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The **NORTH CAROLINA REGISTER**

IN THIS ISSUE

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Environment, Health, and Natural Resources

Justice

Nursing, Board of

Nursing Home Administrators

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RULES INVALIDATED BY JUDICIAL DECISION

ISSUE DATE: JANUARY 2, 1991

Volume 5 • Issue 19 • Pages 1177-1214



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 pages or less, plus fifteen cents (\$0.15) per page for additional page.
- (2) The full publication consists of 52 volumes totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. One year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions include 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, 1988 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1988.

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NORTH CAROLINA REGISTER



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NORTH CAROLINA REGISTER

Publication Schedule

(April 1990 - December 1991)

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*****	*****	*****	*****	*****
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
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09/14/90	08/24/90	08/31/90	10/14/90	01/01/91
10/01/90	09/10/90	09/17/90	10/31/90	02/01/91
10/15/90	09/25/90	10/02/90	11/14/90	02/01/91
11/01/90	10/11/90	10/18/90	11/30/90	03/01/91
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03/15/91	02/22/91	03/01/91	04/14/91	07/01/91
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09/16/91	08/23/91	08/30/91	10/16/91	01/01/92
10/01/91	09/10/91	09/17/91	10/31/91	02/01/92
10/15/91	09/24/91	10/01/91	11/14/91	02/01/92
11/01/91	10/11/91	10/18/91	12/01/91	03/01/92
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12/02/91	11/07/91	11/14/91	01/01/92	04/01/92
12/16/91	11/21/91	12/02/91	01/15/92	04/01/92

* 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.

NOTICE OF PETITION FOR MUNICIPAL INCORPORATION

[G.S. 150B-63(d1) requires publication of Notice that a Petition for Incorporation has been filed with the Joint Legislative Commission on Municipal Incorporations].

In accordance with G.S. 120-165, the Joint Legislative Commission on Municipal Incorporations gives notice that it has received a petition for the incorporation of the Town of Foscoe-Grandfather in Watauga County. A copy of G.S. 120-165 is reprinted below.

§120-165. Initial inquiry.

(a) The Commission shall, upon receipt of the petition, determine if the requirements of G.S. 120-163 and G.S. 120-164 have been met. If it determines that those requirements have not been met, it shall return the petition to the petitioners. The Commission shall also publish in the North Carolina Register notice that it has received the petition.

(b) If it determines that those requirements have been met, it shall conduct further inquiry as provided by this Part.

Sincerely,

Gerry F. Cohen
Counsel, Joint Legislative Commission
on Municipal Corporations

In accordance with G.S. 120-165, the Joint Legislative Commission on Municipal Incorporations gives notice that it has received a petition for the incorporation of the Town of Whitsett in Guilford County. A copy of G.S. 120-165 is reprinted below.

§120-165. Initial inquiry.

(a) The Commission shall, upon receipt of the petition, determine if the requirements of G.S. 120-163 and G.S. 120-164 have been met. If it determines that those requirements have not been met, it shall return the petition to the petitioners. The Commission shall also publish in the North Carolina Register notice that it has received the petition.

(b) If it determines that those requirements have been met, it shall conduct further inquiry as provided by this Part.

Sincerely,

Gerry F. Cohen
Counsel, Joint Legislative Commission
on Municipal Corporations

TITLE 12 - DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Criminal Justice Education and Training Standards Commission intends to amend rule(s) cited as 12 NCAC 9B .0228, .0301 - .0307.

The proposed effective date of this action is June 1, 1991.

The public hearing will be conducted at 10:00 a.m. on February 15, 1991 at the Hearing Room of the Alcoholic Beverage Control Commission Building, 3322 Old Garner Road, Raleigh, North Carolina 27610-5631.

Comment Procedures: Any person interested in these Rules may present oral or written comments relevant to the proposed action at the Public Rule-Making Hearing. Written statements not presented at the Hearing should be directed to Scott Perry, Deputy Director. The proposed rules are available for public inspection and copies may be obtained at the following address:

*Criminal Justice Standards Division
North Carolina Department of Justice
1 West Morgan Street
Room 123, Court of Appeals Building
Post Office Drawer 149
Raleigh, North Carolina 27602*

**CHAPTER 9 - CRIMINAL JUSTICE
EDUCATION AND TRAINING STANDARDS**

**SUBCHAPTER 9B - STANDARDS FOR
CRIMINAL JUSTICE EMPLOYMENT:
EDUCATION AND TRAINING**

**SECTION .0200 - MINIMUM STANDARDS FOR
CRIMINAL JUSTICE SCHOOLS AND
CRIMINAL JUSTICE TRAINING PROGRAMS
OR COURSES OF INSTRUCTION**

**.0228 BASIC TRAINING - WILDLIFE
ENFORCEMENT OFFICERS**

(a) The basic training course for wildlife enforcement officers appointed by the Wildlife Resources Commission as authorized under General Statute 113-136 shall consist of a minimum of ~~536~~ 556 hours of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a wildlife enforcement officer.

(b) Each basic training course for wildlife enforcement officers shall include the following

identified topical areas and minimum instructional hours for each area:

- | | |
|--|---------------------|
| (1) Course Orientation | 2 Hours |
| (2) Constitutional Law | 4 Hours |
| (3) Laws of Arrest, Search and Detention | 16 Hours |
| (4) Mechanics of Arrest, Arrest Procedures | 8 Hours |
| (5) Law Enforcement Communications and Information System | 4 Hours |
| (6) Elements of Criminal Law | 24 Hours |
| (7) Defensive Tactics | 32 Hours |
| (8) Juvenile Law and Procedures | 8 Hours |
| (9) Emergency Medical Services | 24 Hours |
| (9) <u>First Responder</u> | <u>40 Hours</u> |
| (10) Firearms | 40 Hours |
| (11) Hunter Safety | 10 Hours |
| (12) Patrol Techniques | 16 Hours |
| (13) Field Notetaking and Report Writing | 12 Hours |
| (14) Crisis Management | 10 Hours |
| (15) Criminal Investigation | 12 Hours |
| (16) Interviews; Field and In-Custody | 8 Hours |
| (17) Controlled Substances | 6 Hours |
| (18) ABC Laws and Procedures | 4 Hours |
| (19) Electrical and Hazardous Material Materials | 6 12 Hours |
| (20) Law Enforcement Drivers Training | 40 Hours |
| (21) Preparing for Court and Testifying in Court | 12 Hours |
| (22) Game and Fish Laws | 36 Hours |
| (23) Motorboat Laws | 12 Hours |
| (24) Boating Procedures & Small Boat Handling | 20 Hours |
| (25) Dealing with Problem Animal Situations | 4 Hours |
| (26) Basic Field Identification of Fishes | 6 Hours |
| (27) Basic Field Identification of Game Animals, Game Birds and Non-Game Animals | 2 Hours |
| (28) Identification of Migratory Waterfowl | 2 Hours |
| (29) Endangered Species | 2 Hours |
| (30) Trapping | 8 Hours |
| (31) Water Safety and Swimming | 16 Hours |
| (32) Knotsmanship, A Practical Use of Rope | 2 Hours |

- (33) Wildlife Law Enforcement and the Media 8 Hours
- (34) Motorboat Accident Investigation 12 Hours
- (35) Civil Disorders 12 Hours
- (36) Radiological Monitoring 16 Hours
- (37) Covert Activities 2 Hours
- (38) Basic Photography 8 Hours
- (39) Motor Vehicle Laws 6 Hours
- (40) DWI Enforcement 2 Hours
- (41) Physical Training 60 Hours

Statutory Authority G.S. 17C-6; 17C-10.

SECTION .0300 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE INSTRUCTORS

.0301 CERTIFICATION OF INSTRUCTORS

(d) The Standards Division may notify an applicant for instructor certification or a certified instructor that a deficiency appears to exist and attempt, in an advisory capacity, to assist the person in correcting the deficiency.

(e) When any person certified as an instructor by the Commission is found to have knowingly and willfully violated any provision or requirement of these Rules, the Commission may take action to correct the violation and to ensure that the violation does not reoccur, including:

- (1) issuing an oral warning and request for compliance;
- (2) issuing a written warning and request for compliance;
- (3) issuing an official written reprimand;
- (4) suspending the individual's certification for a specified period of time or until acceptable corrective action is taken by the individual;
- (5) revoking the individual's certification.

(f) ~~(d)~~ The Commission may deny, suspend, or revoke an instructor's certification when the Commission finds that the person:

- (1) has failed to meet and maintain any of the requirements for qualification; or
- (2) has failed to remain currently knowledgeable in the person's areas of expertise; or
- (3) has failed to deliver training in a manner consistent with the instructor lesson plans adopted by the Commission; or
- (4) has failed to follow specific guidelines as adopted by the Commission in any current course management guide; or
- (5) has demonstrated unprofessional personal conduct in the delivery of commission-mandated training; or
- (6) ~~(3)~~ demonstrates has otherwise demonstrated instructional incompetence; or

(7) has knowingly and willfully obtained, or attempted to obtain instructor certification by deceit, fraud, or misrepresentation.

~~(e) Prior to the Commission's action denying, suspending, or revoking a "General Instructor Certification", "Specific Instructor Certification", "Professional Lecturer Certification", "Radar Instructor Certification", or "Radar and Time Distance Speed Measurement Instrument Instructor Certification", the Standards Division may notify the person that a deficiency appears to exist and attempt, in an advisory capacity, to assist the person in correcting the deficiency.~~

Statutory Authority G.S. 17C-6.

.0302 GENERAL INSTRUCTOR CERTIFICATION

Certifications issued in this category after December 31, 1984 shall be limited to those topics which are not expressly incorporated under the Specific Instructor Certification category. Individuals certified under the general instructor category are not authorized to teach any of the subjects specified in Rule .0304, entitled "Specific Instructor Certification". To qualify for issuance of General Instructor Certification, an applicant shall demonstrate a combination of education and experience in criminal justice and proficiency in the instructional process to the satisfaction of the Commission. At a minimum, the applicant shall meet the following requirements for General Instructor Certification:

- (1) Present documentary evidence showing that the applicant:
 - (a) is a high school graduate, or has passed the General Education Development Test (GED) indicating high school equivalency, and has acquired four years of practical experience as a criminal justice officer or as an administrator or specialist in a field directly related to the criminal justice system; or
 - (b) has been awarded an associate degree and has acquired three years of practical experience as a criminal justice officer or as an administrator or specialist in a field directly related to the criminal justice system; or
 - (c) has been awarded a baccalaureate degree and has acquired two years of practical experience as a criminal justice officer or as an administrator or specialist in a field directly related to the criminal justice system; or

- (d) has been awarded a graduate/professional degree and has acquired one year of practical experience as a criminal justice officer or as an administrator or specialist in a field directly related to the criminal justice system.
- (2) Present evidence showing successful completion of a commission-accredited instructor training program or an equivalent instructor training course as determined by the Commission. Applicants who hold current General Instructor Certification under any previously commission-adopted instructor certification program shall receive recognition for any previously completed commission-accredited instructor training courses or previously recognized equivalent thereof. All applicants must have previously completed an instructor training course within the twelve month period preceding application. Persons having completed a commission-accredited instructor training course or an equivalent instructor training course as determined by the Commission and not having made application within twelve months of completion of the course shall complete a subsequent commission-accredited instructor training course in its entirety.
- (3) ~~Where the instructor was previously certified, present evidence verifying that the instructor successfully taught in a commission-accredited course within the two year period prior to termination of certification as specified in Rule .0304 of this Section.~~

Statutory Authority G.S. 17C-6.

**.0303 TERMS AND CONDITIONS OF
GENERAL INSTRUCTOR
CERTIFICATION**

(b) The probationary instructor will be eligible for full general instructor status, if the instructor through application at the end of the probationary period, submits to the Commission:

- (1) a favorable recommendation from a school director accompanied by certification on a commission-approved Instructor Evaluation Form that the instructor successfully taught a minimum of ~~four~~ eight hours in a commission-accredited course or a commission-recognized in-service training course during the probationary year. The results of the student evaluation of the instructor must be considered by the

school director when determining recommendation; or

- (2) a favorable written evaluation by a commission or staff member, based on an on-site classroom evaluation of the probationary instructor in a commission-accredited course or a commission-recognized in-service training course. Such evaluation will be certified on a commission-approved Instructor Evaluation Form. In addition, instructors evaluated by a commission or staff member must also teach a minimum of ~~four~~ eight hours in a commission-accredited training course or a commission-recognized in-service training course.

(c) The term of certification as a general instructor is two years from the date the Commission issues the certification. The certification may subsequently be renewed by the Commission for two-year periods. The application for renewal shall contain, in addition to the requirements listed in Rule .0302 of this Section, documentary evidence indicating that the applicant has remained active in the instructional process during the previous two-year period. Such documentary evidence shall include, at a minimum, the following:

- (1) proof that the applicant has, within the two-year period preceding application for renewal, instructed a minimum of ~~four~~ eight hours in a commission-accredited training course or a commission-recognized in-service training course as outlined in Rule .0303 of this Section; and
- (2) a favorable written recommendation from a school director accompanied by certification on a commission-approved Instructor Evaluation Form that the instructor successfully taught a minimum of ~~four~~ eight hours in a commission-accredited training ~~program~~ course or a commission-recognized in-service training course during the two-year period of general certification; or
- (3) a favorable evaluation by a commission or staff member, based on an on-site classroom evaluation of a presentation by the instructor in a commission-accredited training course or a commission-recognized in-service training course, during the two-year period of General Instructor Certification. In addition, instructors evaluated by a commission or staff member must also teach a minimum of ~~four~~ eight hours in a commission-accredited training course or a

commission-recognized in-service training course.

(d) All instructors shall remain active during their period of certification. If an instructor does not teach a minimum of ~~four~~ eight hours during the period of certification, the certification shall not be renewed, and the instructor shall file application for General Instructor Certification, Probationary Status. Such applicants shall be required to meet the minimum requirements of Rule .0302 of this Section.

(e) The use of guest participants in a delivery of the "Basic Recruit Training--Law Enforcement Course" is permissible. However, such guest participants are subject to the direct on-site supervision of a commission-certified instructor and must be authorized by the school director. A guest participant shall only be used to complement the primary certified instructor of the block of instruction and shall in no way replace the primary instructor.

(f) For purposes of this Section, "commission-recognized in-service training" shall mean any training for which the instructor is evaluated by a certified school director on a commission-approved Instructor Evaluation Form. Such training shall be objective based and documented by lesson plans using the ISD Model and documented by departmental training records to include required post-test and testing methodology. The signature of the school director on the Commission-approved Instructor Evaluation Form shall verify compliance with this Rule.

Statutory Authority G.S. 17C-6.

.0304 SPECIFIC INSTRUCTOR CERTIFICATION

(a) The Commission may issue a Specific Instructor Certification to an applicant who has developed specific motor-skills and abilities by virtue of special training and demonstrated experience in one or more of the following topical areas:

- (1) Defensive Tactics
- (2) Emergency Medical Services First Responder
- (3) Firearms
- (4) Law Enforcement Driver Training
- (5) Physical Fitness
- (6) Firearms (DOC)
- (7) Unarmed Self-Defense (DOC/DYS)
- (8) Medical Emergencies (DYS)
- (9) Electrical and Hazardous Materials Emergencies

(b) To qualify for Specific Instructor Certification, with the exception of the Emergency Medical Services and the First Responder, Phys-

ical Fitness, and Electrical and Hazardous Materials Emergencies topical ~~area~~ areas as outlined in Rule .0304 ~~(e) and (d), (e) and (f)~~ of this Section, an applicant, as a minimum, must meet the following requirements:

- (1) hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section; and
- (2) successfully complete the pertinent commission-approved specific instructor training course; and
- (3) obtain the recommendation of a commission-recognized school director.

(c) To qualify for and maintain any Specific Instructor Certification, an applicant must possess a current valid CPR Certification.

(d) To qualify for Specific Instructor Certification in the Emergency Medical Services First Responder topical area, an applicant is not required to meet the standards for issuance of General Instructor Certification, but as a minimum, must qualify through one of the following two options:

- (1) The first option is:
 - (A) hold current CPR instructor certification through either the American Red Cross or the American Heart Association; and
 - (B) hold current basic Emergency Medical Technician certification; and
 - (C) have successfully completed the Department of Transportation's 40 hour EMT Instructor Course or equivalent within the last three years or hold a current North Carolina teaching certificate.
- (2) The second option is:
 - (A) hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section; and
 - (B) hold current CPR instructor certification through either the American Red Cross or the American Heart Association; and
 - (C) hold current basic EMT certification.

(e) To qualify for Specific Instructor Certification in the Physical Fitness topical area, an applicant may become certified through one of the following two methods:

- (1) The first method is:
 - (A) hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section; and
 - (B) successfully complete the pertinent commission-approved specific instructor training course; and

- (C) obtain the recommendation of a commission-recognized school director.
- (2) The second method is:
 - (A) successfully complete the pertinent commission-approved specific instructor training course; and
 - (B) obtain the recommendation of a commission-recognized school director; and
 - (C) in addition to the requirements of both (2), (A) and (B) of this Rule, the applicant must meet one of the following qualifications:
 - (i) hold a current and valid North Carolina Teacher's Certificate and hold a minimum of a baccalaureate degree in physical education and be actively teaching in physical education topics; or
 - (ii) be presently instructing physical education topics in a community college, college or university and hold a minimum of a baccalaureate degree in physical education.
- (f) To qualify for Specific Instructor Certification in the Electrical and Hazardous Materials Emergencies topical area, an applicant is not required to meet the standards for issuance of General Instructor Certification, but as a minimum, must qualify through one of the following two options:
 - (1) The first option is:
 - (A) hold current instructor certification as a First Responder Awareness Level Hazardous Materials instructor; and
 - (B) have successfully completed the Fire Service Instructor Methodology Course or the equivalent as determined by the Commission.
 - (2) The second option is:
 - (A) hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section; and
 - (B) have successfully completed a First Responder Awareness Level Hazardous Materials course.
- (g) ~~(g)~~ Any existing commission-issued "Specific Instructor Certification - Physical Fitness" issued prior to July 1, 1989 is automatically extended with an expiration date of June 30, 1990. Any General Instructor having successfully completed the Specialized Physical Fitness Instructor Course and not having made application, must apply prior to July 1, 1990 in order for such course to be recognized for certification. Any instructor authorized to instruct in a "Basic Recruit Training -- Law Enforcement" course after

January 1, 1989 and before July 1, 1989 shall receive credit for such teaching time to satisfy the probationary period requirements or to obtain renewal of "Specific Instructor Certification - Physical Fitness."

~~(h)~~ ~~(g)~~ To qualify for Specific Instructor Certification in the State Youth Services Medical Emergencies topical area, an applicant is not required to meet the standards for issuance of General Instructor Certification, but as a minimum, must qualify in the following manner:

- (1) have successfully completed a commission-accredited basic instructor training course or an equivalent instructor training course as determined by the Commission within the ~~24~~ 12 month period preceding application; and
- (2) hold current instructor certification in CPR and First Aid by fulfillment of the American Red Cross Instructor requirements.

Statutory Authority G.S. 17C-6.

.0305 TERMS AND CONDITIONS OF SPECIFIC INSTRUCTOR CERTIFICATION

~~(a) An applicant meeting the requirements for certification as a specific instructor shall, for the first 12 months of certification, be in a probationary status. The Specific Instructor Certification, Probationary Status, shall automatically expire 12 months from the date of issuance.~~

~~(b) The probationary instructor will be eligible for full specific instructor status at the end of the probationary period if the instructor, through application, submits to the Commission:~~

- ~~(1) a favorable recommendation from a school director accompanied by certification on a commission-approved Instructor Evaluation Form that the instructor taught at least four hours in each of the topics for which Specific Instructor Certification, Probationary Status, was granted. Such instruction must have occurred in a commission-accredited course during the probationary period. The results of the student evaluation must be considered by the school director when determining the recommendation; or~~
- ~~(2) a favorable written evaluation by a commission or staff member, based on an on-site classroom evaluation of the probationary instructor in a commission-accredited course. Such evaluation will be certified on a commission-approved Instructor Evaluation Form completed for~~

each of the topics where the probationary instructor taught a minimum of four hours and for which Specific Instructor Certification was granted; or

- (3) a favorable recommendation from a school director accompanied by certification on a commission-approved Instructor Evaluation Form that the instructor taught at least four hours during the probationary period in a law enforcement officers' in-service firearms training and qualification program. Such instruction must have occurred in a program that meets the specifications outlined in Rules 9E .0105 and 9E .0106 or 12 NCAG 10B .2100; or
- (4) in the case of the Department of Correction's Specialized Firearms Instructors and Specialized Unarmed Self-Defense Instructors, a favorable written evaluation by a commission or staff member, or a staff member or designee of the Office of Staff Development and Training of the Department of Correction, based on an on-site classroom evaluation of the probationary instructor in a commission-accredited course or a commission-approved DOC in-service firearms or unarmed self-defense course. Such evaluation will be certified on a commission-approved Instructor Evaluation Form completed for each of the topics where the probationary instructor taught a minimum of four hours and for which Specific Instructor Certification was granted; or
- (5) in the case of the Division of Youth Services' Specialized Unarmed Self-Defense Instructors and State Youth Services Medical Emergencies Instructors, a favorable written evaluation by a commission or staff member, or a Staff Development Specialist of the Division of Youth Services, based on an on-site classroom evaluation of the probationary instructor in a commission-accredited course. Such evaluation will be certified on a commission-approved Instructor Evaluation Form completed for the topic where the probationary instructor taught a minimum of four hours and for which Specific Instructor Certification was granted.

(a) An applicant meeting the requirements for Specific Instructor Certification shall be issued a certification to run concurrently with the existing General Instructor Certification. The applicant must apply for certification as a specific instructor within 12 months from the date of completion of a specific instructor course.

(b) The terms of certification as a specific instructor will be determined by the expiration date of the existing General Instructor Certification. The following requirements shall apply during the initial period of certification:

- (1) where certification for both general probationary instructor and Specific Instructor Certification is issued on the same date, the instructor will only be required to satisfy the teaching requirement for the general probationary instructor certification. The instructor may satisfy the teaching requirement for the general probationary instructor certification by teaching any specific topic for which certification has been issued;
- (2) when Specific Instructor Certification is issued during an existing period of general certification, either probationary status or full general status, the specific instructor may satisfy the teaching requirement for the general certification by teaching the specific subject for which certification has been issued;
- (3) where Specific Instructor Certification becomes current with an existing 24 month period of General Instructor Certification, the instructor must teach a minimum of eight hours for each specific topic for which certification has been issued.

(c) The term of certification as a full specific instructor is two years from the date the Commission issues the certification. shall not exceed the 24 month period of full General Instructor Certification. The certification may subsequently be renewed by the commission for two-year periods. at the time of renewal of the full General Instructor Certification. The application for renewal shall contain, in addition to the requirements listed in Rule .0304 of this Section, documentary evidence that the applicant has remained active in the instructional process during the previous two-year period. Such documentary evidence shall include, at a minimum, the following:

- (1) proof that the applicant has, within the two-year period preceding application for renewal, instructed at least four eight hours in each of the topics for which Specific Instructor Certification was granted and such instruction must be in a commission-accredited training course or a commission-recognized in-service training course. Acceptable documentary evidence shall include official commission records submitted by school directors and written certification from a school director; and either

- (2) a favorable written recommendation from a school director accompanied by certification that the instructor successfully taught at least four eight hours in each of the topics for which Specific Instructor Certification was granted. Such teaching must have occurred in a commission-accredited training course or a commission-recognized in-service training course during the two-year period of Specific Instructor Certification; or
- (3) a favorable evaluation by a commission or staff member, based on an on-site classroom evaluation of a presentation by the instructor in a commission-accredited training course or a commission-recognized in-service training course, during the two-year period of Specific Instructor Certification. In addition, instructors evaluated by a commission or staff member must also teach at least four eight hours in each of the topics for which Specific Instructor Certification was granted. ~~or~~
- (4) ~~a favorable recommendation from a school director accompanied by certification on a commission approved Instructor Evaluation Form that the instructor successfully taught at least four hours in a law enforcement officers' in-service firearms training and qualification program during the two-year period of Specific Instructor Certification. Such instruction must have occurred in a program that meets the specifications outlined in Rules 9E .0105 and 9E .0106 or 12 NCAC 10B .2100; or~~
- (5) ~~in the case of the Department of Correction's Specialized Firearms Instructors and Specialized Unarmed Self-Defense Instructors, a favorable evaluation by a commission or staff member, or a staff member or designee of the Office of Staff Development and Training of the Department of Correction, based on an on-site classroom evaluation of the instructor in a commission-accredited training course or a commission-approved DOC in-service firearms or unarmed self-defense course. The instructor must have taught a minimum of four hours in each of the topics for which full Specific Instructor Certification was granted for the two-year period; or~~
- (6) ~~in the case of the Division of Youth Services' Specialized Unarmed Self-Defense Instructors and State Youth Services Medical Emergencies Instructors, a favorable written evaluation by a commission~~

~~or staff member, or a Staff Development Specialist of the Division of Youth Services, based on an on-site classroom evaluation of the instructor in a commission-accredited training course. The instructor must have taught a minimum of four hours in the topic for which full Specific Instructor Certification was granted for the two-year period.~~

(d) All instructors shall remain active during their period of certification. If an instructor does not teach at least four eight hours in each of the topic areas for which certification is granted, the certification shall not be renewed for those topics in which the instructor failed to successfully teach. Any specific instructor training courses previously accepted by the Commission for purposes of certification shall no longer be recognized if the instructor does not successfully teach at least four eight hours in each of the specific topics during the two-year period of which certification was granted. Upon application for recertification, such applicants shall be required to meet the minimum requirements of Rule .0304 of this Section.

(e) The use of guest participants in a delivery of the "Basic Recruit Training--Law Enforcement Course" is permissible. However, such guest participants are subject to the direct on-site supervision of a commission-certified instructor and must be authorized by the school director. A guest participant shall only be used to complement the primary certified instructor of the block of instruction and shall in no way replace the primary instructor.

Statutory Authority G.S. 17C-6.

.0306 PROFESSIONAL LECTURER CERTIFICATION

(a) The Commission may issue Profession Professional Lecturer Certification to a person in a formally recognized profession, e.g., medicine, law, psychology, who by virtue of formal academic degrees ~~or and~~ professional expertise has developed special expertise knowledge in one or more of the following topical ~~areas~~ areas:

- (1) ABC Laws and Procedures Law
- (2) Constitutional Law Psychology
- (3) Deviant Behavior Medicine
- (4) Elements of Criminal Law
- (5) Emergency Medical Services
- (6) Juvenile Laws and Procedures
- (7) Laws of Arrest, Search, and Seizure
- (8) Motor Vehicle Laws
- (9) Preparing for Court and Testifying in Court

Statutory Authority G.S. 17C-6.

**.0307 TERMS AND CONDITIONS OF
PROFESSIONAL LECTURER
CERTIFICATION**

(a) Certification as a professional lecturer shall remain effective for ~~12~~ 24 months from the date of issuance. The lecturer shall apply for re-certification at or before the end of the ~~12~~ 24 month period.

(b) During the ~~12~~ 24 month period of certification, a certified professional lecturer may participate in repetitions of the same training course or courses for which certification is granted so long as there are no changes therein which alter the topical areas, duties, and responsibilities of the lecturer.

Statutory Authority G.S. 17C-6.

**TITLE 15A - DEPARTMENT OF
ENVIRONMENT, HEALTH, AND
NATURAL RESOURCES**

Notice is hereby given in accordance with G.S. 150B-12 that the DEHNR - Division of Environmental Management intends to amend rule cited as 15A NCAC 2N .0203.

The proposed effective date of this action is May 1, 1991.

The public hearing will be conducted at 7:00 p.m. on February 4, 1991 at the Ground Floor Hearing Room, Archdale Building, 512 North Salisbury Street, Raleigh, NC.

Comment Procedures: Oral comments may be made at a hearing, or written statements may be submitted to the agency prior to February 4, 1991. Written copies of oral statements exceeding three minutes are requested. Oral statements may be limited at the discretion of the hearing officer. Send comments to: Randy Prillaman, Envir Specialist, EHNR-DEM-Groundwater Section, P.O. Box 27687, Raleigh, NC 27611. Telephone (919) 733-3221.

**CHAPTER 2 - ENVIRONMENTAL
MANAGEMENT**

**SUBCHAPTER 2N - UNDERGROUND
STORAGE TANKS**

**SECTION .0200 - PROGRAM SCOPE AND
INTERIM PROHIBITION**

.0203 DEFINITIONS

(a) The definitions contained in 40 CFR 280.12 (Subpart A) have been adopted by reference in accordance with G.S. 150B-14(c).

(b) This Rule shall apply throughout this Subchapter except that:

(1) "Implementing agency" shall mean the "Division of Environmental Management."

(2) "Division" shall mean the "Division of Environmental Management."

(3) "Director" and "Director of the Implementing Agency" shall mean the "Director of the Division of Environmental Management."

(c) The following definitions shall apply throughout this Subchapter:

(1) "De minimis concentration" means that amount of a regulated substance which does not exceed one percent of the capacity of the tank, excluding piping and vent lines.

(2) "Expediently emptied after use" means the removal of a regulated substance from an emergency spill or overflow containment UST system within 48 hours after the necessity for use of the UST system has ceased.

(3) "Previously closed" means:

(A) An UST system from which all regulated substances had been removed using commonly employed practices, the tank filled with a solid inert material, and tank openings were sealed or capped prior to December 22, 1988; or

(B) An UST system removed from the ground prior to December 22, 1988.

(4) "Temporarily closed" means:

(A) An UST system from which the product has been removed such that not more than one inch of product and residue are present in any portion of the tank; or

(B) Any UST system in use as of December 22, 1988 which complies with the provisions of 15A NCAC 2N .0801.

(5) "Secondary containment" means a method or combination of methods of release detection for UST systems that includes, but is not limited to:

(A) For tanks, double-walled construction, external liners (including vaults) or other methods, approved by the Division, which meets the provisions of 40 CFR 280.42(b)(5); and

(B) For underground piping, trench liners, double-walled construction or other methods, approved by the Division, which meet the provisions of 40 CFR 280.42(b)(5).

- (6) "Person qualified to assess site conditions" means a person who, through a combination of training and experience, is competent to evaluate the conditions existing at an UST system site, including the physical and chemical conditions of the subsurface.
- (7) "Tank in Use". An underground storage tank (UST) is in use if it fails to meet three of the following criteria:
- (A) the UST has been previously closed in accordance with this Subchapter;
 - (B) all tank openings, except vent lines, have been sealed or capped or otherwise altered to render the contents of the tank inaccessible;
 - (C) all regulated substances have been removed, as measured from outside the tank using common measuring practices, so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remains in the system; or
 - (D) no product is added or removed from the tank for purposes other than closure.

Statutory Authority G.S. 143-215.3(a)(15); 143B-282(2)(h); 150B-14(c).

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Wildlife Resources Commission intends to amend rules cited as 15A NCAC 10C .0103, .0203, .0407; and 15A NCAC 10F .0324.

The proposed effective date of 15A NCAC 10C .0103, .0203, and .0407 is July 1, 1991. The proposed effective date of 15A NCAC 10F .0324 is May 1, 1991.

The public hearing will be conducted at 10:00 a.m. on February 4, 1991 at the Archdale Building, Room 386, 512 North Salisbury Street, Raleigh, NC 27604-1188.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from January 21, 1991 to February 19, 1991. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 North Salisbury Street, Raleigh, NC 27604-1188.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10C - INLAND FISHING REGULATIONS

SECTION .0100 - JURISDICTION OF AGENCIES: CLASSIFICATION OF WATERS

.0103 COASTAL FISHING WATERS

Coastal fishing waters are the Atlantic Ocean; the various coastal sounds; and estuarine waters up to the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Marine Fisheries Commission and the Wildlife Resources Commission. All waters which are tributary to coastal fishing waters and which are not otherwise designated by agreement between the Marine Fisheries Commission and the Wildlife Resources Commission are coastal fishing waters. The regulations and licensing of fishing in coastal fishing waters is under the jurisdiction of the Marine Fisheries Commission; except that inland game fish (exclusive of spotted sea trout, red drum, flounder, white perch, yellow perch, weakfish, and striped bass) are subject to regulations by the Wildlife Resources Commission in coastal fishing waters. Regulations and laws administered by the Marine Fisheries Commission regarding fishing in coastal waters are enforced by fisheries enforcement officers. Regulations regarding inland game fish in coastal waters are enforced by wildlife enforcement officers unless otherwise agreed to by the Wildlife Resources Commission.

Statutory Authority G.S. 113-129; 113-132; 113-134; 113-292.

SECTION .0200 - GENERAL REGULATIONS

.0203 RECIPROCAL LICENSE AGREEMENTS

(a) Virginia. In accordance with a reciprocal license agreement between the States of Virginia and North Carolina, all valid ~~statewide fishing licenses~~ and permits authorizing sport fishing and legally obtained from the Virginia Commission of Game and Inland Fisheries or the North Carolina Wildlife Resources Commission, or the duly authorized agents of either, shall be reciprocally honored for fishing by means of rod and reel, hook and line, casting, or trotline in the Dan River east of the Brantly Steam Plant Dam at Danville, and east of the mouth of Difficult Creek on the Staunton River arm of Kerr Reservoir to the Gaston Dam on the Roanoke River, including all tributary waters lying in either Virginia or North Carolina which are accessible by boat from the main bodies of the Kerr

and Gaston Reservoirs, or from the Island Creek subimpoundment. ~~In addition, the Virginia nonresident interstate three-day Kerr Reservoir fishing license will be so honored, except on Gaston Reservoir.~~ Senior citizen and juvenile license exceptions authorized by either state will be honored by both states. In addition, all valid fishing licenses and permits legally obtained from the Virginia Game and Fish Commission or the North Carolina Wildlife Resources Commission, or the duly authorized agents of either, shall be reciprocally honored for fishing with rod and reel, hook and line or by casting in that portion of the New River between the confluence of the North and South forks of the New River in North Carolina (Alleghany County) and the confluence of the New and Little Rivers in Virginia (Grayson County).

(b) Georgia. In that portion of Chatuge Reservoir lying in and between the States of North Carolina and Georgia, east of the dam to Elf High Bridge on the Shooting Creek Arm and to Macedonia Bridge on US 76 south of Hiwassee, Georgia, and the lateral branches of the reservoir between these points, all official fishing licenses and permits legally obtained from the North Carolina Wildlife Resources Commission or the Georgia Game and Fish Commission, or duly authorized agents of either, shall be honored and accepted as legal authorization to fish by means of rod and reel, hook-and-line, or casting: Provided, however, that all persons fishing in the waters of the Chatuge Reservoir beyond the bounds of the state from which they hold a valid fishing license, shall be authorized to fish with said license only from boats not anchored to the shore or to a pier or boat dock connecting to the shore.

(c) Tennessee. In that portion of Slick Rock Creek which coincides with the state line between North Carolina and Tennessee and in all of Calderwood Reservoir, when fishing from boat, all valid statewide fishing licenses obtained from the North Carolina Wildlife Resources Commission or the Tennessee Wildlife Resources Agency, or the duly authorized agents of either, shall be reciprocally honored for the purposes of fishing with hook and line or fishing in designated mountain trout waters, according to the tenor thereof.

Statutory Authority G.S. 113-134; 113-275; 113-304.

SECTION .0400 - NONGAME FISH

.0407 PERMITTED SPECIAL DEVICES AND OPEN SEASONS

Except in designated public mountain trout waters, and in impounded waters located on the Sandhills Game Land, there is a year-round open season for the licensed taking of nongame fishes by bow and arrow. Seasons and waters in which the use of other special devices is authorized are indicated by counties below:

(6) Beaufort:

- (a) July 1 to June 30 with traps in the Pungo River, and in the Tar and Pamlico Rivers above Norfolk and Southern Railroad bridge; and with gigs in all inland public waters;
- (b) December 1 to June 5 with dip and bow nets in all inland public waters; with drift gill nets in Tar River upstream from the Norfolk and Southern Railroad bridge at Washington to the Pitt County line; and with gill nets in all other inland public waters, except Blounts Creek, Chocowinity Bay, Durham Creek, Mixon Creek and Nevil Creek and their tributaries.

Statutory Authority G.S. 113-134; 113-276; 113-292.

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

.0324 DAVIDSON COUNTY

(a) Regulated Areas. This Rule applies only to ~~that~~ those portions of High Rock Lake, Tuckertown Lake, and Badin Lake which lie within the boundaries of Davidson County.

(b) Speed Limit Near Ramps. No person shall operate a vessel at greater than no-wake speed within 50 yards of any public boat launching ramp while on the waters of High Rock Lake, Tuckertown Lake, and Badin Lake in Davidson County.

(c) Speed Limit in Mooring Areas. No person shall operate a vessel at greater than no-wake speed while within a marked mooring area established with the approval of the Executive Director, or his representative, on the waters of High Rock Lake, Tuckertown Lake, and Badin Lake in Davidson County.

(d) Speed Limit Near Bridges. No person shall operate a vessel at greater than no-wake speed within 50 yards of any highway bridge over the waters of High Rock Lake, Tuckertown Lake, and Badin Lake in Davidson County.

(e) Restricted Swimming Areas. No person operating or responsible for the operation of a vessel shall permit it to enter any marked public

swimming area established with the approval of the Executive Director, or his representative, on the waters of High Rock Lake, Tuckertown Lake, and Badin Lake in Davidson County.

(f) Placement and Maintenance of Markers. The Board of Commissioners of Davidson County is designated a suitable agency for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers, if applicable. With regard to marking High Rock Lake the regulated areas described in Paragraph (a) of this Rule, all of the supplementary standards listed in Rule .0301(g) of this Section shall apply.

Statutory Authority G.S. 75A-3; 75A-15.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Commission for Health Services and the Department of Environment, Health, and Natural Resources intends to amend rules cited as 15A NCAC 13A .0009 - .0010; 13C .0201; repeal rule cited as 15A NCAC 13A .0015; and adopt rules cited as 15A NCAC 13A .0016 - .0017; 16A .0801 - .0810.

The proposed effective date of this action is May 1, 1991.

The public hearing will be conducted at 9:00 a.m. on February 1, 1991 at the Ground Floor Hearing Room, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina.

Comment Procedures: Any person may request copies of the proposed copies of the proposed rules by contacting John P. Barkley, DEHNR, P.O. Box 27687, Raleigh, NC 27611-7687, (919) 733-7247. Written comments on these rules may be sent to Mr. Barkley at the above address or submitted at the public hearing. If you desire to speak at the public hearing, notify Mr. Barkley at least 3 days prior to the public hearing. At the discretion of the Chairman, the public may also be allowed to comment on the rules at the Commission Meeting. Fiscal notes on applicable rules are available from Mr. Barkley.

CHAPTER 13 - SOLID WASTE MANAGEMENT

SUBCHAPTER 13A - HAZARDOUS WASTE MANAGEMENT

.0009 STANDARDS FOR OWNERS/

OPERATORS OF HWTSD FACILITIES - PART 264

(i) 40 CFR 264.140 through 264.151 (Subpart H), "Financial Requirements", have been adopted by reference in accordance with G.S. 150B-14(c), except that 40 CFR 264.143(a)(3), (a)(4), (a)(5), (a)(6), 40 CFR 264.145(a)(3), (a)(4), (a)(5), ~~(a)(6)~~, and 40 CFR 264.151(a)(1), Section 15 are not adopted by reference.

(1) The following shall be substituted for the provisions of 40 CFR 264.143(a)(3) which were not adopted by reference:

The owner or operator shall deposit the full amount of the closure cost estimate at the time the fund is established. Within 1 year of the effective date of these regulations, an owner or operator using a closure trust fund established prior to the effective date of these regulations shall deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or shall obtain other financial assurance as specified in this Section.

(2) The following shall be substituted for the provisions of 40 CFR 264.143(a)(6) which were not adopted by reference:

After the trust fund is established, whenever the current closure cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator within 60 days after the change in the cost estimate, shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in this section to cover the difference.

(3) The following shall be substituted for the provisions of 40 CFR 264.145(a)(3) which were not adopted by reference:

(A) Except as otherwise provided in Paragraph (i)(3)(B) of this Section, the owner or operator shall deposit the full amount of the post-closure cost estimate at the time the fund is established.

(B) If the Department finds that the owner or operator of an inactive hazardous waste disposal unit cannot provide financial assurance for post-closure through any other option (e.g. surety bond, letter of credit, or corporate guarantee), a plan for annual payments to the trust fund over the term of the RCRA post-closure per-

mit may be established by the Department as a permit condition.

~~The owner or operator shall deposit the full amount of the post-closure cost estimate at the time the fund is established. Within 1 year of the effective date of these regulations, an owner or operator using a post-closure trust fund established prior to the effective date of these regulations shall deposit an amount into the fund so that its value after this deposit at least equals the amount of the current post-closure cost estimate, or shall obtain other financial assurance as specified in this Section.~~

- (4) The following shall be substituted for the provisions of 40 CFR 261.145(a)(6) which were not adopted by reference:

After the trust fund is established, whenever the current post-closure cost estimate changes during the operating life of the facility, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current post-closure cost estimate, or obtain other financial assurance as specified in this Section to cover the difference.

- (5) (4) The following additional requirement shall apply:

The trustee shall notify the Department of payment to the trust fund, by certified mail within 10 days following said payment to the trust fund. The notice shall contain the name of the Grantor, the date of payment, the amount of payment, and the current value of the trust fund.

Statutory Authority G.S. 130A-294(c).

.0010 INTERIM STATUS STDS FOR OWNERS-OP OF HWTSD FACILITIES - PART 265

(h) 40 CFR 265.140 through 265.151 (Subpart H), "Financial Requirements", have been adopted by reference in accordance with G.S. 150B-14(c), except that 40 CFR 265.143(a)(3), (a)(4), (a)(5), (a)(6), and 40 CFR 265.145(a)(3), (a)(4), (a)(5), ~~(a)(6)~~, are not adopted by reference.

- (1) The following shall be substituted for the provisions of 40 CFR 265.143(a)(3) which were not adopted by reference:

The owner or operator shall deposit the full amount of the closure cost estimate at the time the fund is established. Within 1 year of the effective date of these regulations, an owner or operator using a closure trust fund established prior to the effective date of these regulations shall deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or shall obtain other financial assurance as specified in this Section.

- (2) The following shall be substituted for the provisions of 40 CFR 265.143(a)(6) which were not adopted by reference:

After the trust fund is established, whenever the current closure cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator within 60 days after the change in the cost estimate, shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in this section to cover the difference.

- (3) The following shall be substituted for the provisions of 40 CFR 265.145(a)(3) which were not adopted by reference:

(A) Except as otherwise provided in Paragraph (h)(3)(B) of this Section, the owner or operator shall deposit the full amount of the post-closure cost estimate at the time the fund is established.

(B) If the Department finds that the owner or operator of an inactive hazardous waste disposal unit cannot provide financial assurance for post-closure through any other option (e.g. surety bond, letter of credit, or corporate guarantee), a plan for annual payments to the trust fund during the interim status period may be established by the Department by use of an Administrative Order.

~~The owner or operator shall deposit the full amount of the post-closure cost estimate at the time the fund is established. Within 1 year of the effective date of these regulations, an owner or operator using a post-closure trust fund established prior to the effective date of these regulations shall deposit an amount into the fund so that its value after this deposit at least equals the amount of the current post-~~

closure cost estimate, or shall obtain other financial assurance as specified in this Section.

- (4) The following shall be substituted for the provisions of 40 CFR 265.145(a)(6) which were not adopted by reference:

After the trust fund is established, whenever the current post-closure cost estimate changes during the operating life of the facility, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current post-closure cost estimate, or obtain other financial assurance as specified in this section to cover the difference.

Statutory Authority G.S. 130A-294(c).

.0015 ANNUAL REPORTS (REPEALED)

Statutory Authority G.S. 130A-294(c).

.0016 SPECIAL PURPOSE COMMERCIAL HAZARDOUS WASTE FACILITY

(a) A commercial hazardous waste facility which meets any of the following criteria is defined as a special purpose hazardous waste facility:

- (1) The facility manages no more than five waste streams and no more than 2500 tons of hazardous waste per year;
- (2) The facility manages six or more waste streams but less than 500 tons of hazardous waste per year; or
- (3) The facility only stores hazardous waste in containers and no more than 4000 tons of hazardous waste per year.

(b) The amount and type of hazardous waste indicated in Paragraph (a) shall be determined based on the previous year's annual report. If no annual report was submitted, quarterly projections shall be submitted to the Department by the facility and the amount and type of hazardous waste shall be determined based on these projections.

(c) Resident inspectors shall be present at special purpose commercial hazardous waste facilities a total of at least 32 hours per month as determined by consideration of the factors listed in G.S. 130A-295.02(j), whenever the facility is

operating or is undergoing any maintenance, repair, testing or calibration.

Statutory Authority G.S. 130A-295.02(j).

.0017 FEE SCHEDULES

(a) A commercial hazardous waste storage, treatment, or disposal facility shall pay, in addition to the fees applicable to all hazardous waste storage, treatment, or disposal facilities as required by G.S. 130A-294.1, a monthly charge of forty one dollars (\$41.00) per hour of operation. The fee shall be paid for any time when hazardous waste is managed or during periods of maintenance, repair, testing, or calibration. Each facility shall submit an operation schedule to the Department on a quarterly basis.

(b) Special purpose commercial hazardous waste facilities shall pay, in addition to the fees applicable to all hazardous waste treatment, storage or disposal facilities as required by G.S. 130A-294.1, a monthly charge of one thousand seven hundred and eighty six dollars (\$1,786.00).

Statutory Authority G.S. 130A-295.02.

SUBCHAPTER 13C - INACTIVE HAZARDOUS SUBSTANCES AND WASTE DISPOSAL SITES

SECTION .0200 - PRIORITIZATION SYSTEM

.0201 PRIORITIZATION

(b) Only sites with confirmed contamination or known disposal of hazardous substances shall be scored on the inactive hazardous waste sites priority list. Contamination is confirmed if laboratory analyses show the presence of hazardous substances in groundwater, surface water, air, wastes, or soils at concentrations significantly above background levels. Concentrations are significantly above background if the levels detected are more than:

- (1) ten times a detected level in the background, or
- (2) three times the detection limit when the background level is below the detection limit.

Statutory Authority G.S. 130A-310.12.

CHAPTER 16 - ADULT HEALTH

SUBCHAPTER 16A - CHRONIC DISEASE

SECTION .0800 - HOME AND COMMUNITY-BASED HIV HEALTH SERVICES PROGRAM

.0801 GENERAL

The Home and Community-based HIV Health Services Program is administered by the Health Care Section, Division of Adult Health, Department of Environment, Health, and Natural Resources, P.O. Box 27687, Raleigh, NC 27611-7687.

Statutory Authority G.S. 130A-223.

.0802 DEFINITIONS

The following definitions shall apply throughout this Section:

- (1) "Home and Community-based HIV Health Services" means durable medical equipment, home health aide, services, personal care services, day treatment or other partial hospitalization, home intravenous (I.V.) therapy (including prescription drugs administered intravenously) and routine diagnostic services provided to an eligible patient in the patient's home according to a written plan of care established by a health care professional.
- (2) "HIV Health Services Program" means the Home and Community-based HIV Health Services Program.
- (3) "Durable Medical Equipment (DME)" means durable medical equipment as defined in HHMM Section 5202.5 which is adopted by reference in accordance with G.S. 150B-14(c). Copies of the HHMM may be inspected at or obtained from the HIV Health Services Program.
- (4) "Home Health Aide Services" means home health aide services as defined in HHMM Section 5502.2 which is adopted by reference in accordance with G.S. 150B-14(c). Copies of the HHMM may be inspected at or obtained from the HIV Health Services Program.
- (5) "Personal Care Services" means personal care services as defined in the Medicaid Provider Manual which is adopted by reference in accordance with G.S. 150B-14(c). Copies of the Medicaid Provider Manual may be inspected at or obtained from the HIV Health Services Program.
- (6) "HIV Health Services Program Reimbursement Rate" is:
 - (a) the local health department rate or the maximum Medicaid rate, whichever is lower, for home health aide services and personal care services;
 - (b) interim Medicare rate for durable medical equipment; and
 - (c) schedule of payments that shall be developed by the Division of Adult Health for Home Intravenous (I.V.) therapy services,

routine diagnostic services, day treatment or partial hospitalization and other services for which neither Medicaid nor Medicare has an established rate.

- (7) "Third Party Payor" is any person or entity that is or may be indirectly liable for the cost of service furnished to a patient. Third party payors include, without limitation, Medicaid, Medicare, and private insurance, Veterans Administration, Children's Special Health Services and Workers' Compensation.
- (8) "Medically dependent" means a patient has been certified by a physician as:
 - (a) requiring the routine use of appropriate medical services (which may include home intravenous drug therapy) to prevent or compensate for the individual's serious deterioration, arising from infection with the etiologic agent for acquired immune deficiency syndrome, of physical health or cognitive function; and
 - (b) being able to avoid long-term or repeated care as an inpatient or resident in a hospital, nursing facility, or other institution if home and community-based health services are provided to the individual.
- (9) "Chronically dependent" means a patient has been certified by a physician as:
 - (a) being unable to perform, because of physical or cognitive impairment (without substantial assistance from another individual) arising from infection with the etiologic agent for acquired immune deficiency syndrome, at least two of the following activities of daily living: bathing, dressing, toileting, transferring, and eating; or
 - (b) having a similar level of disability due to cognitive impairment.

Statutory Authority G.S. 130A-223.

.0803 ELIGIBLE PROVIDERS

The HIV Health Services Program may contract with local health departments and other public and private organizations, institutions, and agencies in order to carry out the purposes of the Program. Only local health departments shall be eligible to contract for HIV Health Services Program reimbursement funds.

Statutory Authority G.S. 130A-223.

.0804 FINANCIAL ELIGIBILITY

- (a) HIV Health Services Program reimbursement funds shall be used to pay for home and community-based HIV health services provided

to financially eligible patients. Financial eligibility shall be determined by the local health department by a signed declaration of gross income and family size by the patient or a person responsible for the patient. A patient whose gross family income is 125 percent or less of Federal Poverty Guidelines shall be financially eligible for full coverage under the program. A patient whose gross family income is between 125 percent and 200 percent of Federal Poverty Guidelines shall be eligible for partial coverage as defined in Rule .1306 of this Section under the program. A patient whose gross family income is 200 percent or more of Federal Poverty Guidelines is not eligible for coverage under the program. Copies of the Federal Poverty Guidelines may be inspected at or obtained from the HIV Health Services Program.

(b) Once a patient is determined to be financially eligible, that eligibility shall continue for the duration of the plan of care for the patient, up to a maximum of one year.

(c) The local health department shall document each financial eligibility determination on a form provided by the HIV Health Services Program.

(d) The local health department is authorized to require substantiating documentation when making financial eligibility determinations.

Statutory Authority G.S. 130A-223.

.0805 MEDICAL ELIGIBILITY

A person who is certified by a physician to be HIV+ and medically or chronically dependent and who is in need of home and community-based HIV health services is eligible for services under this program.

Statutory Authority G.S. 130A-223.

.0806 BILLING THE HIV HEALTH SERVICES PROGRAM

(a) If a patient's gross family income is 125 percent or less of Federal Poverty Guidelines, the local health department may bill the HIV Health Services Program Reimbursement Rate (Rule .1302). The local health department may not bill a patient in this income category.

(b) If a patient's gross family income is between 125 percent and 200 percent of Federal Poverty Guidelines, the local health department may bill the program as follows:

- (1) 85 percent of the HIV Health Services Program Reimbursement Rate if the patient's gross family income is between or includes 126 percent and 140 percent of Federal Poverty Guidelines;

- (2) 70 percent of the HIV Health Services Program Reimbursement Rate if the patient's gross family income is between or includes 141 percent and 155 percent of Federal Poverty Guidelines;
- (3) 55 percent of the HIV Health Services Program Reimbursement Rate if the patient's gross family income is between or includes 156 percent and 170 percent of Federal Poverty Guidelines;
- (4) 40 percent of the HIV Health Services Program Reimbursement Rate if the patient's gross family income is between or includes 172 percent and 185 percent of Federal Poverty Guidelines; or
- (5) 25 percent of the HIV Health Services Program Reimbursement Rate if the patient's gross family income is between or includes 186 percent and 199 percent of Federal Poverty Guidelines.

Statutory Authority G.S. 130A-223.

.0807 RATES OF REIMBURSEMENT

(a) Local health departments that contract for reimbursement funds shall be reimbursed for home and community based HIV health services provided to eligible patients in an amount and percentage based on the HIV Health Services Program Reimbursement Rate in effect at the time service is rendered, as specified in Rule .0802 of this Section.

(b) Claims for reimbursement from HIV Health Services Program must be documented and reported on a quarterly basis on a form provided by the program. No claims for reimbursement will be accepted by the HIV Health Services Program more than 180 days after the date of delivery of services. If after charging the program, the agency receives payment from the patient or other third party that would result in the local health department receiving more than the HIV Health Services Program Reimbursement Rate, the local health department shall reimburse the program the difference between the total amount reimbursed from all sources and the HIV Health Services Program Reimbursement Rate.

Statutory Authority G.S. 130A-223.

.0808 REIMBURSEMENT FUNDS: THIRD PARTY PAYORS

HIV Health Services Program reimbursement funds shall be used to pay for services not reimbursed by a third party payor. A contracting local health department must take reasonable measures to determine and subsequently collect

the full legal liability of third party payors to pay for services reimbursed by the program before requesting payment from the HIV Health Services Program.

Statutory Authority G.S. 130A-223.

.0809 MONITORING

Each local health department receiving reimbursement funds shall submit the following information in a form as prescribed by and in the time frames established in the contract:

- (1) HIV Health Services Program quarterly report;
- (2) HIV Health Services Program annual report;
- (3) Quarterly expenditure report;
- (4) Report the fairly evaluated cost of unreimbursed care provided to patients eligible for the HIV Health Services Program; and
- (5) Other information necessary for the effective administration of the HIV Health Services Program.

Statutory Authority G.S. 130A-223.

.0810 AUDITS

Local health department financial and statistical records, patient records, and any other pertinent information may be audited by the state as part of the overall monitoring and evaluation effort.

Statutory Authority G.S. 130A-223.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Commission for Health Services and Department of Environment, Health, and Natural Resources intends to amend rules cited as 15A NCAC 18A .2601; 15A NCAC 19A .0201; 15A NCAC 24A .0303; and adopt rule cited as 15A NCAC 18A .2901.

The proposed effective date of this action is May 1, 1991.

The public hearing will be conducted at 9:00 a.m. on February 1, 1991 at the Ground Floor Hearing Room, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina.

Comment Procedures: Any person may request copies of the proposed rules by contacting John P. Barkley, DEHNR, P.O. Box 27687, Raleigh, NC 27611-7687, (919) 733-7247. Written comments on these rules may be sent to Mr. Barkley

at the above address or submitted at the public hearing. If you desire to speak at the public hearing, notify Mr. Barkley at least 3 days prior to the public hearing. At the discretion of the Chairman, the public may also be allowed to comment on the rules at the Commission meeting. Fiscal notes on applicable rules are available from Mr. Barkley.

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .2600 - SANITATION OF RESTAURANTS AND OTHER FOODHANDLING ESTABLISHMENTS

.2601 DEFINITIONS

The following definitions shall apply in the interpretation and enforcement of this Section:

- (7) "Food stand" means those food service establishments which prepare or serve foods and which do not provide seating facilities on the premises for customers to use while eating. Establishments which only serve such items as dip ice cream, popcorn, candied apples, or cotton candy are not included.

Statutory Authority G.S. 130A-248.

SECTION .2900 - RESTAURANT AND LODGING FEE COLLECTION AND INVENTORY PROGRAM

.2901 DISBURSEMENT OF FUNDS

Fees collected pursuant to G.S. 130A-248(d) shall be distributed for the support of local public health programs and activities to local health departments in the state as follows:

- (1) initial distribution to each local health department shall be made in accordance with the following formula: (the total amount of fees collected minus projected state expenses related to the collection and inventory programs) multiplied by (the number of facilities in the county divided by the number of facilities in the state) multiplied by (the local health department's percentage of compliance with quarterly inspections requirements for the previous fiscal year, not to exceed 100 percent) equals the allocation to the local health department; and
- (2) distribution of remaining funds to local health departments with 100 percent compliance with quarterly inspection requirements during the previous fiscal year shall be made in accordance with the following formula: (total amount of remaining funds

after initial distribution) multiplied by (the number of facilities in the county divided by the number of facilities in all counties with 100 percent compliance with quarterly inspection requirements during the previous fiscal year) equals the additional allocation to the local health department.

Statutory Authority G.S. 130A-248.

CHAPTER 19 - HEALTH: EPIDEMIOLOGY

SUBCHAPTER 19A - ACUTE COMMUNICABLE DISEASE CONTROL

SECTION .0200 - CONTROL MEASURES FOR COMMUNICABLE DISEASES

.0201 CONTROL MEASURES

(d) The following are the control measures for the Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) infection:

(4) When health care workers or other persons have had a nonsexual blood or body fluid exposure that poses a significant risk of transmission, the following shall apply:

(A) When the source person is known:

(i) The attending physician or occupational health care provider responsible for the exposed person shall notify the attending physician of the person whose blood or body fluids is the source of the exposure that an exposure has occurred. If the attending physician of the source person knows the source's HIV infection status, the physician shall transmit this information to the attending physician of the exposed person. If the attending physician of the source person does not know the infection status of the source person, the physician shall discuss the exposure with the source and if the source person is at high risk for HIV infection, shall request permission for testing for HIV infection. If permission is granted, the source shall be tested. If permission is denied, the local health director may order testing of the source if the local health director determines that the exposure poses a significant risk of transmission of HIV and that the source is at high risk for HIV infection. Whether or not the source is tested, the attending physician of the exposed person shall be notified of the risk status of the source and the infection status of the source, if known.

(ii) The attending physician of the exposed person shall inform the exposed person about the infection status of the source, if known, offer testing for HIV infection as soon as possible after exposure and at reasonable intervals up to one year to determine whether transmission occurred, and, if the physician determines that there is a substantial risk that the source person was HIV infected, give the exposed person the control measures listed in (d)(1)(a) through (c). The attending physician of the exposed person shall instruct the exposed person regarding the necessity for protecting confidentiality.

(B) When the source person is unknown, the attending physician of the exposed person shall inform the exposed person of the risk of transmission and offer testing for HIV infection as soon as possible after exposure and at reasonable intervals up to one year to determine whether transmission occurred.

(C) A health care facility may release the name of the attending physician of a source person upon request of the attending physician of an exposed person.

Statutory Authority G.S. 130A-144; 130A-148.

CHAPTER 24 - GENERAL PROCEDURES FOR PUBLIC HEALTH PROGRAMS

SUBCHAPTER 24A - PAYMENT PROGRAMS

SECTION .0300 - ELIGIBILITY PROCEDURES

.0303 PAYMENT LIMITATIONS

(c) Payment program benefits shall be available only for services or appliances which are not covered by another third party payor or which cannot be paid for out of funds received in settlement of a civil claim. However, payment program benefits shall be available for Children's Special Health Services sponsored clinic patients who cannot reasonably be examined or treated by a Medicaid provider or an authorized provider for another third party payor because of transportation problems, a need for emergency care, or similar exceptional situations. All exceptions must be approved by the Children's Special Health Services program's medical director. Also, Children's Special Health Services may make payments for services provided to Medicaid patients when acting as a Medicaid provider under an agreement making the program eligible for reimbursement from Medicaid. Providers shall take reasonable measures to collect other third

party payments. For the purposes of this Subchapter, third party payor means any person or entity that is or may be indirectly liable for the cost of services or appliances furnished to a patient. Third party payors include, without limitation, the following:

- (1) School services, including physical or occupational therapy, speech and language pathology and audiology services, and nursing services for special needs children;
- (2) Medicaid;
- (3) Medicare, Part A and Part B;
- (4) Insurance;
- (5) Social Services;
- (6) Worker's compensation;
- (7) CHAMPUS; and
- (8) Head Start programs.

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

TITLE 20 - DEPARTMENT OF STATE TREASURER

Notice is hereby given in accordance with G.S. 150B-12 that the Local Government Commission intends to amend rule(s) cited as 20 NCAC 3 .0305.

The proposed effective date of this action is May 1, 1991.

The public hearing will be conducted at 10:00 a.m. on February 1, 1991 at the Conference Room, Room 100, Albemarle Building, 325 North Salisbury Street, Raleigh, North Carolina 27603-1388.

Comment Procedures: A written copy of the comments will be required of all persons wishing to speak at the Public Hearing. All written comments must be received by 4:30 p.m. on February 1, 1991. Written comments should be sent to the APA Coordinator at the address above.

CHAPTER 3 - LOCAL GOVERNMENT COMMISSION

SECTION .0300 - SALE AND DELIVERY OF BONDS AND NOTES

.0305 MATURITIES OF BONDS

(a) The maximum period of usefulness of capital projects for which units of local government may issue bonds are as follows:

- (1) 10 years from the date of the bonds used to finance the following classes of improvements and properties:
 - (A) vehicles, including fire engines, fire trucks, hose carts, ambulances, police cars and patrol wagons, sanitation and solid waste disposal trucks or any vehicle for use in any department or by any official of the unit of local government;
 - (B) voting machines;
 - (C) fire or police alarms and communication systems for use of any department of the unit of government;
 - (D) any equipment, machinery, apparatus, furnishings or other personal property acquired in any manner other than incident to the construction of a new building, major renovation of an existing building, the construction of a sanitary landfill, or the construction or major renovation of a park or playground facility;
- (2) 20 years from the date of the bonds used to finance the following classes of improvements and properties:
 - ~~(A) plants for incineration or disposal of solid waste;~~
 - (A) ~~(B)~~ sanitary landfills, including land, site preparation, earthmoving equipment, compactors, and other necessary machinery;
 - (B) ~~(C)~~ construction and reconstruction of streets, including grading and landscaping;
 - (C) ~~(D)~~ construction and reconstruction of sidewalks, curbs, gutters, including grading;
 - (D) ~~(E)~~ bridges and culverts, including retaining walls and approaches;
- (3) 25 years from the date of the bonds used to finance plants for incineration or disposal of solid wastes;
- (4) ~~(3)~~ 30 years from the date of the bonds used to finance the following classes of improvements and properties:
 - (A) cable television systems;
 - (B) elimination of any grade-crossings or crossings and improvements thereto;
 - (C) land for cemeteries or improvements thereto;
- (5) ~~(4)~~ 40 years from the date of the bonds used to finance the following classes of improvements and properties:
 - (A) water systems;
 - (B) sanitary sewer systems and storm sewer systems (including drainage projects);
 - (C) electric power systems;
 - (D) gas systems;

- (E) watershed improvement projects and acquisition of land or interest in land necessary therefor;
- (F) airports, including land and grading, buildings, equipment and improvements thereto;
- (G) public parks and playgrounds, including land, site improvements, buildings, equipment, and other necessary structures and furnishings;
- (H) street land;
- (I) land and improvements thereto for purposes not otherwise stated in this Regulation;
- (J) buildings or other structures for purposes not otherwise stated in this Regulation;
- (K) groins, jetties, dikes, moles, sand dunes, vegetation or other types of works or improvements which are designed for the control of beach erosion or for the protection from flood and hurricanes or for the preservation or restoration of facilities and natural features;
- (L) any improvement or property not otherwise stated in this Regulation.

Statutory Authority G.S. 159-3(f); 159-122.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina State Board of Dental Examiners intends to amend rule(s) cited as 21 NCAC 16A .0001; 16B .0101, .0307, .0315; 16C .0306, .0310; 16D .0101; 16G .0003; 16H .0202; 16I .0004; 16J .0003; 16Q .0401.

The proposed effective date of this action is May 1, 1991.

The public hearing will be conducted at 8:30 a.m. on February 15, 1991 at the 3716 National Drive, Suite 221, Raleigh, North Carolina.

Comment Procedures: Persons wishing to present oral data, views or arguments on a proposed rule or rule change may file a notice with the Board at least 10 days prior to the public hearing at which the person wishes to speak. Comments should be limited to 10 minutes. The Board's mailing address is: P.O. Box 32270, Raleigh, N.C. 27622-2270. Any person may file a written submission of comments or argument at any time until February 8, 1991.

CHAPTER 16 - BOARD OF DENTAL EXAMINERS

SUBCHAPTER 16A - ORGANIZATION

.0001 DEFINITIONS

As used in this Chapter:

- (1) "Applicant" means a person applying for a dental license, a dental hygiene license or a dental intern permit;
- (2) "Board" means the North Carolina State Board of Dental Examiners; and
- (3) "Candidate" means a person who has applied and been accepted for examination to practice dentistry or dental hygiene in North Carolina.

Statutory Authority G.S. 90-26; 90-28; 90-29(a); 90-30; 90-43; 90-48.

SUBCHAPTER 16B - LICENSURE EXAMINATION: DENTISTS

SECTION .0100 - GENERAL PROVISIONS

.0101 EXAMINATION REQUIRED

All persons desiring to practice dentistry in North Carolina are required to appear before the Board and pass written and clinical examinations before receiving a license. ~~regardless of whether the person has previously been licensed in this state or another state.~~

Statutory Authority G.S. 90-28; 90-30; 90-36; 90-38; 90-48.

SECTION .0300 - APPLICATION

.0307 EXAMINATIONS

(a) The Board, having reviewed and evaluated the written examinations as administered by the Joint Commission on National Dental Examinations and having found the same to be reliable, accurate and valid examinations, has adopted as part of its written examination the National Board Dental Examination. Applicants for dental licensure must achieve a passing score upon such examination. The results of the National Board Dental Examination will be required by the Board before the candidate will be admitted for clinical examination. Each applicant will be responsible for furnishing to the Board the National Board score.

~~(b) Paragraph (a) of this Rule shall not apply to applicants graduated more than ten years prior to the date of application.~~

~~(b) (c)~~ Additional written examinations may be given in such areas or subject matter fields as the Board may designate.

(c) ~~(d)~~ Each candidate is required to present a dental diploma or certification of completion of requirements for graduation at the initial examination session.

(d) ~~(e)~~ Written instructions designating the subject areas to be covered will be made available to candidates prior to the date fixed for each examination.

(e) ~~(f)~~ Each candidate will be given a numbered badge. This badge will contain the candidate's photograph and will be presented to the candidate at the opening session. The number on the badge will be the only identification allowed on any paper or manuscript during this examination. This badge must be returned to the Board at the completion of the examination.

(f) ~~(g)~~ The Board reserves the right to dismiss any candidate who may be detected using or attempting to use any unfair assistance. If such violation is discovered by the Board after a license has been issued to the violator, the license will be revoked.

Statutory Authority G.S. 90-28; 90-30; 90-48.

.0315 REEXAMINATION

(a) A complete application, except for school transcripts, National Board score and letters of recommendation, is required in case of reexamination.

(b) ~~It is recommended that any~~ Any candidate who has failed the examination three times must successfully complete an additional course of study at an approved school of dentistry or serve an internship in clinical dentistry encompassing at least one academic year, such course to be approved by the Board. Such applicant ~~should~~ must send evidence of additional study, ~~or internship~~ along with the application, before being admitted for reexamination.

Statutory Authority G.S. 90-28; 90-30; 90-48.

SUBCHAPTER 16C - LICENSURE EXAMINATION: DENTAL HYGIENIST

SECTION .0300 - APPLICATION

.0306 EXAMINATIONS

(a) The Board, having reviewed and evaluated the written examination as administered by the Joint Commission on National Dental Examinations and having found the same to be a reliable, accurate and valid examination, has adopted as a part of its written examination the National Board Dental Hygiene Examination. Applicants for dental hygiene licensure must achieve a passing score on such examination. ~~The results of the National Board Examination~~

~~will be required by the Board before the applicant will be admitted for clinical examination.~~ Each applicant will be responsible for furnishing to the Board the National Board score.

(b) ~~Paragraph (a) of this Rule shall not apply to applicants graduated from a program of dental hygiene more than ten years prior to the date of application.~~

(b) ~~(c)~~ Additional written examinations may be given to each candidate in such subject areas as the Board may designate.

(c) ~~(d)~~ Each candidate will be given a numbered badge. This badge will contain the candidate's photograph and will be presented to the candidate at the opening session. The number on the badge will be the only identification allowed on any paper or manuscript during the examination. This badge must be returned to the Board at the completion of the examination.

(d) ~~(e)~~ The Board reserves the right to dismiss any candidate who may be detected using or attempting to use any unfair assistance. If such violation is discovered by the Board after a license has been issued to the violator, the license will be revoked.

Statutory Authority G.S. 90-222; 90-223; 90-224.

.0310 REEXAMINATION

(a) A complete application except for school transcripts, National Board score and letters of recommendation, is required in case of reexamination.

(b) ~~It is recommended that any~~ Any applicant who has failed the examination three times must successfully complete an additional course of study at an approved school of dental hygiene in clinical dental hygiene encompassing at least one academic year, such course to be approved by the Board. Such applicant ~~should~~ must send evidence of additional study, ~~to the Board office~~ along with the application, before the applicant will be admitted for reexamination.

Statutory Authority G.S. 90-222; 90-223; 90-224.

SUBCHAPTER 16D - PROVISIONAL LICENSURE: DENTISTS

SECTION .0100 - GENERAL PROVISIONS

.0101 ELIGIBILITY REQUIREMENTS

(a) No person shall be eligible for provisional licensure under the provisions of G.S. 90-29.3 who has not been licensed to practice dentistry in another jurisdiction and actually engaged in the practice of dentistry for a period of not less than two years immediately preceding the date of application for provisional licensure.

Statutory Authority G.S. 90-28; 90-29.3; 90-48.

SUBCHAPTER 16G - DENTAL HYGIENISTS

.0003 PROCEDURES PROHIBITED

Those procedures which do require the professional education and skill of a dentist and may not be delegated to a dental hygienist shall specifically include, but shall not be limited to:

- (1) Any intra-oral procedure which would affect the function or efficiency of an appliance which, when worn by the patient, would come in direct contact with hard or soft tissue and which could result in tissue irritation;
- (2) The placing of permanent type restorations in or on teeth;
- (3) Taking of impressions and jaw registrations other than study models and opposing casts which will not be used for construction of dental appliances;
- (4) Any and all correction of malformation of teeth or the jaws;
- (5) Decisions as to drugs and their dosage, prescription writing, and work authorizations;
- (6) Any and all administration of local or general anesthesia, except application of topical anesthetics; however, a certified registered nurse anesthetist shall be deemed to be a lawfully qualified nurse and as such, may administer anesthetics under the supervision of a licensed dentist.

Statutory Authority G.S. 90-29(b)(6); 90-221(a); 90-223(b).

SUBCHAPTER 16H - DENTAL ASSISTANTS

SECTION .0200 - PERMITTED FUNCTIONS OF DENTAL ASSISTANT

.0202 SPECIFIC PERMITTED FUNCTIONS OF DENTAL ASSISTANT I

A Dental Assistant I may do and perform the following acts and functions, after adequate training and qualification, under the direct control and supervision of a dentist, which dentist shall be personally responsible and liable for any and all consequences or results arising from the performance of these acts and functions:

- (1) Take radiographs of the mouth, gums, jaws, teeth or any portion thereof for dental diagnostic purposes provided, however, any Dental Assistant I who becomes initially employed after January 1, 1971 must show evidence of having completed at least ~~40~~ 14 clock hours in a formal educational program

(which includes an examination) before being permitted to take radiographs;

- (2) Apply topical fluorides directly to the teeth of any person the dentist is treating; and
- (3) Apply topical anesthetics or other topical medications within the oral cavity of any person the dentist is treating.

Statutory Authority G.S. 90-28; 90-29(c)(9); 90-48; 90-222; 90-223; 90-233(c)(3).

SUBCHAPTER 16I - ANNUAL RENEWAL OF LICENSES: DENTAL HYGIENIST

.0004 FORM OF CERTIFICATE

The certificate of renewal of license shall bear a serial number which need not be the serial number of the original license issued, the full name ~~and address~~ of the applicant, and the date of issuance.

Statutory Authority G.S. 90-222; 90-223; 90-227.

SUBCHAPTER 16J - SANITATION

.0003 STERILIZATION

(a) All instruments or equipment used in the treatment of dental patients shall be sterilized according to usage. ~~(i.e., autoclave, boiling water sterilizer, or cold sterilizer solutions as indicated).~~ All dental offices shall follow current and accepted infection control practices.

(b) Effective control techniques and precautions to prevent the cross-contamination and transmission of infection to all persons is the professional responsibility of all dentists. Dentists are required to maintain and provide a safe, therapeutic environment for patients and employees and to follow a comprehensive and practical infection control program at all times.

Statutory Authority G.S. 90-28; 90-41(a)(23); 90-48.

SUBCHAPTER 16Q - GENERAL ANESTHESIA AND SEDATION

SECTION .0400 - RENEWAL OF PERMITS

.0401 ANNUAL RENEWAL REQUIRED

(a) Both general anesthesia and sedation permits shall be renewed by the Board on an annual basis. Such renewal shall be accomplished in conjunction with the license renewal process, and applications for permits shall be made at the same time as applications for renewal of licenses.

(b) Anesthesia and sedation permits are subject to the same renewal deadlines as are dental practice licenses, in accordance with G.S. 90-31. If

the permit renewal application is not received by the date specified in G.S. 90-31, continued administration of anesthesia or sedation shall be unlawful and shall subject the dentist to the penalties prescribed by Section .0600 of this Subchapter.

(c) Renewal of general anesthesia and sedation permits shall be subject to the submission by each permit holder of satisfactory evidence that he has completed a minimum of six hours of continuing education during the previous year. Such continuing education shall be in one or more of the following areas: general anesthesia; conscious sedation; physical evaluation; medical dental emergencies; monitoring; use of monitoring equipment; pharmacology of utilized drugs and agents; or basic or advanced cardiac life support. No course shall be accepted under this requirement unless said course is approved by the Board.

Statutory Authority G.S. 90-28; 90-30.1; 90-48.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Board of Nursing intends to amend rule cited as 21 NCAC 36 .0217.

The proposed effective date of this action is May 1, 1991.

The public hearing will be conducted at 2:00 p.m. on February 13, 1991 at the North Carolina Board of Nursing, 3724 National Drive, Suite 201, Raleigh, NC 27602.

Comment Procedures: Any person wishing to present testimony relevant to the proposed rule may register at the door before the hearing begins and present the hearing officer with a written copy of the testimony. Written statements may be directed five days prior to the hearing date to the North Carolina Board of Nursing, P.O. Box 2129, Raleigh, NC 27602-2129.

CHAPTER 36 - BOARD OF NURSING

SECTION .0200 - LICENSURE

.0217 REVOCATION, SUSPENSION, OR DENIAL OF LICENSE

(a) The definitions contained in G.S. 90-171.20 and G.S. 150B-2 (01), (2), (2b), (3), (4), (5), (8), (8a), (8b), (9) are adopted by reference within

this Rule according to G.S. 150B-14(c). In addition, the following definitions apply:

(1) "Administrative Law Counsel" means an attorney whom the Board of Nursing has retained to serve as procedural officer for contested cases.

(2) "Prosecuting Attorney" means the attorney retained by the Board of Nursing to prepare and prosecute contested cases.

(b) Behaviors and activities which may result in disciplinary action by the Board include, but are not limited to, the following:

- (1) drug or alcohol abuse;
- (2) violence-related crime;
- (3) illegally obtaining, possessing or distributing drugs or alcohol for personal or other use, or other violations of G.S. 90-86 to 90-113.8;
- (4) evidence of any crime which undermines the public trust;
- (5) failure to make available to another health care professional any client information crucial to the safety of the client's health care;
- (6) delegating responsibilities to a person when the licensee delegating knows or has reason to know that the competency of that person is impaired by physical or psychological ailments, or by alcohol or other pharmacological agents, prescribed or not;
- (7) practicing or offering to practice beyond the scope permitted by law;
- (8) accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform;
- (9) performing, without adequate supervision, professional services which the licensee is authorized to perform only under the supervision of a licensed professional, except in an emergency situation where a person's life or health is in danger;
- (10) abandoning or neglecting a client who is in need of nursing care, without making reasonable arrangements for the continuation of such care;
- (11) harassing, abusing, or intimidating a client either physically or verbally;
- (12) failure to maintain an accurate record for each client which records all pertinent health care information as defined in Rules .0224(f)(2) or .0225(f)(2);
- (13) failure to exercise supervision over persons who are authorized to practice only under the supervision of the licensed professional;

- (14) exercising undue influence on the client, including the promotion of the sale of services, appliances, or drugs for the financial gain of the practitioner or of a third party;
 - (15) directly or indirectly offering, giving, soliciting, or receiving or agreeing to receive, any fee or other consideration to or from a third party for the referral of a client;
 - (16) failure to file a report, or filing a false report, required by law or by the Board, or impeding or obstructing such filing or inducing another person to do so;
 - (17) revealing identifiable data, or information obtained in a professional capacity, without prior consent of the client, except as authorized or required by law;
 - (18) guaranteeing that a cure will result from the performance of professional services;
 - (19) altering a license by changing the expiration date, certification number, or any other information appearing on the license;
 - (20) using a license which has been altered;
 - (21) permitting or allowing another person to use his or her license for the purpose of nursing;
 - (22) delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such a person is not qualified by training, by experience, or by licensure;
 - (23) violating any term of probation, condition, or limitation imposed on the licensee by the Board;
 - (24) accepting responsibility for client care while impaired by alcohol or other pharmacological agents; or
 - (25) falsifying a client's record or the controlled substance records of the agency.
- (c) ~~(b)~~ When a person licensed to practice nursing as a licensed practical nurse or as a registered nurse is also licensed ~~by~~ in another jurisdiction and that other jurisdiction takes disciplinary action against the licensee, the North Carolina Board of Nursing may summarily impose the same or lesser disciplinary action upon receipt of the other jurisdiction's action. The licensee may request a hearing. At the hearing the issues will be limited to:
- (1) whether the person against whom action was taken by the other jurisdiction and the North Carolina licensee are the same person;
 - (2) whether the conduct found by the other jurisdiction also violates the North Carolina Nursing Practice Act; and

- (3) whether the sanction imposed by the other jurisdiction is lawful under North Carolina law.

A hearing under this Paragraph will be held in Wake County.

(d) ~~(c)~~ Before the North Carolina Board of Nursing makes a binding final decision in any contested case, the person, applicant or licensee ~~who is to be~~ affected by such ~~action~~ decision will be afforded an administrative hearing pursuant to the provisions of Article 3A, Chapter 150B of the North Carolina General Statutes.

- (1) The Paragraphs contained in this Rule shall apply to conduct of all contested cases heard before or for the North Carolina Board of Nursing.

- (2) The following general statutes, rules, and procedures apply and are adopted by reference within this Rule according to G.S. 150B-14(c), unless another specific statute or rule of the North Carolina Board of Nursing provides otherwise: Rules of Civil Procedure as contained in G.S. 1A-1 and Rules of Evidence pursuant to G.S. Chapter 8C; G.S. 90-86 through 90-113.8; 21 NCAC 36 .0224 - .0225; Article 3A, Chapter 150B; and Rule 6 of the General Rules of Practice for Superior and District Court.

- (3) Every document filed with the Board of Nursing shall be signed by the person, applicant, licensee, or his attorney who prepares the document and shall contain his name, title position, address, and telephone number. If the individual involved is a licensed nurse the nursing license certificate number shall appear on all correspondence with the Board of Nursing.

(e) If the Board of Nursing, through the Chairman and Executive Director, finds that the public health, safety, or welfare requires emergency action, a license may summarily be suspended. Such a finding shall be incorporated with the order of the Board of Nursing and the order shall be effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee and effective during the proceedings. Failure to receive the order because of refusal of service or unknown address does not invalidate the order. Proceedings shall be commenced in a timely manner.

(f) The Board, through its staff, shall issue a Letter of Charges only upon completion of an investigation, by the Discipline Consultant or other authorized Board staff, of a written or verbal complaint and review with legal counsel

and/or prosecuting attorney and/or Executive Director.

- (1) Subsequent to an investigation and validation of a complaint, a Letter of Charges will be sent on behalf of the Board of Nursing to the licensee who is the subject of the complaint.
 - (A) The Letter of Charges shall be served in accordance with G.S. 1A-1, Rule 4, Rules of Civil Procedure.
 - (B) The Letter of Charges serves as the Board's formal notification to the licensee that an allegation of possible violation(s) of the Nursing Practice Act has been initiated.
 - (C) The Letter of Charges does not in and of itself constitute a contested case.
- (2) The Letter of Charges shall include the following:
 - (A) a short and plain statement of the factual allegations;
 - (B) a citation of the relevant sections of the statutes and/or rules involved;
 - (C) notification that a settlement conference will be scheduled upon request;
 - (D) explanation of the procedure used to govern the settlement conference;
 - (E) notification that if a settlement conference is not requested, or if held, does not result in resolution of the case, an administrative hearing will be scheduled; and
 - (F) if applicable, and in accordance with Board-adopted policy, an offer of voluntary surrender or reprimand also may be included in specified types of alleged violations of the Nursing Practice Act.
- (3) A case becomes a contested case after the licensee, person, or applicant disputes the allegations contained in the Letter of Charges, requests an administrative hearing, or refuses to accept a settlement offer extended by the Board of Nursing.
 - (g) No Board member shall discuss with any party the merits of any case pending before the Board of Nursing. Any Board member who has direct knowledge about a case prior to the commencement of the proceeding shall disqualify himself from any participation with the majority of the Board of Nursing hearing the case.
 - (h) A settlement conference, if requested by the licensee, is held for the purpose of attempting to resolve a dispute through informal procedures prior to the commencement of formal administrative proceedings.
 - (1) The conference shall be held in the offices of the Board of Nursing, unless another site is designated by mutual agreement of all involved parties.

- (2) All parties shall attend or be represented at the settlement conference. The parties will be prepared to discuss the alleged violations and the incidents on which these are based.
- (3) Prior to the commencement of the settlement conference, a form shall be signed by the licensee which invalidates all previous offers made to the licensee by the Board.
- (4) At the conclusion of the day during which the settlement conference is held, a form must be signed by all parties which indicates whether the settlement offer is accepted or rejected. Subsequent to this decision:
 - (A) if a settlement is reached, the Board of Nursing will forward a written settlement agreement containing all conditions of the settlement to the other party(ies); or
 - (B) if a settlement cannot be reached, the case will proceed to a formal administrative hearing.
 - (i) Informal disposition may be made of any contested case or an issue in a contested case by stipulation, agreement, or consent order at any time prior to or during the hearing of a contested case.
 - (j) The Board of Nursing shall give the parties in a contested case a Notice of Hearing not less than 15 calendar days before the hearing. The Notice shall be given in accordance with G.S. 1A-1, Rule 4, Rules of Civil Procedure. The notice shall include:
 - (1) Acknowledgement of service, or attempted service, of the Letter of Charges in compliance with Paragraph (f) of this Rule;
 - (2) Date, time, and place of the hearing;
 - (3) Notification of the right of a party to represent himself or to be represented by an attorney;
 - (4) A statement that, pursuant to Paragraph (n) of this Rule, subpoenas may be requested by the licensee to compel the attendance of witnesses or the production of documents;
 - (5) A statement advising the licensee that a notice of representation, containing the name of licensee's counsel, if any, should be filed with the Board of Nursing not less than 10 calendar days prior to the scheduled date of the hearing;
 - (6) A statement advising the licensee that a list of all witnesses for the licensee should be filed with the Board of Nursing not less than 10 calendar days prior to the scheduled date of the hearing; and

- (7) A statement advising the licensee that failure to appear at the hearing may result in the allegations of the Letter of Charges being taken as true and that the Board may proceed on that assumption.
- (k) Prehearing conferences may be held to simplify the issues to be determined, to obtain stipulations in regards to testimony and or exhibits, to obtain stipulations of agreement on nondisputed facts or the application of particular laws, to consider the proposed witnesses for each party, to identify and exchange documentary evidence intended to be introduced at the hearing, and to consider such other matters that may be necessary or advisable for the efficient and expeditious conduct of the hearing.
- (1) The prehearing conference will be conducted in the offices of the Board of Nursing, unless another site is designated by mutual agreement of all parties.
- (2) The prehearing conference shall be an informal proceeding and shall be conducted by a Board-designated administrative law counsel.
- (3) All agreements, stipulations, amendments, and or other matters resulting from the prehearing conference shall be in writing, signed by all parties, and introduced into the record at the beginning of the formal administrative hearing.
- (l) All hearings conducted by the Board of Nursing shall be open to the public. All hearings are conducted in Wake County, except by mutual consent of all parties when a majority of the Board has convened for the purpose of conducting business in another location.
- (m) The discovery provisions of the N.C. Rules of Civil Procedure shall apply to all proceedings before the Board of Nursing.
- (n) The Board of Nursing, through its Executive Director, may issue subpoenas for the Board or a licensee, in preparation for, or in the conduct of, a contested case.
- (1) Subpoenas may be issued for the appearance of witnesses or the production of documents or information, either at the hearing or for the purposes of discovery.
- (2) Requests by a licensee for subpoenas shall be made in writing to the Executive Director and shall include the following:
- (A) the full name and home or business address of all persons to be subpoenaed; and
- (B) the identification, with specificity, of any documents or information being sought.
- (3) Subpoenas shall include the date, time, and place of the hearing and the name and address of the party requesting the subpoena. In the case of subpoenas for the purpose of discovery, the subpoena shall include the date, time, and place for responding to the subpoena.
- (4) Subpoenas shall be served as provided by the Rules of Civil Procedure, G.S. 1A-1. The cost of service, fees, and expenses of any witnesses and or documents subpoenaed shall be paid by the party requesting the witnesses.
- (o) All motions related to a contested case, except those made during the hearing, shall be in writing and submitted to the Board of Nursing at least 10 calendar days before the hearing. Prehearing motions will be heard at a prehearing conference or at the contested case hearing prior to the commencement of testimony. The designated administrative law counsel will hear the motions and the response from the non-moving party pursuant to Rule 6 of the General Rules of Practice for the Superior and District Courts.
- (p) Requests for a continuance of a hearing may be granted upon a showing of good cause. Requests for a continuance must be in writing and received in the office of the Board of Nursing no less than seven calendar days before the hearing date. In determining whether good cause exists, consideration will be given to the ability of the party requesting a continuance to proceed effectively without a continuance. A request for a continuance filed within seven calendar days from the date of the hearing shall be denied unless the reason for the request could not have been ascertained earlier.
- (q) All hearings by the Board of Nursing will be conducted by a majority of members of the Board of Nursing, except as provided in Subparagraph (1) of this Paragraph. The Board of Nursing shall designate one of its members to preside at the hearing. The Board of Nursing shall designate an administrative law counsel as procedural officer to conduct the proceedings of the hearing. The seated members of the Board of Nursing shall hear all evidence, make findings of fact and conclusions of law, and issue an order reflecting a majority decision of the Board.
- (1) When a majority of the members of the Board of Nursing is unable or elects not to hear a contested case, the Board of Nursing shall request the designation of an administrative law judge from the Office of Administrative Hearings to preside at the hearing. The provisions of Article 3A, Chapter 150B and 21 NCAC 36 .0217 shall govern a contested case in which an administrative law judge is designated as the Hearing Officer.

- (2) If a party fails to appear in a contested case after receiving proper notice, the Board of Nursing may continue the hearing or proceed with the hearing and make a decision in the absence of the party.
- (3) In the event that any party or attorney or other representative of a party engages in conduct which obstructs the proceedings or would constitute contempt if done in the General Court of Justice, the Board may apply to the applicable superior court for an order to show cause why the person(s) should not be held in contempt of the Board and its processes.
- (4) During a hearing, if it appears in the interest of justice that further testimony should be received and sufficient time does not remain to conclude the testimony, the Board of Nursing may continue the hearing to a future date to allow for the additional testimony to be taken by deposition or to be presented orally. In such situations and to such extent as possible, the seated members of the Board of Nursing and the designated administrative law counsel shall receive the additional testimony. In the event that new members of the Board and/or a different administrative law counsel must participate, a copy of the transcript of the hearing will be provided to them prior to the receipt of the additional testimony.
- (r) All parties have the right to present evidence, rebuttal testimony, and argument with respect to the issues of law, and to cross-examine witnesses. The North Carolina Rules of Evidence in G.S. Chapter 8C shall apply to contested case proceedings, except as provided otherwise in this Rule and G.S. 150B-41.
- (1) A deposition may be used in lieu of other evidence when taken in compliance with the Rules of Civil Procedure, G.S. 1A-1.
- (2) Sworn affidavits may be introduced by mutual agreement from all parties.
- (3) All oral testimony shall be under oath or affirmation and shall be recorded. Unless otherwise stipulated by all parties, witnesses are excluded from the hearing room until such time that they have completed their testimony and have been released.
- (s) Any form or Board-approved policy or procedure referenced in this Rule, or any rules applicable to a case, are available upon request from the Board of Nursing and will be supplied at a reasonable cost.

Statutory Authority G.S. 90-171.23(b)(3)(7); 90-171.37; 90-171.47; 150B-11; 150B-14; 150B-38 through 150B-42.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina State Board of Examiners for Nursing Home Administrators intends to amend rule(s) cited as 21 NCAC 37 .0603 and .0606.

The proposed effective date of this action is May 1, 1991.

The public hearing will be conducted at 10:30 a.m. on February 12, 1991 at 3700 National Drive, Suite 104, Raleigh, N.C.

Comment Procedures: Written comments may be sent to NC State Board of Examiners for Nursing Home Administrators, 3701 National Drive, Suite 123, Raleigh, NC 27612. Request for an opportunity to present oral testimony and a summary of the testimony must be received at this address no later than January 23, 1991.

CHAPTER 37 - BOARD OF NURSING HOME ADMINISTRATORS

SECTION .0600 - EXAMINATION

.0603 EXAMINATION

(a) There shall be a charge of one hundred fifty dollars (\$150.00) to take the national examination and sixty dollars (\$60.00) to take the state examination.

(b) If the applicant does not pass the examination, no refund will be made.

(c) The applicant will be required to pay the appropriate fee each time he takes the examination.

(d) Upon the third failure of any examination required by the Board, the AIT and the preceptor must submit to the Board a program to strengthen the candidate's weakness as demonstrated by the previous test results. Upon approval by the Board of the program and completion thereof by the candidate, he shall be allowed to take the examinations a fourth time.

Statutory Authority G.S. 90-278; 90-280; 90-285.

.0606 DISQUALIFICATION

(a) An applicant for examination who has been disqualified shall be given written notification by

the Board of his disqualification and the reasons therefor and of his right to a hearing.

(b) Upon the failure of any examination the fourth time, the AIT will be disqualified from continuing in the program. Nothing in this Rule shall be construed to prevent the applicant from reapplying for entrance to the AIT program.

Statutory Authority G.S. 90-278; 90-285.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors intends to amend rule(s) cited as 21 NCAC 50 .0105, .0301, .0309, .0404, .0407, .0411, .0505, and .1102.

The proposed effective date of this action is May 1, 1991.

The public hearing will be conducted at 8:30 a.m. on February 13, 1991 at the State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors, 806 Raleigh Building, #5 West Hargett Street, Raleigh, N. C. 27602.

Comment Procedures: Persons wishing to present oral data, views or argument on a proposed rule or rule change may file a notice with the Board at least 10 days prior to the public hearing at which the person wishes to speak. Comments should be limited to 10 minutes. The address of the Board is P.O. Box 110, Raleigh, N.C. 27602. Written comments or arguments may be presented at any time before February 13, 1991.

CHAPTER 50 - BOARD OF PLUMBING AND HEATING CONTRACTORS

SECTION .0100 - ORGANIZATION

.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 administering examinations, a quorum shall consist of three members, one of whom shall be an officer; for all other purposes a quorum shall consist of four members, one of whom shall be an officer.

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

SECTION .0300 - EXAMINATIONS

.0301 QUALIFICATIONS DETERMINED BY 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 provided pursuant to G.S. 87-21(b).

(c) Applicants for licensure as a fire sprinkler contractor other than pursuant to G.S. 87-21(h) must submit evidence of current certification by the National Institute for Certification and Engineering Technology (NICET) for Fire Protection Engineering Technician, Level III, subfield of Automatic Sprinkler System Layout as the prerequisite for licensure. Current certification by NICET is in lieu of separate examination conducted by the Board.

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

.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 except that licensees seeking to add qualification as a fire sprinkler contractor must pay the license fee for that qualification.

(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 the license fee as prescribed by Rule .1103 of this Chapter.

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

SECTION .0400 - GENERAL PROCEDURES

.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 employ-

ment a person licensed in accordance with the provisions of G.S. 87, Article 2 and whose duties are to supervise all plumbing installations, heating installations, or both installations falling within his license qualification.

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

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

(c) A temporary facility used solely to conduct the plumbing, ~~or heating or fire sprinkler~~ 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.

.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 verification 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 and payment of the fee set forth in Rule .1102 of this Chapter.

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

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

.0411 PUBLICATIONS

The following publications are available from the Board:

- (1) laws applicable to plumbing, heating and ~~air conditioning~~ fire sprinkler contracting in the State of North Carolina;
- (2) rules of the Board;
- (3) suggested study references for the qualifying examinations conducted by the Board;
- (4) register of licensees and supplements thereto.

Statutory Authority G.S. 87-18.

SECTION .0500 - POLICY STATEMENTS AND INTERPRETATIVE RULES

.0505 GENERAL SUPERVISION AND STANDARD OF COMPETENCE

(a) The general supervision required by G.S. 87-26 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 that review of the work done pursuant to the license be performed while the work is in progress.

(b) The Board recognizes the provisions of the North Carolina Building Code, including the provisions of the Southern Building Code to the extent adopted by the Building Code Council of North Carolina from time to time as the minimum standard of competence applicable to contractors licensed by the Board. Licensees are required to design and install systems which meet or exceed the minimum standards of the North Carolina State Building Code and Manufacturer's specifications and installation instructions and accepted standards prevailing in the industry.

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

SECTION .1100 - FEES

.1102 LICENSE FEES

(a) The annual license fee for statewide plumbing and heating licenses issued in the name of an individual, corporation, partnership, or business with a trade name is sixty dollars (\$60.00).

(b) The annual license fee for plumbing and heating 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 thirty dollars (\$30.00).

(c) The annual license fee for an individual who is not actively engaged in the business of plumb-

ing or heating contracting by reason of full-time employment as a local government plumbing, heating or mechanical inspector and who holds qualifications from the Code Officials Qualification Board is ten dollars (\$10.00).

(d) The initial application fee for license as a fire sprinkler contractor is seventy-five dollars (\$75.00). The annual license fee for statewide licenses issued to a fire sprinkler contractor in the name of an individual, corporation, partnership or business with a trade name is two-hundred seventy-five dollars (\$275.00).

(e) The annual license fee for an individual whose qualifications are listed as the second or subsequent individual on a corporation, partnership, or business with a trade name under Paragraphs (a), (b) or (d) of this Rule is ten dollars (\$10.00).

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

TITLE 25 - OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-12 that the Office of State Personnel, State Personnel Commission intends to amend rules cited as 25 NCAC 1L .0202 and .0203.

The proposed effective date of this action is May 1, 1991.

The public hearing will be conducted at 9:00 a.m. on February 5, 1991 at the State Personnel Development Center, 101 West Peace Street, Raleigh, N. C.

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

CHAPTER 1 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 1L - AFFIRMATIVE ACTION

SECTION .0200 - ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS) IN THE WORKPLACE

.0202 BASIC EDUCATION AND TRAINING COMPONENT

(b) Through the WISE program coordinators in each agency or other appropriate resources designated by the agency head, and with the assistance of professional health educators, all employees will be offered training within ~~two~~ three years from the adoption of this policy, and thereafter for new employees within six months of initial employment. ~~A Certificate of Completion will become a part of the employee's personnel record. Each agency will document the completion of its training program by each employee in a manner that is both satisfactory to the agency and which may be audited to insure compliance with this Rule. A copy of the manner in which this training will be documented for each employee shall be filed with the Equal Employment Services Division, Office of State Personnel.~~

Statutory Authority G.S. 126-4.

.0203 ADVANCED EDUCATION AND TRAINING COMPONENT

(b) Each agency with employees requiring advanced training will provide such training ~~within six months from the adoption of this policy.~~ by November 1, 1991. Agencies must provide training for new employees during their work orientation period. The Agency shall appropriately document the employees' compliance with this policy.

Statutory Authority G.S. 126-4.

The Administrative Rules Review Commission (ARRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to ARRC as provided in G.S. 143B-30.2(d).

ECONOMIC AND COMMUNITY DEVELOPMENT

Credit Union Division

<i>4 NCAC 6C .0203 - Fields of Membership</i>	<i>ARRC Objection 8/16/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 9/20/90</i>

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Environmental Health

<i>15A NCAC 18C .0102 - Definitions</i>	<i>ARRC Objection 10/18/90</i>
<i>15A NCAC 18C .1532 - Variances and Exemptions</i>	<i>ARRC Objection 10/18/90</i>
<i>15A NCAC 18C .1534 - Max Contaminant Levels for Coliform Bacteria</i>	<i>ARRC Objection 10/18/90</i>
<i>15A NCAC 18C .2001 - General Requirements</i>	<i>ARRC Objection 10/18/90</i>
<i>15A NCAC 18C .2002 - Disinfection</i>	<i>ARRC Objection 10/18/90</i>
<i>15A NCAC 18C .2003 - Filtration</i>	<i>ARRC Objection 10/18/90</i>
<i>15A NCAC 18C .2004 - Analytical and Monitoring Requirements</i>	<i>ARRC Objection 10/18/90</i>
<i>15A NCAC 18C .2005 - Criteria for Avoiding Filtration</i>	<i>ARRC Objection 10/18/90</i>

Environmental Management

<i>15A NCAC 2H .1203 - Public Notice</i>	<i>ARRC Objection 8/16/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 9/20/90</i>
<i>15A NCAC 2N .0703 - Initial Abatement Measures and Site Check</i>	<i>ARRC Objection 11/14/90</i>
<i>15A NCAC 2N .0704 - Initial Site Characterization</i>	<i>ARRC Objection 11/14/90</i>

Marine Fisheries

<i>15A NCAC 3C .0311 - Cancellation</i>	<i>ARRC Objection 9/20/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 10/18/90</i>
<i>15A NCAC 3N .0001 - Scope and Purpose</i>	<i>ARRC Objection 8/16/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 9/20/90</i>
<i>15A NCAC 3O .0203 - Shellfish Lease Application Processing</i>	<i>ARRC Objection 8/16/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 9/20/90</i>

Solid Waste Management

<i>15A NCAC 13B .1003 - Eligible Purposes</i>	<i>ARRC Objection 8/16/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 9/20/90</i>
<i>15A NCAC 13B .1005 - Priority Factors</i>	<i>ARRC Objection 8/16/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 9/20/90</i>

Wildlife Resources Commission

<i>15A NCAC 1011 .0302 - Minimum Standards</i>	<i>ARRC Objection 9/20/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 10/18/90</i>

HUMAN RESOURCES

Facility Services

<i>10 NCAC 3R .2113 - Definitions</i>	<i>ARRC Objection 9/20/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 9/21/90</i>
<i>10 NCAC 3R .2115 - Need for Services</i>	<i>ARRC Objection 9/20/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 9/21/90</i>
<i>10 NCAC 3V .0303 - Insurance Required</i>	<i>ARRC Objection 11/14/90</i>

Individual and Family Support

<i>10 NCAC 42C .3301 - Existing Building</i>	<i>ARRC Objection 11/14/90</i>
<i>10 NCAC 42D .1401 - Qualifications of Administrator/Co-Administrator</i>	<i>ARRC Objection 11/14/90</i>

INSURANCE

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<i>11 NCAC 6A .0702 - Prelicensing Education Schools</i>	<i>ARRC Objection 8/16/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 9/20/90</i>

Financial Evaluation Division

<i>11 NCAC 11B .0607 - Application - Employers</i>	<i>ARRC Objection 8/16/90</i>
<i>Agency Returned Rule Without Change</i>	<i>9/20/90</i>
<i>11 NCAC 11B .0610 - Application - Groups</i>	<i>ARRC Objection 8/16/90</i>
<i>Agency Returned Rule Without Change</i>	<i>9/20/90</i>

LICENSING BOARDS AND COMMISSIONS

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<i>21 NCAC 32M .0007 - Termination of NP Approval</i>	<i>ARRC Objection 11/14/90</i>
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<i>21 NCAC 48C .0102 - Responsibilities</i>	<i>ARRC Objection 9/20/90</i>
<i>Agency Returned Rule Unchanged</i>	<i>No Action 10/18/90</i>
<i>21 NCAC 48C .0501 - Exemption for Students</i>	<i>ARRC Objection 9/20/90</i>
<i>Agency Returned Rule Unchanged</i>	<i>No Action 10/18/90</i>

Plumbing and Heating Contractors

<i>21 NCAC 50 .1203 - Disposition of Petitions</i>	<i>ARRC Objection 11/14/90</i>
<i>21 NCAC 50 .1207 - Request to Participate</i>	<i>ARRC Objection 11/14/90</i>

PUBLIC EDUCATION

Elementary and Secondary Education

<i>16 NCAC 6C .0312 - Certificate Suspension and Revocation</i>	<i>ARRC Objection 8/16/90</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 9/20/90</i>
<i>16 NCAC 6D .0105 - Use of School Day</i>	<i>ARRC Objection 6/21/90</i>
<i>Objection Reconsidered and Failed</i>	<i>7/19/90</i>
<i>Clincher Motion Passed</i>	
<i>Agency Filed Rule for Codification in the NCAC</i>	<i>9/28/90</i>

STATE PERSONNEL

25 NCAC 1B .0107 - Personnel Commission Meetings	ARRC Objection	9/20/90
25 NCAC 1B .0108 - Commission Staff	ARRC Objection	9/20/90
25 NCAC 1B .0109 - Commission Actions	ARRC Objection	9/20/90
25 NCAC 1B .0110 - Motions	ARRC Objection	9/20/90
25 NCAC 1B .0111 - Voting	ARRC Objection	9/20/90
25 NCAC 1B .0112 - Abstention	ARRC Objection	9/20/90
25 NCAC 1B .0113 - Duties of the Chairman	ARRC Objection	9/20/90
25 NCAC 1B .0114 - Order of Business	ARRC Objection	9/20/90
25 NCAC 1B .0115 - Special Meetings	ARRC Objection	9/20/90
25 NCAC 1B .0116 - Duties of Chairman Between Meetings of the Comm	ARRC Objection	9/20/90
25 NCAC 1B .0117 - Standing/Special Committees	ARRC Objection	9/20/90
25 NCAC 1B .0118 - Minutes	ARRC Objection	9/20/90
25 NCAC 1B .0119 - Notice of Commission Action	ARRC Objection	9/20/90
25 NCAC 1B .0120 - Appointment of Vice-Chairman	ARRC Objection	9/20/90
Agency Withdrew Rules .0107 - .0120		10/18/90
25 NCAC 1L .0201 - Purpose	ARRC Objection	9/20/90
25 NCAC 1L .0202 - Policy	ARRC Objection	9/20/90
Agency Withdrew Rules .0201 - .0202		10/18/90
25 NCAC 1L .0206 - Anti-Discrimination	ARRC Objection	9/20/90
Agency Revised Rule	Obj. Removed	9/21/90
25 NCAC 1L .0207 - Testing and Examination	ARRC Objection	9/20/90
Agency Revised Rule	Obj. Removed	9/21/90

STATE TREASURER

Local Government Commission

20 NCAC 3 .1003 - Petition for Hearing	ARRC Objection	9/20/90
Agency Revised Rule	Obj. Removed	9/20/90
20 NCAC 3 .1004 - Hearing Officer		
Agency Withdrew Rule		9/20/90

This Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.

10 NCAC 1B .0202(c) - REQUEST FOR DETERMINATION

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 1B .0202(c) void as applied in *New Hanover Memorial Hospital, Inc., Petitioner v. N.C. Department of Human Resources, Division of Facility Services, Certificate of Need Section, Respondent* (90 DHHR 0792).

10 NCAC 1B .0202(c) - REQUEST FOR DETERMINATION

Brenda B. Becton, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 1B .0202(c) void as applied in *High Point Regional Hospital, Inc., Petitioner v. Department of Human Resources, Division of Facility Services, Certificate of Need Section, Respondent* (90 DHHR 0770).

10 NCAC 3R .0317(g) - WITHDRAWAL OF A CERTIFICATE

Robert Roosevelt Reilly, Jr., Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 3R .0317(g) void as applied in *Dawn Health Care, a North Carolina General Partnership, Petitioner v. Department of Human Resources, Certificate of Need Section, Respondent* (90 DHHR 0296).

10 NCAC 3R .0317(g) - WITHDRAWAL OF CERTIFICATE

Michael Rivers Morgan, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 3R .0317(g) void as applied in *Autumn Corporation, Petitioner v. N.C. Department of Human Resources, Division of Facility Services, Certificate of Need Section, Respondent* (90 DHHR 0321 and 90 DHHR 0318).

10 NCAC 26I .0101 - PURPOSE: SCOPE; NOTICE OF CHANGE IN LEVEL OF CARE

10 NCAC 26I .0102 - REQUESTS FOR RECONSIDERATION AND RECIPIENT APPEALS

10 NCAC 26I .0104 - FORMAL APPEALS

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rules 10 NCAC 26I .0101, 10 NCAC 26I .0102 and 10 NCAC 26I .0104 void as applied in *Linda Allred, Petitioner v. North Carolina Department of Human Resources, Division of Medical Assistance, Respondent* (90 DHHR 0940).

10 NCAC 42W .0003(c) - COUNTY DEPT OF SOCIAL SERVICES RESPONSIBILITIES

10 NCAC 42W .0005 - REPORTING CASES OF RAPE AND INCEST

The North Carolina Court of Appeals per. Judge Robert F. Orr, declared Rules 10 NCAC 42W .0003(c) and 10 NCAC 42W .0005 void as applied in *Rankin Whittington, Daniel C. Hudgins, Dr. Takey Crist, Dr. Gwendolyn Boyd and Planned Parenthood of Greater Charlotte, Inc., Plaintiffs v. The North Carolina Department of Human Resources, David Flaherty, in his capacity as Secretary of the North Carolina Department of Human Resources, The North Carolina Social Services Commission, and C. Barry McCarty, in his capacity as Chairperson of the North Carolina Social Services Commission, Defendants* [100 N.C. App. _____ (1990)].

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

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