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The **NORTH CAROLINA REGISTER**

IN THIS ISSUE

EXECUTIVE ORDERS

PROPOSED RULES

Human Resources

Labor

Landscape Architects

NRCD

Plumbing and Heating Contractors

FINAL RULES

Correction

Transportation

ISSUE DATE: MARCH 1, 1989

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INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

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

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

Requests for subscriptions to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 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.

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NORTH CAROLINA REGISTER



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ISSUE CONTENTS

I. EXECUTIVE ORDERS

Executive Orders 82-84.....1026

II. PROPOSED RULES

Human Resources

Facility Services1027

Labor

OSHA1028

Licensing Boards

Landscape Architects.....1036

Plumbing and Heating

Contractors1037

NRCD

Coastal Management.....1030

Environmental Management....1029

III. FINAL RULES

Correction

Division of Prisons.....1046

Transportation

Division of Highways.....1046

Division of Motor Vehicles.....1046

IV. CUMULATIVE INDEX.....1050

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

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing & Adoption by Agency	* Earliest Effective Date
*****	*****	*****	*****	*****
01/02/89	12/08/88	12/15/88	02/01/89	05/01/89
01/16/89	12/27/88	01/03/89	02/15/89	05/01/89
02/01/89	01/10/89	01/17/89	03/03/89	06/01/89
02/15/89	01/26/89	02/02/89	03/17/89	06/01/89
03/01/89	02/08/89	02/15/89	03/31/89	07/01/89
03/15/89	02/21/89	03/02/89	04/14/89	07/01/89
04/03/89	03/10/89	03/17/89	05/03/89	08/01/89
04/14/89	03/23/89	03/31/89	05/14/89	08/01/89
05/01/89	04/10/89	04/17/89	05/31/89	09/01/89
05/15/89	04/24/89	05/01/89	06/14/89	09/01/89
06/01/89	05/10/89	05/17/89	07/01/89	10/01/89
06/15/89	05/24/89	06/01/89	07/15/89	10/01/89
07/03/89	06/12/89	06/19/89	08/01/89	11/01/89
07/14/89	06/22/89	06/29/89	08/13/89	11/01/89
08/01/89	07/11/89	07/18/89	08/31/89	12/01/89
08/15/89	07/25/89	08/01/89	09/14/89	12/01/89
09/01/89	08/11/89	08/18/89	10/01/89	01/01/90
09/15/89	08/24/89	08/31/89	10/15/89	01/01/90
10/02/89	09/11/89	09/18/89	11/01/89	02/01/90
10/16/89	09/25/89	10/02/89	11/15/89	02/01/90
11/01/89	10/11/89	10/18/89	12/01/89	03/01/90
11/15/89	10/24/89	10/31/89	12/15/89	03/01/90
12/01/89	11/07/89	11/15/89	12/31/89	04/01/90
12/15/89	11/22/89	12/01/89	01/14/90	04/01/90
01/02/90	12/07/89	12/14/89	02/01/90	05/01/90
01/16/90	12/20/89	12/29/89	02/15/90	05/01/90
02/01/90	01/10/90	01/18/90	03/03/90	06/01/90
02/15/90	01/25/90	02/01/90	03/17/90	06/01/90
03/01/90	02/08/90	02/15/90	03/31/90	07/01/90
03/15/90	02/22/90	03/01/90	04/14/90	07/01/90
04/02/90	03/12/90	03/19/90	05/02/90	08/01/90
04/16/90	03/23/90	03/30/90	05/16/90	08/01/90
05/01/90	04/09/90	04/17/90	05/31/90	09/01/90
05/15/90	04/24/90	05/01/90	06/14/90	09/01/90

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

EXECUTIVE ORDER NUMBER 82**EXTENDING EXPIRATION DATE OF
EXECUTIVE ORDER NUMBER 1
TO JANUARY 31, 1991**

Executive Order Number 1 issued January 31, 1985, as amended by Executive Order Number 30 and extended by Executive Order Number 33, expires on January 29, 1989. This executive order should continue in effect.

NOW, THEREFORE, IT IS ORDERED, that Executive Order Number 1 dated January 31, 1985, be extended up to and through January 31, 1991.

This action is effective on the 29th day of January, 1989.

EXECUTIVE ORDER NUMBER 83**OFFICE OF STATE PRINTING**

It is my policy that the departments and agencies of the State shall perform their responsibilities in the most cost efficient manner commensurate with the effective performance of their responsibilities.

Therefore, pursuant to the authority vested in me as Governor by the Constitution and laws of North Carolina and to the end that said policy may be fulfilled, it is ORDERED:

1. There is created within the Department of Administration an Office of State Printing.
2. The function of the Office of State Printing shall be to coordinate all printing done for the following departments and agencies of the State that heretofore has been coordinated by the Department of Administration, Division of Purchase and Contract:
 - Department of Administration
 - Department of Commerce
 - Department of Correction
 - Department of Crime Control and Public Safety
 - Department of Cultural Resources
 - Department of Human Resources
 - Department of Natural Resources and Community Development
 - Department of Revenue
 - Department of Transportation
 - Office of State Personnel
 - Office of the Governor
 - Office of State Budget
3. In coordinating the printing for said departments and agencies the Office of State Printing shall:

- (a) Maximize the usage of the printing equipment and facilities owned by the State.
 - (b) Enhance the efficiency of the printing equipment and facilities owned by the State by directing printing to the equipment and facilities most appropriate for the printing to be done.
 - (c) In those instances in which printing cannot be done best by printing equipment and facilities owned by the State, coordinate with the Division of Purchase and Contract in awarding printing contracts to private vendors.
4. To enable it to carry out its responsibilities under this Executive Order the Office of State Printing shall:
- (a) Adopt and implement appropriate policies and guidelines; and
 - (b) Continuously evaluate the State's printing needs and the most cost efficient ways of meeting them and make recommendations concerning the same.
- Done in Raleigh, North Carolina, this 8th day of February, 1989.

EXECUTIVE ORDER NUMBER 84**AMENDMENT TO EXECUTIVE ORDER
NUMBER 79
NORTH CAROLINA SMALL BUSINESS
COUNCIL**

The first full paragraph of Executive Order Number 79 dated January 5, 1989, is amended to read as follows:

There is hereby established a North Carolina Small Business Council. The Council shall be composed of at least 20 members with at least one member residing in each congressional district. All members shall be appointed by the Governor and serve at the pleasure of the Governor. The Governor shall designate one of the members as chairman and one as vice-chairman. In addition to the minimum number of 20, the members shall include representatives to the National Federation of Independent Businesses, the North Carolina Retail Merchants' Association, the United States Small Business Administration, North Carolina Citizens for Business and Industry and the North Carolina Food Dealers Association.

All other provisions of Executive Order Number 79 shall remain in effect.

Done in the capital city of Raleigh, North Carolina this 10th day of February, 1989.

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 amend rules cited as 10 NCAC 3G .3201, .3202, .3205.

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

The public hearing will be conducted at 4:00 p.m. on April 14, 1989 at Department of Human Resources, Division of Facility Services, Hearing Room 201, 701 Barbour Drive, Raleigh, North Carolina 27603.

Comment Procedures: Address comments to Lynda McDaniel, Division of Facility Services, 701 Barbour Drive, Raleigh, North Carolina 27603 by April 14, 1989. Comments will also be received orally at the hearing.

CHAPTER 3 - FACILITY SERVICES

SUBCHAPTER 3G - RADIATION PROTECTION

SECTION .3200 - FEES

.3201 PURPOSE AND SCOPE

(a) This Section establishes annual fees to cover the anticipated costs of inspection, educational and training activities of the agency.

(b) The fees are imposed on persons registered pursuant to provisions of Section .2300 of this Subchapter, ~~and~~ on persons licensed pursuant to provisions of Sections .2400 and .3000 of this Subchapter, and on persons applying for out-of-state reciprocal recognition.

(c) Notwithstanding Paragraph (b) of this Rule, no fee shall be imposed on any person in conjunction with the person's possession and use of any luminous safety device or luminous gunsight pursuant to the general licenses in Rules .2409 and .2411 of this Subchapter. For purposes of this Section, "luminous safety device" means an exit marker, hazard warning sign, safety related marker, or other safety equipment containing one or more radioactive material powered light sources for the purpose of improving legibility or visibility.

Statutory Authority G.S. 104E-9(8); 104E-19(a).

.3202 PAYMENT DUE

(a) All fees established in this Section shall be due on the effective date of this Rule and on the first day of July of each subsequent year.

(b) Notwithstanding (a) of this Rule, when a new license or registration is issued by the agency after the first day of July of any year, the initial fee shall be due on the date of issuance of the license or registration.

(c) The initial fee in (b) of this Rule shall be computed as follows:

- (1) When any new license or registration is issued before the first day of January of any year, the initial fee shall be the full amount specified in Rule .3205 of this Section; and
- (2) When any new license or registration is issued on or after the first day of January of any year, the initial fee shall be one-half of the amount specified in Rule .3205 of this Section.

(d) All fees received by the agency pursuant to provisions of this Section shall be nonrefundable.

(e) Each licensee or registrant shall pay all fees by check or money order made payable to "Division of Facility Services - Radiation" and mail or deliver such payment to: Radiation Protection Section, Division of Facility Services, N.C. Department of Human Resources, ~~P.O. Box 12200, 1220 St. Mary's Street (Room G-21), 701 Barbour Drive, Raleigh, North Carolina 27605.~~ 27603-2008.

Statutory Authority G.S. 104E-9(8); 104E-19(a).

.3205 FEE AMOUNTS

(a) Annual fees for persons registered pursuant to provisions of Section .2300 of this Subchapter are as listed in the following table:

Type of registered facility	Letters appearing in registration number
Clinics	A
Chiropractors	C
Dentists	D
Educational	E
Government	G
Podiatrists	H
Industrial	I
Industrial Medical	IM
Health Departments	L
Hospitals	M
Physicians	P
Industrial Radiography	R
Services	S
Veterinarians	V
Other	Z

PROPOSED RULES

Facility plus first X-ray tube		Each additional X-ray tube to a maximum of 40 additional X-ray tubes		\$ 190.00	325.00
				\$ 670.00	<u>1,175.00</u>
				\$ 395.00	<u>600.00</u>
				\$ 185.00	<u>325.00</u>
				\$ 155.00	<u>275.00</u>
				\$ 110.00	<u>200.00</u>
				\$ 125.00	<u>225.00</u>
\$ 45.00	70.00	\$ 7.00	12.50	\$ 20.00	<u>50.00</u>
\$ 45.00	70.00	\$ 7.00	12.50	\$ 105.00	<u>175.00</u>
\$ 45.00	70.00	\$ 7.00	12.50	\$ 50.00	<u>75.00</u>
\$ 35.00	50.00	\$ 5.25	10.00	\$ 50.00	<u>75.00</u>
\$ 35.00	50.00	\$ 5.25	10.00	\$ 155.00	<u>275.00</u>
\$ 45.00	70.00	\$ 7.00	12.50	\$ 50.00	<u>75.00</u>
\$ 50.00	70.00	\$ 7.00	12.50	\$ 75.00	<u>125.00</u>
\$ 65.00	100.00	\$ 10.50	17.50	\$ 45.00	<u>75.00</u>
\$ 65.00	100.00	\$ 10.50	17.50	\$ 40.00	<u>75.00</u>
\$ 90.00	150.00	\$ 10.50	22.50		
\$ 45.00	70.00	\$ 7.00	12.50		
\$ 45.00	150.00	\$	22.50		
\$ 65.00	100.00	\$			
\$ 35.00	50.00	\$ 5.25	10.00		
\$ 45.00	70.00	\$ 7.00	12.50		

(b) Annual fees for persons licensed pursuant to provisions of Section .2400 of this Subchapter are as listed in the following table:

Type of Radioactive Material License

- Specific license of broad scope
 - medical or academic
 - other
- Specific license
 - industrial radiography (with temporary subsites)
 - industrial radiography (in plant only)
 - manufacture or distribution
 - medical institution other than teletherapy
 - medical private practice
 - medical teletherapy with one teletherapy unit
- and
 - each additional teletherapy unit
 - industrial ~~gages~~ gauges
 - moisture-density ~~gages~~ gauges
 - gas chromatographs
 - educational institutions
 - services/consultants
 - other
- General licenses
 - industrial ~~gages~~ gauges
 - IN VITRO testing and others

Annual Fee

\$ ~~515.00~~ 925.00

(c) Annual fees for persons licensed pursuant to provisions of Section .3000 of this Subchapter are as listed in the following table:

Description of Fee

- Facility with one accelerator
- each additional accelerator

Annual Fee

\$ ~~125.00~~ 225.00
\$ ~~20.00~~ 50.00

(d) Annual fees for out-of-state persons granted permission to use sources of radiation in this state pursuant to provisions of Rules .2311 and .2445 of this Subchapter are the same as that provided for in the applicable category specified in Paragraphs (a), (b), and (c) of this Rule. Such fees are due when application for reciprocal recognition of an out-of-state license or registration is made in the same manner as for a new license or registration as specified in Rule .3202.

Statutory Authority G.S. 104E-9(8); 104E-19(a).

TITLE 13 - DEPARTMENT OF LABOR

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Labor intends to adopt rules cited as 13 NCAC 7C .0105, .0106.

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

The public hearing will be conducted at 2:00 p.m. on April 12, 1989 at Conference Room, Room 249, Labor Building, 4 West Edenton Street, Raleigh, NC 27601.

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 April 7, 1989. Oral presentations will be limited to 15 minutes each. Written statements not presented at the hearing will be accepted by the department until April 12, 1989. 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.

CHAPTER 7 - OSHA

SUBCHAPTER 7C - SAFETY AND HEALTH

SECTION .0100 - GENERAL INDUSTRY:
CONSTRUCTION AND AGRICULTURE

.0105 BOILERS AND PRESSURE VESSELS

(a) All boilers and pressure vessels shall be operated and maintained in accordance with the rules set forth in 13 N.C.A.C. 13 which is hereby incorporated by reference.

(b) Copies of these rules may be obtained at the offices of the division, from the Boiler and Pressure Vessel Division, or from the Office of Administrative Hearings.

(c) This Rule is adopted in accordance with G.S. 150B-14(c).

Statutory Authority G.S. 95-131.

.0106 ELEVATORS AND RELATED
EQUIPMENT

(a) All elevators and related equipment shall be operated and maintained in accordance with the rules set forth in 13 N.C.A.C. 15 which is hereby incorporated by reference.

(b) Copies of these rules may be obtained at the offices of the division, from the Elevator and Amusement Device Division, or from the Office of Administrative Hearings.

(c) This Rule is adopted in accordance with G.S. 150B-14(c).

Statutory Authority G.S. 95-131.

TITLE 15 - DEPARTMENT OF NATURAL
RESOURCES AND COMMUNITY
DEVELOPMENT

Notice is hereby given in accordance with G.S. 150B-12 that the Environmental Management

Commission intends to amend rule(s) cited as 15 NCAC 2B .0304.

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

The public hearing will be conducted at 2:00 p.m. on April 4, 1989 at Town Hall, Burnsville, North Carolina.

Comment Procedures: All persons interested in this matter are invited to attend. Comments, statements, data, and other information may be submitted in writing prior to, during, or within thirty (30) days after the hearing or may be presented orally at the hearing. Oral statements may be limited at the discretion of the hearing officer. Submittal of written copies of oral statements is encouraged. For more information, contact: Mr. Stephen Zoufaly, Division of Environmental Management, P.O. Box 27687, Raleigh, N. C. 27611 (919) 733-5083.

CHAPTER 2 - ENVIRONMENTAL
MANAGEMENT

SUBCHAPTER 2B - SURFACE WATER
STANDARDS: MONITORING

SECTION .0300 - ASSIGNMENT OF STREAM
CLASSIFICATIONS

.0304 FRENCH BROAD RIVER BASIN

(c) The French Broad River Basin Schedule of Classifications and Water Quality Standards was amended effective:

- (1) September 22, 1976;
- (2) March 1, 1977;
- (3) August 12, 1979;
- (4) April 1, 1983;
- (5) August 1, 1984;
- (6) August 1, 1985;
- (7) February 1, 1986;
- (8) May 1, 1987;
- (9) March 1, 1989;
- (10) August 1, 1989.

(e) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective August 1, 1989 as follows:

- (3) Cane River (Index No. 7-3) from source to Bowlens Creek and all tributaries were reclassified from Class C trout and Class C to Class WS-III trout and Class WS-III.

Statutory Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Coastal Management intends to adopt rules cited as 15 NCAC 7H .0511 - .0514; 7K .0212; amend rules cited as 15 NCAC 711 .0208 - .0209, .0501 - .0502, .0504, .0602; 7J .0203 - .0204, .0207, .0306, .0312, .0402 - .0403, .0408; and repeal rules cited as 15 NCAC 7J .0801 - .0822, .0901 - .0909, .1001 - .1003.

The proposed effective date of these actions is July 1, 1989.

The public hearing will be conducted at 9:00 a.m. on March 31, 1989 at Blockade Runner, 275 Waynick Boulevard, Wrightsville Beach, NC 28480.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. The Coastal Resources Commission will receive written comments up to the date of the hearing. Any persons desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. Additional information concerning the hearing or the proposals may be obtained by contacting: Portia Rochelle, Division of Coastal Management, P.O. Box 27687, Raleigh, NC 27611-7687, (919) 733-2293.

CHAPTER 7 - COASTAL MANAGEMENT

SUBCHAPTER 7H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0200 - THE ESTUARINE SYSTEM

ALTERNATIVE A

.0208 USE STANDARDS

(a) General Use Standards

- (5) Outstanding Resource Waters are those estuarine and public trust waters classified by the N.C. Environmental Management Commission pursuant to Title 15, Subchapter 2B .0216 of the North Carolina Administrative Code as Outstanding Resource Waters (ORW) upon finding that such waters are of exceptional state or national recreational or ecological significance. In those estuarine and public trust waters classified as ORW by the Environmental Management Commission, no permit required by the Coastal Area

Management Act will be approved unless, after review of a CAMA permit application, the Division of Environmental Management determines that the proposed development will maintain the exceptional water quality and outstanding resource values of the ORW.

Statutory Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-124.

.0209 ESTUARINE SHORELINES

(c) Use Standards

- (9) Where an estuarine shoreline is contiguous to estuarine or public trust waters classified by the N.C. Environmental Management Commission as Outstanding Resource Waters (ORW), no permit required pursuant to the Coastal Area Management Act will be approved unless, after review of a CAMA permit application, the Division of Environmental Management determines that the proposed development will maintain the exceptional water quality and outstanding resource values of the ORW.

Statutory Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124.

ALTERNATIVE B

.0209 ESTUARINE SHORELINES

(b) Description. Estuarine shorelines are those non-ocean shorelines which are especially vulnerable to erosion, flooding, or other adverse effects of wind and water and are intimately connected to the estuary. This area extends from the mean high water level or normal water level along the estuaries, sounds, bays, and brackish waters as set forth in an agreement adopted by the Wildlife Resources Commission and the Department of Natural Resources and Community Development [described in Regulation .0206(a) of this Section] for a distance of 75 feet landward. For those estuarine shorelines immediately contiguous to waters classified as Outstanding Resource Waters by the Environmental Management Commission, the estuarine shoreline AEC shall extend to 575 feet landward from the mean high water level or normal water level. However, an alternative boundary may be established by the Coastal Resources Commission following the legally required public hearing within the affected counties containing waters classified as Outstanding Resource Waters.

(c) Use Standards

- (9) Within the AEC for estuarine shorelines contiguous to waters classified as Outstanding Resource Waters by the EMC, no CAMA permit will be approved unless the proposed development has a built upon area of 25 percent or less, and,
 (A) has no stormwater collection system;
 (B) is at least 30 feet from water classified as ORW; and
 (C) it is demonstrated that no areas within the project site are of such high density that stormwater threatens the water quality of the ORW.

Statutory Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124.

ALTERNATIVE C

.0209 ESTUARINE SHORELINES

(b) Description. Estuarine shorelines are those non-ocean shorelines which are especially vulnerable to erosion, flooding, or other adverse effects of wind and water and are intimately connected to the estuary. This area extends from the mean high water level or normal water level along the estuaries, sounds, bays, and brackish waters as set forth in an agreement adopted by the Wildlife Resources Commission and the Department of Natural Resources and Community Development [described in Regulation .0206(a) of this Section] for a distance of 75 feet landward. For those estuarine shorelines immediately contiguous to waters classified as Outstanding Resource Waters by the Environmental Management Commission, the estuarine shoreline AEC shall extend to 575 feet landward from the mean high water level or normal water level. However, an alternative boundary may be established by the Coastal Resources Commission following the legally required public hearing within the affected counties containing waters classified as Outstanding Resource Waters.

(c) Use Standards

- (9) Where an estuarine shoreline is contiguous to estuarine or public trust waters classified by the N.C. Environmental Management Commission as Outstanding Resource Waters (ORW), no permit required pursuant to the Coastal Area Management Act will be approved unless, after review of a CAMA permit application, the Division of Environmental Management determines that the proposed development will maintain the exceptional water quality and outstanding resource values of the ORW.

Statutory Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124.

ALTERNATIVE D

SECTION .0500 - NATURAL AND CULTURAL RESOURCE AREAS

.0501 GENERAL

The fourth and final group of AECs is gathered under the heading of fragile coastal natural and cultural resource areas and is defined as areas containing environmental, natural or cultural resources of more than local significance in which uncontrolled or incompatible development could result in major or irreversible damage to natural systems or cultural resources, scientific, educational, or associative values, or aesthetic or recreational qualities.

Statutory Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(4e) to (b)(4g); 113A-124.

.0502 SIGNIFICANCE

(a) Fragile coastal natural resource areas are generally recognized to be of educational, scientific, economic, biological, or cultural value because of the natural features of the particular site. These features in the coastal area serve to distinguish the area designated from the vast majority of coastal landscape or waters and therein establish its value. Such areas may be key components of systems unique to the coast which act to maintain the integrity of that system.

Statutory Authority G.S. 113A-107(a),(b); 113A-113(b)(4e) to (b)(4g); 113A-124.

.0504 AECs WITHIN CATEGORY

The description, significance, and management objectives for each AEC (coastal complex natural areas, coastal areas that sustain remnant species, unique coastal geologic formations, significant coastal architectural resources, and significant coastal historic architectural resources) within the grouping of fragile coastal natural and cultural resource areas follows in Regulations .0505, .0506, .0507, .0509, and .0510, and .0511 of this Section.

Statutory Authority G.S. 113A-107(a),(b); 113A-113(b)(4e) to (b)(4h); 113A-124.

.0511 OUTSTANDING RESOURCE WATERS IMPACT AREAS

(a) **Description.** In accordance with Title 15, Subchapter 2B .0216 of the North Carolina Administrative Code, the Environmental Management Commission (EMC) may classify "...certain unique and special surface waters of the state as outstanding resource waters (ORW) upon finding that such waters are of exceptional state or national recreational or ecological significance...." It is considered likely that the EMC will, pursuant to petitions for rulemaking and upon a finding that such waters have exceptional water quality and outstanding resource values, designate as ORWs certain estuarine waters in coastal North Carolina. Since the type and density of development in ORW waters and land areas adjacent to waters designated ORW can have an adverse impact on the integrity of water quality and resource values in the ORW, coastal waters classified ORW by the EMC and land areas contiguous to a designated ORW are defined as ORW Impact Areas of Environmental Concern. The landward extent of an ORW Impact AEC will be at least 75 feet landward of the mean high water level or normal water level. The maximum landward extent will be determined on a case-by-case basis based on the potential impact on the ORW from nonpoint source water pollution as determined by the CRC.

(b) **Significance.** Development on lands adjacent to or bordering designated ORWs has the potential to degrade the water quality and resource value of the waters classified ORW through nonpoint source water pollution. Regulating uses of both these waters and the density and type of development on adjacent lands is necessary to ensure the integrity and resource value of these waters.

(c) **Management Objective.** To ensure that development in designated coastal ORWs and adjacent land areas is compatible with the need to protect these waters from degradation of water quality and diminution of their resource value.

Statutory Authority G.S. 113A-113(b)(4); 113A-124.

.0512 NOMINATION AND DESIGNATION PROCEDURES

Environmental Management Commission (EMC) acceptance of a petition for a site specific water body as a candidate for Outstanding Resource Waters (ORW) classification shall be the exclusive means of nomination of ORW Impact AECs. At the next meeting of the CRC after EMC acceptance of an ORW nomination, the CRC will direct and coordinate a staff analysis and preparation of specific use standards and

boundaries for ORW Impact AECs. To the extent allowed by law, staff review and requisite public hearings shall be fully coordinated with the EMC, Marine Fisheries Commission and any other appropriate regulatory bodies.

Statutory Authority G.S. 113A-107(a)(b); 113A-113(b)(4); 113A-124.

.0513 GENERAL USE STANDARDS

The proposed design, location, and use of development in designated coastal ORW Impact AECs shall maintain the exceptional water quality and outstanding resource values of the waters upon which the ORW classification is based, including:

- (1) Preservation of the value of the stated individual biological and/or economic resources identified by the EMC;
- (2) Not adversely affecting the outstanding scientific associative or educational resources identified by the EMC; and/or
- (3) Consistency with the recreational values of the resource as defined by the EMC.

Statutory Authority G.S. 113A-107(a),(b); 113A-113(b); 113A-124.

.0514 SPECIFIC USE STANDARDS

Site-specific land use and water use standards for an ORW Impact AEC will be adopted on a case-by-case basis after the classification of a coastal water body as an outstanding resource water. These use standards will be developed in conjunction with management plans prepared by the Division of Environmental Management and approved by the EMC for each designated coastal ORW.

Statutory Authority G.S. 113A-107(a),(b); 113A-113(b); 113A-124.

SECTION .0600 - DEVELOPMENT STANDARDS APPLICABLE TO ALL AECs

.0602 POLLUTION OF WATERS

(a) No development shall be allowed in any AEC which would have a substantial likelihood of causing pollution of the waters of the state in which shellfishing is an existing use to the extent that such waters would be officially closed to the taking of shellfish. This rule shall also apply to development adjacent to or within closed shellfish waters when a use attainability study of those waters documents the presence of a significant shellfish resource in an area that could be expected to be opened for shellfishing given reasonable efforts to control the existing sources of pollution.

(b) In waters and land areas adjacent to waters that have been nominated for ORW designation and have been accepted by the EMC as candidates for intensive study and public hearing, permits for development will not be approved unless the proposed development maintains the exceptional water quality and outstanding resource values of the nominated ORW.

Statutory Authority G.S. 113A-107(a),(b); 113A-124.

SUBCHAPTER 7J - PROCEDURES FOR
HANDLING MAJOR DEVELOPMENT
PERMITS: VARIANCE REQUESTS;
APPEALS FROM MINOR DEVELOPMENT
PERMIT DECISIONS; AND
DECLARATORY RULINGS

SECTION .0200 - APPLICATION PROCESS

.0203 PREPARATION OF WORK PLATS

(a) General. Project plans or work plats must include a top or planview, a cross-sectional view, and a location map. ~~Work plats must be submitted on 8 1/2" by 11" plain white paper, must have a one-fourth inch margin on all four sides, and must contain a title block and page number. All plats must have the standard north arrow. When two drawings are shown on the same sheet, they should be drawn so that their meridians are parallel. North should be at the top of the plat. The drawing must be in black pencil or black ink. The prints must be neat and sufficiently clear to permit photographic reproduction. Originals are preferred as copies are often found to be unacceptable. The applicant should use as few sheets as necessary to show clearly what is proposed. Work plats must be accurately drawn to scale. A scale of 1" = 200' or less is normally required in order that project detail can be easily understood.~~

(b) Details of Work Plats

(1) Topview or Planview Plats. Such drawings must show existing and proposed features such as dune systems, shorelines, creeks, marshlands, docks, piers, bulkheads, excavated areas, fill areas, type and location of sewage treatment facilities and effluent outlets. ~~Both~~ Existing water depths must be indicated using mean low water as base or zero. These can be shown either as contours or spot elevation. Care should be used in indicating which features are existing and which are proposed. Property boundaries, as they appear on the deed, and the names of adjacent property owners must be shown on the detailed plat. The work

plat must clearly show the any areas to be excavated and exact locality for disposal of the excavated material. ~~Both these areas must be clearly indicated by hash marks or other means on all copies and suitably designated by words. When fill material is to be placed behind a bulkhead or dike, the plan must be sufficiently detailed to show the exact location of such bulkheads or dikes, and the adequacy of the bulkhead or dike to confine the material. Ebb and flood tide directions or upstream-downstream flow directions of river or stream as appropriate must be indicated on the plan. Also, where pertinent, fresh water outflows, such as natural drainage routes, springs, ponds, etc. must be included. Indicate approximate mean low and mean high water lines and the presence of marsh in the area of proposed work. In areas where the difference in daily low and high tides is less than six inches, only an average water level must be indicated.~~

- (2) Cross-Section Drawing. A cross-sectional diagram showing depth and elevation of proposed work relative to existing ground level -- mean low and mean high water line must be included in the plan. The mean low water must be the reference for water depths and land elevations (i.e., mean low water should be depicted as "Elevation 0.0 M L W"). First floor elevations relative to mean sea level must be shown for any proposed buildings.
- (3) Location Map. A map of small scale showing the location of the proposed work is also required. ~~The location map may be on a separate sheet, or may be drawn as an inset map on a corner of the sheet showing the details of the project. The inset is preferred. A section may be taken from a navigational chart, or a North Carolina county road map with an arrow drawn to the project location. The location map must provide adequate information to locate the project site, such as secondary road numbers to enable investigatory personnel to locate the project site.~~
- (4) Title of Drawing. Each drawing must have a simple title block to identify the project or work, and shall include name of applicant, ~~and~~ date the plat was prepared, and scale of the plat. The date of any revisions must be clearly noted. The applicant must also include the name of

the person who drew the plat and the scale of the plat.

Statutory Authority G.S. 113A-119; 113A-124.

.0204 PROCESSING THE APPLICATION

(b) Application processing will begin when an application is accepted as complete. Before an application will be accepted as complete, the following requirements must be met;

(5) notice to adjacent riparian landowners must be given as follows:

(A) Certified return mail receipts (or copies thereof) indicating that adjacent riparian landowners (as identified in the permit application) have been sent a copy of the application for notice of the proposed development must be included in a CAMA major development and/or dredge and fill permit application. Said landowners have 30 days from the date of notification in which to comment. Such comments will be considered by the department in reaching a final decision on the application.

Statutory Authority G.S. 113-229; 113A-119; 113A-122(c); 113A-124.

.0207 AGENCY REVIEW/COMMENTS: MAJOR DEVELOPMENT/DREDGE AND FILL

(f) The Division of Coastal Management is one of the state agencies that comments on dredge and fill project applications. In its role as a commenting agency the division will use the following criteria in 15 NCAC 711 and local land use plans to assess whether to recommend permit issuance, permit issuance with conditions, or permit denial. Elements of a project which are not addressed in the following criteria may also be considered in assessing a project and making recommendations. Other commenting state agencies will make assessments, in accordance with Paragraph (c) of this Rule. Division criteria are as follows:

- (1) Channels must be aligned or located so as to avoid highly productive shellfish beds, or beds of submerged vegetation.
- (2) Projects should be designed so as not to create stagnant water bodies.
- (3) Marinas and boat basins must be developed on adjacent high ground so as not to disturb valuable wetland areas.
- (4) Excavation of canals in high ground should employ the use of a temporary earthen plug or other methods to minimize siltation of adjacent water bodies.

- (5) Project construction should be accomplished during periods of least significant biological activity.
- (6) The project should be located so as not to adversely impact upon a primary nursery area.
- (7) Channels and boat basins generally must not involve any excavation in highly productive salt cordgrass (*Spartina alterniflora*) marshes.
- (8) Materials must not be excavated from highly productive tidelands, bottoms, and marshlands for the sole purpose of obtaining fill.
- (9) Bulkhead alignment, for the purpose of shoreline stabilization, should approximate the mean high water (MHW) line or, in the absence of tidal influences, the normal water line (NWL).
- (10) Bulkheads should be constructed inland of marshland and marshgrass fringes.
- (11) Bulkhead fill material should be obtained from an upland source. If the bulkhead is a part of a project involving excavation, the material so obtained may be used as a backfill.
- (12) Drainage canals located through any marshland should not exceed six feet wide by four feet deep unless it can be shown by hydraulic engineering that larger dimensions are required.
- (13) Spoil derived from the construction or maintenance of drainage canals through a regularly or irregularly flooded marsh should result in spoil being placed on high ground. Projects of this type will be considered on a case-by-case basis.
- (14) All excavated materials should be confined on high ground landward of regularly or irregularly flooded marshland. In addition, all dredge spoil must be confined on high ground behind adequate dikes or other retaining structures to prevent the materials from entering any marsh or adjacent waters.
- (15) In a hydraulic dredging operation the terminal end of the dredge pipeline should be positioned at or greater than 50 feet from any part of the dike and a maximum distance from spillways to allow adequate settlement of suspended solids.
- (16) Effluent from diked areas receiving disposal from hydraulic dredging operations should be contained by pipe, trough, or similar device to a point at or below the mean low water line to prevent gully erosion and resultant unnecessary siltation.

When project design is in conflict with these criteria and there is no feasible way that the project can be made to conform to the criteria, in making its decision the department will take into account demonstrated public benefit which will result from the project as offsetting the adverse effects of the project. In such cases the applicant must show that the project could not be undertaken on another site so as to achieve similar public benefits without conflicting with the criteria, that the project results in public benefit, and that the public benefits clearly outweigh the long range adverse effects of the project.

Statutory Authority G.S. 113-229; 113A-124(a)(1); 113A-124(c)(5).

SECTION .0300 - HEARING PROCEDURE

.0306 ACTION PENDING FINAL DISPOSITION

Pending the final decision in a contested case, no action may be taken that would be unlawful in the absence of an issued CAMA and or dredge and fill permit.

Statutory Authority G.S. 113A-121.1(d) and (e).

.0312 SETTLEMENT

(b) The commission hereby delegates to the director the authority to enter into settlements of appeals concerning CAMA permits and dredge and fill permits prior to the time the administrative law judge opens the hearing on the permit appeal. The director may enter into a settlement without the commission's approval. Such a settlement shall not be considered a final commission decision, but shall be subject to appeal pursuant to G.S. 113A-121.1 and G.S. 113-229(f). The department shall provide public notice of any settlement entered into prior to the opening of the administrative hearing in the same manner as it provides public notice of permit decisions.

Statutory Authority G.S. 113A-120; 113A-122; 113A-124.

SECTION .0400 - FINAL APPROVAL AND ENFORCEMENT

.0402 CRITERIA FOR GRANT OR DENIAL OF PERMIT APPLICATIONS

(c) If the department denies an application for a permit, the applicant will be notified by registered mail of the action of the department and the grounds for that action.

Statutory Authority G.S. 113A-120.

.0403 DEVELOPMENT PERIOD/ COMMENCEMENT/CONTINUATION

(a) All development initiated pursuant to a CAMA and/or dredge and fill permit shall be completed by December 31 of the third year following the year of permit issuance.

Statutory Authority G.S. 113A-124(c)(5).

.0408 VIOLATION OF A PERMIT

(b) Any person who shall be adjudged to have knowingly or willfully violated any provisions of G.S. 113A-100 to -128, G.S. 113-229(k) or any regulation, rule or order within these or any other administrative procedures properly adopted by the commission, shall be guilty of a misdemeanor, and for each violation shall be liable for a penalty of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000) or shall be imprisoned for not more than 60 days, or both. In addition, if any person continues to violate or further violates any such provision, regulation, rule or order after written notice from the designated local official, the court may determine that each day during which the violation continues or is repeated constitutes a separate violation subject to the foregoing penalties.

Statutory Authority G.S. 113A-126.

SECTION .0800 - DREDGE AND FILL: PERMIT PROCESSING PROCEDURE: STANDARD (REPEALED)

.0801 DEFINITIONS

.0802 APPLICATION FORMS

.0803 PREPARATION OF WORK PLATS: GENERAL

.0804 PREPARATION OF WORK PLATS: SPECIFIC

.0805 ADJACENT RIPARIAN LANDOWNER NOTIFICATION

.0806 APPLICATION PROCESSING

.0807 FIELD INVESTIGATION

.0808 AGENCY REVIEW AND COMMENTS

.0809 CRITERIA FOR PROJECT PLANNING AND EVALUATION

.0810 FINAL ACTION

.0811 NOTICE OF DENIAL

.0812 APPEAL OF DEPARTMENTAL ACTION

.0813 PERMIT ISSUANCE AND TRANSFER

.0814 PERMIT EXPIRATION

.0815 PERMIT RENEWAL

.0816 PERMIT MODIFICATION

.0817 PERMIT CONDITIONS

.0818 PROJECT MAINTENANCE

.0819 MAINTENANCE REQUEST

.0820 CONDITIONS FOR MAINTENANCE

.0821 GRANT OR DENIAL OF MAINTENANCE REQUEST

.0822 VIOLATION OF PERMIT

Statutory Authority G.S. 113A-118(c); 113A-119(a); 113A-124(c)(5); 113-229.

**SECTION .0900 - DREDGE AND FILL:
EMERGENCY PERMIT PROCEDURE
(REPEALED)**

- .0901 PURPOSE
- .0902 DEFINITIONS
- .0903 INITIATION OF EMERGENCY PROCESS:
ON-SITE INVESTIGATION
- .0904 PROCEDURES FOR EXEMPTING
EMERGENCY MAINTENANCE: REPAIRS
- .0905 APPLICABILITY OF EMERGENCY
CAMA: DREDGE AND FILL PERMITS
- .0906 PREPARATION OF EMERGENCY
PERMIT APPLICATION
- .0907 NOTIFICATION OF ADJACENT
RIPARIAN LANDOWNERS
- .0908 REVIEW AND ISSUANCE OF
EMERGENCY PERMIT
- .0909 LIMITATION OF EMERGENCY WORK

Statutory Authority G.S. 113A-103(5)b.5; 113A-118 1.c; 113A-119; 113-229(e1).

**SECTION .1000 - DREDGE AND FILL: REVIEW
HEARING PROCEDURES
(REPEALED)**

- .1001 WHO IS ENTITLED TO HEARING
- .1002 PARTIES
- .1003 PROCEDURES

Statutory Authority G.S. 113-229; 150B, Article 3.

**SUBCHAPTER 7K - ACTIVITIES IN AREAS
OF ENVIRONMENTAL CONCERN WHICH DO
NOT REQUIRE A COASTAL AREA
MANAGEMENT ACT PERMIT**

**SECTION .0200 - CLASSES OF MINOR
MAINTENANCE AND IMPROVEMENTS
WHICH SHALL BE EXEMPTED FROM THE
CAMA MAJOR DEVELOPMENT PERMIT
REQUIREMENT**

.0212 ORW AEC EXEMPTION

Within the AEC for shorelines contiguous to a waters classified as Outstanding Resource Waters by the EMC, no CAMA permit will be required if the proposed development has a built upon area of 25 percent or less, and:

- (1) has no stormwater collection system;
- (2) is at least 30 feet from water classified as ORW; and
- (3) it is demonstrated that no areas within the project site are of such high density that

stormwater threatens the water quality of the ORW.

Statutory Authority G.S. 113A-103(5)c.

**TITLE 21 - OCCUPATIONAL LICENSING
BOARDS**

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Board of Landscape Architects intends to amend rule(s) cited as 21 NCAC 26 .0105.

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

The public hearing will be conducted at 11:00 a.m. on April 6, 1989 at First Floor Conference Room, Caswell Building, 3700 National Drive, Raleigh, NC 27612.

Comment Procedures: Persons wishing to present oral data, views or arguments on a proposed rule may file a notice with the Board at least 10 days prior to the public hearing. Any person may also file a written submission concerning data, comments or arguments at any time until the date of the hearing. Submissions should be mailed to the Board at P.O. Box 26852, Raleigh, NC 27611.

**CHAPTER 26 - LICENSING BOARD OF
LANDSCAPE ARCHITECTS**

**SECTION .0100 - STATUTORY AND
ADMINISTRATIVE PROVISIONS**

.0105 FEES

(a) Application fees shall be as follows:

(1) For registration as a Landscape Architect - seventy five dollars (\$75.00).

(2) For corporate certificate of registration - one hundred dollars (\$100.00).

(b) The Certificate of Permit for a temporary permit shall be one hundred fifty dollars (\$150.00).

(c) Examination fees shall be two hundred fifty dollars (\$250.00) for a complete examination, and shall be paid prior to the examination.

(d) Fees for portions of examinations will be based on the actual charges to the board for procuring, administering and grading the portion of the exam. The fees shall be paid prior to the examination.

(e) The fee for license by reciprocity shall be one hundred fifty dollars (\$150.00).

(f) The fee for a corporate certificate of registration shall be two hundred dollars (\$200.00).

(g) The fee for the annual renewal of any certificate of registration shall be ~~fifty dollars (\$50.00)~~ seventy five dollars (\$75.00).

(h) Annual renewal fees received after July 1 of each year shall be subject to the assessment of a late payment penalty according to the following schedule:

- (1) After July 1 - ten dollars (\$10.00);
- (2) After September 1 - fifteen dollars (\$15.00);
- (3) After October 1 - twenty dollars (\$20.00);
- (4) After November 1 - twenty five dollars (\$25.00);
- (5) After December 1 - thirty dollars (\$30.00);
- (6) After January 1 - thirty five dollars (\$35.00);
- (7) After February 1 - forty dollars (\$40.00);
- (8) After March 1 - forty five dollars (\$45.00);
- (9) After April 1 - fifty dollars (\$50.00).

(i) The fee for re-issue of a lost or damaged certificate or permit is ten dollars (\$10.00).

Statutory Authority G.S. 89A-3(c); 89A-6.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the State Board of Examiners of Plumbing and Heating Contractors intends to amend rule(s) cited as 21 NCAC 50 .0103 - .0105, .0107, .0301, .0303 - .0304, .0306 - .0307, .0309, .0402 - .0411, .0501, .0503, .0505 - .0508; and adopt 21 NCAC 50 .1001 - .1013, .1101 - .1103.

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

The public hearing will be conducted at 2:00 p.m. on April 5, 1989 at McKimmon Center, Corner of Gorman St. and Western Blvd., P.O. Box 7401, Raleigh, NC 27695-7401.

Comment Procedures: Any person interested in these rules may present oral comments relevant to the proposals at the public hearing or deliver written comments to the Board prior to May 5, 1989, at the Board's mailing address: P.O. Box 110, Raleigh, NC 27602. Anyone wishing to address the Board at the public hearing should notify the Board by noon on April 4, 1989, that they wish to speak on the proposals. Oral presentations will be limited to 5 minutes per speaker.

CHAPTER 50 - BOARD OF PLUMBING AND HEATING CONTRACTORS

SECTION .0100 - ORGANIZATION

.0103 ORGANIZATION: OFFICERS: DUTIES

(a) For the purpose of carrying out the provisions of the General Statutes of North Carolina, Chapter 87, Article 2, there shall be elected from the members of the Board a chairman, vice-chairman and secretary-treasurer. The chairman, vice-chairman and secretary-treasurer shall be elected at the first regular meeting of each year and shall assume office on April ~~22nd~~ 25 following election. It shall be the duty of the chairman to call and preside over all meetings of the Board and perform such other duties as may come within the jurisdiction of his office. It shall be the duty of the vice-chairman to function as chairman or secretary-treasurer in the event of their absence or inability. The secretary-treasurer shall be responsible for the keeping of all official records of the Board.

(b) The chairman, vice-chairman, secretary-treasurer, executive secretary and other employees designated by the Board, shall give an indemnity and faithful performance bond in such an amount as may be prescribed by the Board. The said bonds shall be written by some approved bonding company authorized to do business in the State of North Carolina, and the cost of same shall be paid from funds received by the Board.

Statutory Authority G.S. 87-12 to 87-20; 87-27.

.0104 EXECUTIVE SECRETARY: EMPLOYEES

(a) The Board shall employ a full time executive secretary, ~~and other employees required in the administration of the provisions of the article who shall act as an authorized agent of the Board.~~

~~(b) In the execution of matters pertaining to the enforcement of the article, the executive secretary shall act as an authorized agent of the Board.~~

~~(c) (b)~~ The Board is empowered to employ legal, accounting, consulting and other necessary assistance in carrying out the provisions of ~~the article.~~ Article 2 of Chapter 87 of the General Statutes.

Statutory Authority G.S. 87-18.

.0105 MEETINGS OF BOARD: QUORUM

(a) Regular meetings of the Board shall be held during April and October of each year and additional meetings may be held at such other times and places as the Board deems wise and necessary.

(b) For the purpose of ~~giving and grading~~ administering examinations, a quorum shall consist of at least three members, one of whom shall be an officer; shall constitute a quorum and for the purpose of all other purposes a quorum shall consist of at least four members, one of whom shall be an officer. shall constitute a quorum of the Board.

Statutory Authority G.S. 87-18; 87-19.

.0107 BOARD COMMITTEES

(a) The ~~chairman~~ chair of the Board shall appoint regular committees to implement prescribed phases of the Board's functions, and may appoint special committees to undertake specific assignments of the Board.

(b) The ~~chairman~~ chair of the Board shall designate the membership of the committees and may designate one member as committee ~~chairman~~ chair.

(c) Members of committees serve at the pleasure of the ~~chairman~~ chair of the Board.

Statutory Authority G.S. 87-18.

SECTION .0300 - EXAMINATIONS

.0301 QUALIFICATIONS DETERMINED BY WRITTEN EXAMINATION

(a) In order to determine the qualifications of an applicant, the Board shall provide a written examination in the following categories:

- Plumbing Contracting, Class I
- Plumbing Contracting, Class II
- Heating, Group No. 1 - Contracting, Class I
- Heating, Group No. 1 - Contracting, Class II
- Heating, Group No. 2 - Contracting, Class I
- Heating, Group No. 3 - Contracting, Class I
- Heating, Group No. 3 - Contracting, Class II

(b) Each applicant shall be required to read, interpret and provide written answers to all parts of the examinations required by G.S. 87-21(b), except during oral examinations will be provided under circumstances set out in pursuant to G.S. 87-21(b).

Statutory Authority G.S. 87-18; 87-21(a); 87-21(b).

.0303 VISITORS

Visitors or licensees may observe any examination, but shall not be provided with the substance of ~~the~~ any examination.

Statutory Authority G.S. 87-18; 87-21(a); 87-21(b).

.0304 SPECIAL EXAMINATIONS

The expense deposit for a special examination pursuant to ~~permitted by G.S. 87-21(b) upon written demand~~ shall be in an amount determined by the Board. After the special examination is completed and graded, or in case of cancellation by the applicant, the Board will determine the full cost of the examination and refund any balance remaining after applying the expense deposit. the remaining balance, if any, of an expense deposit for a special examination will be returned to the applicant.

Statutory Authority G.S. 87-18; 87-21(a); 87-21(b).

.0306 APPLICATIONS: ISSUANCE OF LICENSE

(a) All applicants for regular examinations shall file an application in the office of the executive secretary on or before the date set out on the examination application form, application for the examination which date will be at least 30 days prior to the examination. All applicants for regular examinations shall file an application, in the office of the executive secretary, at least 30 days prior to the examinations. Applications for examinations shall be on a form approved by the Board.

(b) Applicants who ~~pass the examination~~ obtain a license will receive a certificate ~~and/or license signed by the chair and secretary treasurer~~ issued by the Board, bearing the license number assigned to the qualifying individual.

(c) ~~A~~ The license number shall be assigned to the qualifying individual and shall not be assigned or transferred to any other individual.

Statutory Authority G.S. 87-18; 87-21(b).

.0307 REFUND OF DEPOSIT

(a) An examination fee for a regular examination will not be refunded unless the applicant ~~notified~~ notifies the executive secretary, either orally or in writing, at least three days before the examination that the applicant will be unable to attend the examination. To be effective, an oral notification must be confirmed in writing within three days.

(b) ~~Payments made to cover the cost of a special examination are not refundable.~~

(c) (b) In the event an applicant fails to pass the examination, ~~or~~ fails to appear for examination, or abandons an examination, the license fee deposit will be refunded.

Statutory Authority G.S. 87-18; 87-21(b); 87-22; 87-22.1.

.0309 EXPANDING SCOPE OF LICENSE

(a) Any licensee holding a license as an individual, or a licensee whose name appears on the certificate of license issued in the name of a corporation, partnership, or business that has a trade name, may be examined for the purpose of expansion of his license qualifications without deposit of an additional annual license fee upon payment of the required examination fee.

(b) A current license limited to cities or towns of less than 10,000 population may be expanded to statewide in scope without examination, upon payment of license fee as prescribed by Rule .1103.

Statutory Authority G.S. 87-18; 87-21(b); 87-25.

SECTION .0400 - GENERAL PROCEDURES

.0402 PERMITS

A licensed contractor shall ~~obtain permits and not authorize permits to be obtained or~~ allow his license number to appear on permits ~~only except~~ for work over which he will provide general supervision until the completion of the work, ~~and~~ for which he holds the contract ~~and for which he receives all contractual payments.~~

Statutory Authority G.S. 87-18; 87-26.

.0403 USE OF LICENSE

A licensed contractor shall not permit the use of his license by any ~~contractor not properly licensed by the Board.~~ other person.

Statutory Authority G.S. 87-18; 87-23; 87-26.

.0404 ACTIVE EMPLOYMENT

(a) In each separate place of business or branch thereof operated by a contractor licensed by the Board, there shall be on active on site employment a person licensed in accordance with the provisions of G.S. 87, Article 2 and whose duties are to ~~enter into contracts and to~~ supervise all plumbing installations, heating installations, or both.

(b) Separate place of business or branch thereof shall mean any office or facility of any kind:

- (1) from which plumbing or heating business is solicited or conducted;
- (2) from which plumbing or heating contracts are negotiated or entered into; or
- (3) from which requests for plumbing or heating work or service requiring a license are received and accepted.

A temporary facility used solely to conduct the plumbing or heating business involved in an existing contract or contracts entered into by the

main license office and from which no new business is solicited or conducted shall not be deemed a separate place of business or branch thereof.

Statutory Authority G.S. 87-18; 87-21(a)(5); 87-21(a)(6); 87-26.

.0405 MULTIPLE LICENSES

(a) In order to maintain the identity of firms, a licensee shall qualify only one ~~place of~~ business with his personal qualifications.

(b) A licensee may be listed on only one license at any given time, whether the license is issued in the name of the individual or in the name of a firm.

(c) The licensee may, upon deletion of his name and qualifications from a firm license, reinstate his personal license, either as an individual or in the name of some other corporation, partnership, or business that has a trade name, upon compliance with G.S. 87-26.

Statutory Authority G.S. 87-18; 87-21(a)(5); 87-21(a)(6); 87-26.

.0406 RESPONSIBILITY OF LICENSED PERSON EMPLOYED BY FIRM

~~The responsibility of the licensed person required by G.S. 87-26 may be assumed, in writing, by another licensee employed by the firm holding the contract and upon notice, in writing, to the Board.~~

(a) The licensed person, whether individually or for a corporation, partnership or business with a trade name, shall execute all contracts to the extent of his qualifications.

(b) A contract, and the responsibility imposed on a licensed person to supervise work performed under a contract, may be assumed by another licensee in writing upon written notice to the Board of the assignment.

Statutory Authority G.S. 87-18; 87-26.

.0407 CORPORATIONS: PARTNERSHIPS: AND TRADE NAMES

(a) A license may be issued or renewed in the name of a corporation, partnership, or business with a trade name upon compliance with the provisions of G.S. 87-26, verified by the execution of forms furnished by the Board.

(b) Additional licensees may be added to licenses issued in the above manner upon verifications of compliance with the provisions of G.S. 87-26. In the event a licensee terminates his association with a corporation, partnership, or business with a trade name, he shall immediately notify the executive secretary of the Board.

(c) A person who has a license which has been expired less than three years may be added to an active license issued in the name of a corporation, partnership or business with a trade name, without payment by the firm of an additional license fee upon written request and completion of forms provided by the Board.

(e) (d) The license number assigned to a corporation, partnership, or trading name business with a ~~an assumed~~ trade name shall be that of the first licensee listed on the license.

Statutory Authority G.S. 87-18; 87-22; 87-26.

.0408 CHANGE OF TRADE NAME

(a) The trading trade name of a under which a license is issued licensee may be changed upon request to and approval by the Board. If the Board approves the name change, the last certificate of license issued to the licensee must be returned to the executive secretary.

(b) A licensee may not request issuance will not be issued or renewed in a like or similar name to any [existing license operating in the same geographic area.] pre-existing license issued to a corporation, partnership or business with a trade name operating within a 150 mile radius of the applicant for the name change.

Statutory Authority G.S. 55B-5; 87-18; 87-26.

.0409 REINSTATEMENT OF EXPIRED LICENSE

A license which expires may be reinstated within three years of the date of expiration upon written request. Upon presentation of satisfactory evidence that the licensee has not engaged in the business of either plumbing or heating contracting since the expiration of his license, payment of the license fee for the current year only will be required. In the absence of such evidence, the license may be reinstated upon payment of the current license fee, ~~and the license fee for the years subsequent to the year for which such evidence is omitted and all subsequent years, together with penalties. the penalty imposed by G.S. 87-22.~~

Statutory Authority G.S. 87-18; 87-22.

.0410 RENEWAL OF LICENSES

(a) When a licensee makes timely and sufficient application for renewal of a license or a new license, including the payment of any required license fee, with reference to activity of a continuing nature, the existing license does not expire until a decision on the application is finally reached by the Board, and if the application is

~~denied, the existing license does not expire until the expiration of the period for applying for judicial review of the agency order. This provision does not affect Board action summarily suspending such license under the provisions of G.S. 150B-3.~~

(b) The issuance of a license in the name of a corporation or other entity or the transfer of the license qualification of an individual licensee to a license in the name of a corporation or other entity through which the individual is actively engaged in contracting, pursuant to Rules .0405, .0407 and .0408 hereof, does not result in the expiration of the license of the individual for purposes of re-examination under G.S. 87-22 if such corporate or other license is kept in force.

(e) During the period of time an individual licensed under G.S. 87, Article 2 is employed full time by a unit of local government as an inspector and holds a valid certificate from the North Carolina Code Officials Qualification Board, his license shall not be deemed expired for the purposes of re-examination under G.S. 87-22, despite the non-payment of renewal fees; provided that this Rule does not authorize contracting within the meaning of G.S. 87-21 by any individual whose license is not current.

Statutory Authority G.S. 87-18; 87-22; 150B-3.

.0411 PUBLICATIONS

The following publications are available from the Board:

- (1) laws applicable to plumbing, heating and air conditioning contracting in the State of North Carolina; G.S. 87, Article 2;
- (2) ~~general rules regulations and procedures~~ of the Board;
- (3) suggested study references for ~~persons desiring to take~~ the qualifying examinations;
- (4) ~~annual~~ register of licensees and supplements thereto.

Statutory Authority G.S. 87-18.

SECTION .0500 - POLICY STATEMENTS AND INTERPRETATIVE RULES

.0501 AIR CONDITIONING FURTHER DEFINED

An air conditioning system is an aggregation or assemblage of objects united by some form of interaction or interdependence, or a group of single or multiple units so combined as to form an integral whole, requiring that requires a total of more than 15 tons of mechanical refrigeration to function, operate or move in unison, which produces conditioned air by the lowering of

temperature for comfort cooling, and ~~requiring~~ requires air distribution ducts.

Statutory Authority G.S. 87-18; 87-21(a)(3).

.0503 SUBMISSION OF BID

The submission of a bid to ~~undertake~~ perform plumbing, heating or air conditioning work is an offer to engage in the business of plumbing, heating or air conditioning contracting within the meaning of G.S. 87-25.

Statutory Authority G.S. 87-18; 87-25.

.0505 GENERAL SUPERVISION

The general supervision ~~a licensee is required by G.S. 87-26 to exercise over work supervised by him~~ is that degree of supervision which is necessary and sufficient to ensure that the contract is performed in a workmanlike manner and with the requisite skill and that the installation is made properly, safely and in accordance with applicable codes and rules. General supervision requires full time employment and that the review of the work done pursuant to the license be performed during regular business hours while the work is in progress.

Statutory Authority G.S. 87-18; 87-23; 87-26.

.0506 MINOR REPAIRS AND ALTERATIONS

(a) The connection of a factory-installed and inspected mobile home drainage system to an existing approved premises sewer system, which premises sewer system extends from the septic tank or municipal sewer system, constitutes a minor repair or replacement. The connection of a factory-installed mobile home water system to an existing approved potable water supply on the premises constitutes a minor repair or replacement.

(b) The initial installation ~~and~~ or the subsequent replacement of a hot water heater in any structure requires a license in plumbing contracting except that the replacement of a hot water heater, with no change in fuel or energy source, energy use rate, routing or sizing of venting or piping, constitutes a minor replacement within the meaning of G.S. 87-21(c).

Statutory Authority G.S. 87-18; 87-21(a)(1); 87-21(a)(5); 87-21(c).

**.0507 HEATING: GROUP 1 LICENSE
REQUIRED**

A license in heating, group No. 1 is required for the installation or replacement of a boiler in a

heating group No. 1 system. ~~requires a Heating Group 1 license.~~

Statutory Authority G.S. 87-18; 87-21(a)(2); 87-21(a)(5); 87-21(c).

**.0508 HEATING: GROUP 3 LICENSE
REQUIRED**

(a) A license in heating, group No. 3 is required for installation ~~of~~ or replacement of a furnace in a heating group No. 3 system.

(b) A license in heating, group No. 3 is required to install or replace self-contained fireplace unit if the unit utilizes ducts or a blower to distribute air to areas not immediately adjacent to the fireplace itself.

(c) A license in heating, group No. 3 ~~contracting~~ is required when air conditioning of less than 15 tons is added to an already installed heating, group No. 3 system, provided the existing heating system is altered or modified, or there are changes in the duct or control system.

Statutory Authority G.S. 87-18; 87-21(a)(3); 87-21(a)(5); 87-21(c).

SECTION .1000 - CONTESTED CASES

.1001 RIGHT TO HEARING

When the Board acts or proposes to act, other than in rule-making or declaratory ruling proceedings, in a manner which will affect the rights, duties, or privileges of a specific, identifiable person, such person has the right to an administrative hearing. When the Board proposes to act in such a manner, it shall give all such affected persons notice of their right to a hearing by mailing by certified mail to them at their last known address a notice of the proposed action and a notice of a right to a hearing.

Statutory Authority G.S. 87-18; 150B-11; 150B-38.

.1002 REQUEST FOR HEARING

(a) Any time an individual believes that individual's rights, duties, or privileges have been affected by the Board's administrative action, but has not received notice of a right to an administrative hearing, that individual may file a formal request for a hearing.

(b) Before an individual may file a request, that individual is encouraged to exhaust all reasonable efforts to resolve the issue informally with the Board.

(c) Subsequent to such informal action, if still dissatisfied, the individual should submit a request to the Board's office, with the request bearing the notation: REQUEST FOR AD-

MINISTRATIVE HEARING. The request should contain the following information:

- (1) name and address of the Petitioner,
- (2) a concise statement of the action taken by the Board which is challenged,
- (3) a concise statement of the way in which the Petitioner has been aggrieved, and
- (4) a clear and specific statement of request for a hearing.

(d) The request will be acknowledged promptly and, if deemed appropriate by the Board in accordance with Rule 21 N.C.A.C. 50 .1003, a hearing will be scheduled.

Statutory Authority G.S. 87-18; 150B-11; 150B-38.

.1003 GRANTING OR DENYING HEARING REQUEST

(a) The Board will grant a request for a hearing if it determines that the party requesting the hearing is a "person aggrieved" within the meaning of G.S. 150B-2(6).

(b) The denial of request for a hearing will be issued immediately upon decision, and in no case later than 60 days after the submission of the request. Such denial shall contain a statement of the reasons leading the Board to deny the request.

(c) Approval of a request for a hearing will be signified by the issuing of a notice as required by G.S. 150B-38(b) and explained in Rule .1004 of this Section.

Statutory Authority G.S. 87-18; 150B-11; 150B-38.

.1004 NOTICE OF HEARING

(a) The Board shall give the party or parties in a contested case a notice of hearing not less than 15 days before the hearing. Said notice shall contain the following information, in addition to the items specified in G.S. 150B-38(b):

- (1) the name, position, address and telephone number of a person at the offices of the Board to contact for further information or discussion;
- (2) the date, time, and place for a pre-hearing conference, if any; and
- (3) any other information deemed relevant to informing the parties as to the procedure of the hearing.

(b) If the Board determines that the public health, safety or welfare requires such action, it may issue an order summarily suspending a license. Upon service of the order, the licensee to whom the order is directed shall immediately cease the practice of plumbing and heating con-

tracting in North Carolina. The Board shall promptly give notice of hearing pursuant to G.S. 150B-38 following service of the order. The suspension shall remain in effect pending issuance by the Board of a final agency decision pursuant to G.S. 150B-42.

Statutory Authority G.S. 87-18; 150B-3(c); 150B-11; 150B-38.

.1005 WHO SHALL HEAR CONTESTED CASES

All administrative hearings will be conducted by the Board, a panel consisting of a majority of the members of the Board, or an administrative law judge designated to hear the case pursuant to G.S. 150B-40(e).

Statutory Authority G.S. 87-18; 150B-11; 150B-38; 150B-40.

.1006 INFORMAL PROCEDURES

The Board and the party or parties may agree in advance to simplify the hearing by: decreasing the number of issues to be contested at the hearing; accepting the validity of certain proposed evidence; accepting the findings in some other case with relevance to the case at hand; or agreeing to such other matters as may expedite the hearing.

Statutory Authority G.S. 87-18; 150B-11; 150B-41.

.1007 PETITION FOR INTERVENTION

(a) A person desiring to intervene in a contested case must file a written petition with the Board's office. The request should bear the notation: PETITION TO INTERVENE IN THE CASE OF (Name of case).

(b) The petition must include the following information:

- (1) the name and address of petitioner;
- (2) the business or occupation of petitioner, where relevant;
- (3) a full identification of the hearing in which petitioner is seeking to intervene;
- (4) the statutory or non-statutory grounds for intervention;
- (5) any claim or defense in respect of which intervention is sought; and
- (6) a summary of the arguments of evidence petitioner seeks to present.

(c) If the Board determines to allow intervention, notice of that decision will be issued promptly to all parties, and to the petitioner. In cases of discretionary intervention, such notification will include a statement of any limitations

of time, subject matter, evidence or whatever else is deemed necessary which are imposed on the intervenor.

(d) If the Board's decision is to deny intervention, the petitioner will be notified promptly. Such notice will be in writing, identifying the reasons for the denial, and will be issued to the petitioner and all parties.

Statutory Authority G.S. 87-18; 150B-11; 150B-38.

.1008 TYPES OF INTERVENTION

(a) Intervention of Right. A petition to intervene as of right, as provided in the North Carolina Rules of Civil Procedure, Rule 24, will be granted if the petitioner meets the criteria of that rule and the petition is timely.

(b) Permissive Intervention. A petition to intervene permissively, as provided in the North Carolina Rules of Civil Procedure, Rule 24, will be granted if the petitioner meets the criteria of that rule and the Board determines that:

- (1) There is sufficient legal or factual similarity between the petitioner's claimed rights, privileges, or duties and those of the parties to the hearing; and
- (2) Permitting intervention by the petitioner as a party would aid the purpose of the hearing.

(c) Discretionary Intervention. The Board may allow discretionary intervention, with whatever limits and restrictions are deemed appropriate.

Statutory Authority G.S. 87-18; 150B-11; 150B-38.

.1009 DISQUALIFICATION OF BOARD MEMBERS

(a) Self-disqualification. If for any reason a Board member determines that personal bias or other factors render that member unable to hear a contested case and perform all duties in an impartial manner, that Board member shall voluntarily decline to participate in the hearing or decision.

(b) Petition for Disqualification. If for any reason any party in a contested case believes that a Board member is personally biased or otherwise unable to hear a contested case and perform all duties in an impartial manner, the party may file a sworn, notarized affidavit with the Board. The title of such affidavit should bear the notation: AFFIDAVIT OF DISQUALIFICATION OF BOARD MEMBER IN THE CASE OF (Name of case).

(c) Contents of Affidavit. The affidavit must state all facts the party deems to be relevant to the disqualification of the Board member.

(d) Timeliness and Effect of Affidavit. An affidavit of disqualification will be considered timely if filed ten days before commencement of the hearing. Any other affidavit will be considered timely provided it is filed at the first opportunity after the party becomes aware of facts which give rise to a reasonable belief that a Board member may be disqualified under this rule.

Where a petition for disqualification is filed less than ten days before or during the course of a hearing, the hearing shall continue with the challenged Board member sitting. Petitioner shall have the opportunity to present evidence supporting his petition, and the petition and any evidence relative thereto presented at the hearing shall be made a part of the record. The Board, before rendering its decision, shall decide whether the evidence justifies disqualification. In the event of disqualification, the disqualified member will not participate in further deliberation or decision of the case.

(e) Procedure for Determining Disqualification.

- (1) The Board will appoint a Board member to investigate the allegations of the affidavit.
- (2) The investigator will report to the Board the findings of the investigation.
- (3) The Board shall decide whether to disqualify the challenged individual.
- (4) The person whose disqualification is to be determined will not participate in the decision but may be called upon to furnish information to the other members of the Board.
- (5) When a Board member is disqualified prior to the commencement of the hearing or after the hearing has begun, such hearing will continue with the remaining members sitting provided that the remaining members still constitute a majority of the Board.
- (6) If four or more members of the Board are disqualified pursuant to this rule, the Board shall petition the Office of Administrative Hearings to appoint an administrative law judge to hear the contested case pursuant to G.S. 150B-40(e).

Statutory Authority G.S. 87-18; 150B-11; 150B-38; 150B-40.

.1010 SUBPOENAS

(a) Requests for subpoenas for the attendance and testimony of witnesses or for the production of documents, either at a hearing or for the pur-

poses of discovery, shall be made in writing to the Board, shall identify any document sought with specificity, and shall include the full name and home or business address of all persons to be subpoenaed and, if known, the date, time, and place for responding to the subpoena. The Board shall issue the requested subpoenas within three days of receipt of the request.

(b) Subpoenas shall contain: the caption of the case; the name and address of the person subpoenaed; the date, hour and location of the hearing in which the witness is commanded to appear; a particularized description of the books, papers, records or objects the witness is directed to bring with him to the hearing, if any; the identity of the party on whose application the subpoena was issued; the date of issue; the signature of the presiding officer or his designee; and a "return of service." The "return of service" form, as filled out, shows the name and capacity of the person serving the subpoena, the date on which the subpoena was delivered to the person directed to make service, the date on which service was made, the person on whom service was made, the manner in which service was made, and the signature of the person making service.

(c) Subpoenas shall be served by the sheriff of the county in which the person subpoenaed resides, when the party requesting such subpoena prepays the sheriff's service fee. The subpoena shall be issued in duplicate, with a "return of service" form attached to each copy. A person serving the subpoena shall fill out the "return of service" form for each copy and properly return one copy of the subpoena, with the attached "return of service" form completed, to the Board.

(d) Any person receiving a subpoena from the Board may object thereto by filing a written objection to the subpoena with the Board's office.

(e) Such objection shall include a concise, but complete, statement of reasons why the subpoena should be revoked or modified. These reasons may include lack of relevancy of the evidence sought, or any other reason sufficient in law for holding the subpoena invalid, such as that the evidence is privileged, that appearance or production would be so disruptive as to be unreasonable in light of the significance of the evidence sought, or other undue hardship.

(f) Any such objection to a subpoena must be served on the party who requested the subpoena simultaneously with the filing of the objection with the Board.

(g) The party who requested the subpoena, in such time as may be granted by the Board, may file a written response to the objection. The written response shall be served by the requesting

party on the objecting witness simultaneously with filing the response with the Board.

(h) After receipt of the objection and response thereto, if any, the Board shall issue a notice to the party who requested the subpoena and the party challenging the subpoena, and may notify any other party or parties of an open hearing, to be scheduled as soon as practicable, at which evidence and testimony may be presented, limited to the narrow questions raised by the objection and response.

(i) Promptly after the close of such hearing, a majority of the Board members hearing the contested case will rule on the challenge and issue a written decision. A copy of the decision will be issued to all parties and made a part of the record.

Statutory Authority G.S. 87-18; 150B-11; 150B-38; 150B-39; 150B-40.

.1011 WITNESSES

Any party may be a witness and may present witnesses on the party's behalf at the hearing. All oral testimony at the hearing shall be under oath or affirmation and shall be recorded. At the request of a party or upon the Board's own motion, the presiding officer may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

Statutory Authority G.S. 87-18; 150B-11; 150B-38; 150B-40.

.1012 FINAL DECISION

In all cases heard by the Board, the Board will issue its decision within 60 days after its next regularly scheduled meeting following the close of the hearing. This decision will be the prerequisite "final agency decision" for the right to judicial review.

Statutory Authority 87-18; 150B-11; 150B-38; 150B-42.

.1013 PROPOSALS FOR DECISIONS

(a) When an administrative law judge conducts a hearing pursuant to G.S. 150B-40(e), a "proposal for decision" shall be rendered within 45 days of the hearing pursuant to the Rules of the Office of Administrative Hearings, 26 N.C.A.C. 3 .0026. The parties may file written exceptions to this "proposal for decision" and submit their own proposed findings of fact and conclusions of law. The exceptions and alternative proposals must be filed within ten days after the party has received the "proposal for decision" as drafted by the administrative law judge.

(b) Any exceptions to the procedure during the hearing, the handling of the hearing by the administrative law judge, rulings on evidence, or any other matter must be written and refer specifically to pages of the record or otherwise precisely identify the occurrence to which exception is taken. The exceptions must be filed with the Board within ten days of the receipt of the proposal for decision. The written exceptions should bear the notation: EXCEPTIONS TO THE PROCEEDINGS IN THE CASE OF (Name of case).

(c) Any party may present oral arguments to the Board upon request. The request must be included with the written exceptions.

(d) Upon receipt of request for further oral argument, notice will be issued promptly to all parties designating the time and place for such oral argument.

(e) Giving due consideration to the proposal for decision and the exceptions and arguments of the parties, the Board may adopt the proposal for decision or may modify it as the Board deems necessary. The decision rendered will be a part of the record and a copy thereof given to all parties. The decision as adopted or modified becomes the "final agency decision" for the right to judicial review. Said decision will be rendered by the Board within 60 days of the next regularly scheduled meeting following the oral arguments, if any. If there are no oral arguments presented, the decision will be rendered within 60 days of the next regularly scheduled Board meeting following receipt of the written exceptions.

Statutory Authority G.S. 87-18; 150B-11; 150B-38; 150B-40.

SECTION .1100 - FEES

.1101 EXAMINATION FEES

An examination fee of ten dollars (\$10.00) required by G.S. 87-22.1 must accompany an application for examination.

Statutory Authority G.S. 87-18; 87-22.1.

.1102 LICENSE FEES

(a) The annual license fee for statewide licenses issued in the name of an individual, corporation, partnership, or business with a trade name is fifty dollars (\$50.00).

(b) The annual license fee for licenses limited in scope to cities or towns of less than 10,000 population and issued in the name of an individual, corporation, partnership or business with a trade name is twenty five dollars (\$25.00).

Statutory Authority G.S. 87-18; 87-22.

.1103 EXPANDING SCOPE OF LICENSE

A current license limited to cities or towns of less than 10,000 population may be expanded to statewide in scope upon payment of a twenty five dollar (\$25.00) fee to the Board.

Statutory Authority G.S. 87-18; 87-22.

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

When the text of any adopted rule is identical to the text of that as proposed, adoption of the rule will be noted in the "List of Rules Affected" and the text of the adopted rule will not be republished.

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

TITLE 5 - DEPARTMENT OF CORRECTION

CHAPTER 2 - DIVISION OF PRISONS

SUBCHAPTER 2G - COURT RELATED PROCEEDINGS

SECTION .0300 - ADMINISTRATIVE REMEDY PROCEDURE

.0306 REJECTION OF GRIEVANCES

(a) A grievance filed pursuant to these regulations shall be rejected at any level if it:

- (1) Seeks to challenge matters already decided by a State or Federal court;
- (2) Challenges a Parole Commission decision;
- (3) Challenges a disciplinary action; or
- (4) Challenges matters beyond the control of the Department.

(b) In accordance with Rule .0310, a grievance may be rejected at any level if:

- (1) The grievance concerns an action not yet taken or a decision which has not been made.
- (2) There has been a time lapse of more than one year between the event and submission of the grievance.
- (3) The inmate has requested a remedy for another inmate.
- (4) The inmate has requested a remedy for more than one incident (see Rule .0304).
- (5) The inmate's grievance directs toward any person language that is generally considered profane, vulgar, abusive, contemptuous, or threatening. Inmates who violate this rule may be subject to disciplinary action. The grievance may be resubmitted for processing once the objectionable language has been eliminated.

- (6) Rules and procedures established herein have not been followed.

History Note: Filed as a Temporary Amendment Eff. February 20, 1989 for a Period of 40 Days to Expire on March 31, 1989; Statutory Authority G.S. 148-118.1; Eff. September 1, 1988; Amended Eff. April 1, 1989.

TITLE 19A - DEPARTMENT OF TRANSPORTATION

CHAPTER 2 - DIVISION OF HIGHWAYS

SUBCHAPTER 2B - HIGHWAY PLANNING

SECTION .0100 - RIGHT OF WAY

.0162 DELEGATION TO MANAGER OF PROGRAM AND POLICY

The State Highway Administrator has delegated to the Manager of the Program and Policy Branch the following powers and duties: to approve and execute all municipal agreements for projects involving use of small urban funds.

History Note: Statutory Authority G.S. 143B-350; Eff. March 1, 1989.

CHAPTER 3 - DIVISION OF MOTOR VEHICLES

SUBCHAPTER 3D - LICENSE AND THEFT SECTION

SECTION .0200 - MOTOR VEHICLE DEALER AND SALESMAN LICENSE

.0216 DEFINITIONS

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

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

- (1) "Principal Place of Business" - Means a salesroom containing 96 square feet of floor space in a permanently enclosed building or structure which is separate and apart from any living quarters, residence or other business and having a separate entrance; where any vehicles displayed are separate and apart from vehicles of any other dealer; having displayed thereon or immediately adjacent thereto a sign, in block letters of not less than 3 inches in

height on a contrasting background, clearly and distinctly designating the trade name of the business at which a permanent business of bartering, trading and selling of motor vehicles will be carried on as such in good faith and at which place of business shall be kept and maintained the books, records, and files the Division may require as necessary to conduct the business at such location. Provided, however, the minimum area requirement provided for in this Paragraph is not applicable to any established place of business lawfully in existence and duly licensed on or before January 1, 1978.

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

locations must operate in exactly the same name as the principal place of business and only vehicles owned by or lawfully consigned to the principal place of business may be offered for sale at supplemental locations. Provided, the provisions of this Subsection shall not apply to sales of recreational vehicles and boat trailers which take place at trade shows within the franchise area of the participating dealers.

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

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

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT
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	Public 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	Independent Agencies
25	State Personnel, Office of
26	Administrative Hearings, Office of

NOTE: Title 21 contains the chapters of the various occupational licensing boards.

CHAPTER LICENSING BOARDS

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	General 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

CUMULATIVE INDEX
(April 1988 - March 1989)

1988 - 1989

Pages	Issue
1 - 25.....	1 - April
26 - 108.....	2 - April
109 - 118.....	3 - May
119 - 145.....	4 - May
146 - 184.....	5 - June
185 - 266.....	6 - June
267 - 294.....	7 - July
295 - 347.....	8 - July
348 - 400.....	9 - August
401 - 507.....	10 - August
508 - 523.....	11 - September
524 - 593.....	12 - September
594 - 606.....	13 - October
607 - 686.....	14 - October
687 - 728.....	15 - November
729 - 799.....	16 - November
800 - 833.....	17 - December
834 - 853.....	18 - December
854 - 872.....	19 - January
873 - 988.....	20 - January
989 - 1009.....	21 - February
1010 - 1025.....	22 - February
1026 - 1053.....	23 - March

- AO - Administrative Order
- 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
- M - Miscellaneous
- NP - Notice of Petitions
- PR - Proposed Rule
- SO - Statements of Organization
- TR - Temporary Rule

ADMINISTRATION

Administrative Analysis Division, 447 PR
Auxiliary Services, 270 PR
Departmental Rules, 270 PR

Human Relations Council, 609 PR
State Construction, 187 PR, 834 PR
Youth Advocacy and Involvement Office, 148 PR

ADMINISTRATIVE HEARINGS

General, 579 PR
Hearings Division, 76 PR, 581 PR
Rules Division, 580 PR
706 Deferral, 843 PR

ADMINISTRATIVE ORDER

Administrative Order, 369 AO, 873 AO

AGRICULTURE

Markets, 992 PR
Food and Drug Protection Division, 271 PR
N.C. Gasoline and Oil Inspection Board, 689 PR
N.C. Pesticide Board, 524 PR
N.C. State Fair, 451 PR
Plant Industry, 453 PR, 992 PR
Standards Division, 452 PR
Structural Pest Control Committee, 296 PR
Veterinary Division, 993 PR

COMMERCE

Alcoholic Beverage Control Commission, 276 PR
Departmental Rules, 612 PR
Milk Commission, 120 PR, 190 PR
N.C. State Ports Authority, 731 PR
Seafood Industrial Park Authority, 613 PR

COMMUNITY COLLEGES

Community Colleges, 287 PR, 557 PR

CORRECTION

Division of Prisons, 490 FR, 1046 FR

CRIME CONTROL AND PUBLIC SAFETY

Alcohol Law Enforcement, 47 PR

CULTURAL RESOURCES

Division of Archives and History, 691 PR

EDUCATION

Elementary and Secondary Education, 862 PR, 1013 PR

ELECTIONS

State Board of Elections, 120 PR

EXECUTIVE ORDERS

Executive Orders 68 - 71, 1 EO
 72, 119 EO
 73, 146 EO
 74 - 75, 508 EO
 76 - 77, 594 EO
 78, 800 EO
 79 - 81, 989 EO
 82 - 84, 1026 EO

FINAL DECISION LETTERS

Voting Rights Act, 5 FDL, 26 FDL, 185 FDL, 267 FDL, 295 FDL, 370 FDL,
401 FDL, 511 FDL, 597 FDL, 608 FDL, 688 FDL, 729 FDL, 801 FDL, 854 FDL,
877 FDL, 991 FDL

GENERAL STATUTES

Chapter 7A, 348 GS
Chapter 143B, 350 GS
Chapter 150B, 352 GS

HUMAN RESOURCES

Division of Aging, 229 PR
Drug Commission, 113 FR
Facility Services, 455 PR, 524 PR, 614 PR, 739 PR, 1027 PR
Health Services, 7 PR, 220 PR, 296 PR, 616 PR, 879 PR
Medical Assistance, 7 PR, 30 PR, 109 PR, 121 PR, 237 PR, 303 PR, 461 PR
Mental Health: General, 457 PR, 530 PR, 770 PR
Mental Health: Hospitals, 459 PR
Mental Health: Mental Retardation and Substance Abuse Services, 629 PR,
890 PR
Mental Health: Other Programs, 530 PR,
Office of the Secretary, 31 PR
Services for the Blind, 948 PR
Social Services Commission, 27 PR, 531 PR, 949 PR
Vocational Rehabilitation Services, 371 PR

INDEPENDENT AGENCIES

Agricultural Finance Authority, 841 PR
Housing Finance, 21 PR, 134 PR, 255 PR, 518 PR, 839 PR, 1000 PR

INSURANCE

Agent Services Division, 238 PR, 636 PR
Company Operations Division, 470 PR
Consumer Services, 691 PR
Engineering and Building Codes, 772 PR
Fire and Casualty Division, 32 PR, 461 PR, 773 PR, 993 PR
Fire and Rescue Services Division, 122 PR, 149 PR
Life: Accident and Health Division, 534 PR
Special Services Division, 856 PR
Support Services Division, 856 PR

JUSTICE

Criminal Justice Education and Training Standards, 304 PR
Private Protective Services, 303 PR, 834 PR

LABOR

Boiler and Pressure Vessel, 598 PR
Elevator and Amusement Device Division, 599 PR
Notice, 607 C
Office of Occupational Safety and Health, 598 PR, 1028 PR

LICENSING BOARDS

Cosmetic Art Examiners, 283 PR, 473 PR, 1013 PR
CPA Examiners, 73 PR, 472 PR, 837 PR
Dental Examiners, 704 PR, 820 PR
Examiners of Electrical Contractors, 151 PR
Hearing Aid Dealers, 77 FR
Landscape Architects, 1036 PR
Medical Examiners, 838 PR

Nursing, Board of 376 PR, 477 PR, 704 PR, 965 PR
Plumbing and Heating Contractors, 1037 PR
Podiatry Examiners, 377 PR

LIST OF RULES AFFECTED

April 1, 1988, 102 LRA
May 1, 1988, 137 LRA
June 1, 1988, 260 LRA
July 1, 1988, 335 LRA
August 1, 1988, 496 LRA
September 1, 1988, 585 LRA
October 1, 1988, 675 LRA
November 1, 1988, 790 LRA
December 1, 1988, 845 LRA
January 1, 1989, 976 LRA
February 1, 1989, LRA

NATURAL RESOURCES AND COMMUNITY DEVELOPMENT

Coastal Management, 11 PR, 67 PR, 254 PR, 281 PR, 703 PR, 1010 PR, 1030 PR
Community Assistance, 69 PR, 555 PR, 836 PR
Departmental Rules, 954 PR
Division of Economic Opportunity, 556 PR, 778 PR
Environmental Management, 241 PR, 278 PR, 599 PR, 656 PR, 698 PR, 777 PR
960 PR, 1029 PR
Forest Resources, 68 PR
Marine Fisheries, 62 PR
Soil and Water Conservation, 111 PR
Wildlife Resources and Water Safety, 111 PR, 282 PR, 470 PR, 513 PR, 555 PR,
599 PR, 656 PR, 777 PR, 805 PR, 835 PR, 860 PR, 961 PR, 998 PR, 1011 PR

NOTICE OF PETITION

Municipal Incorporation, 804 NP

REVENUE

Departmental Rules, 864 FR
Individual Income Tax, 710 FR, 825 FR, 864 FR, 1002 FR
License and Excise Tax, 113 FR
Motor Fuels Tax, 258 FR
Sales and Use Taxes, 386 FR, 584 FR, 826 FR

SECRETARY OF STATE

Securities Division, 125 PR, 656 PR

STATE PERSONNEL

State Personnel Commission, 135 PR, 333 PR, 559 PR, 781 PR, 971 PR

STATE TREASURER

Escheats and Abandoned Property, 328 PR
Local Government Commission, 18 PR
Retirement Systems, 513 PR

STATEMENTS OF ORGANIZATION

Statements of Organization, 403 SO

TRANSPORTATION

Division of Highways, 719 FR, 1046 FR
Division of Motor Vehicles, 172 FR, 258 FR, 720 FR, 1046 FR

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