority for which appointed, company name and number, effective date of appointment and authorized signature of company official.

*Statutory Authority G. S. 58-617.*

**.0231 TERMINATION OF NORTH CAROLINA AGENT - RISK RETENTION**

The "Termination of North Carolina Agent - Risk Retention" shall include personal information, the kind of insurance authority being terminated, company name and number, effective date of termination of appointment, and signature of company official.

*Statutory Authority G.S. 58-617(e).*

**.0232 APPLICATION LICENSE TO REPRESENT SURPLUS LINES INSURER**

The "Application for License to Represent Surplus Lines Insurer (Form SL)" 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. 58-433(b)(2).*

**.0233 BOND (FORM B) SL-2**

The "Bond (Form B) SL-2" shall include the name of the principal, bond number, name of the surety, amount of bond, date and conditions of the bond, appropriate signatures and other pertinent information. A power of attorney must accompany this bond.

*Statutory Authority G.S. 58-433(b)(4).*

**.0234 RENEWAL APPLICATION FOR LICENSE TO REPRESENT A SURPLUS LINES INSURER**

The "Renewal Application for License to Represent a Surplus Lines Insurer (Form SL-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. 58-428(d); 58-433(d).*

**.0235 CORPORATE SURPLUS LINES APPLICATION**

The "Corporate Surplus Lines Application" shall contain pertinent information concerning the corporation, the names of surplus lines licensees within the corporation and conditions for the issuance of the license and shall include appropriate signatures. This form is used for both new and renewal applicants.

*Statutory Authority G.S. 58-433(c)(d).*

**.0236 APPLICATION FOR CORPORATE/  
PARTNERSHIP INSURANCE LICENSE**

The "Application for Corporate/Partnership Insurance License" shall contain pertinent information concerning the corporation/partnership and other information that is relevant in aiding the division in determining if the applicant meets eligibility requirements for licensing. The application must be signed by all officers/partners and notarized. This form is used for both new and renewal applicants.

*Statutory Authority G.S. 58-614(h); 58-615(a).*

**.0237 FOREIGN MILITARY SALES AGENT  
LICENSE APPLICATION**

The "Foreign Military Sales Agent License Application" shall include personal information, company name, number and address, signature of applicant and authorized company representative, a certificate signed by an officer of the company, and other information to aid the division in determining if the applicant is qualified for the license.

*Statutory Authority G.S. 58-612.*

**SECTION .0300 - EXAMINATIONS**

**.0301 TYPES OF EXAMINATIONS**

Types of examinations administered for licensing by the division are Life, Accident and Health; Fire and Casualty; Auto Physical Damage; Adjusters; Hail Adjusters; Hospital; Dental; Title; and Surplus Lines. ~~Life, accident and health, combination life accident and health, fire and casualty, auto physical damage, adjusters, hail adjusters, hospital, dental, title and variable annuity and surplus lines.~~ Additional examinations may be created and administered at the discretion of the commissioner.

*Statutory Authority G.S. 58-433(b)(3); 58-615(e).*

**.0302 FORM OF EXAMINATIONS**

All examinations shall be written and may be in objective or essay form. ~~Exceptions are that a~~ A physically handicapped individual whose abil-

ity to write is impaired or lost ~~may give examination answers orally and a visually handicapped persons may individual may have the examinations read aloud to them and may give answers orally.~~ special assistance from other individuals acting as readers or recorders. ~~Visually handicapped persons should provide their own readers.~~ Applicants requiring special assistance must request in writing such assistance by the filing deadline of the examination. Verification of handicaps and a statement of all assistance needed must be included at the time of application.

*Statutory Authority G.S. 58-615(e).*

**.0303 SCHEDULE OF EXAMINATIONS**

The division will publish or cause to have published the current schedules of examinations. The schedules shall include day, time and location of examination. ~~No examinations are given on state holidays. A candidate may take the examination at his convenience, provided that it is within 90 days of issuance of an examination permit.~~ The commissioner may set other special times for examinations in addition to those listed on the current examination schedule. An applicant who cannot take the examination on a scheduled examination date for religious reasons may request an individually administered test. Such a request must be in writing by the applicant's religious advisor and sent with the application for examination and licensure. Individually administered examinations are given only on a pre-registered basis.

*Statutory Authority G.S. 58-615(e).*

**.0304 RESPONSIBILITY OF APPLICANT  
AT EXAMINATION SITE**

Applicants are responsible at the examination site for the following:

- (1) Applicant must bring to the examination site the permit to take the examination. When so instructed by the examiner, the applicant must sign and date the permit. Applicants who expect to take any examination and who have not received their examination permit shall contact the licensing division at least two full working days prior to the expected examination date. Applicants who have pre-registered and who have not previously failed the same examination must bring to the examination site the ticket of admission and two forms of proof of identity.
- (2) Applicant must have a company check, made payable to the North Carolina De-



partment of Insurance, in the amount of proper license fee as specified in G.S. 105-228.7. Applicants who wish to take the examination on a walk-in basis and who have not previously failed the same examination must bring to the examination site a properly completed application, two forms of proof of identity and proper fees.

- (3) Applicant must have proper identification, preferably a driver's license or some form of identification that has a photograph of the applicant. Applicants who have previously failed an examination may retake the examination in accordance with instructions furnished by the commissioner and must pay applicable fees for each administration.
- (4) Applicants must arrive at the examination site at the time specified on the current examination schedule. All examinations will begin promptly. [NCHD Reg. No. 27] Examination fees must be paid by company check, certified check or money order. [Examination fees G.S. 58-615(4) and registration fees G.S. 58-634(e)]
- (5) Applicants taking the Life, Accident and Health or Fire and Casualty examination are required to bring to the examination site a Precensing Course Completion Certificate indicating that the applicant has successfully completed the mandatory Precensing Education requirements as specified in G.S. 58-615(d)(2). The Precensing Course Completion Certificate is valid for 12 months from the date of course completion.
- (6) No applications will be supplied at the examination site for completion by applicants; nor will required supplies be furnished to applicants.
- (7) Applicants must arrive at the examination site at the time specified in the current examination schedule.

Statutory Authority G.S. 58-615(d)(2); 58-615(e); 58-634.

#### .0305 ADMINISTRATION OF EXAMINATION

Applicants should expect the examination to be administered using, among others, the following procedures:

- (1) Applicants shall present examination permit, company check for license fee and proper identification to the staff examiner when so instructed. to the test site personnel upon request the applicable items described in 11 NCAC 6A .0304 (1) through (7).
- (2) Applicants should follow carefully all instructions given by the staff examiner, ex-

amination proctors, particularly when completing the answer sheet.

- (3) Examinations are considered to be of a continuous nature and, therefore, the applicant should not leave the room without permission from the staff examiner. Applicants are not permitted to take calculators, textbooks, other books or papers into the examinations. Applicants found to have any of these materials or other aids will not be allowed to continue the examination.
- (4) The examination session will last a maximum of three hours. The answer sheets must contain only identification data and responses to exam questions. No credit will be given to any applicant for any marks or answers made in the examination booklet.
- (5) If the applicant is to take more than one examination, each examination must be taken separately. Applicants will be permitted to have only one examination at a time. No more than two examinations will be given to one applicant during an examination session. Applicants may leave the examination room only after obtaining permission from the examination proctors and handing in exam materials. No extra time will be allowed for examination.
- (6) No results of examinations will be given at the examination site. Any applicant who gives or receives assistance during the examination will be required to turn in all exam materials immediately and leave the room. Under these circumstances, the applicant's answer sheet will not be scored and the relevant facts will be reported by the test personnel proctors to the commissioner.
- (7) An applicant may take only one examination on any given exam date.

Statutory Authority G.S. 58-615(e).

#### .0306 APPLICATION FOR EXAMINATION

Application for examination must be made 45 days prior to the date on which the applicant expects to take the examination. A separate application, Form A-1, must be made for each examination to be taken except for the combination life accident and health examination, for which only one A-1 Form is required. For complete instructions for application, see 11 NCAC 6 .0401 and .0402. and licensure must be postmarked no later than the published filing deadline for applicants who wish to pre-register to take the examination. A separate application for examination and licensure must be made for each examination.



Statutory Authority G.S. 58-615(e).

## SECTION .0400 - LICENSING PROCEDURES

### .0401 LICENSES: GENERAL PROVISIONS

(a) General Provisions. All licenses will shall specify the lines kinds of insurance for which the agent, adjuster or broker Agent, Adjuster, Limited Representative, Motor Vehicle Damage Appraiser or Broker may carry and be designated as local, general or special agents' licenses. In addition, the following general rules apply: is licensed.

(b) All licensees must be able, upon request to furnish evidence of their licensing authority.

- (1) An agent may hold a general or local license with one or more companies, but may not hold both for the same company.
- (2) Holding a special agent's license precludes holding of any other type of license with any other company.
- (3) No individual may hold an agent's license and an adjuster's license simultaneously.
- (b) (c) Licenses issued by the department division are:

- (1) resident or non-resident agent; Resident or Non-Resident Adjuster;
- (2) resident or non-resident adjuster; Resident or Non-Resident Agent;
  - (A) company; Company, Firm;
  - (B) independent; Self-Employed;
  - (C) self-employed; Hail;
- (3) resident or non-resident broker; Resident or Non-Resident Limited Representative,
- (4) motor vehicle damage appraiser; Resident or Non-Resident Broker,
- (5) surplus lines licensee. Resident or Non-Resident Motor Vehicle Damage Appraiser,
- (6) Surplus Lines Agent,
- (7) Corporate Surplus Lines License,
- (8) Corporate Partnership, Agent or Limited Representative,
- (9) Purchasing Group Agent or Broker,
- (10) Risk Retention Agent or Broker,
- (11) Foreign Military Agent,
- (12) Temporary License.

(c) (d) Lines of Insurance. The following lines of insurance are recognized by the department, and an agent, adjuster or broker An Agent, Limited Representative or Broker may be licensed for any one or several of these lines kinds of insurance enumerated in G.S. 58-614 upon meeting all qualifications:

- (1) life,
- (2) accident and health,
- (3) combination life accident and health,
- (4) fire and casualty,

- (5) hospital,
- (6) dental,
- (7) title,
- (8) variable annuities,
- (9) credit,
- (10) credit life,
- (11) credit accident and health,
- (12) credit life accident and health,
- (13) travel accident and baggage,
- (14) county mutuals,
- (15) fraternal organizations,
- (16) auto physical damage,
- (17) hail (adjusters only),
- (18) ocean marine.

Statutory Authority G.S. 58-9; 58-614; 58-615(h).

### .0402 LICENSING OF RESIDENT AGENT: LIMITED REPRESENTATIVE AND ADJUSTERS

(a) Applicants must meet minimum qualifications as stated in Chapter 58, Section 44 615 of the General Statutes of North Carolina.

(b) An applicant Applicants for a license to sell Variable Contracts variable annuities must follow additional procedures as outlined in 11 NCAC 6 A .0406.

(c) A Limited Representative must be licensed with each company for which he will solicit business. No solicitation shall begin by the applicant until he has received such license.

(e) (d) Responsibility of Company for Forms and Fees

- (1) Companies shall have the sole responsibility for making application for agents and company adjusters to be licensed. There shall be only one office with authority to make such requests and that office location must be on file with the licensing division. Also, each company must designate representatives who are the only persons authorized to make application for examination and licensing of agents or adjusters. The name of each authorized company representative must be on file in a permanent file in the division. Only the office and those representatives who are on file with the division will be recognized in the processing of examination and license applications. make application for Limited Representatives and Company/Firm Adjusters to be licensed.

- (2) The company shall submit to the division simultaneously a company check in the correct amount of examination fee as specified in G.S. 105-228.7 (made payable to the North Carolina Department of In-

insurance). Form A-1 and Form A-2, properly completed; a separate A-1 Form must be submitted for each examination to be taken, except for the combination life accident and health examination for which only one Form A-1 is required. Companies shall have on file with the division the address of one Central Licensing Office to which all correspondence, licenses, and invoices will be forwarded.

- (3) All appropriate forms and fees must be received by the division at least 10 days prior to the expected examination date. Companies shall have on file with the division a list of persons authorized to make application for the issuance licenses and termination of licenses, and to submit agent appointments and termination of agent appointments.
- (4) The companies shall submit to the division company checks for the proper amount due.

**(d) (e) Responsibility of the division Agent:**

- (1) Upon receipt of Forms A-1, A-2 and examination fee, the division will issue a permit for examination valid for 90 days from date of issue. An applicant who is subject to the Examination shall submit to the Service the Candidate Guide Application along with a company check, certified check or money order in the appropriate amount.
- (2) In some cases the division will issue a temporary license which is valid pending successful completion of the examination by the applicant. (see 11 NCAC 6 .0410) An agent shall be responsible for verifying licensure to a company prior to being appointed.
- (3) All applicants not eligible for a temporary license shall have a license issued upon successful completion of the written examination. A person who, after surrender or termination of a license for such period of time that he is no longer eligible for waiver of the examination, shall meet all legal requirements for previously unlicensed persons.

**(e) (f) Results of Examination for Passing Grades Responsibility of the Service:**

- (1) Companies will be advised that the examinee has passed the examination by receipt of a license for that individual, except that when a temporary license has been issued, the company will be notified in writing that the applicant has passed, without reference to numerical grade. The Service

shall administer the Examination for Life, Accident and Health; Fire and Casualty; Automobile Physical Damage; Adjusters; Hail Adjusters; Hospital Service; Title; Accident and Health; Dental Service; and Surplus Lines.

- (2) All licenses issued as a result of passing grade on the examination shall be continuous and shall be valid, upon automatic annual renewal, until cancelled by the company according to procedures in 11 NCAC 6 .0504. The Service shall issue pass or fail notices for each examination administered, without reference to numeric scores within two weeks of testing.
- (3) The Service shall notify the division of score reports for all examinations administered, within one week of testing.
- (4) The Service shall meet the requirements of its contract with the commissioner in a timely manner.

**(f) (g) Results of Examination for Failing Grades Responsibility of the Division:**

- (1) The company and the examinee will be advised of the failure in writing by the division. No reference will be made to numerical grade. Upon receipt of score reports from the Service, the division shall issue appropriate licenses to qualified applicants.
- (2) The company application for license, Form A-2, and the company check for license fee will be returned to the company. For eligible applicants, the Division shall issue a Temporary License that is valid pending successful completion of the Examination. If an applicant who holds a valid Temporary License fails the Examination, the division shall notify the company and the applicant and shall terminate the Temporary License.
- (3) The examinee's copy of the failure letter will serve as the applicant's permit to re-take the examination after the 30 day waiting period required by law.
- (4) The applicant shall present his failure letter permit, Form A-2, company check, and proper identification to the examiner when taking the examination a second time.
- (5) In cases where a temporary license has been issued, the applicant and company will be advised in writing that the applicant has failed and that the temporary license has been cancelled. The company shall return the temporary license to the division immediately.



(e) Applicants who fail the examination a second time must reinstitute all procedures for examination and licensing.

(g) (h) An applicant Applicants not meeting the requirement requirements of residency as stated in G.S. 58-41 shall obtain a Letter of Clearance letter of clearance from the his state in which last licensed of residency certifying the lines kinds of insurance for which the applicant was licensed, that the applicant qualified by written examination, that all licenses held in that state have been cancelled and that the agent applicant was in good standing in that state at the time of the cancellation of licenses.

Statutory Authority G.S. 58-615; 58-622.

.0403 LICENSING OF NON-RESIDENT AGENTS: LIMITED REPRESENTATIVE AND ADJUSTERS

(a) An individual applicant must meet minimum qualifications as stated in G.S. 58-41, 58-615, except those pertaining to residency. in the state.

(b) A non-resident agent must be licensed by the same company in his home state as the one for which he is making application to represent in North Carolina. Non-Resident applicant must submit appropriate forms, along with a company check, certified check or money order, and a Letter of Certification from the applicant's state of residency stating that he is duly licensed for the same kind of insurance for which he is applying.

(c) The company must submit Form A-1 and company check for appropriate registration fee. The registration fee will correspond to the examination fee as specified in G.S. 105-228.7. Checks must be made payable to the North Carolina Department of Insurance.

(d) The company must submit Form A-2 and appropriate licence fee as specified in G.S. 105-228.7.

(e) The company must send a letter from an authorized company representative indicating one of the following:

- (1) the full name and address of the general or district agent to whom the applicant's North Carolina business will be reported, or
- (2) that the applicant's territory includes North Carolina; or
- (3) that the company's accounting procedures are designed to designate all North Carolina business as such.

(f) The company shall submit a certificate or letter from the applicant's home state insurance department stating that he is licensed with the

same company (agents only) in that state and that he is licensed in his home state for the same lines of insurance as those for which he is applying to be licensed in North Carolina.

Statutory Authority G.S. 58-615(a)(h).

.0404 LICENSING OF RESIDENT BROKERS

(a) An applicant Applicant must be a duly licensed resident agent Agent in this North Carolina state according to G.S. 58-40 and 58-41.1 and procedures established in 41 NCAC 6 .0402.

(b) A Broker's broker's license gives the holder authority to broker only those lines of insurance for which he holds an agent's agents license. Brokering must be done through a licensed and appointed resident agent of the company with which the business is being placed. A Broker's Brokers' licenses does do not carry a signature confer binding authority; but it only gives give authority to share in commissions with a writing agent.

(c) Each applicant must submit to the division Form A-2 and appropriate fee. Checks should be made payable to the North Carolina Department of Insurance. In addition to all required forms, an applicant must submit a company check, certified check or money order made payable to the N. C. Department of Insurance.

(d) Each applicant shall file with the his application the bond required by statute. in favor of the State of North Carolina for use of aggrieved parties using an "Insurance Broker's Bond" form. The bond shall be for five thousand dollars (\$5,000) with an aggregate liability of ten thousand (\$10,000). The bond shall be continuous in form. If the bond is cancelled at any time, the broker will be notified in writing by the division that he has 30 days from the date the cancellation was received by the division to replace the bond.

Statutory Authority G.S. 58-615(f)(h)(1).

.0405 LICENSING OF NON-RESIDENT BROKERS

(a) Applicant must properly complete the "Application for Non-Resident Brokers License." In addition to all required forms, an applicant must submit a company check, certified check or money order made payable to the N. C. Department of Insurance.

(b) The fee in North Carolina for non-resident brokers is subject to retaliatory law, but shall not be less than twenty-five dollars (\$25.00). A check made payable to the North Carolina Department of Insurance must be submitted with application to the division. A Non-Resident Broker's license



gives 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) If a performance bond is required by the state in which the applicant is presently licensed, the State of North Carolina requires that a performance bond in the same amount be filed with the Commissioner of Insurance. An "Insurance Non-Resident Broker's Bond" form must be completed and submitted to the division. Each applicant shall file with his application the bond required by statute.

(d) All information, forms, fee and bond (where applicable) shall be submitted to the North Carolina Department of Insurance, licensing division, along with a self-addressed stamped envelope. A Non-Resident Broker must submit a Home State Certification 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.

(c) Non-resident brokers Non-Resident Broker may not solicit directly or indirectly, but they may participate in commission of controlled brokered business. not to exceed 50 percent. All business must be countersigned by a duly registered and licensed North Carolina agent. Brokering must be done through a licensed and appointed Resident Agent of the company with which the business is being placed.

*Statutory Authority G.S. 58-615(f)(h)(2).*

**.0406 LICENSING OF RESIDENT VARIABLE CONTRACT LIMITED REPRESENTATIVE**

(a) The company making application must first be qualified to issue Variable Contracts variable annuity contracts in the State of North Carolina and the applicant must currently be licensed in the State of North Carolina as a Life, Accident and Health agent life agent and appointed by for that company.

(b) The company shall do the following:

(1) submit to the Division certification that the applicant has successfully passed part I, NASD Securities Examination, or a satisfactory alternative examination, which shall be any examination which is declared by the commissioner to be equivalent on the basis of content and administration; A list of acceptable examinations will be supplied upon request of the company; of the applicant's securities registration, and

(2) follow all other procedures for licensing of Resident resident agents and adjusters. Limited Representatives. [NCID Reg. No. 48]

*Statutory Authority G.S. 58-614(e)(1).*

**.0407 LICENSING OF NON-RESIDENT VARIABLE CONTRACT LIMITED REPRESENTATIVE**

(a) Application shall be made in the same manner as for non-resident agents and adjusters Non-Resident Limited Representative as outlined in 11 NCAC 6A .0403.

(b) In addition, the The applicant must currently be licensed in North Carolina as a life non-resident agent Life, Accident and Health Non-Resident Agent and appointed by the same company that is making application for the Variable Contract license. variable annuities.

(c) The company shall submit certification by the home state insurance department of the applicant 's state of residency stating that the applicant is currently licensed as a life resident agent Life, Accident and Health Resident Agent and holds a Variable Contract license in that state. variable annuity agent in that state, and that the applicant is licensed with the same company as the one for which is making application in North Carolina. Certification must also state that the applicant has passed a required variable annuity written examination or a comparable examination required in that state.

(d) A copy of the applicant's securities registration must be submitted with Forms A-1, A-2 and fees. Non-resident variable annuity license must be the same type (local or general) agent as specified on the life non-resident license. A certification of the applicant's securities registration and proper fees must be submitted at the time of application.

(e) An authorized company representative shall advise the division what general agent or resident agents will report the business written by the applicant. Full name and address of that agent is required.

*Statutory Authority G.S. 58-614(e)(1).*

**.0408 LICENSING OF MOTOR VEHICLE DAMAGE APPRAISERS**

(a) The applicant Applicant must submit the appropriate forms along with a company check, certified check or money order in the proper amount to the division. The applicant must meet all other relevant requirements of G.S. 58-615 and 58-611(c). complete a Form A-1 "Insurance License Application, Agents, Adjusters" and Form A-2 "Insurance License Application, Agents, Adjusters" and submit the forms with proper fees to the division. The applicant must meet all other requirements of G.S. 58-40.6.

~~Checks or money orders should be made payable to the North Carolina Department of Insurance.~~

~~(b) No written examination is required of motor vehicle damage appraisers. In addition to all required forms and fees, a Non-Resident Motor Vehicle Damage Appraiser shall submit a Home State Certification stating that applicant is duly licensed for the same kind of insurance for which he is applying.~~

*Statutory Authority G.S. 58-611(e); 58-615.*

**.0409 LICENSING OF OTHER AGENTS  
AND ADJUSTERS (REPEALED)**

*Statutory Authority G.S. 58-9; 58-40; 58-268.*

**.0410 TEMPORARY LICENSES**

~~(a) Applicants for temporary license under Section (1) of G.S. 58-41.3 shall complete forms and follow the same procedures outlined in 11 NCAC 6 .0402. The company will be advised of the result of applicant's examination. If the applicant passes the written examination, a permanent license will be issued. If the applicant fails the written examination, the license must immediately be returned to the licensing division of the North Carolina Department of Insurance. A Temporary License is available only to persons described in G.S. 58-622 (a).~~

~~(b) Applicants for temporary license under Sections (2), (3) and (4) of G.S. 58-41.3 shall follow the same procedures outlined in 11 NCAC 6 .0402. In addition, an authorized company representative shall send a letter to the division requesting the temporary license and stating the reason applicant is applying for the license, such as death or disability of the present licensee. The company shall submit to the division the application for Temporary License at the same time the applicant forwards the Candidate Guide Application to the Service.~~

~~(c) Successful completion of the Examination will cause the Temporary License to be changed to a permanent license.~~

~~(d) Unsuccessful completion of the Examination will cause immediate cancellation of the Temporary License. The company shall return the Temporary License to the division immediately.~~

~~(e) Applicants for temporary license due to hardship will follow the procedures outlined in 11 NCAC 6 .0402. In addition, an authorized company official shall send a letter to the division requesting a temporary license and stating the reason applicant is applying.~~

*Statutory Authority G.S. 58-41.3.*

**.0411 LIMITED LICENSES (REPEALED)**

*Statutory Authority G.S. 58-41.2.*

**.0412 APPOINTMENT OF AGENT:  
RESPONSIBILITY OF COMPANY**

Companies shall be responsible for investigating an agent prior to appointing the agent. The company shall determine that each agent holds the proper license for each kind of authority for which such agent will be appointed. A company's investigation of an agent shall give due consideration to the provisions of G.S. 58-615(c) concerning character, competence and trustworthiness. The appointing company shall inquire of agents information relevant to the grounds for license suspension or revocation set forth in G.S. 58-618(a). The "Appointment of North Carolina Agent" form must be received by the division within 30 days of the appointment.

*Statutory Authority G.S. 58-617.*

**.0413 LICENSING OF CORPORATION:  
PARTNERSHIPS**

(a) Applicants must meet minimum qualifications as stated in G.S. 58-615.

(b) Applicants shall submit application forms with a company check, certified check or money order.

(c) Corporations making first time application domiciled in North Carolina shall provide proof of corporate status by submitting a copy of its Articles of Incorporation certified by the North Carolina Secretary of State.

(d) A foreign corporation making first time application shall provide proof of corporate status by submitting a copy of its Application for Certificate of Authority certified by the North Carolina Secretary of State.

(e) Partnerships making first time application shall submit a copy of the filing with the County Clerk's office where the Partnership business is being conducted. This copy shall be certified by the County Clerk or a Notary Public.

(f) Applicant shall file with the department a list of all companies contracted with the firm along with the names and social security numbers of the agents representing each company.

(g) Any addition or deletion of an agent or company shall be submitted in writing within 30 days of any such change in the corporate representation.

(h) The "Corporation / Partnership Application" shall bear the signatures of all officers of the corporation or partners of the partnership.



Statutory Authority G.S. 58-615.

SECTION .0500 - RENEWAL AND  
CANCELLATION OF LICENSES

.0501 RENEWAL OF AGENT APPOINTMENTS  
AND LICENSES FOR LIMITED  
REPRESENTATIVES AND COMPANY  
ADJUSTERS

(a) ~~The company shall submit cancellation forms to the division on or before the last date specified by the division. Companies will be given at least 30 days advance notice of the last date the division will process cancellations. Companies shall also receive a copy of proper renewal and cancellation procedures. Annually the division will provide to each company a list of appointees and licensees. Following instructions accompanying such list, the company shall indicate all appointments and licenses which are to be terminated. Each list shall be returned no later than the date specified by the instructions. Companies will be given at least 30 days advance notice of the last date the division will process terminations.~~

(b) ~~On the date specified by the division as the last date to submit cancellations, terminations, the division shall cease processing of all cancellations terminations and begin billing bill companies for renewals. All agents will automatically be renewed unless the division has received a "Request for Cancellation of Agents and Adjuster(s)" form or a "North Carolina Department of Insurance Notice of Cancellation" from the company. All appointments and licenses will automatically be renewed unless the division has received a termination request from the Company within the specified time.~~

(c) ~~Each company Company will be sent an invoice from the division stating the total amount of money due. Companies shall remit a check made payable to the North Carolina Department of Insurance in the amount of the invoice. from the licensing division. Any discrepancies claimed by companies will be adjusted only after full payment is received.~~

(d) ~~Upon receipt of the company check, the division will mail all agents and adjusters' licenses to the company. The company will then have the responsibility for distribution of the licenses to individual agents and adjusters. a list of all appointments and licenses renewed.~~

(e) ~~Daily licenses issued prior to the renewal date, Appointments recorded and licenses issued prior to the renewal date, but after the date specified by the division as the last date to process termination cancellations will be considered valid until the following year. when they will be au-~~

~~tomatically renewed unless cancelled by the company.~~

Statutory Authority G.S. 58-620.

.0502 RENEWAL OF BROKERS LICENSES

(a) ~~The division will mail to all Brokers, resident and non-resident, Brokers a "Resident Broker's Renewal Broker Application" or "Renewal Application for Non-Resident Broker's License, Broker Application," whichever is appropriate.~~

(b) ~~Brokers shall complete the form and return it to the division by the date specified.~~

(c) ~~Brokers shall submit the proper renewal fee as stated in G.S. 405-228.7, 58-634. Checks An agency check, company check, certified check or money order must be made payable to the North Carolina Department of Insurance.~~

(d) ~~Broker bonds Bonds must be in force at the time of renewal. where applicable.~~

Statutory Authority G.S. 58-615(n); 58-634.

.0503 RENEWAL: SELF-EMPLOYED  
ADJUSTER: MOTOR VEHICLE  
DAMAGE APPRAISER

~~The division will mail an appropriate renewal form to the self-employed adjuster or motor vehicle damage appraiser Self-Employed Adjuster or Motor Vehicle Damage Appraiser and will specify the last date that the division will accept these renewals. The renewal form and appropriate renewal fee as specified in G.S. 405-228.7 58-634 must be submitted to the division on or before the last date specified. within the time allowed. Any renewal forms and fees not received by the specified date will result in the cancellation of the license held. All checks An adjusting company check, certified check or money order must be made payable to the North Carolina Department of Insurance.~~

Statutory Authority G.S. 58-614(n); 58-634.

.0504 NON-RENEWAL: CANCELLATION OF  
LICENSES ISSUED DIRECTLY  
TO INDIVIDUALS

~~Failure to renew a license by the date specified by the division will result in automatic cancellation of the license by the division. This Rule applies to all self-employed adjusters, resident and non-resident brokers, and motor vehicle damage appraisers. Self-Employed Adjusters, Brokers, and Motor Vehicle Damage Appraisers.~~

Statutory Authority G.S. 58-614(n).

.0505 CANCELLATION OF LICENSES FOR  
LIMITED REPRESENTATIVES AND



# COMPANY ADJUSTERS

Any company wishing to cancel the license of any of its ~~agents or adjusters~~ Limited Representatives or Adjusters shall:

- (1) ~~Submit the N.C. Notice of Cancellation cancellation form to the licensing division. The company IBM number must be included on the cancellation form.~~
- (2) ~~Send the agent's or adjuster's license to the division with the a cancellation form or Notice of Cancellation. If the license cannot be located, the company must furnish the division with an affidavit stating the reason for the license not being returned.~~
- (3) ~~For cancellation other than those at the renewal date, submit cancellation forms notice of cancellation within 30 days of the date on which the date the agent's or adjuster's Limited Representative's or Adjuster's employment with the company was terminated.~~

*Statutory Authority G.S. 58-620.*

## .0506 CANCELLATION OF LICENSES ISSUED TO INDIVIDUALS

(a) An Agent, Broker, Adjuster or Motor Vehicle Damage Appraiser desiring to cancel a license shall submit a written request to the division and return the license to the division. If the license cannot be located, the licensee must furnish a statement explaining the reason for not returning the license.

(b) Cancellation of a license will automatically terminate all appointments for the line of authority covered by such license.

*Statutory Authority G. S. 58-617(e); 58-619.*

## .0507 TERMINATION OF AGENT APPOINTMENT

Any company wishing to terminate an agent's appointment shall:

- (1) Submit the Termination of North Carolina Agent Appointment form to the division.
- (2) For termination other than at the renewal date, submit the termination form within 30 days of the date on which the agent's contract with the company was terminated.

*Statutory Authority G. S. 58-617(e).*

## SECTION .0600 - DENIAL OF LICENSE

### .0601 BASIS FOR DENIAL OF LICENSE

~~The department may refuse to issue a license on one or a combination of the following bases, including, but not limited to:~~

- (1) ~~failure of the applicant to successfully pass a written examination;~~
- (2) ~~completion of application forms by an applicant with false or incomplete information in an attempt to mislead the department or in an attempt to conceal pertinent information with reference to qualifications for license;~~
- (3) ~~a record of past violations of the insurance laws or a record of unethical conduct while licensed with this or any other state;~~
- (4) ~~a court record which, in the opinion of the department, indicates that the applicant is untrustworthy;~~
- (5) ~~has willfully failed to comply with, or has willfully violated, any proper order, rule or regulation issued by the commissioner.~~

For purposes of determining that a licensee has committed forgery under G.S. 58-618(a)(12) an "Application for Insurance" shall be considered to be the application form, underwriting form and any policy servicing or claim form that affects any funds, rights or privileges of the policyowner or insured.

*Statutory Authority G.S. 58-618.*

### .0602 COURT RECORDS AND AFFIDAVITS REQUIRED

An individual who has been convicted of a crime, crimes, other than traffic violations, shall submit to the licensing division the following information with applications for license and examination:

- (1) a copy of the entire court record;
- (2) a copy of unconditional release and unconditional discharge from the Board of Paroles, where applicable, on the forms provided by the North Carolina Department of Correction;
- (3) ~~notarized affidavits from at least two individuals who have known the applicant for three or more years and can attest to the character of the applicant; if the applicant or licensee is currently employed or expects to be employed by an insurer, agency, company or firm in the business of insurance, the applicant or licensee shall submit a letter from such employer or potential employer stating that the applicant or licensee has disclosed to the employer information concerning the conviction;~~
- (4) a notarized affidavit from the applicant concerning the ~~matter, conviction;~~
- (5) when applicable, a statement from the applicant's probation officer(s);

- (6) any additional ~~supportive~~ information which the ~~department~~ division deems necessary and proper.

*Statutory Authority G.S. 58-618.*

**.0603 EVALUATION OF RECORDS AND AFFIDAVITS**

In its evaluation of court records and affidavits, the ~~department~~ division shall consider all information and as many facts as are presented to it, including, but not limited to:

- (1) time elapsed since last offense or conviction;
- (2) seriousness of the offense or alleged offense;
- (3) extenuating circumstances, particularly in the case of juvenile offenses;
- (4) statements of character witnesses, including the notarized affidavits which are submitted by previous employers.

*Statutory Authority G.S. 58-618.*

**.0604 PERSONAL INTERVIEWS**

Personal interviews may be required for purposes of clarification of information or for presentation of additional information. Such interviews may be initiated by any ~~one~~ of the parties involved: ~~that is the department, the sponsoring company, or the applicant.~~ All requests for personal interviews shall be made in writing, shall include a brief explanation of the reason for the interview, and shall specify what information will be required if any.

*Statutory Authority G.S. 58-618.*

**.0605 NOTIFICATION OF DENIAL OF LICENSE (REPEALED)**

*Statutory Authority G.S. 58-9.*

**SECTION .0700 - PRE-LICENSING EDUCATION**

**.0701 GENERAL REQUIREMENTS**

(a) This Section applies to individuals attempting to obtain a license to solicit Life, Accident and Health and/or Fire and Casualty insurance in North Carolina except as specifically exempted by 11 NCAC 6A .0701 (b) through (e).

(b) The following individuals applying for a Life, Accident and Health and/or Fire and Casualty license shall be exempt from the provisions of this Section:

- (1) An individual licensed in North Carolina for Life, Accident and Health and/or Fire and Casualty insurance within 24 months preceding the date of application for a new license in that kind of insurance; or

- (2) An individual licensed in another state for Life, Accident and Health and/or Fire and Casualty insurance within 24 months preceding the date of application for a new license in that kind of insurance, upon furnishing a Letter of Clearance certifying same and that such license was granted upon passing a written examination given by an insurance department of a state. A Letter of Clearance is valid for six months from its date of issuance.

(c) The following individuals applying for a Life, Accident and Health license shall be exempt from the provisions of this Section:

- (1) Chartered Financial Consultant (ChFC); or
- (2) Chartered Life Underwriter (CLU); or
- (3) Fellow of Life Management Institute (FLMI); or
- (4) Life Underwriter Training Council Fellow (LUTCF).

(d) Individuals applying for a Fire and Casualty license who are Chartered Property and Casualty Underwriters (CPCU) shall be exempt from the provisions of this Section.

(e) The following individuals applying for a Life, Accident and Health and/or Fire and Casualty license shall be exempt from the provisions of this Section but are required to take the Examination:

- (1) Life, Accident and Health:
  - (A) Certified Employee Benefits Specialist (CEBS); or
  - (B) Fraternal Insurance Counselor (FIC); or
  - (C) Life Underwriter Training Council Graduate (LUTC Graduate); or
  - (D) Certified Financial Planner (CFP); or
  - (E) Holder of degree in Insurance (Associate or Bachelors).
- (2) Fire and Casualty:
  - (A) Accredited Advisor in Insurance (AAI); or
  - (B) Associate in Claims (AIC); or
  - (C) Associate in Insurance Accounting and Finance (AIAF); or
  - (D) Associate in Premium Auditing (APA); or
  - (E) Associate in Risk Management (ARM); or
  - (F) Associate in Underwriting (AU); or
  - (G) Certified Insurance Counselor (CIC); or
  - (H) Holder of Certificate in General Insurance (INS); or
  - (I) Holder of degree in Insurance (Associate or Bachelors).

If an applicant exempted from Prelicensing Education under the provisions of Rule .0701 (e) fails the Examination, the applicant must successfully meet North Carolina's mandatory Prelicensing Education requirement prior to retaking the Examination.

(f) In this Section, unless otherwise noted the following definitions will apply:

- (1) "Assistant Instructor" shall mean an approved instructor in a classroom school who is responsible for the presentation of lesson plans to assure that the Outline is taught to that school's students. The Assistant Instructor shall be supervised by the school's appropriate Lead Instructor and Program Director.
- (2) "Classroom School" shall mean an entity that provides Prelicensing Education sponsored by a company, agency, association or educational institution through instruction by either a Lead or Assistant Instructor utilizing a teaching curriculum based on the Outline.
- (3) "Correspondence Course" shall mean home, self, individual, or correspondence study utilizing programmed text instructions.
- (4) "Correspondence School" shall mean an entity that provides Prelicensing Education sponsored by a company, agency, association or educational institution through completion of a correspondence course which has been approved by the commissioner, with students individually supervised by an approved Proctor.
- (5) "Lead Instructor" shall mean an approved instructor in a classroom school who is responsible for preparation and presentation of lesson plans to assure that the Outline is taught to that school's students and who prepares a final course examination. The Lead Instructor shall direct and supervise teaching by an Assistant Instructor.
- (6) "Outline" shall mean the North Carolina Instructors Life, Accident and Health and/or Fire and Casualty Outline prepared and published by the department.
- (7) "Proctor" shall mean an individual approved by the commissioner to assist and supervise students in the completion of an approved Correspondence Course.
- (8) "Program Director" shall mean the individual associated with an approved classroom or correspondence school who is responsible for the administration of that school according to 11 NCAC 6A .0702 (k).

*Statutory Authority G.S. 58-615(d); 58-616.*

**.0702 PRELICENSING EDUCATION SCHOOLS**

(a) This Rule applies to all classroom and correspondence schools offering a Prelicensing course prescribed by General Statute 58-615. All schools desiring to conduct a Prelicensing course shall be approved by the commissioner prior to commencement of the courses.

(b) A school seeking approval to conduct a Prelicensing course shall make written application to the Commissioner upon a form prescribed by the commissioner.

(c) After due investigation and consideration, approval shall be granted to the school when it is shown to the satisfaction of the commissioner that:

- (1) the school has submitted all information required by the commissioner;
- (2) the course to be conducted complies with Rule .0704 of this Section;
- (3) the Instructor or Proctor for the course has been approved by the commissioner in accordance with Rule .0705 or .0706 of this Section; and
- (4) the Program Director has been approved by the commissioner in accordance with Rule .0703 of this Section.

(d) The following guidelines shall apply to the approval of classroom and correspondence schools:

- (1) Approval extends only to the course and location reported in the application for approval.
- (2) Approval shall terminate on June 30 next following the date of issuance.
- (3) A school must renew annually its approval to conduct Prelicensing courses by submitting an application for approval not later than May 31 of each year.
- (4) Any school that does not conduct at least one Prelicensing course during the 24 months preceding application for renewal shall be deemed ineligible for approval.

(e) The commissioner shall deny, withdraw or suspend approval of any school upon finding that:

- (1) the school has refused or failed to comply with any of the provisions of Rules .0702, .0703, .0704, .0705, or .0706 of this Section; or
- (2) any school official or instructor has obtained or used, or attempted to obtain or use, in any manner or form, Examination questions; or
- (3) the school's students have a licensing examination performance record that is de-



terminated by the commissioner to be substantially below the performance record of all first-time examination candidates.

(f) In all proceedings to withdraw or deny approval of a school, the provisions of Chapter 150B of the General Statutes shall be applicable.

(g) When a school's approval is discontinued, the procedure for reinstatement shall be to apply as a new school, with a statement of the reasons that the school is now eligible for reconsideration. The commissioner may require an investigation before new approval is granted.

(h) The following guidelines shall apply for changes during any approved year:

- (1) A school shall obtain advance approval from the commissioner for any change of course location or change of Instructors or Proctors. Requests for approval of such changes shall be in writing.
- (2) An approved school that intends to terminate its Prelicensing program shall notify the commissioner in writing.
- (3) A school shall notify the commissioner in writing of a change of textbook.
- (4) A school shall notify the commissioner in writing at the time an Instructor or Proctor resigns or ceases to be associated with the school.

(i) An approved school may utilize, for advertising or promotional purposes, Examination performance data provided to the school by the commissioner, provided that any data disclosed by the school shall be accurate, shall be presented in a manner that is not misleading, and shall:

- (1) be limited to the annual Examination performance data for the particular school and for all Examination candidates in the state;
- (2) include the type of Examination, the time period covered, the number of first-time candidates examined, and either the number or percentage of first-time candidates passing the Examination; and
- (3) be reviewed and approved by the commissioner prior to publication.

(j) A classroom school's facilities and equipment shall have been found by appropriate local building, heating and fire inspectors to be in compliance with all applicable local, state and federal laws and regulations regarding safety, sanitation, and access by handicapped persons.

(k) The school shall designate one person as the Program Director. The Program Director shall be responsible for administrative matters such as recruiting, evaluating and certifying the qualifications of Instructors and/or Proctors, program development, scheduling of classes, ad-

vertising, maintaining facilities and equipment, recordkeeping and general supervision of the Prelicensing program.

(k) The school shall designate one person as the Program Director. The Program Director shall be responsible for administrative matters such as recruiting, evaluating and program development, scheduling of classes, advertising, maintaining of the Prelicensing program.

(l) A school shall publish and provide to all students prior to enrollment a bulletin or similar official publication of that school that contains the following information:

- (1) name of school and publication date;
- (2) name of sponsor;
- (3) all associated costs;
- (4) detailed outline or description of all Prelicensing courses offered.

(m) A school shall file with the commissioner information giving exact dates, times, and locations for each scheduled Prelicensing course. This information may be submitted either at the beginning of each quarter/semester, or no later than one week prior to the first class meeting of each Prelicensing course.

(n) Classroom schools shall retain the following material on file for a minimum of three years:

- (1) class schedules;
- (2) advertisements;
- (3) bulletins, catalogues, and other official publications;
- (4) grade reports;
- (5) attendance records;
- (6) master copy of each final course examination, indicating the answer key, the school name, course location, course dates and name of instructor; and
- (7) list of student names and Social Security numbers for each course, and the name of the Instructor.

All files shall be made available to the commissioner upon request.

(o) Correspondence schools shall retain the following material on file for a minimum of three years:

- (1) advertisements,
- (2) bulletins, catalogues and other official publications,
- (3) grade reports, and
- (4) a list of student names and Social Security numbers for each course and the name of the Proctor.

All files shall be made available to the commissioner upon request.

(p) In the event of illness, injury or death of an Instructor or Proctor, the Program Director may utilize a non-approved Instructor or Proctor to complete a course. The school shall thereafter

suspend operation of its Prelicensing courses until an approved Instructor or Proctor is available.

*Statutory Authority G.S. 58-615(d).*

**.0703 PROGRAM DIRECTORS**

(a) All Program Directors shall be approved by the commissioner in accordance with the provisions of this Section.

(b) A person desiring approval as a Program Director shall make written application to the commissioner upon a form prescribed by the commissioner.

(c) Applications must be endorsed by the President/Chief Operating Officer of the sponsoring educational institution, company, agency or association. If the employing school is not currently approved by the commissioner, an application for school approval should be submitted along with the application for Program Director approval.

(d) The commissioner shall approve an applicant as a Program Director upon finding that the applicant is recommended by the President/Chief Operating Officer of the sponsoring educational institution, company, agency or association has submitted all information required by the commissioner, possesses good character and reputation, and possesses the qualifications described in this Paragraph:

- (1) Holds a baccalaureate or higher degree and has at least two years experience as an instructor of insurance or as an educational administrator; or
- (2) Holds a baccalaureate or higher degree and has at least six years of experience in the insurance industry with a minimum of two years experience in insurance management; or
- (3) Possesses qualifications which are found by the commissioner to be substantially equivalent to those described.

(e) Program Director approval shall be valid for an indefinite period, subject to future changes in laws or regulations regarding approval of Program Directors.

(f) The commissioner shall deny, revoke, or suspend the approval of any Program Director upon finding that:

- (1) The Program Director fails to meet the criteria for approval provided by these Regulations; or
- (2) The Program Director has failed to comply with any provisions of 11 NCAC 6A .0700; or
- (3) The Program Director's employment has been terminated by any sponsoring educational institution/company; or

(4) The Program Director provided false information to the commissioner when making application for approval; or

(5) The Program Director has at any time had an insurance license denied, suspended or revoked by this or any other insurance department, or has ever been required to return a license while under investigation; or

(6) The Program Director has obtained or used, or attempted to obtain or use, in any manner or form, North Carolina Insurance licensing examination questions; or

(7) The Program Director has failed to utilize an acceptable level of performance in directing the Insurance Prelicensing Program.

(g) In all proceedings to deny, revoke, or suspend approval, the provisions of Chapter 150B of the General Statutes shall be applicable.

(h) When a Program Director's approval is discontinued, the procedure for reinstatement shall be to apply as a new Program Director, with a statement of the reasons that he is now eligible for reconsideration. The commissioner may require an investigation before new approval is granted.

(i) An approved Program Director shall inform the Commissioner of any change in program affiliation by filing an application for Program Director approval prior to directing a new program.

(j) Full-time faculty of fully accredited senior level colleges and universities who regularly teach Risk and Insurance courses shall be deemed to meet the eligibility requirements of this Section.

*Statutory Authority G.S. 58-615(d).*

**.0704 COURSES**

(a) This Rule establishes minimum standards for Life, Accident and Health and/or Fire and Casualty Prelicensing courses prescribed by General Statute 58-615.

(b) Insurance Prelicensing programs shall consist of one or both of the following courses:

- (1) Life, Accident and Health Insurance;
- (2) Fire and Casualty Insurance;

(c) The maximum length of an approved Prelicensing Education course shall be at the discretion of the school. In no event shall a school offer a course of less than 40 hours.

(d) The following requirements are course standards:

- (1) All courses shall consist of instruction in the subject areas covered in the Outline.
- (2) Courses may also include coverage of related subject areas not prescribed by the commissioner; however, such courses

must provide additional class time, above the minimum requirement state in Rule .0704 (c) of this Section for the coverage of such subject areas.

- (3) Prelicensing courses are intended for instructional purposes only and not for promoting the interests of or recruiting employees for any particular insurance agency or company.
- (4) Schools shall establish and enforce academic standards for course completion that reasonably assure that students receiving a passing grade possess adequate knowledge and understanding of the subject areas prescribed for the course. In any course for which college credit is awarded, the passing grade for such course shall be the same as the grade that is considered passing under the school's uniform grading system.
- (5) Schools shall conduct a final comprehensive course examination that covers all subject areas prescribed by the commissioner for each course. The time for this examination shall be in addition to the minimum 40 hours of instruction required. Schools may allow a student to make up a missed examination or to retake a failed examination in accordance with policies adopted by the school. No final examination may be scheduled until the fifth day after the commencement of the course.
- (6) Students shall attend a minimum of 40 hours of instruction. Break time may not count toward the 40 hour instructional requirement. If a course is scheduled for 50 or more instructional hours, a student shall attend at least 80 percent of the total hours offered by the course.
- (e) The following requirements shall be met for scheduling purposes:
  - (1) Class meetings or correspondence courses shall be limited to a maximum of eight hours of instruction in any given day.
  - (2) Classroom courses shall have fixed beginning and ending dates and may not be conducted on an open-entry/open-exit basis.
  - (3) Correspondence courses shall not have fixed beginning and ending dates and shall be conducted on an open-entry basis.
- (f) The following shall apply to the use of text books:
  - (1) Choice of classroom course text shall be at the discretion of each school.

- (2) Text books used in correspondence courses shall be approved by the commissioner before use.

(g) All Prelicensing classroom school courses shall be taught by Instructors who have been approved by the commissioner. A Lead Instructor must be designated for each course location.

(h) All Prelicensing correspondence courses shall be monitored by Proctors who have been approved by the commissioner. A Proctor shall be designated for each correspondence course student.

(i) The following certification of course completion procedures shall apply:

- (1) Schools shall furnish each student who successfully completes a Prelicensing course an official certificate on a form prescribed by the commissioner. A certificate shall not be issued to a student prior to completion of all course requirements and the passing of the course's comprehensive final examination.
- (2) A Certificate of Prelicensing Course Completion shall be issued for each course successfully completed by a student. A certificate presented at the Examination site that indicates completion of more than one course shall be held invalid.
- (3) A Certificate of Prelicensing Course Completion shall be valid for access to the Examination for 12 months. If an applicant for a license does not successfully pass the Examination within 12 months, he shall again complete a Prelicensing Education course to be eligible for the Examination.

*Statutory Authority G.S. 58-615(d).*

#### **.0705 LEAD AND ASSISTANT INSTRUCTORS**

(a) All Lead and Assistant Instructors shall be approved by the commissioner in accordance with the provisions of this Rule.

(b) A person desiring approval to teach Prelicensing courses shall make written application to the commissioner upon a form prescribed by the commissioner.

(c) Applications must be endorsed by the Program Director of the employing school. If the employing school is not currently approved by the commissioner, an application for school approval should be submitted along with the application for Lead or Assistant Instructor approval.

(d) The commissioner shall approve an applicant as a Lead Instructor upon finding that the applicant is recommended by an approved



school, has submitted all information required by the commissioner, possesses good character and reputation, and possesses the appropriate qualifications described in this Paragraph:

- (1) Life, Accident and Health:
  - (A) Chartered Life Underwriter (CLU); or
  - (B) Chartered Financial Consultant (ChFC); or
  - (C) Fellow Life Management Institute (FLMI); or
  - (D) Life Underwriter Training Council Fellow (LUTCF); or
  - (E) Attorney (LLB or JD); or
  - (F) Four years experience as a full-time employee or representative in the Life, Accident and Health industry and a designation as:
    - (i) Certified Employee Benefits Specialist (CEBS); or
    - (ii) Life Underwriter Training Council Graduate (LUTC); or
    - (iii) Fraternal Insurance Counselor (FIC); or
    - (iv) Certified Financial Planner (CFP); or
    - (v) Holder of degree in Insurance (Associate or Bachelors); or
  - (G) Three years experience teaching Life, Accident and Health Prelicensing courses; or
  - (H) Seven years experience as a full-time employee or representative in the Life, Accident and Health industry; or
  - (I) A combination of training, experience and qualifications that are substantially equivalent to those listed among Rule .0705 (d)(1) (A) through (H) to satisfy the commissioner that the applicant is qualified.
- (2) Fire and Casualty:
  - (A) Chartered Property and Casualty Underwriter (CPCU); or
  - (B) Attorney (LLB or JD); or
  - (C) Four years experience as a full-time employee or representative in the Fire and Casualty industry and a designation as:
    - (i) Associate in Underwriting (AU); or
    - (ii) Program in General Insurance (INS); or
    - (iii) Accredited Advisor in Insurance (AAI); or
    - (iv) Associate in Claims (AIC); or
    - (v) Associate in Risk Management (ARM); or
    - (vi) Certified Insurance Counselor (CIC); or
    - (vii) Associate in Premium Auditing (APA); or

- (viii) Associate in Insurance Accounting and Finance (AIAF); or
- (ix) Holder of degree in Insurance (Associate or Bachelors); or

- (D) Three years experience teaching Fire and Casualty Prelicensing courses; or
- (E) Seven years experience as a full-time employee or representative in the Fire and Casualty industry; or
- (F) A combination of training, experience and qualifications that are substantially equivalent to those listed among Rule .0705 (d)(2)(A) through (E) to satisfy the commissioner that the applicant is qualified.

(e) The commissioner shall approve an applicant as an Assistant Instructor upon finding that the applicant is recommended by an approved school, has submitted all information required by the commissioner possesses good character and reputation, and possesses the appropriate qualifications described in this Paragraph:

- (1) Life, Accident and Health Insurance: Three years experience in the Life, Accident and Health industry.
- (2) Fire and Casualty Insurance: Three years experience in the Fire and Casualty Insurance industry.
- (3) Possesses qualifications that are found by the commissioner to be substantially equivalent to those described in (1) and (2) of this Paragraph.

(f) An applicant for Lead and Assistant Instructor shall be approved for each course taught in the Prelicensing curriculum.

(g) Approval of an Instructor for a school shall continue until cancellation by that school's Program Director, resignation by the Instructor, revocation or suspension by the commissioner, or disapproval or termination of that school.

(h) The commissioner shall deny, revoke, or suspend the approval of an Instructor upon finding that:

- (1) The Instructor fails to meet the criteria for approval provided by these regulations; or
- (2) The Instructor has failed to comply with the commissioner's regulations regarding Prelicensing courses or schools; or
- (3) The Instructor's employment has been terminated by any school approved by the commissioner on the grounds of incompetence or failure to comply with institutional policies and procedures; or
- (4) The Instructor provided false information to the commissioner on any form or application; or

- (5) The Instructor has at any time had an insurance license denied, suspended or revoked by this or any other insurance department, or has ever been required to return a license while under investigation; or
  - (6) The Instructor has obtained or used, or attempted to obtain or use, in any manner or form, Examination questions; or
  - (7) The Instructor has failed to employ acceptable instructional principles and methods.
- (i) In all proceedings to deny, revoke, or suspend approval of a Lead or Assistant Instructor, the provisions of Chapter 150B of the General Statutes shall be applicable.
- (j) When an Instructor's approval is discontinued, the procedure for reinstatement shall be to apply as a new Instructor, with a statement of reasons that he is now eligible for reconsideration. The commissioner may require an investigation before new approval is granted.
- (k) An approved Instructor shall inform the commissioner of any change in school affiliation by filing an application for Instructor approval prior to instructing in the new school.

*Statutory Authority G.S. 58-615(d).*

#### **.0706 PROCTORS**

- (a) All Proctors shall be approved by the commissioner in accordance with the provisions of this Rule.
- (b) A person desiring to be approved as a Proctor shall make written application upon a form prescribed by the commissioner.
- (c) Applications must be endorsed by the Program Director of the employing correspondence school. If the school is not currently approved by the commissioner, the application for school approval should be submitted along with the application for Proctor approval.
- (d) The commissioner shall approve an applicant to monitor correspondence courses as a Proctor upon finding that the applicant is recommended by an approved school, has submitted all information required by the commissioner, possesses good character and reputation, has provided evidence of successful completion of each correspondence course for which he is to be approved as Proctor, and possesses the appropriate qualifications described in this Paragraph for each course for which approval is sought:
  - (1) Has three years experience in the Life, Accident and health insurance industry to proctor Life, Accident and Health Insurance courses; or
  - (2) Has three years experience in the Fire and Casualty insurance industry to proctor Fire and Casualty Insurance courses.
  - (3) Possesses qualifications that are found by the commissioner to be substantially equivalent to those described in (1) and (2) of this Paragraph.
  - (e) An applicant shall be approved for each course proctored in the Prelicensing curriculum.
  - (f) Approval of a Proctor for a school continues until cancellation by that school's Program Director, resignation by the Proctor, revocation or suspension by the commissioner, or disapproval or termination of the school.
  - (g) A Proctor's duties are prescribed by the commissioner and a description may be obtained by writing to the North Carolina Department of Insurance, Agent Services Division, Prelicensing Education Section, Post Office Box 26267, Raleigh, North Carolina 27611.
  - (h) The commissioner shall deny, revoke or suspend the approval of a Proctor upon finding that:
    - (1) The Proctor fails to meet the criteria for approval provided by these regulations; or
    - (2) The Proctor has failed to comply with the commissioner's regulations regarding correspondence courses or schools; or
    - (3) The Proctor's employment has been terminated by the school; or
    - (4) The Proctor provided false information to the commissioner on any form or application; or
    - (5) The Proctor has at any time had an insurance license denied, suspended or revoked by this or any other insurance department, or has ever been required to return a license while under investigation; or
    - (6) The Proctor has obtained or used, or attempted to obtain or use, in any manner or form, Examination questions; or
    - (7) The Proctor has failed to utilize an acceptable level of performance in overseeing a Prelicensing course.
    - (i) In all proceedings to deny, revoke, or suspend approval of a Proctor, the provisions of Chapter 150B of the General Statutes shall be applicable.
    - (j) When a Proctor's approval is discontinued, the procedure for reinstatement shall be to apply as a new Proctor, with a statement of reasons that he is now eligible for reconsideration. The commissioner may require an investigation before new approval is granted.
    - (k) An approved Proctor shall inform the commissioner of any change in school affiliation

by filing an application for Proctor approval prior to proctoring in the new school.

Statutory Authority G.S. 58-615(d).

**TITLE 15 - DEPARTMENT OF NATURAL  
RESOURCES AND COMMUNITY  
DEVELOPMENT**

*Notice is hereby given in accordance with G.S. 150B-12 that the N. C. Environmental Management Commission intends to amend rule(s) cited as 15 NCAC 2J .0002.*

*The proposed effective date of this action is March 1, 1989.*

*The public hearing will be conducted at 10:00 a.m. on November 1, 1989 at Ground Floor Hearing Room, Archdale Bldg., 512 N. Salisbury Street, Raleigh, North Carolina.*

*Comment Procedures: Any person interested in this matter is invited to attend. Comments, statements, data, and other information may be submitted in writing prior to, during, or within thirty days after the hearing or may be presented orally at the hearing. Oral statements may be limited at the discretion of the hearing officer. For more information and copies of the proposed rule, please contact Mr. Paul Wilms, Director, Division of Environmental Management, P. O. Box 27687, Raleigh, NC 27611, (919) 733-7015.*

**CHAPTER 2 - ENVIRONMENTAL  
MANAGEMENT**

**SUBCHAPTER 2J - CIVIL PENALTIES**

**.0002 DEFINITIONS**

(5) "Waste", "wastes", "other wastes" shall include, but shall not be limited to, sawdust, shavings, lime, offal, oil, tar chemicals, petroleum products, medical wastes, refuse, litter, bottles cans, paper, rubbish, garbage, debris, plastic materials and all other substances; and

(6) "Into waters of the state," "to the waters of the state", and "to the open waters of the Atlantic Ocean over which the state has jurisdiction" shall include the act of discharging or placing materials or substances into or onto water adjacent to waters of the state in such proximity that the materials or substances are likely to, and subsequently do, enter the waters of the state.

Statutory Authority G.S. 143-215.3(a)(1); 143-213(18); 143-212(6); 143-214.2.

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*Notice is hereby given in accordance with G.S. 150B-12 that the Wildlife Resources Commission intends to amend rule(s) cited as 15 NCAC 10F .0307.*

*The proposed effective date of this action is February 1, 1989.*

*The public hearing will be conducted at 10:00 a.m. on November 14, 1988 at 386 Archdale Bldg., 512 N. Salisbury Street, Raleigh NC 27611.*

*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 1, 1988 to November 29, 1988.*

**CHAPTER 10 - WILDLIFE RESOURCES AND  
WATER SAFETY**

**SUBCHAPTER 10F - MOTOR BOATS AND  
WATER SAFETY**

**SECTION .0300 - LOCAL WATER SAFETY  
REGULATIONS**

**.0307 CATAWBA: IREDELL: LINCOLN  
AND MECKLENBURG COUNTIES**

(a) Regulated Area. This rule applies to Lake Norman which is located in the counties above named.

(b) Speed Limit Near Shore Facilities. No person shall operate a vessel at greater than no-wake speed within 50 yards of any marked boat launching area, bridge, dock, pier, marina, boat storage structure, or boat service area on the waters of Lake Norman.

Statutory Authority G.S. 75A-3; 75A-15.

**TITLE 18 - DEPARTMENT OF  
SECRETARY OF STATE**

*Notice is hereby given in accordance with G.S. 150B-12 that the Securities Division - Department of Secretary of State intends to adopt rule(s) cited as 18 NCAC 6 .1701 - .1714, .1801 - .1811.*



## CORRECTION

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**CORRECTION TO NOTICE AS PUBLISHED IN THE NORTH CAROLINA REGISTER AT 3:14 NCR 656 SHOULD READ:**

### **TITLE 15 - DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT**

*Notice is hereby given in accordance with G.S. 150B-12 that the N. C. Environmental Management Commission intends to amend rule(s) cited as 15 NCAC 2J .0002.*

*The proposed effective date of this action is March 1, 1989.*

*The public hearing will be conducted at 10:00 a.m. on November 21, 1988 at Ground Floor Hearing Room, Archdale Bldg., 512 N. Salisbury Street, Raleigh, North Carolina.*

*Comment Procedures: Any person interested in this matter is invited to attend. Comments, statements, data, and other information may be submitted in writing prior to, during, or within ten days after the hearing or may be presented orally at the hearing. Oral statements may be limited at the discretion of the hearing officer. For more information and copies of the proposed rule, please contact Mr. Paul Wilms, Director, Division of Environmental Management, P. O. Box 27687, Raleigh, NC 27611, (919) 733-7015.*



*The proposed effective date of this action is February 1, 1989.*

*The public hearing will be conducted at 9:30 a.m. on November 14, 1988 at Securities Division, Department of Secretary of State, 300 N. Salisbury St., Room 404, Raleigh, NC 27611.*

*Comment Procedures: Comments in the form of data, opinions, and arguments may be submitted to the Securities Division in writing prior to or orally at the hearing.*

## CHAPTER 6 - SECURITIES DIVISION

### SECTION .1700 - REGISTRATION OF INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

#### .1701 DEFINITIONS

For purposes of Sections .1700 and .1800 of these Rules, the following definitions shall apply:

- (1) "Act" shall mean the North Carolina Investment Advisers Act, Chapter 78C of the North Carolina General Statutes, as may be amended from time to time;
- (2) "Dealer" shall have the same meaning as that set forth in Section 78A-2(2) of the North Carolina General Statutes; and
- (3) "Salesman" shall have the same meaning as that set forth in Section 78A-2(9) of the North Carolina General Statutes.

*Statutory Authority G.S. 78C-30(a).*

#### .1702 APPLICATION FOR INVESTMENT ADVISER REGISTRATION

(a) The application for initial registration as an investment adviser pursuant to Section 78C-17(a) of the Act shall be filed upon Form ADV (Uniform Application for Investment Adviser Registration) (17 C.F.R. 279.1) with the administrator. The initial application shall include the consent to service of process required by Section 78C-46(b) of the Act, and shall include the following:

- (1) A statement or certificate showing compliance by the investment adviser with the examination requirements of Rule .1709;
- (2) Such financial statements as set forth in Rule .1708, including at the time of application, a copy of the balance sheet for the last fiscal year, and if such balance sheet is as of a date more than 45 days from the date of filing of the application, an unaudited balance sheet prepared as set forth in Rule .1708;

- (3) Evidence of compliance with the minimum financial requirements of Rule .1704;
  - (4) A copy of the surety bond required by Section 78C-17(e), if applicable;
  - (5) The fee required by Section 78C-17(b) of the Act; and
  - (6) Any other information the administrator may from time to time require.
- (b) The application for renewal of registration as an investment adviser shall be filed on Form ADV-S (Annual Report for Investment Advisers Registered Under the Investment Advisers Act of 1940) (17 C.F.R. 279.3) and shall contain the following:
- (1) A copy of the surety bond required by Rule .1705, if applicable; and
  - (2) The fee required by Section 78C-17(b) of the Act.
- (c) The investment adviser shall file with the administrator, as soon as practicable but in no event later than 30 days, notice of any civil, criminal or administrative charges filed against the investment adviser which relate directly or indirectly to its activities in the securities or financial services business. This notice shall include notification of any investigation by any securities, commodities, or other financial services regulatory agency and any disciplinary, injunctive, restraining, or limiting action taken by such agencies, by any court of competent jurisdiction, or by any state administrator with respect to the investment adviser's activities in the securities or financial services business. Any amendment required by Section 78C-18(d) of the Act for an investment adviser shall be made on Form ADV in the manner prescribed by that form. Any amendment to Form ADV shall be filed with the administrator within the time period specified in the instructions to that form relating to filings made with the Securities and Exchange Commission.
- (d) Registration becomes effective at noon of the 30th day after a completed application is filed or such earlier time upon issuance of a license or written notice of effective registration, unless proceedings are instituted pursuant to G.S. 78C-19. The administrator may order defer the effective date after the filing of any amendment but no later than noon of the 30th day after the filing of the amendment.
- (e) Every investment adviser shall notify the administrator of any change of address, the opening or closing of any office (including the office of any investment adviser representative operating apart from the investment adviser's premises) or any material change thereto, in writing as soon as practicable.



(f) The registration of an investment adviser shall expire on December 31 of each year unless timely renewed. The application for renewal of registration should be filed at least 15 days before the expiration date.

*Statutory Authority G.S. 78C-16(b); 78C-17(a); 78C-17(b); 78C-17(e); 78C-18(d); 78C-19(a); 78C-30(a); 78C-30(b); 78C-30(c); 78C-30(d); 78C-46(b).*

**.1703 APPLICATION FOR INVESTMENT  
ADVISER REPRESENTATIVE  
REGISTRATION**

(a) The application for initial registration as an investment adviser representative pursuant to Section 78C-17(a) of the Act shall be filed upon Form U-4 (Uniform Application for Securities Industry Registration or Transfer) with the administrator and contain the additional information required by this Rule. The initial application shall include the consent to service of process required by Section 78C-46(b) of the Act. The application for initial registration shall also provide the following:

- (1) A statement or certificate showing compliance by the investment adviser representative with the examination requirements of Rule .1709; and
- (2) The fee required by Section 78C-17(b) of the Act.

(b) The application for renewal of registration as an investment adviser representative shall, unless waived by the administrator, be filed with the administrator. No renewal of registration as an investment adviser representative shall be effected until the fee required by Section 78C-17(b) of the Act is remitted to the administrator.

(c) The investment adviser representative or the investment adviser for which the investment adviser representative is registered shall file with the administrator, as soon as practicable but in no event later than 30 days, notice of any civil, criminal, or administrative charges filed against the investment adviser representative which relate directly or indirectly to his activities in the securities or financial services business. This notice shall include notification of any investigation by any securities, commodities, or other financial services regulatory agency and any disciplinary, injunctive, restraining, or limiting action taken by such agencies, by any court of competent jurisdiction, or by any state administrator with respect to the investment adviser representative's activities in the securities or financial services business. Any amendment required by Section 78C-18(d) of the Act for an investment adviser representative shall be made on Form U-4 in the

manner prescribed by that form. Such amended Form U-4 shall be filed with the administrator not later than 30 days following the event necessitating such amendment.

(d) Registration becomes effective at noon of the 30th day after a completed application is filed or such earlier time upon approval of the application by the administrator, unless proceedings are instituted pursuant to G.S. 78C-19. The administrator may by order defer the effective date after the filing of any amendment but no later than noon of the 30th day after the filing of the amendment.

(e) The registration of any investment adviser representative shall expire on December 31 of each year unless renewed in a timely fashion. The application for renewal of registration should be filed at least 15 days before the expiration date. The application for renewal of registration of investment adviser representatives shall be submitted by the investment adviser, who shall file with the Securities Division a listing of all investment adviser representatives to be renewed along with their current addresses and social security numbers. The investment advisers renewal list shall be submitted in alphabetical order as follows: last name, first name, middle name or maiden name; current address; social security number. A fee of forty-five dollars (\$45.00) for each investment adviser representative made payable to the North Carolina Secretary of State shall be submitted along with the investment adviser representative renewal list.

*Statutory Authority G.S. 78C-16(b); 78C-17(a); 78C-17(b); 78C-18(d); 78C-19(a); 78C-30(a); 78C-30(b); 78C-46(b).*

**.1704 MINIMUM FINANCIAL REQUIREMENTS  
FOR INVESTMENT ADVISERS**

(a) Unless an investment adviser posts a bond pursuant to Rule .1705, an investment adviser registered or required to be registered under the Act who has custody of client funds or securities shall maintain at all times a minimum net worth of thirty-five thousand dollars (\$35,000.00), and every investment adviser registered or required to be registered under the Act who has discretionary authority over client funds or securities but does not have custody of client funds or securities shall maintain at all times a minimum net worth of ten thousand dollars (\$10,000.00).

(b) Unless otherwise exempted, as a condition of the right to continue to transact business in this state, every investment adviser registered or required to be registered under the Act shall by the close of business on the next business day notify the administrator if such investment ad-

viser's total net worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next business day a written report with the administrator of its financial condition, including the following:

- (1) A trial balance of all ledger accounts;
- (2) A statement of all client funds or securities which are not segregated;
- (3) A computation of the aggregate amount of client ledger debit balances; and
- (4) A statement as to the number of client accounts.

(c) For purposes of this Rule, the term "net worth" shall mean an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets: prepaid expenses (except as to items properly classified as current assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature; home, home furnishings, automobile(s), and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

(d) The administrator may require that a current appraisal be submitted in order to establish the worth of any asset.

*Statutory Authority G.S. 78C-17(d); 78C-18(c); 78C-18(d); 78C-30(a).*

#### **.1705 BONDING REQUIREMENTS FOR CERTAIN INVESTMENT ADVISERS**

(a) Every investment adviser having custody of or discretionary authority over client funds or securities shall be bonded in an amount of not less than thirty-five thousand dollars (\$35,000.00) by a bonding company qualified to do business in this state or in lieu thereof may provide evidence of a deposit of cash or securities in such amount. The requirements of this Rule shall not apply to those applicants or registrants who comply with the requirements of Rule .1704.

(b) Should an investment adviser's bond be terminated by the surety resulting in the investment adviser's failure to meet the requirements of Paragraph (a) of this Rule and the bond was not terminated due to fault of the investment adviser, then the investment adviser shall be provided a reasonable time period up to six months, without the necessity of ceasing to do business as an investment adviser, to obtain another bond in order to meet the requirements of

Paragraph (a) of this Rule provided that the investment adviser notifies the administrator in writing within two business days of the termination of the bond and files such further information as the administrator may require regarding the financial status of the investment adviser until evidence of compliance with Paragraph (a) of this Rule is provided.

(c) The surety bond shall be filed with the administrator on Form NCIAB (North Carolina Securities Division Investment Adviser's Bond) or on a form acceptable to the administrator. Evidence of a deposit of cash or securities shall be filed with the administrator on Form CDCS-IA (Certification of Deposit of Cash or Securities -- Investment Advisers) or on a form acceptable to the administrator.

*Statutory Authority G.S. 78C-17(d); 78C-18(b); 78C-18(c); 78C-30(a).*

#### **.1706 RECORD-KEEPING REQUIREMENTS FOR INVESTMENT ADVISERS**

(a) Every investment adviser registered or required to be registered under the Act shall make and keep true, accurate and current the following books, ledgers and records:

- (1) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger;
- (2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts;
- (3) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. Such memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed such order; and shall show the account for which entered, the date of entry, and the bank or dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated;
- (4) All check books, bank statements, cancelled checks and cash reconciliations of the investment adviser;

- (5) All bills or statements (or copies thereof), paid or unpaid, relating to the business of the investment adviser as such;
- (6) All trial balances, financial statements, and internal audit working papers relating to the business of such investment adviser;
- (7) Originals of all written communications received and copies of all written communications sent by such investment adviser relating to:
  - (A) Any recommendation made or proposed to be made and any advice given or proposed to be given,
  - (B) Any receipt, disbursement or delivery of funds or securities, or
  - (C) The placing or execution of any order to purchase or sell any security; provided, however,
    - (i) that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, and
    - (ii) that if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than ten persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if such notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of such notice, circular or advertisement a memorandum describing the list and the source thereof;
- (8) A list or other record of all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client;
- (9) All powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser, or copies thereof;
- (10) All written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser as such;
- (11) A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication recommending the purchase or sale of a specific security, which the investment adviser circulates or distributes, directly or indirectly, to ten or more persons (other than clients receiving investment supervisory services or persons connected with such investment adviser), and if such notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication does not state the reasons for such recommendation, a memorandum of the investment adviser indicating the reasons thereof;
- (12) The following records:
  - (A) A record of every transaction in a security in which the investment adviser or any advisory representative of such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except:
    - (i) Transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and
    - (ii) Transactions in securities which are direct obligations of the United States. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten days after the end of the calendar quarter in which the transaction was effected.
  - (B) For purposes of this Subparagraph (12), the term "advisory representative" shall mean any partner, officer or director of the investment adviser; any employee who makes any recommendation, who participates in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which recommendation shall be made; any employee who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of such recommendations or of the information concerning such rec-



ommendations; and any of the following persons who obtain information concerning securities recommendations being made by such investment adviser prior to the effective dissemination of such recommendations or of the information concerning such recommendations:

- (i) any person in a control relationship to the investment adviser,
- (ii) any affiliated person of such controlling person, and
- (iii) any affiliated person of such affiliated person.

"Control" shall have the same meaning as that set forth in Section 2(a)(9) of the Investment Company Act of 1940, as amended.

- (C) An investment adviser shall not be deemed to have violated the provisions of this Subparagraph (12) because of his failure to record securities transactions of any advisory representative if he establishes that he instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded;

- (13) Records required of investment advisers primarily engaged in other businesses:

- (A) Notwithstanding the provisions of Subparagraph (12) in this Rule, where the investment adviser is primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative of such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except:

- (i) Transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and
- (ii) Transactions in securities which are direct obligations of the United States. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an

admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten days after the end of the calendar quarter in which the transaction was effected.

- (B) An investment adviser is "primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients" when, for each of its three most recent fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived, on an unconsolidated basis, more than 50 percent of:
- (i) its total sales and revenues, and
  - (ii) its income (or loss) before income taxes and extraordinary items, from such other business or businesses.

- (C) For purposes of this Subparagraph (13), the term "advisory representative", when used in connection with a company primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients, shall mean any partner, officer, director or employee of the investment adviser who makes any recommendation, who participates in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which recommendation shall be made, or who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of such recommendations or of the information concerning such recommendations; and any of the following persons who obtain information concerning securities recommendations being made by such investment adviser prior to the effective dissemination of such recommendations or of the information concerning such recommendations:

- (i) any person in a control relationship to the investment adviser,
- (ii) any affiliated person of such controlling person, and
- (iii) any affiliated person of such affiliated person.

"Control" shall have the same meaning as that set forth in Section 2(a)(9) of the Investment Company Act of 1940, as amended.

- (D) An investment adviser shall not be deemed to have violated the provisions of

this Subparagraph (13) because of his failure to record securities transactions of any advisory representative if he establishes that he instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded; and

- (14) A copy of each written statement and each amendment or revision thereof, given or sent to any client or prospective client of such investment adviser in accordance with the provisions of Rule .1707, and a record of the dates that each written statement, and each amendment or revision thereof, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

(b) If an investment adviser subject to Paragraph (a) of this Rule has custody or possession of securities or funds of any client, the records required to be made and kept under Paragraph (a) of this Rule shall also include:

- (1) A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for such accounts and all other debits and credits to such accounts;
- (2) A separate ledger account for each such client showing all purchases, sales, receipts and deliveries of securities, the date and price of each such purchase and sale, and all debits and credits;
- (3) Copies of confirmations of all transactions effected by or for the account of any such client; and
- (4) A record for each security in which any such client has a position, which record shall show the name of each such client having any interest in each security, the amount or interest of each such client, and the locations of each such security.

(c) Every investment adviser subject to Paragraph (a) of this Rule who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:

- (1) Records showing separately for each such client the securities purchased and sold, and the date, amount and price of each such purchase and sale; and
- (2) For each security in which any such client has a current position, information from which the investment adviser can promptly furnish the name of each such

client, and the current amount or interest of such client.

(d) Any books or records required by this Rule may be maintained by the investment adviser in such manner that the identity of any client to whom such investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

(e) Duration requirement for maintenance of records:

- (1) All books and records required to be made under the provisions of Paragraphs (a) to (c)(1), inclusive, of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser.
- (2) Partnership articles and any amendments thereto, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.

(f) An investment adviser subject to Paragraph (a) of this Rule, before ceasing to conduct or discontinuing business as an investment adviser, shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this Rule for the remainder of the period specified in this Rule, and shall notify the administrator in writing of the exact address where such books and records will be maintained during such period.

(g) Preservation and maintenance of records:

- (1) The records required to be maintained and preserved pursuant to this Rule may be immediately produced or reproduced by photograph on film or, as provided in Subparagraph (g)(2) of this Rule, on magnetic disk, tape or other computer storage medium, and be maintained and preserved for the required time in that form. If records are produced or reproduced by photographic film or computer storage medium, the investment adviser shall:

- (A) arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record;
- (B) be ready at all times to provide, and promptly provide, any facsimile enlarge-

ment of film or computer printout or copy of the computer storage medium which the administrator by its examiners or other representatives may request;

(C) store separately from the original one other copy of the film or computer storage medium for the time required;

(D) with respect to records stored on a computer storage medium, maintain procedures for maintenance and preservations of, and access to, records from loss, alteration, or destruction; and

(E) with respect to records stored on photographic film, at all times have available for the administrator's examination of its records pursuant to Section 78C-18(e) of the Act, facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

(2) Pursuant to Subparagraph (g)(1) of this Rule an adviser may maintain and preserve on computer tape or disk or other computer storage medium records which, in the ordinary course of the adviser's business, are created by the adviser on electronic media or are received by the adviser solely on electronic media or by electronic data transmission.

(h) For purposes of this Rule, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client.

(i) Every registered investment adviser shall maintain within this state, in a readily accessible location, all records required by this Rule. A written request for the waiver of the provisions of this Section may be made to the administrator to permit any registered investment adviser to maintain any of the records required by this Rule in some place other than the State of North Carolina. In determining whether or not the provisions of this Rule should be waived, the administrator may consider, among other things, whether the main office of the investment adviser is in a place outside the State of North Carolina or whether the investment adviser uses all or some of the bookkeeping facilities of some other investment adviser whose main office is outside the State of North Carolina.

*Statutory Authority G.S. 78C-18(a); 78C-18(b); 78C-18(e); 78C-30(a).*

**.1707 INVESTMENT ADVISER BROCHURE RULE**

(a) Unless otherwise provided in this Rule, an investment adviser, registered or required to be

registered pursuant to Section 78C-16 of the Act, shall, in accordance with the provisions of this Rule, furnish each advisory client and prospective advisory client with a written disclosure statement which may be a copy of Part II of its Form ADV or written documents containing at least the information then so required by Part II of Form ADV, or such other information as the administrator may require.

(b) **Deadline for delivery of brochure:**

(1) An investment adviser, except as provided in Subparagraph (2), shall deliver the statement required by this Rule to an advisory client or prospective advisory client:

(A) not less than 48 hours prior to entering into any investment advisory contract with such client or prospective client, or

(B) at the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract.

(2) Delivery of the statement required by Subparagraph (1) need not be made in connection with entering into:

(A) an investment company contract, or

(B) a contract for impersonal advisory services.

(c) **Requirement of delivery or offer to deliver brochure:**

(1) An investment adviser, except as provided in Subparagraph (2), shall annually, without charge, deliver or offer in writing to deliver upon written request to each of its advisory clients the statement required by this Rule.

(2) The delivery or offer required by Subparagraph (1) need not be made to advisory clients receiving advisory services solely pursuant to:

(A) an investment company contract, or

(B) a contract for impersonal advisory services requiring a payment of less than two hundred dollars (\$200.00).

(3) With respect to an advisory client entering into a contract or receiving advisory services pursuant to a contract for impersonal advisory services which requires a payment of two hundred dollars (\$200.00) or more, an offer of the type specified in Subparagraph (1) shall also be made at the time of entering into an advisory contract.

(4) Any statement requested in writing by an advisory client pursuant to an offer required by this Paragraph must be mailed



or delivered within seven days of the receipt of the request.

(d) If an investment adviser renders substantially different types of investment advisory services to different advisory clients, any information required by Part II of Form ADV may be omitted from the statement furnished to an advisory client or prospective advisory client if such information is applicable only to a type of investment advisory service or fee which is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

(e) Nothing in this Rule shall relieve any investment adviser from any obligation pursuant to any provision of the Act or the rules and regulations thereunder or other federal or state law to disclose any information to its advisory clients not specifically required by this Rule.

(f) Definitions. For the purposes of this Rule:

- (1) "Contract for impersonal advisory services" means any contract relating solely to the provision of investment advisory services:
  - (A) by means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts;
  - (B) through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or
  - (C) by any combination of the foregoing services;
- (2) "Entering into," in reference to an investment advisory contract, does not include an extension or renewal without material change of any such contract which is in effect immediately prior to such extension or renewal; and
- (3) "Investment company contract" means a contract with an investment company registered under the Investment Company Act of 1940 which meets the requirements of Section 15(c) of that Act.

*Statutory Authority: G.S. 78C-18(b); 78C-30(a); 78C-30(b).*

#### **.1708 FINANCIAL REPORTING REQUIREMENTS FOR INVESTMENT ADVISERS**

(a) Every registered investment adviser who has custody of client funds or securities or who requires payment of advisory fees six months or more in advance and in excess of five hundred dollars (\$500.00) per client shall file with the administrator an audited balance sheet as of the end of the investment adviser's fiscal year.

(1) Each balance sheet filed pursuant to this Rule must be:

- (A) examined in accordance with generally accepted auditing standards and prepared in conformity with generally accepted accounting principles;
- (B) audited by an independent public accountant or an independent certified public accountant; and
- (C) accompanied by an opinion of the accountant as to the report of financial position, and by a note stating the principles used to prepare it, the basis of included securities, and any other explanations required for clarity.

(b) Every registered investment adviser who has discretionary authority over client funds or securities, but not custody, shall file with the administrator a balance sheet, which need not be audited, but which must be prepared in accordance with generally accepted accounting principles and represented by the investment adviser or the person who prepared the statement as true and accurate, as of the end of the investment adviser's fiscal year.

(c) The financial statements required by this Rule shall be filed with the administrator within 90 days following the end of the investment adviser's fiscal year.

*Statutory Authority: G.S. 78C-18(c); 78C-30(a); 78C-30(c).*

#### **.1709 EXAMINATION REQUIREMENTS FOR INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES**

(a) Unless otherwise waived by the administrator, an investment adviser shall take and pass the Uniform Investment Adviser State Law Examination with a score of 70 percent or better and shall take and pass the Investment Adviser Practice/Knowledge Examination with a score of 70 percent or better as a condition of registration as an investment adviser. If the investment adviser is not an individual, an officer (if the applicant is a corporation) or a general partner (if the applicant is a partnership) shall take and pass these examinations.

(b) Unless otherwise waived by the administrator, an investment adviser representative shall take and pass the Uniform Investment Adviser State Law Examination with a score of 70 percent or better and shall take and pass the Investment Adviser Representative Practice/Knowledge Examination with a score of 70 percent or better.

(c) Any person who was registered as an investment adviser or investment adviser representative in this state as of the effective date of these Rules shall not be required to take and pass the Uniform Investment Adviser State Law Examination, the Investment Adviser Practice/ Knowledge Examination, or the Investment Adviser Representative Practice/ Knowledge Examination.

(d) An applicant who has taken and passed the Uniform Investment Adviser State Law Examination with a score of 70 percent or better within two years prior to the date the application is filed with the administrator, or at any time if the applicant has not been inactive in the investment advisory business for more than two years when the application is filed, shall not be required to take and pass the Uniform Investment Adviser State Law Examination again.

(e) Persons deemed to be investment adviser representatives only because they solicit, offer or negotiate for the sale of or sell investment advisory services in this state shall not be required to take or pass a practice/knowledge examination.

*Statutory Authority G.S. 78C-19(b)(5); 78C-30(a); 78C-30(b).*

**.1710 TERMINATION OR WITHDRAWAL OF INVESTMENT ADVISER AND INVESTMENT ADVISER REPRESENTATIVE REGISTRATIONS**

(a) The application for withdrawal of registration as an investment adviser pursuant to Section 78C-19(e) of the Act shall be filed upon Form ADV-W (Notice of Withdrawal from Registration as Investment Adviser) (17 C.F.R. 279.2) with the administrator. Such filing shall be accompanied by any outstanding investment adviser's license. Withdrawal shall not be effective until receipt by the administrator of any investment adviser's license that may be outstanding. Investment advisers shall be held accountable for all acts until actual receipt of any outstanding license by the administrator. Withdrawing investment advisers shall comply with Paragraph (b) of this Rule with respect to each of their investment adviser representations.

(b) When an investment adviser representative withdraws, cancels, or otherwise terminates registration, the application for termination or withdrawal of registration as an investment adviser representative shall be filed upon Form U-5 (Uniform Termination Notice for Securities Industry Registration) with the administrator by the investment adviser as soon as practicable after termination, but in no event later than ten busi-

ness days after the investment adviser representative terminates.

*Statutory Authority G.S. 78C-16(b); 78C-19(e); 78C-30(a); 78C-30(b).*

**.1711 TRANSFER OF INVESTMENT ADVISER REPRESENTATIVE'S REGISTRATION**

(a) In order to effect a transfer of registration of an investment adviser representative from one registered investment adviser (the "previous investment adviser") to another registered investment adviser (the "new investment adviser"), the administrator shall be provided the following information:

- (1) Uniform Termination Notice for Securities Industry Registration (Form U-5) to be provided by the previous investment adviser pursuant to the requirements of Rule .1710 of this Section;
- (2) Uniform Application for Securities and Commodities Industry Representative (Form U-4) to be provided by the new investment adviser, accompanied by a fee of forty-five dollars (\$45.00) for issuance of the new registration, pursuant to the requirements of Rule .1703.

(b) Every registration of an investment adviser representative expires when the employment of the investment adviser representative terminates until that investment adviser representative's registration with a new investment adviser has been approved.

*Statutory Authority G.S. 78C-16(a); 78C-16(b); 78C-17(a); 78C-17(b); 78C-30(a); 78C-30(b).*

**.1712 CHANGE OF NAME OF INVESTMENT ADVISER**

Where only a change in the name of the investment adviser applicant or registrant occurs, an amended Form ADV or ADV-S shall be filed with the administrator together with any amendments to the organizational documents, or accompanying letters of explanation, within 30 days of the date of the change. The investment adviser shall return its license and a new license will be issued reflecting the name change. There will be no fee for reissuance of the license. Each investment adviser representative shall retain his investment adviser representative's license and this license shall suffice as evidence of licensing under the new investment adviser name until renewal.

*Statutory Authority G.S. 78C-17(c); 78C-18(d); 78C-30(a); 78C-30(b).*



**.1713 INVESTMENT ADVISER MERGER/  
CONSOLIDATION/ACQUISITION/  
SUCCESSION**

(a) When there is a merger, consolidation, acquisition, succession, or other fundamental change the surviving or new entity shall file with the administrator, prior to such fundamental change, an amended Form ADV or ADV-S or successor form, with the plan of fundamental change and a letter or any documents of explanation including the date of mass transfer of investment adviser representatives pursuant to Paragraph (c) of this Rule if contemplated. As soon as practicable, but not later than 30 days after the fundamental change, the surviving or new entity shall file with the administrator the current financial statements of the surviving or new entity; the amended or new charter and by-laws; and, if applicable, a copy of the certificate of merger, consolidation or other fundamental change.

(b) The registration of the surviving or new entity usually will be granted by the administrator on the same date that the fundamental change becomes effective. Where the fundamental change results in a change in the name of the surviving or new entity from the name listed on any outstanding investment adviser's license, the license shall be returned and a new license reflecting the new name will be issued. There will be no fee for reissuance of a license.

(c) Investment advisers shall effect mass transfers of investment adviser representatives by filing with the Securities Division a Form U-4 or successor form for each investment adviser representative to be transferred from the nonsurviving entity to the surviving or new entity and a Form U-5 or successor form for each investment adviser representative not to be transferred. Each transferred investment adviser representative shall retain his investment adviser representative's license which shall suffice as evidence of registration with the surviving or new entity until renewal. The transfer of the investment adviser representative is effective upon receipt of the Form U-4 or successor form by the Securities Division. All Form U-5's or successor forms shall be filed as soon as practicable but no later than ten business days after the fundamental change. There will be no fee for these transfers.

*Statutory Authority G.S. 78C-16(b); 78C-17(a); 78C-17(c); 78C-18(b); 78C-18(c); 78C-18(d); 78C-30(a); 78C-30(b).*

**.1714 REGISTRATION OF PARTNERS/  
EXECUTIVE OFFICERS/DIRECTORS**

(a) Any partner, executive officer, director, or a person occupying a similar status or performing similar functions who represents a registered investment adviser in transacting business in this state as an investment adviser shall be registered as an investment adviser representative pursuant to Paragraph (b) of this Rule.

(b) Automatic investment representative registration for partners, executive officers or directors of a registered investment adviser or a person occupying a similar status or performing similar functions shall be obtained by filing an original or amended Form ADV or ADV-S and any appropriate schedule thereto, providing the required disclosures regarding the registrant, and a written notice to the Securities Division identifying the registrant and that the registrant will engage in the activities as described in Paragraph (a) of this Rule; provided, however, if such information is currently on file with the administrator then the written notice only is required to be filed. Automatic registration shall lapse where a material change in the information reported on Form ADV or ADV-S or any schedule thereto regarding the registrant has occurred and has not been reported to the Securities Division by filing an original or amended Form ADV or ADV-S or the appropriate schedule therewith current information within ten business days of the material change. The investment adviser shall timely inform the Securities Division in writing when any registrant under this Paragraph ceases to engage in the activities described in Paragraph (a) of this Rule for the purposes of termination of the automatic investment adviser representative registration. Annual renewal is automatic upon renewal of the investment adviser registration.

(c) Failure to maintain a current automatic registration pursuant to Paragraph (b) of this Rule for those persons described in Paragraph (a) of this Rule may result in violation of G.S. 78C-16.

(d) Automatic registration may be denied, revoked, suspended, restricted or limited or the registrant censured as provided by G.S. 78C-19. Nothing in this Rule shall limit the administrator's authority to institute administrative proceedings against an investment adviser, or an applicant for investment adviser registration due to the qualifications of or disclosures regarding a person described in Paragraph (a) of this Rule.

(e) An investment adviser representative shall not be registered with more than one investment adviser regardless of whether registration is accomplished or contemplated under this Rule or Rule .1703 of this Section unless each of the investment advisers which employs or associates the investment adviser representative is under common ownership or control.



(f) For the purposes of this Rule, "Executive Officer" shall mean the chief executive officer, the president, the principal financial officer, each vice president with responsibility involving policy making functions for a significant aspect of the investment dealer's business, the secretary, the treasurer, or any other person performing similar functions with respect to any organization whether incorporated or unincorporated.

*Statutory Authority G.S. 78C-16(a); 78C-16(b); 78C-17(a); 78C-18(b); 78C-18(d); 78C-19(a); 78C-30(a); 78C-30(b).*

**SECTION .1800 - MISCELLANEOUS  
PROVISIONS – INVESTMENT ADVISERS**

**.1801 DISHONEST OR UNETHICAL  
PRACTICES**

(a) An investment adviser is a fiduciary and has a duty to act primarily for the benefit of its clients. While the extent and nature of his duty varies according to the nature of the relationship between an investment adviser and its clients and the circumstances of each case, an investment adviser shall not engage in unethical business practices, including the following:

- (1) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the investment adviser after reasonable examination of such of the client's financial records as may be provided to the investment adviser;
- (2) Placing an order to purchase or sell a security for the account of a client without authority to do so;
- (3) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client;
- (4) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten business days after the date of the first transaction placed pursuant to oral discretionary authority. Discretionary power does not include a power relating solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both;
- (5) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account;
- (6) Borrowing money or securities from a client unless the client is a dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of lending funds or securities;
- (7) Lending money to a client unless the investment adviser is a financial institution engaged in the business of lending funds or the client is an affiliate of the investment adviser;
- (8) Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading;
- (9) Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact. (This prohibition does not apply to a situation in which the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service.);
- (10) Charging a client an advisory fee that is unreasonable in the light of the type of services to be provided, the experience and expertise of the adviser, the sophistication and bargaining power of the client, and whether the adviser has disclosed that lower fees for comparable services may be available from other sources;
- (11) Failing to disclose to a client in writing before entering into or renewing an advisory agreement with that client any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:
  - (A) Compensation arrangements connected with advisory services to clients which are

in addition to compensation from such clients for such services; and

- (B) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees;
- (12) Guaranteeing a client that a specific result will be achieved (gain or no loss) as a result of the advice which will be rendered;
- (13) Publishing, circulating or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940;
- (14) Disclosing the identity, affairs or investments of any client to any third party unless required by law to do so, or unless consented to by the client;
- (15) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the safekeeping requirements of Rule 206(4)-2 under the Investment Advisers Act of 1940, unless the investment adviser is exempt from such requirements by virtue of Rule 206(4)-2(b);
- (16) Entering into, extending or renewing any investment advisory contract, other than a contract for impersonal advisory services, unless such contract is in writing and discloses, in substance: the services to be provided; the term of the contract; the advisory fee or the formula for computing the fee; the amount or the manner of calculation of the amount of the prepaid fee to be returned in the event of contract termination or non-performance; whether the contract grants discretionary power to the adviser; and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract; and
- (17) Failing to disclose to any client or prospective client all material facts with respect to:
  - (A) A financial condition of the adviser that is reasonably likely to impair the ability of the adviser to meet contractual commitments to clients, if the adviser has discretionary authority (express or implied) or custody over such client's funds or securities, or requires prepayment of advisory fees of more than five hundred

dollars (\$500.00) from such client, six months or more in advance; or

- (B) A legal or disciplinary event that is material to an evaluation of the adviser's integrity or ability to meet contractual commitments to clients.

The conduct set forth in Rule .1801(a) is not inclusive. It also includes employing any device, scheme, or artifice to defraud or engaging in any act, practice or course of business which operates or would operate as a fraud or deceit.

(b) There shall be a rebuttable presumption that the following legal or disciplinary events involving the adviser or a management person of the adviser (any of the foregoing being referred to hereafter as "person") that were not resolved in the person's favor or subsequently reversed, suspended, or vacated are material within the meaning of Subparagraph (a)(17)(B) of this Rule for a period of ten years from the time of the event:

- (1) A criminal or civil action in a court of competent jurisdiction in which the person:
  - (A) was convicted, pleaded guilty or nolo contendere ("no contest") to a felony or misdemeanor, or is the named subject of a pending criminal proceeding (any of the foregoing referred to hereafter as "action"), and such action involved: an investment-related business, fraud, false statements, or omissions; wrongful taking of property; or bribery, forgery, counterfeiting, or extortion;
  - (B) was found to have been involved in a violation of an investment-related statute or regulation; or
  - (C) was the subject of any order, judgment, or decree permanently or temporarily enjoining the person from, or otherwise limiting the person from, engaging in any investment-related activity;
- (2) Administrative proceedings before the Administrator, Securities and Exchange Commission, any other federal regulatory agency or any other state agency (any of the foregoing being referred to hereafter as "agency") in which the person:
  - (A) was found to have caused an investment-related business to lose its authorization to do business;
  - (B) was found to have been involved in a violation of an investment-related statute or regulation and was the subject of an order by the agency denying, suspending, or revoking the authorization of the person to act in, or barring or suspending the person's association with, an investment-

related business; or otherwise significantly limiting the person's investment-related activities; or

- (C) was found to have engaged in an act or a course of conduct which resulted in the issuance by the agency of an order to cease and desist the violation of the provisions of any investment-related statute or rule; or

- (3) Self-Regulatory Organization (SRO) proceedings in which the person:

- (A) was found to have caused an investment-related business to lose its authorization to do business; or

- (B) was found to have been involved in a violation of the SRO's rules and was the subject of an order by the SRO barring or suspending the person from membership or from association with other members, or expelling the person from membership; fining the person more than two thousand five hundred dollars (\$2,500.00); or otherwise significantly limiting the person's investment-related activities.

(c) The information required to be disclosed by Subparagraph (a)(17) shall be disclosed to clients promptly, and to prospective clients not less than 48 hours prior to entering into any written or oral investment advisory contract, or no later than the time of entering into such contract if the client has the right to terminate the contract without penalty within five business days after entering into the contract.

- (d) For purposes of this Rule:

- (1) "Management person" means a person with power to exercise, directly or indirectly, a controlling influence over the management or policies of an adviser which is a company or to determine the general investment advice given to clients;

- (2) "Found" means determined or ascertained by adjudication or consent in a final SRO proceeding, administrative proceeding, or court action;

- (3) "Investment-related" means pertaining to securities, commodities, banking, insurance, or real estate [including, but not limited to, acting as or being associated with a dealer, investment company, investment adviser, government securities broker or dealer, municipal securities dealer, bank, savings and loan association, entity or person required to be registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.), or fiduciary];

- (4) "Involved" means acting or aiding, abetting, causing, counseling, commanding,

inducing, conspiring with or failing reasonably to supervise another in doing an act; and

- (5) "Self-Regulatory Organization" or "SRO" means any national securities or commodities exchange, registered association, or registered clearing agency.

(e) For purposes of calculating the ten-year period during which events are presumed to be material under Paragraph (b), the date of a reportable event shall be the date on which the final order, judgment, or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees lapsed.

(f) Compliance with this Rule shall not relieve any investment adviser from the obligations of any other disclosure requirement under the Act, the rules and regulations thereunder, or under any other federal or state law.

*Statutory Authority G.S. 78C-18(b); 78C-30(a).*

#### **.1802 CUSTODY OF CLIENT FUNDS OR SECURITIES BY INVESTMENT ADVISERS**

(a) It shall be unlawful for any investment adviser to take or have custody of any securities or funds of any client unless:

- (1) the investment adviser notifies the administrator in writing that the investment adviser has or may have custody. Such notification may be given on Form ADV;
- (2) the securities of each client are segregated;
- (3) the following conditions are satisfied:

- (A) all client funds are deposited in one or more bank accounts containing only clients' funds,

- (B) such account or accounts are maintained in the name of the investment adviser as agent or trustee for such clients, and

- (C) the investment adviser maintains a separate record for each such account showing the name and address of the bank where the account is maintained, the dates and amounts of deposits in and withdrawals from the account, and the exact amount of each client's beneficial interest in the account;

- (4) immediately after accepting custody or possession of funds or securities from any client, the investment adviser notifies the client in writing of the place where and the manner in which the funds and securities will be maintained and subsequently, if and when there is a change in the place where or the manner in which the funds or securities are maintained, the invest-



ment adviser gives written notice thereof to the client;

- (5) at least once every three months, the investment adviser sends each such client an itemized statement showing the funds and securities in the investment adviser's custody at the end of such period and all debits, credits and transactions in the client's account during such period; and
- (6) at least once every calendar year, an independent certified public accountant verifies all client funds and securities by actual examination at a time chosen by the accountant without prior notice to the investment adviser. A report stating that such accountant has made an examination of such funds and securities, and describing the nature and extent of the examination, shall be filed with the administrator within 30 days after each such examination.

(b) This Rule shall not apply to an investment adviser also registered as a broker-dealer under Section 15 of the Securities Exchange Act of 1934 if the broker-dealer is:

- (1) Subject to and in compliance with SEC Rule 15c3-1 (Net Capital Requirements for Brokers or Dealers), 17 C.F.R. 240.15c3-1 under the Securities Exchange Act of 1934, or
- (2) A member of an exchange whose members are exempt from SEC Rule 15c3-1, 17 C.F.R. 240.15c3-1 under the provisions of Paragraph (b)(2) thereof, and the broker-dealer is in compliance with all rules and settled practices of the exchange imposing requirements with respect to financial responsibility and the segregation of funds or securities carried for the accounts of customers.

*Statutory Authority G.S. 78C-18(a); 78C-18(b); 78C-30(a).*

### 1803 AGENCY CROSS TRANSACTIONS

(a) For purposes of this Rule, "agency cross transaction for an advisory client" means a transaction in which a person acts as an investment adviser in relation to a transaction in which the investment adviser, or any person controlling, controlled by, or under common control with such investment adviser, including an investment adviser representative, acts as a dealer for both the advisory client and another person on the other side of the transaction. When acting in such capacity such person is required to be registered as a dealer in this state unless excluded

from the definition of "dealer" in N.C. Gen. Stat. Section 78A-2(2).

(b) An investment adviser effecting an agency cross transaction for an advisory client shall be in compliance with Section 78C-8(a)(3) of the Act if the following conditions are met:

- (1) The advisory client executes a written consent prospectively authorizing the investment adviser to effect agency cross transactions for such client;
- (2) Before obtaining such written consent from the client, the investment adviser makes full written disclosure to the client that, with respect to agency cross transactions, the investment adviser will act as dealer for, receive commissions from and have a potentially conflicting division of loyalties and responsibilities regarding both parties to the transactions;
- (3) At or before the completion of each agency cross transaction, the investment adviser or any other person relying on this Rule sends the client a written confirmation. The written confirmation shall include:
  - (A) a statement of the nature of the transaction,
  - (B) the date the transaction took place,
  - (C) an offer to furnish, upon request, the time when the transaction took place, and
  - (D) the source and amount of any other remuneration the investment adviser received or will receive in connection with the transaction.

In the case of a purchase, if the investment adviser was not participating in a distribution, or, in the case of a sale, if the investment adviser was not participating in a tender offer, the written confirmation may state whether the investment adviser has been receiving or will receive any other remuneration and that the investment adviser will furnish the source and amount of such remuneration to the client upon the client's written request;
- (4) At least annually, and with or as part of any written statement or summary of the account from the investment adviser, the investment adviser or any other person relying on this Rule sends the client a written disclosure statement identifying:
  - (A) the total number of agency cross transactions during the period for the client since the date of the last such statement or summary; and
  - (B) the total amount of all commissions or other remuneration the investment adviser received or will receive in connection with

agency cross transactions for the client during the period;

- (5) Each written disclosure and confirmation required by this Rule must include a conspicuous statement that the client may revoke the written consent required under Subparagraph (b)(1) of this Rule at any time by providing written notice to the investment adviser; and

- (6) No agency cross transaction may be effected in which the same investment adviser recommended the transaction to both any seller and any purchaser.

(c) Nothing in this Rule shall be construed to relieve an investment adviser or investment adviser representative from acting in the best interests of the client, including fulfilling his duty with respect to the best price and execution for the particular transaction for the client nor shall it relieve any investment adviser representative of any other disclosure obligations imposed by the Act.

*Statutory Authority G.S. 78C-8(a); 78C-8(f); 78C-18(b); 78C-30(a).*

**.1804 EXEMPTION FROM SECTION 78C-8(a)(3) FOR CERTAIN BROKER-DEALERS**

(a) For purposes of this Rule:

- (1) "Publicly distributed written materials" means written materials which are distributed to 35 or more persons who pay for those materials; and
- (2) "Publicly made oral statements" means oral statements made simultaneously to 35 or more persons who pay for access to those statements.

(b) An investment adviser registered as a broker-dealer pursuant to Section 15 of the Securities Exchange Act of 1934 shall be exempt from Section 78C-8(a)(3) of the Act in connection with any transaction in relation to which that broker-dealer acts as an investment adviser:

- (1) solely by means of publicly distributed written materials or publicly made oral statements;
  - (2) solely by means of written materials or oral statements not purporting to meet the objectives or needs of specific individuals or accounts;
  - (3) solely through the issuance of statistical information containing no expressions of opinion as to the investment merits of a particular security; or
  - (4) any combination of the foregoing services.
- This exemption shall apply only if the materials and oral statements disclose that, if the purchaser

of the advisory communication uses the investment adviser's services in connection with the sale or purchase of a security which is a subject of the communication, the investment adviser may act as principal for its own account or as agent for another person. Compliance by the investment adviser with the foregoing disclosure requirement shall not relieve it of any other disclosure obligations under the Act.

*Statutory Authority G.S. 78C-8(f); 78C-30(a).*

**.1805 PERFORMANCE-BASED COMPENSATION EXEMPTION**

(a) For purposes of this Rule:

- (1) "Affiliate" shall have the same definition as in Section 2(a)(3) of the federal Investment Company Act of 1940;
- (2) "Client's independent agent" means any person who agrees to act as an investment advisory client's agent in connection with the contract, but does not include:

(A) The investment adviser relying on this Rule;

(B) An affiliated person of the investment adviser or an affiliated person of an affiliated person of the investment adviser including an investment adviser representative;

(C) An interested person of the investment adviser;

(D) A person who receives, directly or indirectly, any compensation in connection with the contract from the investment adviser, an affiliated person of the investment adviser, an affiliated person of an affiliated person of the investment adviser or an interested person of the investment adviser; or

(E) A person with any material relationship between himself (or an affiliated person of that person) and the investment adviser (or an affiliated person of the investment adviser) that exists, or has existed at any time during the past two years;

- (3) "Company" means a corporation, partnership, association, joint stock company, trust, or any organized group of persons, whether incorporated or not; or any receiver, trustee in a case under Title 11 of the United States Code, or similar official or any liquidating agent for any of the foregoing, in his capacity as such. "Company" shall not include:

(A) A company required to be registered under the federal Investment Company Act of 1940 but which is not so registered;

- (B) A private investment company (for purposes of this Subparagraph (B)), a private investment company is a company which would be defined as an investment company under Section 3(a) of the federal Investment Company Act of 1940 but for the exception from that definition provided by Section 3(c)(1) of that act;
- (C) An investment company registered under the federal Investment Company Act of 1940; or
- (D) A business development company as defined in Section 202(a)(22) of the federal Investment Company Advisers Act of 1940, unless each of the equity owners of any such company, other than the investment adviser entering into the contract, is a natural person or company within the meaning of Subparagraph (a)(3) of this Rule; and
- (4) "Interested person" means:
- (A) Any member of the immediate family of any natural person who is an affiliated person of the investment adviser;
- (B) Any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued by the investment adviser or by a controlling person of the investment adviser if that beneficial or legal interest exceeds:
- (i) one tenth of one percent of any class of outstanding securities of the investment adviser or a controlling person of the investment adviser; or
- (ii) five percent of the total assets of the person seeking to act as the client's independent agent; or
- (C) Any person or partner or employee of any person who, at any time since the beginning of the last two years, has acted as legal counsel for the investment adviser.
- (b) Notwithstanding Section 78C-8(c)(1) of the Act, an investment adviser may enter into, extend or renew an investment advisory contract which provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds, or any portion of the funds, of the client if the conditions in Subparagraphs (c) through (h) of this Rule are met.
- (c) The client entering into the contract must be:
- (1) A natural person or a company who, immediately after entering into the contract has at least five hundred thousand dollars (\$500,000.00) under the management of the investment adviser; or
- (2) A person who the investment adviser and its investment adviser representatives reasonably believe, immediately before entering into the contract, is a natural person or a company whose net worth, at the time the contract is entered into, exceeds one million dollars (\$1,000,000.00).
- For purposes of this Rule, the term "net worth" shall have the same meaning as that provided by Rule .1704(c). The net worth of a natural person may include assets held jointly with that person's spouse.
- (d) The compensation paid to the investment adviser with respect to the performance of any securities over a given period must be based on a formula with the following characteristics:
- (1) In the case of securities for which market quotations are readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940, (Definition of "Current Net Asset Value" for Use in Computing Periodically the Current Price of Redeemable Security), 17 C.F.R. 270.2a-4(a)(1), the formula must include the realized capital losses and unrealized capital depreciation of the securities over the period;
- (2) In the case of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940, 17 C.F.R. 270.2a-4(a)(1), the formula must include:
- (A) the realized capital losses of securities over the period; and
- (B) if the unrealized capital appreciation of the securities over the period is included, the unrealized capital depreciation of the securities over the period; and
- (3) The formula must provide that any compensation paid to the investment adviser under this Rule is based on the gains less the losses (computed in accordance with Subparagraphs (1) and (2) of this Paragraph) in the client's account for a period of not less than one year.
- (e) Before entering into the advisory contract and in addition to the requirements of Form ADV, the investment adviser must disclose in writing to the client or the client's independent agent all material information concerning the proposed advisory arrangement, including the following:
- (1) That the fee arrangement may create an incentive for the investment adviser to make investments that are riskier or more



speculative than would be the case in the absence of a performance fee;

- (2) Where relevant, that the investment adviser may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's account;
- (3) The periods which will be used to measure investment performance throughout the contract and their significance in the computation of the fee;
- (4) The nature of any index which will be used as a comparative measure of investment performance, the significance of the index, and the reason the investment adviser believes that the index is appropriate; and
- (5) Where the investment adviser's compensation is based in part on the unrealized appreciation of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940, 17 C.F.R. 270.2a-4(a)(1), how the securities will be valued and the extent to which the valuation will be independently determined.

(f) The investment adviser (and any investment adviser representative) who enters into the contract must reasonably believe, immediately before entering into the contract, that the contract represents an arm's length arrangement between the parties and that the client (or in the case of a client which is a company as defined in Subparagraph (a)(3) of this Rule, the person representing the company), alone or together with the client's independent agent, understands the proposed method of compensation and its risks. The representative of a company may be a partner, director, officer or an employee of the company or the trustee, where the company is a trust, or any other person designated by the company or trustee, but must satisfy the definition of client's independent agent set forth in Subparagraph (a)(2) of this Rule.

(g) Any person entering into or performing an investment advisory contract under this Rule is not relieved of any obligations under Section 78C-8(a) or any other applicable provision of the Act or any rule or order thereunder.

(h) Nothing in this Rule shall relieve a client's independent agent from any obligation to the client under applicable law.

*Statutory Authority G.S. 78C-8(b); 78C-8(c)(i); 78C-8(f); 78C-30(a).*

**.1806 TRANSACTIONS DEEMED NOT TO BE ASSIGNMENTS**

For purposes of Section 78C-8(c)(2) of the Act, a transaction which does not result in a change of actual control or management of an investment adviser is not an assignment.

*Statutory Authority G.S. 78C-8(c)(2); 78C-8(f); 78C-30(a).*

**.1807 REQUEST FOR INTERPRETATIVE OPINIONS**

(a) Requests for interpretative opinions shall be directed to the administrator and shall contain the following:

- (1) Specific facts surrounding the proposed transaction in letter form with the identity of the persons involved;
- (2) The statutory and/or rule citation upon which the request is based;
- (3) Statement of the applicant's requested interpretation supported by appropriate reasoning or justification and applicable case law or administrative opinions or decisions;
- (4) Any other relevant information or exhibits that the applicant desires the administrator to consider; and
- (5) A fee in the amount of one hundred fifty dollars (\$150.00).

(b) An interpretative opinion shall not be considered an absolute exemption or exception from a definition. The burden of proving an exemption or exception from a definition shall remain upon the person claiming it should the necessity of proof arise.

(c) The administrator may, in his discretion, honor or deny requests for interpretative opinions.

*Statutory Authority G.S. 78C-30(a); 78C-31(e).*

**.1808 SUPERVISION OF INVESTMENT ADVISER REPRESENTATIVES**

(a) An investment adviser shall be responsible for the acts, practices, and conduct of its investment adviser representatives in connection with advisory services until such time as the investment adviser representatives have been properly terminated as provided by Rule .1710.

(b) Every investment adviser shall exercise diligent supervision over the advisory activities of all of its investment adviser representatives.

(c) Every investment adviser representative employed by an investment adviser shall be subject to the supervision of a supervisor designated by such investment adviser. The supervisor may be the investment adviser in the case of a sole proprietor, or a partner, officer, office manager or any qualified investment adviser representative

in the case of entities other than sole proprietorships.

(d) As part of its responsibility under this Rule, every investment adviser shall establish, maintain and enforce written procedures, a copy of which shall be kept in each business office, which shall set forth the procedures adopted by the investment adviser, which shall include but not be limited to the following duties imposed by this Rule:

- (1) The review and written approval by the designated supervisor of the opening of each new client account;
  - (2) The frequent examination of all client accounts to detect and prevent irregularities or abuses;
  - (3) The prompt review and written approval by a designated supervisor of all advisory transactions by investment adviser representatives of all correspondence pertaining to the solicitation or execution of all advisory transactions by investment adviser representatives;
  - (4) The prompt review and written approval of the handling of all client complaints.
- (e) Every investment adviser who has designated more than one supervisor pursuant to Paragraph (c) of this Rule shall designate from among its partners, officers, or other qualified investment adviser representatives, a person or group of persons who shall:

- (1) Supervise and periodically review the activities of the supervisors designated pursuant to Paragraph (c) of this Rule; and
  - (2) Periodically inspect each business office under his/her supervision to insure that the written procedures are being enforced.
- (f) The provisions of Paragraph (a) of this Rule shall be applicable to an investment adviser who is also a dealer within the meaning of N.C. Gen. Stat. §78A-2(2) with respect to the acts, practices, and conduct of its salesmen [as that term is defined by N.C. Gen. Stat. Section 78A-2(9)] until such time as such salesmen are terminated pursuant to the provisions of N.C. Gen. Stat. §78A-36(b) and 18 NCAC 6 .1408. Every such investment adviser shall exercise diligent supervision over the activities of its salesmen within the scope of their employment.

*Statutory Authority G.S. 78C-19(a)(j); 78C-30(a).*

#### **.1809 PUBLIC INFORMATION**

Investment adviser records shall be classified as public information except where:

- (1) The administrator has determined that a claim or judicial action is in progress or a claim against or by the administrator may result in any judicial action or administrative proceeding;
- (2) The administrator is conducting or has conducted a private investigation pursuant to G.S. 78C-27;
- (3) The administrator has determined to conduct an administrative hearing privately pursuant to G.S. 78C-30(g); or
- (4) A statute, rule or order otherwise provides.

*Statutory Authority G.S. 78C-27(a); 78C-30(a); 78C-30(g); 78C-31(c); 132-1; 132-1.1.*

#### **.1810 FORM OF CONSENT TO SERVICE OF PROCESS**

If the filing of a consent to service of process is required by statute or rule, the consent shall name the Secretary of State as service agent and shall be filed using the Uniform Consent to Service of Process (Form U-2) and if applicable, the Uniform Form of Corporate Resolution (Form U-2A). Both Form U-2 and Form U-2A shall be properly signed and acknowledged before a notary.

*Statutory Authority G.S. 78C-30(a); 78C-30(b); 78C-46(b).*

#### **.1811 FORMS**

For use in compliance with the requirements of the provisions of Chapter 78C of the North Carolina General Statutes and the rules promulgated thereunder, the following forms are available upon request from the Securities Division:

- (1) Uniform Application for Investment Adviser Registration (Form ADV);
- (2) Annual Report for Investment Advisers Registered Under the Investment Advisers Act of 1940 (Form ADV-S);
- (3) Uniform Consent to Service of Process (Form U-2);
- (4) Uniform Form of Corporate Resolution (Form U-2A);
- (5) Uniform Application for Securities Industry Registration or Transfer (Form U-4);
- (6) Uniform Termination Notice for Securities Industry Registration (Form U-5);
- (7) North Carolina Securities Division Investment Adviser's Bond (Form NCLAB); and
- (8) Certification of Deposit of Cash or Securities -- Investment Advisers (Form CDCS-IA).

*Statutory Authority G.S. 78C-30(a); 78C-30(b).*

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**LIST OF RULES AFFECTED**

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**NORTH CAROLINA ADMINISTRATIVE CODE****EFFECTIVE: October 1, 1988**

AGENCY			ACTION TAKEN
<b><u>DEPARTMENT OF ADMINISTRATION</u></b>			
1	NCAC 19B	.0101 - .0103	Adopted
		.0201	Adopted
		.0301 - .0303	Adopted
	30E	.0101 - .0103	Adopted
		.0201 - .0202	Adopted
		.0301 - .0306	Adopted
		.0401 - .0402	Adopted
<b><u>DEPARTMENT OF AGRICULTURE</u></b>			
2	NCAC 9L	.1006	Amended
	22B	.0002	Amended
<b><u>DEPARTMENT OF COMMERCE</u></b>			
4	NCAC 1E	.0303	Temp. Amended Expires 03-14-89
<b><u>BOARD OF ELECTIONS</u></b>			
8	NCAC 8	.0004	Adopted
	9	.0001 - .0005	Adopted
<b><u>GOVERNOR'S OFFICE</u></b>			
9	NCAC 2	Executive Order Number 76 Eff. September 14, 1988 Executive Order Number 77 Eff. September 14, 1988	
<b><u>DEPARTMENT OF HUMAN RESOURCES</u></b>			
10	NCAC 8C	.0901	Amended
		.1106	Amended
		.1204	Amended
	14K	.0101 - .0103	Adopted
		.0201 - .0218	Adopted
		.0301 - .0302	Adopted
		.0304 - .0364	Adopted
		.0401 - .0408	Adopted
	14L	.0101 - .0106	Adopted
		.0201 - .0203	Adopted
		.0301 - .0310	Adopted
		.0401 - .0407	Adopted
		.0501 - .0508	Adopted
		.0601 - .0613	Adopted
		.0701 - .0712	Adopted
	14M	.0101 - .0113	Adopted
		.0201 - .0210	Adopted
		.0301 - .0304	Adopted
		.0401 - .0410	Adopted



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*LIST OF RULES AFFECTED*

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	.0501 - .0511	Adopted
	.0601 - .0616	Adopted
	.0701 - .0716	Adopted
14N	.0101 - .0107	Adopted
	.0201 - .0207	Adopted
	.0301 - .0307	Adopted
	.0401 - .0406	Adopted
	.0501 - .0507	Adopted
	.0601 - .0607	Adopted
	.0701 - .0705	Adopted
	.0801 - .0811	Adopted
14O	.0101 - .0109	Adopted
	.0201 - .0212	Adopted
	.0301 - .0314	Adopted
	.0401 - .0416	Adopted
	.0501 - .0505	Adopted
	.0601 - .0619	Adopted
18I	.0120	Amended
18J	.0408 - .0409	Repealed
	.0602	Amended
	.0709	Amended
	.0712	Amended
18L	.0333 - .0334	Amended
	.0337	Repealed
	.0338	Amended
	.0429	Amended
	.0432	Amended
	.0604	Amended
	.0702 - .0703	Amended
	.0705 - .0707	Amended
	.0804 - .0809	Amended
	.0903 - .0904	Amended
	.1002	Amended
	.1004 - .1006	Amended
	.1102 - .1107	Amended
	.1202	Repealed
	.1203 - .1206	Amended
	.1302 - .1305	Amended
	.1402 - .1403	Amended
18M	.0506	Amended
	.0607 - .0608	Amended
	.0701	Amended
	.0702	Repealed
	.0704	Amended
	.0801 - .0803	Amended
	.0804 - .0816	Repealed
	.0819 - .0821	Repealed
	.1201 - .1202	Repealed
18O	.0104 - .0123	Repealed
	.0218 - .0227	Repealed
	.0311 - .0321	Repealed
	.0405 - .0415	Repealed
	.0638 - .0651	Repealed
18P	.0131 - .0143	Repealed
	.0227 - .0244	Repealed
	.0301 - .0313	Repealed
	.0401 - .0407	Repealed
	.0501 - .0508	Repealed
	.0601 - .0603	Repealed

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*LIST OF RULES AFFECTED*

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		.0701 - .0707	Repealed
		.0801 - .0807	Repealed
		.0904	Repealed
18Q		.0123	Amended
		.0124	Repealed
		.0126	Amended
		.0284	Amended
		.0285	Repealed
		.0286 - .0287	Amended
		.0320 - .0334	Repealed
		.0421 - .0433	Repealed
		.0520 - .0521	Amended
		.0522 - .0537	Repealed
		.0538 - .0541	Amended
		.0601 - .0611	Repealed
		.0701 - .0708	Repealed
		.0802 - .0804	Amended
		.0806	Repealed
		.0808	Amended
		.0810	Amended
		.0812	Amended
18R		.0101 - .0109	Repealed
		.0201 - .0204	Repealed
		.0206 - .0214	Repealed
		.0301 - .0306	Repealed
		.0401 - .0405	Repealed
		.0501 - .0504	Repealed
		.0601 - .0605	Repealed
		.0701 - .0702	Repealed
		.0801 - .0803	Repealed
		.0901 - .0902	Repealed
		.1001 - .1004	Repealed
		.1101 - .1106	Repealed
		.1201 - .1209	Repealed
		.1301 - .1302	Repealed
		.1401 - .1402	Repealed
22F		.0101	Amended
		.0301	Amended
22G		.0209	Repealed
		.0307	Repealed
		.0315 - .0316	Adopted
22I		.0101 - .0122	Adopted
		.0201	Adopted
45H		.0119 - .0133	Repealed

DEPARTMENT OF INSURANCE

11	NCAC	1	.0403	Amended
		5	.0105	Amended
			.0403 - .0404	Adopted
		7	.0101	Amended
			.0105	Amended
			.0201	Amended
			.0202 - .0203	Repealed
			.0301 - .0302	Repealed
			.0303 - .0306	Amended

DEPARTMENT OF JUSTICE

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**LIST OF RULES AFFECTED**

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12	NCAC 10	.0103	Amended
		.0302	Amended
		.1101	Amended
		.1201	Amended

**DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT**

15	NCAC 11	.0001 - .0003	Adopted
	2A	.0007	Amended
	2B	.0309	Amended
		.0315	Amended
	2H	.1101 - .1111	Adopted
	2J	.0002	Temp. Adopted Expires 03-08-89
	4C	.0008	Amended
	7H	.0206	Amended
		.0208	Amended
		.0506	Amended
		.0509	Amended
	7I	.0302	Amended
		.0510	Amended
	7J	.0206 - .0207	Amended
		.0209	Amended
		.0301 - .0302	Amended
		.0305 - .0306	Amended
		.0312	Amended
		.0401	Amended
		.0601 - .0603	Amended
		.0702	Amended
	7M	.0402	Amended
		.0802	Amended
	12C	.0315	Amended
	13P	.0101 - .0104	Adopted
		.0201 - .0202	Adopted
		.0301 - .0303	Adopted
		.0401 - .0403	Adopted
		.0501 - .0505	Adopted
		.0601 - .0604	Adopted
	16C	.0113	Temp. Adopted Expires 03-13-89
	16D	.0201	Temp. Amended Expires 03-13-89

**DEPARTMENT OF REVENUE**

17	NCAC 7B	.0803	Amended
		.1122	Amended
		.3502	Amended
		.3505	Amended

**SECRETARY OF STATE**

18	NCAC 6	.1101	Amended
		.1104	Amended
		.1202 - .1203	Amended
		.1205 - .1206	Amended
		.1208 - .1209	Amended
		.1301	Amended
		.1303 - .1305	Amended



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**LIST OF RULES AFFECTED**

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.1307 - .1308	Amended
.1310	Amended
.1312	Repealed
.1313	Amended
.1316	Amended
.1317 - .1318	Adopted
.1401 - .1402	Amended
.1406 - .1407	Amended
.1409 - .1410	Amended
.1414	Amended
.1504	Amended
.1509	Amended

**BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS**

21	NCAC 8G	.0305 - .0306	Amended
		.0406	Amended

**BOARD FOR CONTRACTORS**

21	NCAC 12	.0820	Adopted
		.0822 - .0823	Adopted
		.0825	Adopted
		.0827	Adopted

**BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS**

21	NCAC 18A	.1601 - .1607	Repealed
		.1701 - .1703	Repealed
		.1801 - .1812	Repealed
		.1901 - .1910	Repealed
		.2001 - .2004	Repealed
		.2101 - .2103	Repealed
		.2201 - .2211	Repealed
		.2301 - .2308	Repealed
		.2401 - .2403	Repealed
		.2501 - .2502	Repealed
		.2601 - .2613	Repealed
		.2701 - .2704	Repealed
	18B	.0101 - .0109	Adopted
		.0201 - .0211	Adopted
		.0301 - .0307	Adopted
		.0401 - .0407	Adopted
		.0501 - .0505	Adopted
		.0601 - .0602	Adopted
		.0701 - .0705	Adopted
		.0801 - .0810	Adopted
		.0901 - .0906	Adopted
		.1001 - .1004	Adopted

**BOARD OF LANDSCAPE ARCHITECTS**

21	NCAC 26	.0203	Amended
		.0302	Amended

**MIDWIFERY JOINT COMMITTEE**

21	NCAC 33	.0001	Amended
		.0004 - .0005	Amended

OFFICE OF STATE PERSONNEL

25 NCAC 1D .1401

Temp. Amended  
Expires 03-20-89

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1	Administration, Department of
2	Agriculture, Department of
3	Auditor, Department of State
4	Commerce, Department of
5	Corrections, Department of
6	Council of State
7	Cultural Resources, Department of
8	Elections, State Board of
9	Governor, Office of the
10	Human Resources, Department of
11	Insurance, Department of
12	Justice, Department of
13	Labor, Department of
14A	Crime Control and Public Safety, Department of
15	Natural Resources and Community Development, Department of
16	Education, Department of
17	Revenue, Department of
18	Secretary of State, Department of
19A	Transportation, Department of
20	Treasurer, Department of State
*21	Occupational Licensing Boards
22	Administrative Procedures
23	Community Colleges, Department of
24	Housing Finance Agency
25	State Personnel, Office of
26	Administrative Hearings, Office of

NOTE: Title 21 contains the chapters of the various occupational licensing boards.

<b>CHAPTER</b>	<b>LICENSING BOARDS</b>
2	Architecture, Board of
4	Auctioneers, Commission for
6	Barber Examiners, Board of
8	Certified Public Accountant Examiners, Board of
10	Chiropractic Examiners, Board of
12	Contractors, Licensing Board for
14	Cosmetic Art Examiners, Board of
16	Dental Examiners, Board of
18	Electrical Contractors, Board of Examiners of
20	Foresters, Board of Registration for
21	Geologists, Board of
22	Hearing Aid Dealers and Fitters Board
26	Landscape Architects, Licensing Board of
28	Landscape Contractors, Registration Board of
31	Marital & Family Therapy Certification Board
32	Medical Examiners, Board of
33	Midwifery Joint Committee
34	Mortuary Science, Board of
36	Nursing, Board of
37	Nursing Home Administrators, Board of
38	Occupational Therapists, Board of
40	Opticians, Board of
42	Optometry, Board of Examiners in



44	Osteopathic Examination and Registration, Board of
46	Pharmacy, Board of
48	Physical Therapy, Examining Committee of
50	Plumbing and Heating Contractors, Board of
52	Podiatry Examiners, Board of
53	Practicing Counselors, Board of
54	Practicing Psychologists, Board of
56	Professional Engineers and Land Surveyors, Board of
58	Real Estate Commission
60	Refrigeration Examiners, Board of
62	Sanitarian Examiners, Board of
63	Social Work, Certification Board for
64	Speech and Language Pathologists and Audiologists, Board of Examiners of
66	Veterinary Medical Board

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AG - Attorney General's Opinions  
C - Correction  
E - Errata  
EO - Executive Order  
FDL - Final Decision Letters  
FR - Final Rule  
GS - General Statute  
JO - Judicial Orders or Decision  
LRA - List of Rules Affected  
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