

# *The* **NORTH CAROLINA REGISTER**

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**RULES INVALIDATED BY JUDICIAL DECISION**

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**ISSUE DATE: March 16, 1992**  
**Volume 6 • Issue 24 • Pages 1816 - 1863**



# INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

## NORTH CAROLINA REGISTER

The *North Carolina Register* is published twice a month 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 notices of public hearings filed under G.S. 150B-21.2 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. Individual issues may be purchased for eight dollars (\$8.00).

Requests for subscription to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, N. C. 27611-7447.

## ADOPTION AMENDMENT, AND REPEAL OF RULES

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any 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 (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the *North Carolina Administrative Code* (NCAC).

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

## TEMPORARY RULES

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, the Codifier of Rules must review the agency's written statement of findings of need for the temporary rule pursuant to the provisions in G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 150B-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review or the agency may respond that it will remain with its initial position. The Codifier, thereafter, will enter the rule into the NCAC. A temporary rule becomes effective either when the Codifier of Rules enters the rule in the Code or on the sixth business day after the agency resubmits the rule without change. The temporary rule is in effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

## 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% of is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

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

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication are available.

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

## CITATION TO THE NORTH CAROLINA REGISTER

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

FOR INFORMATION CONTACT: Office of Administrative Hearings, ATTN: Rules Division, P.O. Drawer 27447, Raleigh, North Carolina 27611-7447, (919) 733-2678.

*Leading decisions by North Carolina's  
Office of Administrative Hearings  
now available in the  
North Carolina Register*

Over 1,500 contested case petitions are filed each year with the Office of Administrative Hearings (OAH). Listed below are some of the types of cases which are decided by OAH:

- Environment (including permits)
  - Certificate of Need
    - Day Care Licensing
      - Alcoholic Beverage Control (ABC)
        - Special Education
          - State Personnel

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Starting April 1, 1992, the *North Carolina Register* will include a section featuring the full text of the more significant Administrative Law Judge decisions along with an index to all recent contested case decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge.

This is an entirely new service in addition to the other informative sections of the *North Carolina Register* which address the administrative rulemaking process.

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# NORTH CAROLINA REGISTER



*Office of Administrative Hearings*  
P. O. Drawer 27447  
Raleigh, NC 27611-7447  
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**NORTH CAROLINA REGISTER**  
*Publication Schedule*  
 (January 1992 - December 1992)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing	Earliest Date for Adoption by Agency	Last Day to Submit to RRC	* Earliest Effective Date
01 02 92	12 09 91	12 16 91	01 17 92	02 01 92	02 20 92	04 01 92
01 15 92	12 20 91	12 31 91	01 30 92	02 14 92	02 20 92	04 01 92
02 03 92	01 10 92	01 17 92	02 18 92	03 04 92	03 20 92	05 01 92
02 14 92	01 24 92	01 31 92	02 29 92	03 15 92	03 20 92	05 01 92
03 02 92	02 10 92	02 17 92	03 17 92	04 01 92	04 20 92	06 01 92
03 16 92	02 24 92	03 02 92	03 31 92	04 15 92	04 20 92	06 01 92
04 01 92	03 11 92	03 18 92	04 16 92	05 01 92	05 20 92	07 01 92
04 15 92	03 25 92	04 01 92	04 30 92	05 15 92	05 20 92	07 01 92
05 01 92	04 10 92	04 17 92	05 16 92	05 31 92	06 20 92	08 03 92
05 15 92	04 24 92	05 01 92	05 30 92	06 14 92	06 20 92	08 03 92
06 01 92	05 11 92	05 18 92	06 16 92	07 01 92	07 20 92	09 01 92
06 15 92	05 22 92	06 01 92	06 30 92	07 15 92	07 20 92	09 01 92
07 01 92	06 10 92	06 17 92	07 16 92	07 31 92	08 20 92	10 01 92
07 15 92	06 24 92	07 01 92	07 30 92	08 14 92	08 20 92	10 01 92
08 03 92	07 13 92	07 20 92	08 18 92	09 02 92	09 20 92	11 02 92
08 14 92	07 24 92	07 31 92	08 29 92	09 13 92	09 20 92	11 02 92
09 01 92	08 11 92	08 18 92	09 16 92	10 01 92	10 20 92	12 01 92
09 15 92	08 25 92	09 01 92	09 30 92	10 15 92	10 20 92	12 01 92
10 01 92	09 10 92	09 17 92	10 16 92	10 31 92	11 20 92	01 04 93
10 15 92	09 24 92	10 01 92	10 30 92	11 14 92	11 20 92	01 04 93
11 02 92	10 12 92	10 19 92	11 17 92	12 02 92	12 20 92	02 01 93
11 16 92	10 23 92	10 30 92	12 01 92	12 16 92	12 20 92	02 01 93
12 01 92	11 06 92	11 13 92	12 16 92	12 31 92	01 20 93	03 01 93
12 15 92	11 24 92	12 01 92	12 30 92	01 14 93	01 20 93	03 01 93

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

*This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.*

STATE OF NORTH CAROLINA  
ENVIRONMENTAL MANAGEMENT COMMISSION  
POST OFFICE BOX 29535  
RALEIGH, NORTH CAROLINA 27626-0535

**PUBLIC NOTICE OF INTENT TO ISSUE STATE GENERAL NPDES PERMITS**

Public notice of intent to issue State National Pollutant Discharge Elimination System (NPDES) General Permits for Point Source Discharges of Stormwater and Mine Dewatering Discharges associated with the following activities:

1. NPDES General Permit No. NCG010000 for the point source conveyance of stormwater runoff associated with construction activities including clearing, grading and excavation activities resulting in the disturbance of five or more acres of total land area.
2. NPDES General Permit No. NCG020000 for the point source conveyance of stormwater runoff associated with activities classified as Standard Industrial Classification (SIC) 14 (mineral mining industry) including: (a) active or inactive mining operations that discharge stormwater runoff that has either been contaminated with or that has come in contact with any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; (b) stormwater from vehicle maintenance activities at mining operations; and/or (c) mine dewatering.

On the basis of preliminary staff review and application of Article 21 of Chapter 143 of the General Statutes of North Carolina, Public Law 92-500 and other lawful standards and regulations, the North Carolina Environmental Management Commission proposes to issue State NPDES General Permits for the discharges as described above.

INFORMATION: Copies of the draft NPDES General Permits and Fact Sheets concerning the draft Permits are available by writing or calling:

Ms. Colleen Sullins, Supervisor  
Stormwater Group  
Water Quality Planning  
N.C. Division of Environmental Management  
P.O. Box 29535  
Raleigh, North Carolina 27626-0535

Telephone (919) 733-5083

Persons wishing to comment upon or object to the proposed determinations are invited to submit their comments in writing to the above address no later than April 15, 1992. All comments received prior to that date will be considered in the final determination regarding permit issuance. A public meeting may be held where the Director of the Division of Environmental Management finds a significant degree of public interest in any proposed permit issuance.

*IN ADDITION*

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The draft Permits, Fact Sheets and other information are on file at the Division of Environmental Management, 512 N. Salisbury Street, Room 625-C, Archdale Building, Raleigh, North Carolina. They may be inspected during normal office hours. Copies of the information on file are available upon request and payment of the costs of reproduction. All such comments and requests regarding these matters should make reference to the draft Permit Numbers, NCG010000 (for Construction Activities) and NCG020000 (for Mining Operations).

Date: February 24, 1992

George T. Everett, Director  
Division of Environmental Management

## PROPOSED RULES

### TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Aging intends to adopt rule(s) cited as 10 NCAC 22O .0101, .0201 - .0205; 22P .0101, .0201.

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

The public hearing will be conducted at 2:00 p.m. on March 31, 1992 at the Division of Aging, 693 Palmer Dr., Room 127, Raleigh, N.C.

**Reason for Proposed Action:** 10 NCAC 22O .0101 - Establishes definition for Service Cost-Sharing. 10 NCAC 22O .0201 - Identifies aging services subject to Service Cost-Sharing. 10 NCAC 22O .0202 - Provides specifications for the development of a Service Cost-Sharing form by Aging Service Providers. 10 NCAC 22O .0203 - Establishes policy that Aging Service Providers shall develop policy regarding the collection of Service Cost-Sharing Revenues. 10 NCAC 22O .0204 - Establishes policy prohibiting the termination of service recipients who fail to pay the agreed upon Service Cost-Sharing amount. 10 NCAC 22O .0205 - Establishes policy for deducting Service Cost-Sharing Revenues from monthly service reimbursement to Aging Service Providers. 10 NCAC 22P .0101 - Establishes requirement that agencies providing Adult Day Care services with funds administered by the N.C. Division of Aging shall comply with the N.C. Division of Social Services Certification Standards for Adult Day Care as stated in 10 NCAC 42E. 10 NCAC 22P .0201 - Establishes maximum reimbursement rates for daily care for Adult Day Care Services and daily transportation for Adult Day Care client to an adult day care facility.

**Comment Procedures:** Written comments may be received by the Director of the Division of Aging through April 15, 1992. Verbal comments will be heard at the public hearing.

### CHAPTER 22 - AGING

#### SUBCHAPTER 22O - SERVICE COST-SHARING

##### SECTION .0100 - SCOPE OF SERVICE COST-SHARING

###### .0101 SCOPE OF SERVICE COST-SHARING

As used in this Subchapter, the following definition of Service Cost-Sharing shall apply:

Service Cost-Sharing solicits from all service recipients a portion of the cost for services rendered based upon their ability to pay in order to extend the availability of in-home and community based services administered by the Division of Aging.

Authority G.S. 143B-181.1 (a) (10); 143B-181.1 (c); 42 U.S.C. 3001; 45 C.F.R. 1321.67.

##### SECTION .0200 - REQUIREMENTS

###### .0201 SERVICES SUBJECT TO SERVICE COST-SHARING

Services subject to Service Cost-Sharing are Adult Day Care, Adult Day Health Care, Congregate Nutrition, Home Delivered Meals, Home Health, Housing and Home Improvement, In-Home Aide, Institutional Respite, and Transportation as provided under this Subchapter.

Authority G.S. 143B-181.1 (a) (10); 143B-181.1 (c); 42 U.S.C. 3001; 45 C.F.R. 1321.67.

###### .0202 SERVICE COST-SHARING FORM

Agencies providing services subject to Service Cost-Sharing shall develop a Service Cost-Sharing Form which includes the following:

- (1) a service cost-sharing schedule which includes income ranges and corresponding cost-sharing percentages;
- (2) space to indicate the service recipient's income range;
- (3) space to list services to be received;
- (4) space to indicate the cost of service to which the cost-sharing percentage is being applied;
- (5) space to indicate the individual's calculated or negotiated cost-sharing amount per unit or hour for each service, if applicable;
- (6) a statement indicating that services will not be terminated for failure to pay the agreed upon cost-sharing amount;
- (7) information regarding whom the service recipient should contact if he or she has questions regarding Service Cost-Sharing procedures; and
- (8) space for signatures by the service recipient or designated representative and the agency representative indicating that the form has been reviewed with the service recipient and the date.

Authority G.S. 143B-181.1 (a) (10); 143B-181.1 (c); 42 U.S.C. 3001; 45 C.F.R. 1321.67.

###### .0203 WRITTEN POLICIES AND PROCEDURES

Agencies shall develop written policies and procedures regarding the collection of Service Cost-Sharing revenues.

Authority G.S. 143B-181.1 (a) (10); 143B-181.1 (c); 42 U.S.C. 3001; 45 C.F.R. 1321.67.

.0204 TERMINATION

Service recipients shall not be terminated from services for failure to pay the agreed upon Service Cost-Sharing amount.

Authority G.S. 143B-181.1 (a) (10); 143B-181.1 (c); 42 U.S.C. 3001; 45 C.F.R. 1321.67.

.0205 DEDUCTING SVC COST-SHARING REVENUES FROM MONTHLY SVC REIMBURSEMENT

The North Carolina Division of Aging will deduct the amount of Service Cost-Sharing revenues reported collected from the amount of monthly reimbursement due to each service provider for each service subject to Service Cost-Sharing as specified in Rule .0201 of this Section.

Authority G.S. 143B-181.1 (a) (10); 143B-181.1 (c); 42 U.S.C. 3001; 45 C.F.R. 92.25.

SUBCHAPTER 22P - ADULT DAY CARE

SECTION .0100 - SCOPE OF ADULT DAY CARE

.0101 ADULT DAY CARE STANDARDS

Agencies providing Adult Day Care services with funds administered by the North Carolina Division of Aging shall comply with the North Carolina Division of Social Services Certification Standards for Adult Day Care as established by the North Carolina Social Services Commission in 10 NCAC 42E.

Statutory Authority G.S. 143B-181.1(c).

SECTION .0200 - REQUIREMENTS

.0201 MAXIMUM REIMBURSEMENT RATES

(a) The maximum reimbursement rate for adult day care services is twenty-one dollars (\$21.00) per day and shall not exceed four hundred and fifty-five dollars (\$455.00) per month, per client.

(b) The maximum reimbursement rate for transporting an adult day care client to an adult day care center shall not exceed one dollar and four cents (\$1.04) for a one-way trip. The maximum reimbursement rate for round-trip transportation of an adult day care client to an adult day care center shall not exceed two dollars and seven cents (\$2.07) per day, per client.

Statutory Authority G.S. 143B-181.1(c).

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Human Resources Division of Medical Assistance intends to adopt rule(s) cited as 10 NCAC 26M .0101 - .0105, .0201 - .0203.*

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

*The public hearing will be conducted at 1:30 p.m. on April 15, 1992 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 297, Raleigh, N.C. 27603.*

*Reason for Proposed Action: To comply with 42 CFR 434, Subparts C and E.*

*Comment Procedures: Written comments concerning these adoptions must be submitted by April 15, 1992, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, N.C. 27603, ATTN.: Bill Hottel, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal impact statement is available upon written request from the same address.*

CHAPTER 26 - MEDICAL ASSISTANCE

SUBCHAPTER 26M - MANAGED CARE AND PREPAID PLANS

SECTION .0100 - MANAGED CARE

.0101 PROGRAM DEFINITION

Carolina ACCESS will contract with primary care physicians in participating counties to deliver and coordinate the health care of certain categories of Medicaid recipients.

Statutory Authority G.S. 108A-25(b); S.L. 1991, c. 689, s. 93(h).

.0102 COORDINATION FEE

In addition to normal Medicaid payments, the Division of Medical Assistance has the authority to pay participating physicians a monthly coordination fee for providing or coordinating the health care services of enrollees who have selected them as their primary care physician.

Statutory Authority G.S. 108A-25(b); S.L. 1991, c. 689, s. 93(h).

.0103 ACCESS TO CARE

Carolina ACCESS enrollees will receive covered health care services that are provided or coordi-

## PROPOSED RULES

nated by their primary care physician. The Division of Medical Assistance has the authority to deny payment for covered services that are not authorized by the primary care physician.

*Statutory Authority G.S. 108A-25(b); S.L. 1991, c. 689, s. 93(h).*

### .0104 ENROLLMENT

All clients in participating counties will enroll in Carolina ACCESS unless exempt due to category of eligibility, institutional placement or special exemption based on individual consideration.

*Statutory Authority G.S. 108A-25(b); S.L. 1991, c. 689, s. 93(h).*

### .0105 EMERGENCY ROOM CARE

Payment for services in hospital emergency rooms will be limited to an assessment fee unless the assessment indicates need for further emergency room care.

*Statutory Authority G.S. 108A-25(b); S.L. 1991, c. 689, s. 93(h).*

## SECTION .0200 - PREPAID PLANS

### .0201 PROGRAM DEFINITION

Federally qualified Health Maintenance Organizations (HMOs) and State licensed and certified HMOs are eligible to enter contracts with the Division of Medical Assistance for enrollment of Medicaid eligible individuals.

*Statutory Authority G.S. 108A-25(b); S.L. 1991, c. 689, s. 93(h).*

### .0202 ENROLLMENT

Each contract will define eligible enrollees and service areas.

*Statutory Authority G.S. 108A-25(b); S.L. 1991, c. 689, s. 93(h).*

## CHAPTER 10 - NC SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

### SUBCHAPTER 10B - NC SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

#### SECTION .0600 - MINIMUM STANDARDS OF TRAINING FOR JAILERS

##### .0601 JAILER CERTIFICATION COURSE

(a) This Section establishes the current minimum standard by which Sheriffs' Department personnel shall receive jailer training. These rules will serve to raise the level of jailer training heretofore available to law enforcement officers across the state. The Jailer Certification Course shall consist of a minimum of ~~120~~ 135 hours of instruction designed to provide the trainee with the skills and knowledge necessary to perform those tasks considered essential to the administration and operation of a confinement facility.

### .0203 ACCESS TO CARE

HMO enrollees will receive recovered health care services that are provided by the HMO or its subcontractors. The Division of Medical Assistance has the authority to deny payment for covered services not provided nor authorized by the HMO.

*Statutory Authority G.S. 108A-25(b); S.L. 1991, c. 689, s. 93(h).*

## TITLE 12 - DEPARTMENT OF JUSTICE

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Sheriffs' Standards Commission intends to amend rule(s) cited as 12 NCAC 10B .0601, .0901.*

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

*Instructions on how to demand a public hearing (must be requested in writing within 15 days of notice): A written request for a public hearing may be filed with the Sheriffs' Standards Division at 104 Fayetteville Street Mall, Post Office Drawer 629, Raleigh, North Carolina 27601-0629 by March 31, 1992.*

*Reason for Proposed Action: 12 NCAC 10B .0601 - To correct the minimum number of instructional hours required in the Jailer Certification Course. 12 NCAC 10B .0901 - To correct the information regarding where copies of 12 NCAC 9B .0300 et seq. can be obtained and the cost.*

*Comment Procedures: The record of hearing will be open for receipt of written comments from March 16, 1992 until April 15, 1992. Such comments must be delivered or mailed to the Sheriffs' Standards Division at 104 Fayetteville Street Mall, Post Office Drawer 629, Raleigh, North Carolina 27602.*

*PROPOSED RULES*

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(b) Each Jailer Certification Course shall include the following identified topic areas and approximate minimum instructional hours for each area:

(1) Disciplinary Procedures	2 hours
(2) Contraband Searches	6 hours
(3) Transportation of Inmates	6 hours
(4) Processing Inmates	5 hours
(5) Patrol and Emergency Procedures	5 hours
(6) Recreation and Visiting	2 hours
(7) Key and Tool Control	1 hour
(8) Stress	2 hours
(9) Special Populations	5 hours
(10) Medical Care in the Jail	5 hours
(11) First Aid and CPR (National Safety Council)	14 hours
(12) Unarmed Self-Defense	18 hours
(13) Written Communication	3 hours
(14) Legal Rights and Responsibilities	12 hours
(15) Civil Liability	2 hours
(16) Suicides in the Jail	4 hours
(17) Introduction to Rules and Regulations Governing Jail Facilities	3 hours
(18) Role of the Jailer in Supervision, Communication, and Crisis Management	6 hours
(19) Handling Fire Emergencies	16 hours
(20) Investigative Duties of the Jailer	4 hours
(21) Legal Aspects of Criminal Investigation	3 hours
(22) Testifying in Court	4 hours
(23) Physical Assessment of Jailers	4 hours
(24) Commission Exam	3 hours
TOTAL	135 hours

(c) In addition to the requirements of Paragraph (b) of this Rule, the reading component of a standardized test shall be administered to each trainee within the first two weeks of the Jailer Certification Course, and the reading grade level reported as a part of the trainee's official training records. The school director shall determine the test instrument to be used.

(d) Consistent with the curriculum development policy of the Commission, the Commission shall designate the developer of the Jailer Certification Course curricula and such designation shall be deemed by the Commission as approval for the developer to conduct pilot Jailer Certification Courses. Individuals who successfully complete such a pilot Jailer Certification Course offering shall be deemed to have successfully complied with and satisfied the minimum training requirement.

(e) The "Jailer Certification Training Manual" as published by the North Carolina Justice Academy is hereby adopted by reference and shall automatically include any later amendments and editions of the adopted matter as authorized by G.S. 150B-14(c) to apply as the basic curriculum for the Jailer Certification Course.

(f) The "Jailer Certification Course Management Guide" as published by the North Carolina Justice Academy is hereby adopted by reference and shall automatically include any later amendments, editions of the adopted matter as authorized by G.S. 150B-14(c) to be used by certified school directors in planning, implementing and delivering basic jailer training. Each certified school director shall be issued a copy of the guide at the time of certification at no cost to the accredited school.

*Statutory Authority G.S. 17E-4(a).*

**SECTION .0900 - MINIMUM STANDARDS FOR JUSTICE OFFICER INSTRUCTORS**

**.0901 CERT/INSTRUCTORS/BASIC LAW ENFORCEMENT TRAINING COURSE**

The rules covering the certification of instructors, codified as Title 12, Subchapter 9B, Section .0300 of the North Carolina Administrative

Code, and previously adopted by the North Carolina Criminal Justice Education and Training Standards Commission, are hereby incorporated by reference, and shall automatically include any later amendments and editions of the referenced materials, to apply to actions of the North Carolina Sheriffs' Education and Training Standards Commission with the exception of in-

structors for the Jailer Certification Course and instructors for the Physical Fitness topical area of the Basic Law Enforcement Training Course. Copies of the publication may be obtained from the North Carolina Justice Academy, Post Office Drawer 99, Salemburg, North Carolina 28385, Office of Administrative Hearings, Capehart-Crocker House, 424 North Blount Street, Raleigh, North Carolina 27601. The cost per manual is ninety five dollars (\$95.00) for a student manual and one hundred dollars (\$100.00) for an instructor manual copy is two dollars and fifty cents (\$2.50) for the first 10 pages and fifteen cents (\$.15) for each page thereafter at the time of adoption of this Rule.

Statutory Authority G.S. 17E-4.

TITLE 13 - DEPARTMENT OF LABOR

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Labor intends to amend rule(s) cited as 13 NCAC 13 .0201, .0404.*

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

*The public hearing will be conducted at 2:00 p.m. on April 7, 1992 at the Highway Building, Room 150, 1 S. Wilmington Street, Raleigh, N.C.*

*Reason for Proposed Action: The proposed action corrects the phone number of the Boiler and Pressure Vessel Division, removes and unnecessary requirement dealing with resetting safety valves and clarifies the requirements for safety valves for hydropneumatic storage tanks.*

*Comment Procedures: People wanting to present oral testimony at the hearing should provide a written summary of the proposed testimony to the Department by April 2, 1992. Written comments will be accepted by the Department until April 15, 1992. Direct all correspondence to Bobby Bryan, NC Department of Labor, 4 West Edenton Street, Raleigh, NC 27601.*

CHAPTER 13 - BOILER AND PRESSURE VESSEL

SECTION .0200 - ADMINISTRATION

.0201 NAME: ADDRESS

(a) The Boiler and Pressure Vessel Division, which administers the provisions of Article 7A of G.S. Chapter 95, is located in the Raleigh of-

fice of the department on the corner of Edenton and Salisbury Streets.

(b) Address correspondence to:  
Boiler and Pressure Vessel Division  
North Carolina Department of Labor  
Four West Edenton Street  
Raleigh, North Carolina 27601  
~~Telephone (919) 733-3034~~  
~~Telephone (919) 733-2383~~  
~~FAX (919) 733-6197.~~

Statutory Authority G.S. 95-4; 95-69.12.

SECTION .0400 - GENERAL REQUIREMENTS

.0404 SAFETY APPLIANCES

(a) All safety valves and safety relief valves installed on any boiler, pressure vessel, or nuclear energy system shall be constructed in accordance with the ASME Code.

(b) All safety valves and safety relief valves shall be stamped and capacity certified by the National Board of Boiler and Pressure Vessel Inspectors.

(c) Any repair organization, manufacturer or user who performs repairs on safety valves or safety relief valves shall hold a valid certificate of authorization and VR symbol repair stamp issued by the National Board of Boiler and Pressure Vessel Inspectors.

(d) A person shall not:

(1) attempt to remove, tamper or perform any work on any safety appliance while the boiler, pressure vessel, or nuclear energy system is in operation, except as permitted by the ASME or the National Board Inspection Code;

(2) ~~reset a safety valve when an authorized inspector or the valve manufacturer is not present;~~

(2) ~~(2)~~ load a safety valve in any manner to maintain a working pressure in excess of the maximum allowable working pressure as stated on the inspection certificate; or

(3) ~~(3)~~ operate any boiler, pressure vessel, or nuclear energy system without the safety appliances as described in these Rules, the ASME Code, and the National Board Inspection Code.

(e) Hydropneumatic storage tanks supplying potable water at ambient temperature and containing a cushion of air shall be protected with a liquid rated safety valve installed below the water line and rated in gallons per minute with a capacity of not less than the inlet supply pump. Alternatively, when the tank is installed so that the release of water as a result of vessel rupture will not create an additional hazard, such as electrical shortage, the tank may be protected

with a safety valve installed at the top of the vessel above the water line, so long as the safety valve is either:

- (1) an air rated safety valve with a capacity of not less than one standard cubic foot per minute (SCFM) for each gallon per minute of input from the water supply pump; or
- (2) a safety valve with a capacity of not less than 3,000 Btu hr for each gallon per minute of water input.

*Statutory Authority G.S. 95-69.11; 95-69.14.*

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

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt rule(s) cited as 15A NCAC 2D .0538; and amend rule(s) cited as 15A NCAC 2H .0610.*

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

*The public hearing will be conducted at 7:00 p.m. on April 1, 1992 at the Groundfloor Hearing Room, Archdale Building, 512 N. Salisbury St., Raleigh, N.C.*

*Reason for Proposed Action: To establish emission standards for emissions of ethylene oxide resulting from use as a sterilant in the production and subsequent storage of medical devices or the packaging and subsequent storage of medical devices and to allow compliance with these standards in lieu of complying with the air toxic regulations.*

*Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Any person desiring to comment for more than three minutes is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The hearing officer may limit oral presentation lengths to five minutes if many people want to speak. The record of proceedings will remain open until April 15, 1992, to receive additional written statements.*

*Comments should be sent to and additional information concerning the hearing or the proposals may be obtained by contacting:*

*Mr. Thomas C. Allen  
Division of Environmental Management  
P.O. Box 29535  
Raleigh, North Carolina 27626-0535  
(919) 733-3340*

**CHAPTER 2 - ENVIRONMENTAL MANAGEMENT**

**SUBCHAPTER 2D - AIR POLLUTION CONTROL REQUIREMENTS**

**SECTION .0500 - EMISSION CONTROL STANDARDS**

**.0538 CONTROL OF ETHYLENE OXIDE EMISSIONS**

(a) For purposes of this Rule, "medical devices" means instruments, apparatus, implements, machines, implants, in vitro reagents, contrivances, or other similar or related articles including their components, parts, and accessories, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or to affect the structure or any function of the body of man or other animals.

(b) This Rule applies to emissions of ethylene oxide resulting from use as a sterilant in:

- (1) the production and subsequent storage of medical devices; or
- (2) the packaging and subsequent storage of medical devices for sale;

from the processes described in Paragraph (d) of this Rule for which construction began after April 30, 1992.

(c) This Rule does not apply to hospital or medical facilities.

(d) Facilities subject to this Rule shall comply with the following standards:

- (1) For sterilization chamber evacuation, a closed loop liquid ring vacuum pump, or equipment demonstrated to be as effective at reducing emissions of ethylene oxide shall be used;
- (2) For sterilizer exhaust, a reduction in uncontrolled emissions of ethylene oxide of at least 99.8 percent by weight shall be achieved;
- (3) For sterilizer unload and backdraft valve exhaust, a reduction in uncontrolled emissions of ethylene oxide of at least 99 percent by weight shall be achieved;
- (4) Sterilized product ethylene oxide residual shall be reduced by:  
(A) a heated degassing room to aerate the products after removal from the sterilization chamber; the temperature of the degassing room shall be maintained

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at a minimum of 95° Fahrenheit during the degassing cycle, and product hold time in the aeration room shall be at least 24 hours; or

(B) a process demonstrated to be as effective as Subparagraph (d)(4)(A) of this Rule;

(5) Emissions of ethylene oxide from the degassing area (or equivalent process) shall be vented to a control device capable of reducing uncontrolled ethylene oxide emissions by at least 99 percent by weight. The product aeration room and the product transfer area shall be maintained under a negative pressure.

(e) Before installation of the controls required by Paragraph (d) of this Rule, and annually thereafter, a written description of waste re-

duction, elimination, or recycling plan shall be submitted [as specified in G.S. 143-215.108(c)] to determine if ethylene oxide use can be reduced or eliminated through alternative sterilization methods or process modifications.

(f) The owner or operator of the facility shall conduct a performance test to verify initial efficiency of the control devices. The owner or operator shall maintain temperature records to demonstrate proper operation of the degassing room. Such records shall be retained for a period of at least two calendar years at all times and shall be made available for inspection by Division personnel.

*Statutory Authority G.S. 143-215.3 (a) (1); 143-215.107 (a) (4), (5); 143-215.108 (c).*

**SUBCHAPTER 21I - PROCEDURES FOR PERMITS: APPROVALS**

**SECTION .0600 - AIR QUALITY PERMITS**

**.0610 PERMIT REQUIREMENTS FOR TOXIC AIR POLLUTANTS**

(a) No person shall cause or allow any toxic air pollutant named in 15A NCAC 2D .1104 to be emitted into the atmosphere from any source without having received a permit from the commission in accordance with the following:

- (1) Sources and modifications of sources which require a permit or permit modification because of the applicability of Sections in Subchapter 2D of this Chapter other than Section .1100 and which began construction after April 30, 1990, shall have received a permit or permit modification to emit toxic air pollutants before beginning construction and shall be in compliance with their permit when beginning operations.
- (2) The owner or operator of any incinerator subject to 15A NCAC 2D .1200 which began construction or was in operation before October 1, 1991, shall apply for a permit or a permit modification to emit toxic air pollutants in accordance with the compliance schedules contained in 15A NCAC 2D .1209. All other sources at the facility with the incinerator shall be included, and the owner or operator of these sources shall apply for a permit or a permit modification to emit toxic air pollutants from these sources in accordance with Paragraph (b) or (c) of this Rule.
- (3) Paragraph (a)(1) of this Rule does not apply to sources whose emissions result from combusting only unadulterated fossil fuels or unadulterated wood if the permit application is only for this type of combustion source and if the facility has not already been permitted or applied for a permit to emit toxic air pollutants.
- (4) The owner or operator of any source other than sources required to have a permit under Paragraph (a)(1) of this Rule shall have 180 days to apply for a permit or permit modification for the emissions of toxic air pollutants after receiving written notification from the division.
- (5) When the director calls for permit applications for facilities pursuant to Paragraph (a)(4) of this Rule, he shall call for permit applications on the basis of standard industrial classifications, that is, he shall call at one time for permits for all facilities statewide that have the same four-digit standard industrial classification code, except those facilities located in certified local air pollution control agency areas. All sources at the facility regardless of their standard industrial classification code and including sources combusting only unadulterated fossil fuels or unadulterated wood shall be included in the call for permit applications. All members of a source or facility category not having a standard industrial classification code shall similarly be called at one time.
- (6) The owner or operator of a source required to obtain a permit or permit modification before the date on which the guidelines in 15A NCAC 2D .1104(b) become effective shall be required to obtain the permit or permit modification only for toxic air pollutants named in 15A NCAC 2D .1104(a). However, the owner or operator of the source will later be required in accordance

with Paragraph (a)(4) of this Rule to obtain permit modifications covering toxic air pollutants named in 15A NCAC 2D .1104(b).

(7) Permit calls made under this Rule shall be limited to the emissions of toxic air pollutants.

(b) The owner or operator of a source who is applying for a permit or permit modification to emit toxic air pollutants shall:

(1) demonstrate to the satisfaction of the Director through dispersion modeling that the emissions of toxic air pollutants from the facility will not cause any acceptable ambient level listed in 15A NCAC 2D .1104 to be exceeded; or

(2) demonstrate to the satisfaction of the commission or its delegate that the ambient concentration beyond the premises (contiguous property boundary) for the subject toxic air pollutant will not adversely affect human health even though the concentration is higher than the acceptable ambient level in 15A NCAC 2D .1104 by providing one of the following demonstrations:

(A) the area where the ambient concentrations are expected to exceed the acceptable ambient levels in 15A NCAC 2D .1104 are not inhabitable or occupied for the duration of the averaging time of the pollutant of concern, or

(B) new toxicological data that shows that the acceptable ambient level in 15A NCAC 2D .1104 for the pollutant of concern is too low and the facility's ambient impact is below the level indicated by the toxicological data.

(c) This Paragraph shall not apply to any incinerator covered under Section 15A NCAC 2D .1200. The owner or operator of any source constructed before May 1, 1990, who cannot supply a demonstration described in Paragraph (b) of this Rule shall:

(1) submit a compliance schedule acceptable to the Director that will reduce the subject toxic air pollutant ambient concentration within three years after receiving written notification from the Director pursuant to Paragraph (a)(4) of this Rule to a level that will not exceed any acceptable ambient level listed in 15A NCAC 2D .1104;

(2) demonstrate to the satisfaction of the commission or its delegate that complying with the guidelines in 15A NCAC 2D .1104 is technically infeasible (the technology necessary to reduce emissions to a level to prevent the acceptable ambient levels in 15A NCAC 2D .1104 from being exceeded does not exist); or

(3) demonstrate to the satisfaction of the commission or its delegate that complying with the guidelines in 15A NCAC 2D .1104 would result in serious economic hardship.

(d) If the owner or operator makes a demonstration to the satisfaction of the commission or its delegate pursuant to Paragraph (c)(2) or (3) of this Rule, the Director shall require the owner or operator of the source to apply maximum feasible control. Maximum feasible control shall be in place and operating within three years after receiving written notification from the Director pursuant to Paragraph (a)(4) of this Rule.

(e) If the owner or operator of a source chooses to make a demonstration pursuant to Paragraph (b)(2) or (c)(2) or (3) of this Rule, the commission or its delegate shall approve or disapprove the permit after a public notice with an opportunity for a public hearing. The public notice shall meet the requirements of Paragraph (d) of Rule .0603 of this Section. Any subsequent public hearing shall meet the requirements of Paragraph (e) of Rule .0603 of this Section except that the permit, if approved, shall not become part of the North Carolina State Implementation Plan for Air Quality.

(f) If the owner or operator of a facility demonstrates by modeling that any toxic air pollutant emitted from his facility contributes an incremental concentration to the ambient air concentration of that pollutant beyond his premises which is less than the acceptable ambient level values given in 15A NCAC 2D .1104, he does not have to provide any further modeling demonstration with his permit application. However, the commission may still require more stringent emission levels in accordance with its analysis under 15A NCAC 2D .1107.

(g) A permit to emit toxic air pollutants shall not be required for:

(1) the noncommercial use of household cleaners, household chemicals, or household fuels in private residences;

(2) asbestos demolition and renovation projects that comply with 15A NCAC 2D .0525 and that are being done by persons accredited by the Department of Environment, Health and Natural Resources under the Asbestos Hazard Emergency Response Act;

(3) emissions from gasoline dispensing facility or gasoline service station operations performed as a part of petroleum distribution to the ultimate consumer where the emissions comply with 15A NCAC 2D .0524, .0925, .0928, .0932 and .0933 and that receive gasoline from bulk gasoline

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plants or bulk gasoline terminals that comply with 15A NCAC 2D .0524, .0925, .0926, .0927, .0932, and .0933 via tank trucks that comply with 15A NCAC 2D .0932;

- (4) the use for agricultural operations by a farmer of fertilizers, pesticides, or other agricultural chemicals containing one or more of the compounds listed in 15A NCAC 2D .1104 if such compounds are applied in accordance with agronomic practices acceptable to the North Carolina Department of Agriculture and the Commission;
- (5) manholes and customer vents of wastewater collection systems;
- (6) emissions of ethylene oxide resulting from use as a sterilant in the production and subsequent storage of medical devices or the packaging and subsequent storage of medical devices for sale provided that the emissions from all new and existing sources located at the facility described in Paragraph (d) of 15A NCAC 2D .0538 are controlled at least to the degree described in Paragraph (d) of 15A NCAC 2D .0538 and the facility complies with Paragraphs (e) and (f) of 15A NCAC 2D .0538.
- (h) A permit to emit toxic air pollutants shall not be required for any facility whose actual emissions from all sources are no more than the following:

	1b/yr	1b/day	1b/hr	1b/15 min.
(1) acetaldehyde				1.7
(2) acetic acid				0.24
(3) acrolein				0.005
(4) acrylonitrile	10			
(5) ammonia				0.17
(6) ammonium chromate	0.0056			
(7) ammonium dichromate	0.0056			
(8) aniline			0.25	
(9) arsenic and inorganic arsenic compounds	0.016			
(10) asbestos	1.9x10 <sup>-6</sup>			
(11) aziridine		0.13		
(12) benzene	8.1			
(13) benzidine and salts	0.0010			
(14) benzo(a)pyrene	2.2			
(15) benzyl chloride			0.13	
(16) beryllium	0.28			
(17) beryllium chloride	0.28			
(18) beryllium fluoride	0.28			
(19) beryllium nitrate	0.28			
(20) bis-chloromethyl ether	0.025			
(21) bromine				0.013
(22) 1,3-butadiene	12			
(23) cadmium	0.37			
(24) cadmium acetate	0.37			
(25) cadmium bromide	0.37			
(26) calcium chromate	0.0056			
(27) carbon disulfide		3.9		
(28) carbon tetrachloride	460			
(29) chlorine		0.79		0.057
(30) chlorobenzene		46		
(31) chloroform	290			
(32) chloroprene		9.2	0.89	
(33) chromic acid	0.0056			
(34) chromium (VI)	0.0056			
(35) cresol			0.56	
(36) p-dichlorobenzene				4.2
(37) dichlorodifluoromethane		5200		
(38) dichlorofluoromethane		10		
(39) di(2-ethylhexyl)phthalate		0.63		
(40) dimethyl sulfate		0.063		
(41) 1,4-dioxane		12		

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(42) epichlorohydrin	5600			
(43) ethyl acetate			36	
(44) ethylenediamine		6.3	0.64	
(45) ethylene dibromide	27			
(46) ethylene dichloride	260			
(47) ethylene glycol monoethyl ether		2.5	0.48	
(48) ethylene oxide	1.8			
(49) ethyl mercaptan			0.025	
(50) fluorides		0.34	0.064	
(51) formaldehyde				0.010
(52) hexachlorocyclopentadiene		0.013	0.0025	
(53) hexachlorodibenzo-p-dioxin	0.0051			
(54) n-hexane		23		
(55) hexane isomers except n-hexane				23
(56) hydrazine		0.013		
(57) hydrogen chloride				0.045
(58) hydrogen cyanide		2.9	0.28	
(59) hydrogen fluoride		0.63		0.016
(60) hydrogen sulfide				0.13
(61) lithium chromate	0.0056			
(62) maleic anhydride		0.25	0.025	
(63) manganese and compounds		0.63		
(64) manganese cyclopentadienyl tricarbonyl		0.013		
(65) manganese tetroxide		0.13		
(66) mercury, alkyl		0.0013		
(67) mercury, aryl and inorganic compounds		0.013		
(68) mercury, vapor		0.013		
(69) methyl chloroform		250		16
(70) methylene chloride	1600			
(71) methyl ethyl ketone		78		5.6
(72) methyl isobutyl ketone		52		1.9
(73) methyl mercaptan			0.013	
(74) nickel carbonyl		0.013		
(75) nickel metal		0.13		
(76) nickel, soluble compounds, as nickel		0.013		
(77) nickel subsulfide	0.14			
(78) nitric acid				0.064
(79) nitrobenzene		1.3	0.13	
(80) N-nitrosodimethylamine	3.4			
(81) pentachlorophenol		0.063	0.0064	
(82) perchloroethylene	13,000			
(83) phenol			0.24	
(84) phosgene		0.052		
(85) phosphine				0.008
(86) polychlorinated biphenyls	5.6			
(87) potassium chromate	0.0056			
(88) potassium dichromate	0.0056			
(89) sodium chromate	0.0056			
(90) sodium dichromate	0.0056			
(91) strontium chromate	0.0056			
(92) styrene			2.7	
(93) sulfuric acid		0.25	0.025	
(94) tetrachlorodibenzo-p-dioxin	0.00020			
(95) 1,1,1,2-tetrachloro-2,2-difluoroethane		1100		
(96) 1,1,2,2-tetrachloro-1,2-difluoroethane		1100		
(97) 1,1,1,2-tetrachloroethane	430			
(98) toluene		98		3.6
(99) toluene-2,4-diisocyanate		0.011		0.001

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(100) trichloroethylene	4000		
(101) trichlorofluoromethane		140	60
(102) 1,1,2-trichloro-1,2,2-trifluoroethane			
(103) vinyl chloride	26		
(104) vinylidene chloride		2.5	
(105) xylene		57	4.1

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.108; 143B-282.

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend rule(s) cited as 15A NCAC 2D .1104; 2H .0610.*

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

*The public hearing will be conducted at 7:00 p.m. on April 1, 1992 at the Groundfloor Hearing Room, Archdale Building, 512 N. Salisbury St., Raleigh, N.C.*

*Reason for Proposed Action: To change acceptable ambient levels and permit deminimus levels for several chromate compounds.*

*Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Any person desiring to comment for more than three minutes is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The hearing officer may limit oral presentation lengths to five minutes if many people want to speak. The record of proceedings will remain open until April 15, 1992, to receive additional written statements.*

*Comments should be sent to and additional information concerning the hearing or the proposals may be obtained by contacting:*

*Mr. Thomas C. Allen  
Division of Environmental Management  
P.O. Box 29535  
Raleigh, North Carolina 27626-0535  
(919) 733-3340*

**CHAPTER 2 - ENVIRONMENTAL MANAGEMENT**

**SUBCHAPTER 2D - AIR POLLUTION CONTROL REQUIREMENTS**

**SECTION .1100 - CONTROL OF TOXIC AIR POLLUTANTS**

**.1104 TOXIC AIR POLLUTANT GUIDELINES**

(a) A facility shall not emit any of the following toxic air pollutants in such quantities that may cause or contribute beyond the premises (contiguous property boundary) to any significant ambient air concentration that may adversely affect human health. In determining these significant ambient air concentrations, the division shall be guided by the following list of acceptable ambient levels in milligrams per cubic meter at 77° F (25° C) and 29.92 inches (760 mm) of mercury pressure (except for asbestos):

	Annual (Carcinogens)	24-hour (Chronic Toxicants)	1-hour (Acute Systemic Toxicants)	15-minute (Acute Irritants)
(1) acetaldehyde				27
(2) acetic acid				3.7
(3) acrolein				0.08
(4) ammonia				2.7
(5) aniline			1	
(6) arsenic and inorganic arsenic compounds	2.3x10 <sup>-7</sup>			
(7) asbestos	2.8x10 <sup>-11</sup>	fibers/ml		
(8) aziridine		0.006		
(9) benzidine and salts	1.5x10 <sup>-8</sup>			
(10) benzo(a)pyrene	3.3x10 <sup>-5</sup>			

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(11) benzyl chloride			0.5	
(12) beryllium	4.1x10 <sup>-6</sup>			
(13) beryllium chloride	4.1x10 <sup>-6</sup>			
(14) beryllium fluoride	4.1x10 <sup>-6</sup>			
(15) beryllium nitrate	4.1x10 <sup>-6</sup>			
(16) bis-chloromethyl ether	3.7x10 <sup>-7</sup>			
(17) bromine				0.2
(18) cadmium	5.5x10 <sup>-6</sup>			
(19) cadmium acetate	5.5x10 <sup>-6</sup>			
(20) cadmium bromide	5.5x10 <sup>-6</sup>			
(21) carbon disulfide		0.186		
(22) chlorine		0.0375		0.9
(23) chlorobenzene		2.2		
(24) chloroprene		0.44	3.5	
(25) cresol			2.2	
(26) p-dichlorobenzene				66
(27) dichlorodifluoromethane		248		
(28) dichlorofluoromethane		0.5		
(29) di(2-ethylhexyl)phthalate		0.03		
(30) dimethyl sulfate		0.003		
(31) 1,4-dioxane		0.56		
(32) epichlorohydrin	8.3x10 <sup>-2</sup>			
(33) ethyl acetate			140	
(34) ethylenediamine		0.3	2.5	
(35) ethylene dibromide	4.0x10 <sup>-4</sup>			
(36) ethylene dichloride	3.8x10 <sup>-3</sup>			
(37) ethylene glycol monoethyl ether		0.12	1.9	
(38) ethyl mercaptan			0.1	
(39) fluorides		0.016	0.25	
(40) formaldehyde				0.15
(41) hexachlorocyclopentadiene		0.0006	0.01	
(42) hexachlorodibenzo-p-dioxin	7.6x10 <sup>-8</sup>			
(43) n-hexane		1.1		
(44) hexane isomers except n-hexane				360
(45) hydrazine		0.0006		
(46) hydrogen chloride				0.7
(47) hydrogen cyanide		0.14	1.1	
(48) hydrogen fluoride		0.03		0.25
(49) hydrogen sulfide				2.1
(50) maleic anhydride		0.012	0.1	
(51) manganese and compounds		0.031		
(52) manganese cyclopentadienyl tricarbonyl		0.0006		
(53) manganese tetroxide		0.0062		
(54) mercury, alkyl		0.00006		
(55) mercury, aryl and inorganic compounds		0.0006		
(56) mercury, vapor		0.0006		
(57) methyl chloroform		12		245
(58) methyl ethyl ketone		3.7		88.5
(59) methyl isobutyl ketone		2.56		30
(60) methyl mercaptan			0.05	
(61) nickel carbonyl		0.0006		
(62) nickel metal		0.006		
(63) nickel, soluble compounds as nickel		0.0006		

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(64) nickel subsulfide	2.1x10 <sup>-6</sup>			
(65) nitric acid				1
(66) nitrobenzene		0.06	0.5	
(67) N-nitrosodimethylamine	5.0x10 <sup>-5</sup>			
(68) pentachlorophenol		0.003	0.025	
(69) phenol			0.95	
(70) phosgene		0.0025		
(71) phosphine				0.13
(72) polychlorinated biphenyls	8.3x10 <sup>-5</sup>			
(73) styrene			10.6	
(74) sulfuric acid		0.012	0.1	
(75) 1,1,1,2-tetrachloro-2,2-difluoroethane		52		
(76) 1,1,2,2-tetrachloro-1,2-difluoroethane		52		
(77) 1,1,1,2-tetrachloroethane	6.3x10 <sup>-3</sup>			
(78) toluene		4.7		56
(79) toluene-2,4-diisocyanate		0.0005		0.015
(80) trichlorofluoromethane			560	
(81) 1,1,2-trichloro-1,2,2-trifluoroethane				950
(82) vinyl chloride	3.8x10 <sup>-4</sup>			
(83) vinylidene chloride		0.12		
(84) xylene		2.7		65

(b) A facility shall not emit after May 1, 1991, any of the following toxic air pollutants in such quantities that may cause or contribute beyond the premises to any significant ambient air concentration that may adversely affect human health. In determining these significant ambient air concentrations, the division shall be guided by the following list of acceptable ambient levels in milligrams per cubic meter at 77° F (25° C) and 29.92 inches (760 mm) of mercury pressure:

	Annual (Carcinogens)	<u>24-Hour (Chronic Toxicants)</u>
(1) acrylonitrile	1.5x10 <sup>-4</sup>	
(2) ammonium chromate	<del>8.3x10<sup>-8</sup></del>	<u>6.2x10<sup>-4</sup></u>
(3) ammonium dichromate	<del>8.3x10<sup>-8</sup></del>	<u>6.2x10<sup>-4</sup></u>
(4) benzene	1.2x10 <sup>-4</sup>	
(5) 1,3-butadiene	1.7x10 <sup>-4</sup>	
(6) calcium chromate	8.3x10 <sup>-8</sup>	
(7) carbon tetrachloride	6.7x10 <sup>-3</sup>	
(8) chloroform	4.3x10 <sup>-3</sup>	
(9) chromic acid	<del>8.3x10<sup>-8</sup></del>	<u>6.2x10<sup>-4</sup></u>
(10) chromium (VI)	8.3x10 <sup>-8</sup>	
(11) ethylene oxide	2.7x10 <sup>-5</sup>	
<del>(12) lithium chromate</del>	<del>8.3x10<sup>-8</sup></del>	
(12) <del>(13)</del> methylene chloride	2.4x10 <sup>-2</sup>	
(13) <del>(14)</del> perchloroethylene	1.9x10 <sup>1</sup>	
(14) <del>(15)</del> potassium chromate	<del>8.3x10<sup>-8</sup></del>	<u>6.2x10<sup>-4</sup></u>
(15) <del>(16)</del> potassium dichromate	<del>8.3x10<sup>-8</sup></del>	<u>6.2x10<sup>-4</sup></u>
(16) <del>(17)</del> sodium chromate	<del>8.3x10<sup>-8</sup></del>	<u>6.2x10<sup>-4</sup></u>
(17) <del>(18)</del> sodium dichromate	<del>8.3x10<sup>-8</sup></del>	<u>6.2x10<sup>-4</sup></u>
(18) <del>(19)</del> strontium chromate	8.3x10 <sup>-8</sup>	
(19) <del>(20)</del> tetrachlorodibenzo-p-dioxin	3.0x10 <sup>-9</sup>	
(20) <del>(21)</del> trichloroethylene	5.9x10 <sup>-2</sup>	
(21) <u>zinc chromate</u>	<u>8.3x10<sup>-8</sup></u>	

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.107 (a) (3), (4), (5); 143B-282.

SUBCHAPTER 2H - PROCEDURES FOR PERMITS: APPROVALS

SECTION .0600 - AIR QUALITY PERMITS

.0610 PERMIT REQUIREMENTS FOR TOXIC AIR POLLUTANTS

(a) No person shall cause or allow any toxic air pollutant named in 15A NCAC 2D .1104 to be emitted into the atmosphere from any source without having received a permit from the commission in accordance with the following:

- (1) Sources and modifications of sources which require a permit or permit modification because of the applicability of Sections in Subchapter 2D of this Chapter other than Section .1100 and which began construction after April 30, 1990, shall have received a permit or permit modification to emit toxic air pollutants before beginning construction and shall be in compliance with their permit when beginning operations.
- (2) The owner or operator of any incinerator subject to 15A NCAC 2D .1200 which began construction or was in operation before October 1, 1991, shall apply for a permit or a permit modification to emit toxic air pollutants in accordance with the compliance schedules contained in 15A NCAC 2D .1209. All other sources at the facility with the incinerator shall be included, and the owner or operator of these sources shall apply for a permit or a permit modification to emit toxic air pollutants from these sources in accordance with Paragraph (b) or (c) of this Rule.
- (3) Paragraph (a)(1) of this Rule does not apply to sources whose emissions result from combusting only unadulterated fossil fuels or unadulterated wood if the permit application is only for this type of combustion source and if the facility has not already been permitted or applied for a permit to emit toxic air pollutants.
- (4) The owner or operator of any source other than sources required to have a permit under Paragraph (a)(1) of this Rule shall have 180 days to apply for a permit or permit modification for the emissions of toxic air pollutants after receiving written notification from the division.
- (5) When the director calls for permit applications for facilities pursuant to Paragraph (a)(4) of this Rule, he shall call for permit applications on the basis of standard industrial classifications, that is, he shall call at one time for permits for all facilities statewide that have the same four-digit standard industrial classification code, except those facilities located in certified local air pollution control agency areas. All sources at the facility regardless of their standard industrial classification code and including sources combusting only unadulterated fossil fuels or unadulterated wood shall be included in the call for permit applications. All members of a source or facility category not having a standard industrial classification code shall similarly be called at one time.
- (6) The owner or operator of a source required to obtain a permit or permit modification before the date on which the guidelines in 15A NCAC 2D .1104(b) become effective shall be required to obtain the permit or permit modification only for toxic air pollutants named in 15A NCAC 2D .1104(a). However, the owner or operator of the source will later be required in accordance with Paragraph (a)(4) of this Rule to obtain permit modifications covering toxic air pollutants named in 15A NCAC 2D .1104(b).
- (7) Permit calls made under this Rule shall be limited to the emissions of toxic air pollutants.

(b) The owner or operator of a source who is applying for a permit or permit modification to emit toxic air pollutants shall:

- (1) demonstrate to the satisfaction of the Director through dispersion modeling that the emissions of toxic air pollutants from the facility will not cause any acceptable ambient level listed in 15A NCAC 2D .1104 to be exceeded; or
- (2) demonstrate to the satisfaction of the commission or its delegate that the ambient concentration beyond the premises (contiguous property boundary) for the subject toxic air pollutant will not adversely affect human health even though the concentration is higher than the acceptable ambient level in 15A NCAC 2D .1104 by providing one of the following demonstrations:
  - (A) the area where the ambient concentrations are expected to exceed the acceptable ambient levels in 15A NCAC 2D .1104 are not inhabitable or occupied for the duration of the averaging time of the pollutant of concern, or
  - (B) new toxicological data that shows that the acceptable ambient level in 15A NCAC 2D .1104 for the pollutant of concern is too low and the facility's ambient impact is below the level indicated by the toxicological data.

**PROPOSED RULES**

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(c) This Paragraph shall not apply to any incinerator covered under Section 15A NCAC 2D .1200. The owner or operator of any source constructed before May 1, 1990, who cannot supply a demonstration described in Paragraph (b) of this Rule shall:

- (1) submit a compliance schedule acceptable to the Director that will reduce the subject toxic air pollutant ambient concentration within three years after receiving written notification from the Director pursuant to Paragraph (a)(4) of this Rule to a level that will not exceed any acceptable ambient level listed in 15A NCAC 2D .1104;
  - (2) demonstrate to the satisfaction of the commission or its delegate that complying with the guidelines in 15A NCAC 2D .1104 is technically infeasible (the technology necessary to reduce emissions to a level to prevent the acceptable ambient levels in 15A NCAC 2D .1104 from being exceeded does not exist); or
  - (3) demonstrate to the satisfaction of the commission or its delegate that complying with the guidelines in 15A NCAC 2D .1104 would result in serious economic hardship.
- (d) If the owner or operator makes a demonstration to the satisfaction of the commission or its delegate pursuant to Paragraph (c)(2) or (3) of this Rule, the Director shall require the owner or operator of the source to apply maximum feasible control. Maximum feasible control shall be in place and operating within three years after receiving written notification from the Director pursuant to Paragraph (a)(4) of this Rule.

(e) If the owner or operator of a source chooses to make a demonstration pursuant to Paragraph (b)(2) or (c)(2) or (3) of this Rule, the commission or its delegate shall approve or disapprove the permit after a public notice with an opportunity for a public hearing. The public notice shall meet the requirements of Paragraph (d) of Rule .0603 of this Section. Any subsequent public hearing shall meet the requirements of Paragraph (e) of Rule .0603 of this Section except that the permit, if approved, shall not become part of the North Carolina State Implementation Plan for Air Quality.

(f) If the owner or operator of a facility demonstrates by modeling that any toxic air pollutant emitted from his facility contributes an incremental concentration to the ambient air concentration of that pollutant beyond his premises which is less than the acceptable ambient level values given in 15A NCAC 2D .1104, he does not have to provide any further modeling demonstration with his permit application. However, the commission may still require more stringent emission levels in accordance with its analysis under 15A NCAC 2D .1107.

(g) A permit to emit toxic air pollutants shall not be required for:

- (1) the noncommercial use of household cleaners, household chemicals, or household fuels in private residences;
  - (2) asbestos demolition and renovation projects that comply with 15A NCAC 2D .0525 and that are being done by persons accredited by the Department of Environment, Health and Natural Resources under the Asbestos Hazard Emergency Response Act;
  - (3) emissions from gasoline dispensing facility or gasoline service station operations performed as a part of petroleum distribution to the ultimate consumer where the emissions comply with 15A NCAC 2D .0524, .0925, .0928, .0932 and .0933 and that receive gasoline from bulk gasoline plants or bulk gasoline terminals that comply with 15A NCAC 2D .0524, .0925, .0926, .0927, .0932, and .0933 via tank trucks that comply with 15A NCAC 2D .0932;
  - (4) the use for agricultural operations by a farmer of fertilizers, pesticides, or other agricultural chemicals containing one or more of the compounds listed in 15A NCAC 2D .1104 if such compounds are applied in accordance with agronomic practices acceptable to the North Carolina Department of Agriculture and the Commission.
  - (5) manholes and customer vents of wastewater collection systems;
- (h) A permit to emit toxic air pollutants shall not be required for any facility whose actual emissions from all sources are no more than the following:

	1b yr	1b day	1b hr	1b 15 min.
(1) acetaldehyde				1.7
(2) acetic acid				0.24
(3) acrolein				0.005
(4) acrylonitrile	10			
(5) ammonia				0.17
(6) ammonium chromate	<u>0.0056</u>	<u>0.013</u>		
(7) ammonium dichromate	<u>0.0056</u>	<u>0.013</u>		
(8) aniline			0.25	
(9) arsenic and inorganic				

*PROPOSED RULES*

arsenic compounds	0.016		
(10) asbestos	1.9x10 <sup>-6</sup>		
(11) aziridine		0.13	
(12) benzene	8.1		
(13) benzidine and salts	0.0010		
(14) benzo(a)pyrene	2.2		
(15) benzyl chloride			0.13
(16) beryllium	0.28		
(17) beryllium chloride	0.28		
(18) beryllium fluoride	0.28		
(19) beryllium nitrate	0.28		
(20) bis-chloromethyl ether	0.025		
(21) bromine			0.013
(22) 1,3-butadiene	12		
(23) cadmium	0.37		
(24) cadmium acetate	0.37		
(25) cadmium bromide	0.37		
(26) calcium chromate	0.0056		
(27) carbon disulfide		3.9	
(28) carbon tetrachloride	460		
(29) chlorine		0.79	0.057
(30) chlorobenzene		46	
(31) chloroform	290		
(32) chloroprene		9.2	0.89
(33) chromic acid	<del>0.0056</del>	<u>0.013</u>	
(34) chromium (VI)	0.0056		
(35) cresol			0.56
(36) p-dichlorobenzene			4.2
(37) dichlorodifluoromethane		5200	
(38) dichlorofluoromethane		10	
(39) di(2-ethylhexyl)phthalate		0.63	
(40) dimethyl sulfate		0.063	
(41) 1,4-dioxane		12	
(42) epichlorohydrin	5600		
(43) ethyl acetate			36
(44) ethylenediamine		6.3	0.64
(45) ethylene dibromide	27		
(46) ethylene dichloride	260		
(47) ethylene glycol monoethyl ether		2.5	0.48
(48) ethylene oxide	1.8		
(49) ethyl mercaptan			0.025
(50) fluorides		0.34	0.064
(51) formaldehyde			0.010
(52) hexachlorocyclopentadiene		0.013	0.0025
(53) hexachlorodibenzo-p-dioxin	0.0051		
(54) n-hexane		23	
(55) hexane isomers except n-hexane			23
(56) hydrazine		0.013	
(57) hydrogen chloride			0.045
(58) hydrogen cyanide		2.9	0.28
(59) hydrogen fluoride		0.63	0.016
(60) hydrogen sulfide			0.13
<del>(61) lithium chromate</del>	<del>0.0056</del>		
<del>(61) (62) maleic anhydride</del>		0.25	0.025
<del>(62) (63) manganese and compounds</del>		0.63	
<del>(63) (64) manganese cyclopentadienyl tricarbonyl</del>		0.013	
<del>(64) (65) manganese tetroxide</del>		0.13	
<del>(65) (66) mercury, alkyl</del>		0.0013	

**PROPOSED RULES**

(66) <del>(67)</del> mercury, aryl and inorganic compounds		0.013	
(67) <del>(68)</del> mercury, vapor		0.013	
(68) <del>(69)</del> methyl chloroform		250	16
(69) <del>(70)</del> methylene chloride	1600		
(70) <del>(71)</del> methyl ethyl ketone		78	5.6
(71) <del>(72)</del> methyl isobutyl ketone		52	1.9
(72) <del>(73)</del> methyl mercaptan			0.013
(73) <del>(74)</del> nickel carbonyl		0.013	
(74) <del>(75)</del> nickel metal		0.13	
(75) <del>(76)</del> nickel, soluble compounds, as nickel		0.013	
(76) <del>(77)</del> nickel subsulfide	0.14		
(77) <del>(78)</del> nitric acid			0.064
(78) <del>(79)</del> nitrobenzene		1.3	0.13
(79) <del>(80)</del> N-nitrosodimethylamine	3.4		
(80) <del>(81)</del> pentachlorophenol		0.063	0.0064
(81) <del>(82)</del> perchloroethylene	13,000		
(82) <del>(83)</del> phenol			0.24
(83) <del>(84)</del> phosgene		0.052	
(84) <del>(85)</del> phosphine			0.008
(85) <del>(86)</del> polychlorinated biphenyls	5.6		
(86) <del>(87)</del> potassium chromate	<del>0.0056</del>	<u>0.013</u>	
(87) <del>(88)</del> potassium dichromate	<del>0.0056</del>	<u>0.013</u>	
(88) <del>(89)</del> sodium chromate	<del>0.0056</del>	<u>0.013</u>	
(89) <del>(90)</del> sodium dichromate	<del>0.0056</del>	<u>0.013</u>	
(90) <del>(91)</del> strontium chromate	0.0056		
(91) <del>(92)</del> styrene			2.7
(92) <del>(93)</del> sulfuric acid		0.25	0.025
(93) <del>(94)</del> tetrachlorodibenzo-p-dioxin	0.00020		
(94) <del>(95)</del> 1,1,1,2-tetrachloro-2,2-difluoroethane		1100	
(95) <del>(96)</del> 1,1,2,2-tetrachloro-1,2-difluoroethane		1100	
(96) <del>(97)</del> 1,1,1,2-tetrachloroethane	430		
(97) <del>(98)</del> toluene		98	3.6
(98) <del>(99)</del> toluene-2,4-diisocyanate		0.011	0.001
(99) <del>(100)</del> trichloroethylene	4000		
(100) <del>(101)</del> trichlorofluoromethane			140
(101) <del>(102)</del> 1,1,2-trichloro-1,2,2-trifluoroethane			60
(102) <del>(103)</del> vinyl chloride	26		
(103) <del>(104)</del> vinylidene chloride		2.5	
(104) <del>(105)</del> xylene		57	4.1
(105) <u>zinc chromate</u>	<u>.0056</u>		

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.108; 143B-282.

**TITLE 16 - DEPARTMENT OF PUBLIC EDUCATION**

*a.m. on April 8, 1992 at the 3rd Floor Board Room, Education Bldg., 116 West Edenton Street, Raleigh, NC 27603-1712.*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Education intends to amend rule(s) cited as 16 NCAC 6B .0004; 6C .0402.*

*Reason for Proposed Action: 16 NCAC 6B .0004 - Conform rule to legislative changes to G.S. 115C-246. 16 NCAC 6C .0402 - Make rule easier to administer and more responsive to local needs.*

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

*Comment Procedures: Any interested person may submit views either in writing prior to or at the public hearing or orally at the hearing or by mailing comments to the Department by April 15, 1992.*

*The public hearing for 16 NCAC 6C .0402 will be conducted at 9:30 a.m. and the public hearing for 16 NCAC 6B .0004 will be conducted at 10:30*

CHAPTER 6 - ELEMENTARY: SECONDARY  
EDUCATION

SUBCHAPTER 6B - STUDENT  
TRANSPORTATION SYSTEM

.0004 BUS ROUTES

(a) ~~Principals Superintendents~~ shall plan bus routes in a way designed to conserve gasoline and to use buses efficiently. ~~including confining routes to the geographical area assigned to the school, eliminating overlapping routes, backtrack mileage and unnecessary trips, and reducing backing and deadheading to the first stop.~~

(b) A route may not deviate from a general path of direction for a distance of less than one-half mile and then return to the original path except for groups of 10 or more pupils, unescorted pupils in grades K-3 or special education pupils.

(c) Unless safety factors require otherwise, ~~principals superintendents~~ may not plan bus stops closer together than 0.2 miles. Each student must be at the designated stop at the time of the bus's arrival.

(d) Except in an emergency, regular and substitute drivers will transfer a bus at the school.

(e) Drivers shall park buses at night and on weekends in locations which lessen opportunities for persons to steal gasoline and commit vandalism.

(f) Service personnel shall maintain buses to ensure greatest gasoline economy.

(g) Each LEA will establish the time required for each bus route and certify this time. The LEA will use this certified time to contract with the driver for each route operated. The LEA will determine the hourly rate of pay by a salary schedule adopted by the SBE.

Statutory Authority G.S. 115C-240(c).

SUBCHAPTER 6C - PERSONNEL

SECTION .0400 - LEAVE

.0402 SICK LEAVE

(a) Public school employees who earn vacation leave also earn sick leave. Full-time employees earn one day per month. Part-time employees earn and may use sick leave in proportion to the part of the day for which they are employed.

(b) The LEA may allow sick leave to be used for temporary disability which prevents an employee from performing his or her usual duties, illness in the employee's immediate family and attendant medical appointments which require the employee's attendance, death in the immediate family and medical appointments for the employee. The immediate family includes spouse,

children, parents and dependents living in the household, except that in the case of death, the term does not include dependents but does include siblings, grandparents, grandchildren, and the step, half and in-law relationships.

(c) Employees must take leave in minimum units one-half or whole workdays.

(d) Employees may accumulate sick leave indefinitely and may transfer sick leave as in the case of vacation leave.

(e) LEAs may advance sick leave not to exceed the amount which would be earned within the school year.

(f) An employee who is overdrawn on sick leave when the employee separates from service will have the excess leave corrected through a deduction from the final salary check.

(g) If the period of sick leave taken is less than 30 days, the employee will return to his or her position with the LEA. If the period of temporary disability exceeds 30 days, the superintendent shall determine when the employee is to be reinstated. The superintendent makes this decision based on the welfare of the students and the need for continuity of instruction.

(h) The LEA shall credit an employee who separates from service and returns within 60 months with all sick leave accumulated to the time of separation.

(i) Upon exhaustion of sick leave, including the extended 20 days or optionally used vacation leave, as permissible, the employee ~~may~~ shall be placed on leave without pay for a period of up to one year or the end of the contracted period of employment, whichever is shorter. This may be extended beyond ~~one year~~ these time limits as approved by the local board.

Statutory Authority G.S. 115C-12(8); 115C-336.

TITLE 18 - SECRETARY OF STATE

*Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of the Secretary of State intends to adopt rule(s) cited as 18 NCAC 8 .1101 - .1105.*

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

*The public hearing will be conducted at 7:00 p.m. on the following dates and locations:*

*April 6, 1992  
Yancey County Courthouse  
Main Street  
Burnsville, North Carolina*

April 8, 1992  
Pittsboro Memorial Library  
Highway 64 West  
Pittsboro, North Carolina

April 14, 1992  
Pitt County Courthouse Annex  
District Courtroom No. 2  
3rd and Evans Street  
Greenville, North Carolina

*Reason for Proposed Action:* To establish procedures for the statewide implementation of uniform indexing standards in all North Carolina Registers of Deeds offices.

*Comment Procedures:* Interested persons may present statements either orally or in writing at the public hearing, or in writing by April 15, 1992 by mail addressed to Mr. Phil Stanley, Director, Land Records Management Division, N.C. Department of the Secretary of State, P.O. Box 27687, Raleigh, N.C. 27611. For copies of any information related to the hearings, call (919) 733-7006 or write to the aforementioned address.

#### CHAPTER 8 - LAND RECORDS MANAGEMENT DIVISION

##### SECTION .1100 - MINIMUM STANDARDS FOR INDEXING LAND RECORDS

###### .1101 INTRODUCTION AND PURPOSE

(a) The Registers of Deeds of North Carolina are dedicated to sound management practices, progressive land records modernization efforts, and the best possible assistance to the citizens who depend on their services. Toward this end, the N.C. Association of Registers of Deeds, in conjunction with the Real Property Section of the N.C. Bar Association, developed indexing standards which shall be administered statewide beginning July 1, 1993. The standards will bring uniformity to the methods used for indexing land records documents in each Register of Deeds office and will ultimately benefit every person who uses a Register of Deeds facility in conducting any phase of a land parcel and title search.

(b) The Land Records Management Division, hereinafter referred to as "Division", is responsible for encouraging local and county governments to utilize modern methods, techniques, equipment, and documentation which will improve the quality of public service with respect to land records and to achieve a high degree of standardization throughout the State. The Divi-

sion also provides technical assistance to local and county governments in their efforts to further enhance their abilities to provide the best possible service to their public. The Division has therefore been designated by the North Carolina Secretary of State as the Division within the North Carolina Department of the Secretary of State best able to assist the Secretary in the implementation of the rules in this Section.

(c) The Indexing Standards, hereinafter referred to as "Standards", published in August 1990 and approved by the N.C. Association of Registers of Deeds in September 1990, and by the Real Property Section of the N.C. Bar Association in November 1990, are hereby incorporated by reference including any subsequent amendments and editions. The Standards contain uniform procedures to be used by all Registers of Deeds for indexing land records. Copies of the Standards may be viewed or obtained by contacting the Land Records Management Division, N.C. Department of the Secretary of State, P.O. Box 27687, Raleigh, NC 27611, (919) 733-7006. The cost for receiving a copy of the Standards will be minimal to cover reproduction and postage.

*Statutory Authority G.S. 147-37; 147-54.3 (b1); 150B-21.6; 161-22.3.*

###### .1102 TECHNICAL ASSISTANCE

The Division shall make every effort, within reason, depending on financial and personnel resources, to assist any Register of Deeds in making the transition to the Standards. Requests for assistance from Registers of Deeds shall be in writing and submitted to the Division at the address contained in Rule .1101 of this Section. The requests for assistance shall describe in detail the problems encountered and types of assistance needed in making the transition.

*Statutory Authority G.S. 147-54.3 (b); 147-54.3 (b1); 147-54.3 (c); 161.22.3.*

###### .1103 COMPLIANCE AUDITS

(a) In order to determine that full statewide compliance with the Standards has been accomplished, the Division shall request documentation from time to time from the Registers of Deeds to assess additional needs such as assistance and problem solving, and to confirm progress of compliance in specific counties.

(b) After July 1, 1993, the Division shall periodically make on-site visits to observe Registers of Deeds operations and report to the respective county boards of commissioners and the current President of the N.C. Association of Registers of

Deeds findings of compliance or non-compliance with the Standards.

*Statutory Authority G.S. 147-54.3 (b); 147-54.3 (b1); 161-22.3.*

**.1104 LAND RECORDS ADVISORY COMMITTEE ON INDEXING, COMPUTERIZATION**

The Land Records Advisory Committee on Indexing and Computerization (hereinafter referred to as "Committee") is an established standing committee of the N.C. Association of Registers of Deeds. The Committee was appointed for the purpose of obtaining the goals and objectives that have been set by the General Assembly relative to the Land Records Management Division and the Registers of Deeds offices throughout the State. The Committee provides the Division with expertise, advice, and guidance with regard to the statewide modernization of land records in general, and specifically the implementation of uniform indexing standards. The Committee's guidance will be essential to the Division's ability to provide knowledgeable technical assistance to each county's efforts in complying with the Standards. Included in the Committee's functions shall be recommendations for additional standards of indexing and changes to the existing standards.

*Statutory Authority G.S. 147-54.3 (b); 147-54.3 (b1); 161-22.3.*

**.1105 CHANGES AND ADDITIONS TO THE STANDARDS**

(a) The Committee and the Division shall jointly consider changes and additions to the Standards after sufficient study and factual justification. Changes or additions shall represent the needs of the majority of the membership of the N.C. Association of Registers of Deeds.

(b) The Committee's and Division's reasons for considering the addition to or amendment of the Standards shall include, but not be limited to, the following:

- (1) a determination is made by the Committee that additional standards are necessary to carry out the established goals and objectives of the General Assembly with regard to land records;
- (2) a determination is made by the Committee that standards are lacking that would afford the Registers of Deeds additional guidance to maintain higher degrees of uniformity and service to the public;

(3) a request is submitted to the Committee for consideration to add to or change the Standards; and

(4) results of one or more counties' efforts to implement the new standards prove that one or more aspects of a standard or standards is not possible or feasible.

(c) Procedures for adding to or amending the Standards shall be as follows:

(1) a majority of the membership of the Committee shall determine there is justifiable cause for an addition or amendment to the Standards;

(2) a majority of the Real Property Section Subcommittee on Computerization of Land Records, and subsequently the Executive Council of the N.C. Bar Association, shall agree with the addition or amendment; and

(3) a majority of the full membership of the N.C. Registers of Deeds Association shall approve the addition or amendment.

*Statutory Authority G.S. 147-54.3(b1); 161-22.3.*

**TITLE 21 - OCCUPATIONAL LICENSING BOARDS**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board for General Contractors intends to adopt rule(s) cited as 21 NCAC 12 .0207, .0409, .0505 - .0506, .0901 - .0912; amend rule(s) cited as 21 NCAC 12 .0103, .0202, .0205, .0302, .0306, .0408, and .0503.*

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

*The public hearing will be conducted at 9:00 a.m. on April 4, 1992 at the Sheraton Greensboro Hotel and Conference Ctr., 303 North Elm Street, Appalachian Room, Greensboro, NC.*

**Reason for Proposed Action:**

**Rule 21 NCAC 12 .0207** - *This Rule is adopted to specify the licensure requirements of a joint venture.*

**Rule 21 NCAC 12 .0409** - *This Rule is adopted to establish a reasonable fee for examination review workshops.*

**Rule 21 NCAC 12 .0505** - *This Rule is adopted to enable the Board to maintain an accurate register of all applicants for licensure.*

## PROPOSED RULES

Rule 21 NCAC 12 .0506 - This Rule is adopted to establish a reasonable fee for a status of licensure affidavit.

Rule 21 NCAC 12 .0202 - This Rule is amended to clarify what construction activities fall within specific classifications of general contracting.

Rule 21 NCAC 12 .0103 - This amendment is to reflect an amendment to statute.

Rule 21 NCAC 12 .0205 - This Rule is amended to clarify the filing deadline for applicants seeking qualification by employment of a person who has already passed an examination and to establish criteria governing the use of qualifying parties for application purposes.

Rule 21 NCAC 12 .0302 - This Rule is amended to establish a reasonable fee for the cost of publication and mailing of the application package for licensure.

Rule 21 NCAC 12 .0306 - This Rule is amended to eliminate gender reference and clarify need for completed application for examination.

Rule 21 NCAC 12 .0408 - This Rule is amended to provide criteria for a responsible managing person taking an examination for an applicant.

Rule 21 NCAC 12 .0503 - This Rule is amended to clarify which portions of Rule .0204 are applicable to application for renewal of license and to require evidence of continued financial responsibility if the Board deems it appropriate.

Rules 21 NCAC 12 .0901 - .0912 - These Rules are adopted to implement the Homeowners Recovery Fund.

*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 address is 3509 Haworth Drive, Suite 302, P.O. Box 17187, Raleigh, N.C., 27619. Any person may file written submission of comments or argument at any time up to and including April 15, 1992.

### CHAPTER 12 - LICENSING BOARD FOR GENERAL CONTRACTORS

#### SECTION .0100 - ORGANIZATION OF BOARD

#### .0103 STRUCTURE OF BOARD

(a) Organization. The Board consists of ~~seven~~ nine members who are appointed by the Governor of North Carolina, with its composition in terms of its members being specified in G.S. 87-2.

(b) Officers. Annually, during the April meeting, the Board elects from its members a Chairman and Vice-Chairman. The Chairman shall preside over all meetings of the Board and perform such other duties as he may be directed to do by the Board. The Vice-Chairman shall function as Chairman in the absence of the Chairman.

(c) Secretary-Treasurer. In addition to those duties and responsibilities required of him by the North Carolina General Statutes, the Secretary-Treasurer, as the Board's Chief Administrative Officer, specifically has the responsibility and power to:

- (1) employ the clerical and legal services necessary to assist the Board in carrying out the requirements of the North Carolina General Statutes;
- (2) purchase or rent whatever office equipment, stationery, or other miscellaneous articles as are necessary to keep the records of the Board;
- (3) make expenditures from the funds of the Board by signing checks for expenditures after the checks are signed by the Chairman; and
- (4) do such other acts as may be required of him by the Board.

(d) Meetings of the Board.

- (1) Regular meetings will be held during January, April, July and October of each year at the main office of the Board or at any other place so designated by the Board.
- (2) Special Meetings. Special meetings of the Board will be held at the request of the Chairman or any two of the members at the main office of the Board or at any place fixed by the person or persons calling the meeting.
- (3) Notice of Meetings. Regular meetings of the Board will be held after each Board member is duly notified by the Secretary-Treasurer of the exact date of the meeting. However, any person or persons requesting a special meeting of the Board will, at least two days before the meeting, give notice to the other members of the Board of that meeting by any usual means of communication. Such notice must specify the purpose for which the meeting is called.

- (4) Quorum. Any five members of the Board which includes either the Chairman or Vice-Chairman shall constitute a quorum.

Statutory Authority G.S. 87-1 to 87-8.

SECTION .0200 - LICENSING REQUIREMENTS

.0202 CLASSIFICATION

(a) A general contractor may be certified in one of five classifications. These classifications are:

- (1) Building Contractor. This classification covers commercial, industrial, institutional, and all types of residential building construction; covers all site work, grading and paving of parking lots, driveways, sidewalks, curbs and gutters which are ancillary to the aforementioned types of construction; and covers the work done under the specialty classifications of S(Concrete Construction), S(Insulation), S(Interior Construction), S(Masonry Construction), S(Roofing), S(Metal Erection), and S(Swimming Pools).
- (2) Residential Contractor. This classification covers the construction of residential units which are required to conform to the North Carolina Uniform Residential Building Codes; covers all site work, driveways and sidewalks ancillary to the aforementioned construction; and covers the work done as part of such residential units under the specialty classifications of S(Insulation), S(Masonry Construction), S(Roofing), and S(Swimming Pools).
- (3) Highway Contractor. This classification covers grading, paving of all types, installation of exterior artificial athletic surfaces, relocation of public and private utility lines ancillary to the principal project, bridge construction and repair, sidewalks, curbs, and gutters; and covers work done under the specialty classifications of S(Boring and Tunneling), S(Concrete Construction), S(Marine Construction) and S(Railroad Construction). If the contractor limits his activity to grading and does no other work described herein, upon proper qualification the classification of H(Grading and Excavating) may be granted.
- (4) Public Utilities Contractor. This classification includes those whose operations are the performance of construction work on the subclassifications of facilities set forth in G.S. 87-10(3). The Board may issue a license to a public utilities contractor that is limited to any of the subel-

assifications set forth in G.S. 87-10(3) for which the contractor qualifies. Within appropriate subclassification, a public utilities contractor license covers work done under the specialty classifications of S(Boring and Tunneling), PU(Communications), PU(Fuel Distribution), PU(Electrical - Ahead of Point of Delivery), and S(Swimming Pools).

- (5) Specialty Contractor. This classification shall embrace that type of construction operation and performance of contract work outlined as follows:
  - (A) H(Grading and Excavating). Covers the digging, moving and placing of materials forming the surface of the earth, excluding air and water, in such a manner that the cut, fill, excavation, grade, trench, backfill, or any similar operation can be executed with the use of hand and power tools and machines commonly used for these types of digging, moving and material placing. Covers work on earthen dams and the use of explosives used in connection with all or any part of the activities described in this Subparagraph.
  - (B) S(Boring and Tunneling). Covers the construction of underground or underwater passageways by digging or boring through and under the earth's surface including the bracing and compacting of such passageways to make them safe for the purpose intended. Includes preparation of the ground surfaces at points of ingress and egress.
  - (C) PU(Communications). Covers the installation of the following:
    - (i) All types of pole lines, and aerial and underground distribution cable for telephone systems;
    - (ii) Aerial and underground distribution cable for Cable TV and Master Antenna TV Systems capable of transmitting R.F. signals;
    - (iii) Underground conduit for communication cable; and
    - (iv) Microwave systems and towers, including foundations and excavations where required, when the microwave systems are being used for the purpose of transmitting R.F. signals.
  - (D) S(Concrete Construction). Covers the construction and installation of foundations, pre-cast silos and other concrete tanks or receptacles, pre-stressed components, and gunite applications, but excludes bridges, streets, sidewalks, curbs,

- gutters, driveways, parking lots and highways.
- (E) PU(Electrical - Ahead of Point of Delivery). Covers the construction, installation, alteration, maintenance or repair of an electrical wiring system, including substations or components thereof, which is or is intended to be owned, operated and maintained by an electric power supplier, such as a public or private utility, a utility cooperative, or any other properly franchised electric power supplier, for the purpose of furnishing electrical services to one or more customers.
- (F) PU(Fuel Distribution). Covers the conveyance or transmission construction, installation, alteration, maintenance or repair of systems for distribution of petroleum fuels, petroleum distillates, natural gas, chemicals and slurries through pipeline ~~distribution~~ from one station to another. Includes all excavating, trenching and backfilling in connection therewith.
- (G) PU(Water Lines and Sewer Lines). Covers construction work on water and sewer mains, water service lines, and house and building sewer lines as defined in the North Carolina State Building Code, and covers water storage tanks, lift stations, pumping stations, and appurtenances to water storage tanks, lift stations and pumping stations.
- (H) PU(Water Purification and Sewage Disposal). Covers the performance of construction work on water and wastewater treatment facilities and appurtenances to water and wastewater treatment facilities.
- (I) S(Insulation). Covers the installation, alteration or repair of materials classified as insulating media used for the non-mechanical control of temperatures in the construction of residential and commercial buildings. Does not include the insulation of mechanical equipment and ancillary lines and piping.
- (J) S(Interior Construction). Covers the installation of ~~acoustical~~ acoustical ceiling systems and panels; drywall partitions (load bearing and non-load bearing), lathing and plastering, ~~wood~~ flooring and finishing, interior recreational surfaces, door installation, and installation of fixtures, cabinets and millwork. Includes the removal of asbestos ~~coatings~~ and replacement with non-toxic substances.
- (K) S(Marine Construction). Covers all marine construction and repair activities in deep-water installations and ~~repair done~~ in harbors, inlets, sounds, bays, and channels; ~~and~~ covers dredging, construction and installation of pilings, piers, slips, causeways, docks, and bulkheads. Does not include structures required on docks, slips and piers.
- (L) S(Masonry Construction). Covers the installation, with or without the use of mortar or adhesives, of the following:
- (i) Brick, concrete block, gypsum partition tile, pumice block or other lightweight and facsimile units and products common to the masonry industry;
  - (ii) Installation of fire clay products and refractory construction;
  - (iii) Installation of rough cut and dressed stone, marble panels and slate units, and installation of structural glazed tile or block, glass brick or block, and solar screen tile or block.
- (M) S(Railroad Construction). Covers the building, construction and repair of railroad lines including:
- (i) The clearing and filling of rights-of-way;
  - (ii) Shaping, compacting, setting and stabilizing of road beds;
  - (iii) Setting ties, tie plates, rails, rail connectors, frogs, switch plates, switches, signal markers, retaining walls, dikes, fences and gates; and
  - (iv) Construction and repair of tool sheds and platforms.
- (N) S(Roofing). Covers the installation and repair of roofs and decks on residential, commercial, industrial, and institutional structures requiring materials that form a water-tight and weather-resistant surface. The term "materials" shall be defined for purposes of this Subparagraph to include, among other things, cedar, cement, asbestos, clay tile and composition shingles, all types of metal coverings, wood shakes, single ply and built-up roofing, protective and reflective roof and deck coatings, sheet metal valleys, flashings, gravel stops, gutters and downspouts, and bituminous waterproofing.
- (O) S(Metal Erection). Covers:
- (i) The field fabrication, erection, repair and alteration of architectural and structural shapes, plates, tubing, pipe and bars, not limited to steel or aluminum, that are or may be used as structural members for buildings, equipment and structure; and

- (ii) The layout, assembly and erection by welding, bolting or riveting such metal products as, but not limited to, curtain walls, tanks, hoppers, structural members for buildings, towers, stairs, conveyor frames, cranes and crane runways, canopies, carports, guard rails, signs, steel scaffolding, rigging, flagpoles, fences, steel and aluminum siding and fire escapes.

(P) S(Swimming Pools). Covers the construction, service and repair of all swimming pools. Includes:

- (i) Excavation and grading;
- (ii) Construction of concrete, gunite, and plastic-type pools, pool decks, and walkways, and tiling and coping; and
- (iii) installation of all equipment including pumps, filters and chemical feeders. Does not include direct connections to a sanitary sewer system or to portable water lines, nor the grounding and bonding of any metal surfaces or the making of any electrical connections.

(b) An applicant may be licensed in more than one classification of general contracting provided the applicant meets the qualifications for the classifications, which includes passing the examination for the classifications in question. The license granted to an applicant who meets the qualifications for all classifications will carry with it a designation of "unclassified".

*Statutory Authority G.S. 87-1; 87-10.*

**.0205 FILING DEADLINE/APP SEEKING QUAL/EMP/ANOTHER**

(a) Any application made pursuant to G.S. 87-10 for a new applicant seeking qualification by employment of a licensee person who has already passed an examination shall be completed and filed no later than the first day of the month preceding at least 30 days before any regularly scheduled regular or special meeting of the Board. At such meeting the Board will consider the application. The regular meetings of the Board are in January, April, July and October of each year.

(b) The qualifier for the applicant shall be a responsible managing employee, officer or member of the personnel of the applicant, as described in G.S. 87-10 and Rule .0408(a) of this Chapter. A person may serve as a qualifier for the person's own individual license and for only one additional license. A person may not serve as a qualifier under this Rule if such person has not served as a qualifier for a license of the appropriate classification for more than two years prior

to the filing of the application. Subject to the provisions of G.S. Chapter 150B and Section .0800 of these Rules, the Board may reject the application of an applicant seeking qualification by employment of a person who has already passed an examination if such person has previously served as qualifier for a license which has been disciplined by the Board.

*Statutory Authority G.S. 87-1; 87-10.*

**.0207 JOINT VENTURE**

A joint venture may practice general contracting in North Carolina if every principal of the joint venture is licensed to practice general contracting in North Carolina with the appropriate classification and at least one principal has the appropriate limitation, or if the joint venture obtains a general contracting license in its own name in accordance with G.S. 87-10 and these Rules.

*Statutory Authority G.S. 87-1; 87-10.*

**SECTION .0300 - APPLICATION PROCEDURE**

**.0302 REQUEST**

(a) A request for the required application form may be made at the address in Rule .0101 of this Chapter.

(b) The Board shall charge a fee of five dollars (\$5.00) per application package if the package is mailed, and charge a fee of four dollars (\$4.00) per application package if the package need not be mailed. The Board shall not charge more than the cost of publication and mailing of the application package. Should the total cost of development, mailing and publication be less than five dollars (\$5.00), the Board will adjust the fees accordingly.

*Statutory Authority G.S. 87-1; 87-10; 150B-19(5).*

**.0306 FILING DEADLINE**

The applicant who wishes to be admitted to a particular examination must file his a completed application no later than the first day of the month preceding the month of the desired examination in order to be assured of being admitted to that examination. Examinations are given in March, June, September and December of each year.

*Statutory Authority G.S. 87-1; 87-10.*

**SECTION .0400 - EXAMINATION**

**.0408 PERSON TAKING EXAMINATION**

(a) Persons other than the applicant, if the applicant is an individual, may take the required examination under certain conditions. Persons associated with a firm or corporation may take the required examination on behalf of the firm or corporation under certain conditions. The conditions are described in G.S. 87-10. The term "responsible managing" as used in G.S. 87-10 to describe persons who may take an examination on behalf of an applicant means that the person shall be actively engaged in the work of the applicant a minimum of 20 hours per week or a majority of the hours operated by the applicant.

(b) More than one person associated with an applicant may take the required examination. If one person associated with the applicant fails, and another passes, the license will be granted to that applicant.

*Statutory Authority G.S. 87-1; 87-10.*

**.0409 REVIEW WORKSHOP CHARGE**

Each applicant who fails an examination may attend a group workshop conducted by the staff of the Board, in which examinations and examination results are made available to the applicant. The workshop shall be self-taught. The Board shall charge a fee of twenty dollars (\$20.00) per person attending such workshop. Should the actual cost of the workshop be less than twenty dollars (\$20.00) per person, the Board may not charge more than the actual cost, which shall include the cost of renting conference space, materials, and labor. All of the funds received from the charge or fee for the Review Workshop shall be allocated exclusively to development and production of examinations.

*Statutory Authority G.S. 87-10; 150B-19(5)d.*

**SECTION .0500 - LICENSE**

**.0503 RENEWAL OF LICENSE**

(a) Form. An application for renewal requires the holder of a valid license to set forth whether there were any changes made in the status of the licensee's business during the preceding year and also requires the holder to give a financial statement for the business in question. The financial statement need not be prepared by a certified public accountant or by a qualified independent accountant but may be completed by the holder of the license on the form itself. However, the Board reserves the right in its sole discretion to require a license holder to submit an audited financial statement if the circumstances render such submission necessary. Except as provided herein, the financial statement will be subject to

approval by the Board in accordance with the working capital requirements of Rule .0204 of this Chapter. A licensee may be required to provide evidence of continued financial responsibility satisfactory to the Board should circumstances render such evidence necessary, and shall provide the Board with a copy of any bankruptcy petition filed by the licensee within 30 days of its filing.

(b) Display. The certificate of renewal of license granted by the Board, containing the signatures of the Chairman and the Secretary-Treasurer, must be displayed at all times by the licensee at his place of business.

*Statutory Authority G.S. 87-1; 87-10.*

**.0505 NOTIFICATION OF ADDRESS CHANGE**

Applicants for licensure and holders of a valid license shall notify the Board in writing of a change in address within 30 days from the date of the change.

*Statutory Authority G.S. 87-8.*

**.0506 CHARGE FOR STATUS OF LICENSURE AFFIDAVIT**

The Board shall charge persons requesting an affidavit as to status of licensure a fee of twelve dollars (\$12.00) per affidavit. The Board may furnish copies of such affidavits free of charge to governmental entities.

*Statutory Authority G.S. 87-8; 87-13; 150B-19(5)d.*

**SECTION .0900 - HOMEOWNERS RECOVERY FUND**

**.0901 DEFINITIONS**

The following definitions shall apply to the Board's administration of the Homeowners Recovery Fund established pursuant to Article IX, Chapter 87 of the General Statutes:

- (1) "Dishonest conduct" shall not include a mere breach of a contract.
- (2) "Incompetent conduct" is conduct which demonstrates a lack of ability or fitness to discharge a duty associated with undertaking to construct or alter a single-family residential dwelling or the supervision of such construction or alteration.
- (3) "Reimbursable losses" shall not include the losses of a spouse, child, parent, grandparent, sibling, partner, associate, or employee of a general contractor whose conduct caused a reimbursable loss. In addition, reimbursable losses shall not include

losses of another general contractor or any financial or lending institution.

*Statutory Authority G.S. 87-15.6.*

**.0902 MANAGEMENT OF FUND**

(a) The Secretary-Treasurer, as the Board's Chief Administrative Officer, shall:

(1) Establish a special account of the Board for those monies collected pursuant to G.S. 87-15.6(b);

(2) Make expenditures from the fund as authorized by G.S. 87-15.7(b) by signing checks for expenditures after the checks are signed by the Chairman.

(b) Until such time as the fund initially reaches two hundred fifty thousand dollars (\$250,000.00), or at any time thereafter that the fund has insufficient assets in excess of two hundred fifty thousand dollars (\$250,000.00) to pay outstanding claims, the Secretary-Treasurer shall not disburse any payments to an applicant for recovery. Any applicant who is awarded payment from the fund, however, shall hold a vested right for payment once the fund reaches a sufficient level. Authorized payments which cannot be made due to lack of funds will be paid as funds become available, beginning with those payments which have been unsatisfied for the longest period of time.

(c) Monies forwarded to the Board pursuant to G.S. 87-15.6(b) for deposit into the fund shall be accompanied by a verified statement signed by the city or county inspector on a form provided by the Board. The form shall require information concerning the number of permits issued by the reporting inspections department from which the recovery fund fee was collected and the total dollar amount due to the fund for that particular quarter.

*Statutory Authority G.S. 87-15.6; 87-15.7; 87-15.8.*

**.0903 APPLICATION FOR PAYMENT**

(a) Applicants desiring to obtain payment from the fund shall file a verified application with the Board on a prescribed form. The form shall require information concerning the applicant and the claim including, but not limited to, the applicant's name and address, the amount of the claim, a description of the acts of the general contractor which constitute the grounds for the claim and a statement that all Court proceedings are concluded or the general contractor has filed for bankruptcy. If the applicant has exhausted all civil remedies pursuant to G.S. 87-15.8(a)(3), the application should include certified copies

from the civil action of the Complaint, Judgment, and return of execution marked as unsatisfied. If the applicant has been precluded from filing suit, obtaining a judgment or otherwise proceeding against the general contractor due to the automatic stay provisions of Section 362 of the U.S. Bankruptcy Code, then the applicant should submit a certified copy of the bankruptcy petition and any proof of claim or other document bearing on the disposition of funds in the bankruptcy proceeding.

(b) Requests for the application form shall be directed to the Board at the address shown in Rule .0101 of this Chapter.

*Statutory Authority G.S. 87-15.6; 87-15.7; 87-15.8.*

**.0904 FILING DEADLINE AND SERVICE**

(a) Applicants seeking recovery from the fund shall be forever barred unless application is made within one year after termination of all proceedings, including appeals, in connection with an unsatisfied judgment obtained against a general contractor. Claims based upon the automatic stay provisions of Section 362 of the U.S. Bankruptcy Code shall be forever barred unless application is made within one year after the effective date of the stay.

(b) Applications shall be filed at the address shown in Rule .0101 of this Chapter. In addition, the applicant shall serve a copy of the application upon the general contractor who allegedly caused the loss. Service shall be accomplished by certified mail, return receipt requested, or other methods authorized by G.S. 1A-1, Rule 4. The applicant shall file with the Board an affidavit including the original signed return receipt or other proof establishing service.

*Statutory Authority G.S. 87-15.6; 87-15.7; 87-15.8.*

**.0905 MULTIPLE CLAIMS**

(a) Any time the Board has notice of more than one application or potential claim for payment from the fund arising out of the conduct of a single general contractor, the Board may, in its discretion, direct that all applications filed before a date determined by the Board, be consolidated for hearing.

(b) When consolidation is appropriate, the Board shall issue to the general contractor, the applicants and potential claimants, an Order of Consolidation setting forth the deadline for filing all applications to be consolidated. On or before the deadline, the Board may, in its discretion, either extend the deadline or issue to the general

## PROPOSED RULES

contractor and all applicants notice of the time, date and place set for a hearing on the consolidated applications.

(c) Claims for which the Board has received no notice or for which no application has been filed prior to the deadline set forth in the Order of Consolidation shall not be considered by the Board until after the completion of all proceedings relating to the consolidated applications and payment thereon.

*Statutory Authority G.S. 87-15.6; 87-15.7.*

### .0906 PROCESSING OF APPLICATION

#### Preliminary or Threshold Determination.

(1) An application, properly filed, is initially referred to the Recovery Fund Review Committee.

(2) The Recovery Fund Review Committee is a committee made up of the following individuals:

- (a) one member of the Board,
- (b) the legal counsel of the Board, and
- (c) the Secretary-Treasurer.

(3) The Committee is specifically delegated the responsibility of determining, prior to a hearing, whether or not an application is meritless. The decision of the Committee is final. Within 30 days after service of a copy of the application upon the general contractor, the general contractor may file a response to the application setting forth answers and defenses. Responses shall be filed with the Board and copies shall be served on the applicant.

(4) If the general contractor denies the charges contained in the application, then, in the sole discretion of the Committee, a field investigation may be performed by an investigator retained by the Board.

(5) After all preliminary evidence has been received by the Committee, it makes a threshold determination regarding the disposition of the application. From the evidence, it recommends to the Board that:

- (a) The application be dismissed as meritless; or
- (b) The application and charges contained therein be presented to the Board for a hearing and determination by the Board on the merits of the application.

(6) Notice of the threshold determination of the Committee shall be given to the applicant and the general contractor within 10 days of the Committee's decision. Though it is not forbidden to do so, the Committee is not required to notify the parties of the reasons for its threshold determination.

*Statutory Authority G.S. 87-15.6; 87-15.7; 87-15.8.*

### .0907 HOMEOWNERS RECOVERY FUND HEARING

(a) If it is determined by the Recovery Fund Review Committee that the Board should conduct a hearing on an application, the Board shall give the applicant and general contractor notice of hearing not less than 15 days before the hearing. This notice shall contain the following information:

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

(b) All homeowners recovery fund hearings will be conducted by the Board or a panel consisting of a majority of the members of the Board.

(c) The provisions of 21 NCAC 12 .0825 governing disqualification of Board members shall also govern hearings conducted pursuant to this Section.

(d) Should a party fail to appear at a hearing, the Board may proceed with the hearing and make its decision in the absence of the party, provided that the party has been given proper notice. The Board may, in its discretion, order a continuance in order to give the party another opportunity to appear.

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

(f) At the hearing, the applicant shall be required to show:

- (1) He has suffered a reimbursable loss as defined in G.S. 87-15.5(6) and 21 NCAC 12 .0901(c) in the construction or alteration of a single-family residential dwelling unit owned or previously owned by that person;
- (2) He did not, directly or indirectly, obtain the building permit in his own name or did use a general contractor;
- (3) He has made application within one year after the termination of all judicial proceedings, including appeals, in connection with the unsatisfied judgment or within

one year after the effective date of a stay entered on behalf of the general contractor pursuant to Section 362 of the U.S. Bankruptcy Code;

(4) He has diligently pursued his remedies against all persons potentially liable, including efforts to collect from such persons, and attempted execution on the judgments against all judgment debtors without success.

(g) The general contractor shall be permitted to participate in the hearing as a party and shall have recourse to all appropriate means of defense, including the examination of witnesses.

*Statutory Authority G.S. 87-15.5; 87-15.6; 87-15.7; 87-15.8.*

**.0908 ORDER DIRECTING PAYMENT FROM FUND**

If, after a hearing, the Board finds that an applicant should be paid from the fund, the Board shall enter an Order requiring payment from the fund in whatever sum the Board deems appropriate in accordance with the limitations contained in Rule .0910 of this Chapter. All payments are a matter of privilege and not of right and, therefore, there shall be no right to appeal from any decision of the Board regarding recovery from the fund.

*Statutory Authority G.S. 87-15.6; 87-15.7; 87-15.8.*

**.0909 SETTLEMENT OF CLAIMS**

The claim or claims forming the basis of an application for recovery from the fund may be compromised and settled by the applicant and the general contractor after the filing of the application. The parties shall notify the Board immediately of any such settlement. Payment of the claim, in whole or in part, by the general contractor as part of a settlement will result in the claim no longer being a "reimbursable loss" as defined by G.S. 87-15.5(6)(b), and the claim will be dismissed by the Board.

*Statutory Authority G.S. 87-15.6; 87-15.7; 87-15.8.*

**.0910 LIMITATIONS; PRO RATA DISTRIBUTION**

(a) Payments from the fund shall be subject to the following limitations:

(1) The fund shall not be liable for more than eighteen thousand dollars (\$18,000.00) per applicant;

(2) Payments from the fund shall not exceed in the aggregate thirty-six thousand dollars (\$36,000.00) for any one general contractor within a single calendar year;

(3) The fund shall not be liable for payment of any consequential damages, multiple or punitive damages, civil or criminal penalties or fines, incidental damages, special damages, interest, or court costs;

(4) Applications for payment from the fund received or considered by the Board after the liability of the fund as described herein has been exhausted shall be dismissed.

(b) If the maximum liability of the fund is insufficient to pay in full the valid claims of all applicants whose claims relate to the same transaction or to the same general contractor, the total amount for which the fund is liable shall be distributed among the applicants in the ratio that their respective awards bear to the total of such awards or in such other manner as the Board deems equitable.

*Statutory Authority G.S. 87-15.6; 87-15.7; 87-15.8.*

**.0911 SUBROGATION OF RIGHTS**

When the Board has paid from the fund any sum to the applicant, the Board shall be subrogated to the rights of the applicant and the applicant shall assign to the Board all of his rights, title, and interest in the claim to the extent of the amount paid from the fund.

*Statutory Authority G.S. 87-15.6; 87-15.7; 87-15.9.*

**.0912 ACTIONS AGAINST GENERAL CONTRACTOR**

Nothing contained in these Rules shall prohibit or limit the authority of the Board to take disciplinary action against its licensees or to seek injunctive relief against those persons who have engaged in the unauthorized practice of general contracting. Stipulations made between the general contractor and the applicant as part of settlement or compromise of any claim shall not be binding on the Board in any disciplinary proceeding or action for injunction.

*Statutory Authority G.S. 87-11; 87-13; 87-13.1; 87-15.6.*

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*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of*

Dietetics Nutrition intends to adopt rule(s) cited as 21 NCAC 17 .0001 - .0015.

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

The public hearing will be conducted at 1:00 p.m. on April 10, 1992 at the Offices of Jordan, Price, Wall, Gray and Jones, 200 Hillsborough Place, 225 Hillsborough Street, Raleigh, North Carolina.

Reason for Proposed Action: To implement and administer the Dietetics Nutrition Practice Act, General Statutes Chapter 90, Article 25.

Comment Procedures: Written comments must be received by the Board no later than 5:00 p.m. on April 15, 1992; requests to make oral comments at the hearing must be received by 5:00 p.m. on April 3, 1992. Comments should be limited to 10 minutes. Comments and requests should be addressed to Executive Secretary, North Carolina Board of Dietetics/Nutrition, Post Office Box 11321, Department LB, Charlotte, NC 28220.

Editor's Note: These Rules have been filed as temporary rules effective March 19, 1992 for a period of 180 days to expire on September 13, 1992.

CHAPTER 17 - BOARD OF DIETETICS/NUTRITION

.0001 DEFINITIONS

As used in this Chapter, the following terms and phrases, which have not already been defined in the Practice Act, G.S. 90-350 through 90-369, shall have the meanings specified:

- (1) "Act" means Dietetics Nutrition Practice Act.
- (2) "ADA" means The American Dietetic Association.
- (3) "Applicant" means any person who has applied to the Board for a license to practice dietetics nutrition in the State of North Carolina.
- (4) "Application" means a written request directed to and received by the Board, on forms supplied by the Board, for a license to practice dietetics nutrition in the State of North Carolina, together with all information, documents and other materials required by the Board.
- (5) "CDR" means the Commission on Dietetic Registration that is the national certifying agency for voluntary professional

credentialing in dietetics and nutrition and is a member of the National Commission for Health Certifying Agencies.

- (6) "Degree" means a degree received from a college or university that was U.S. regionally accredited at the time the degree was conferred.
- (7) "Dietitian nutritionist" means one engaged in dietetics nutrition practice.
- (8) "Executive Secretary" means the person employed to carry out the administrative functions of the Board.
- (9) "Nutrition assessment" means the evaluation of the nutrition needs of individuals and groups based upon appropriate biochemical, anthropometric, physical, and dietary data to determine nutrient needs and recommend appropriate nutrition intake including enteral and parenteral nutrition.
- (10) "Nutrition counseling" means the advice and assistance provided by licensed dietitians nutritionists to individuals or groups on appropriate nutrition intake by integrating information from the nutrition assessment with information on food and other sources of nutrient and meal preparation consistent with cultural background, socioeconomic status and therapeutic needs.
- (11) "Provisionally licensed dietitian nutritionist" means a person provisionally licensed under this Act.

Statutory Authority G.S. 90-352; 90-356.

.0002 REQUIREMENT OF LICENSE

(a) On or after the effective date of June 1, 1992, only a person who is licensed under General Statute Chapter 90, Article 25 shall:

- (1) Engage in the practice dietetics nutrition or provide nutrition care services.
- (2) Use the title "dietitian nutritionist".
- (3) Use the words "dietitian", "dietician", "nutritionists", or "licensed dietitian nutritionist" alone or in combination.
- (4) Use the letters "ID", "LN", or "IDN" or any facsimile or combination in any words, letters, abbreviations, or insignia.
- (5) Imply orally or in writing or indicate in any way that the person is a licensed dietitian nutritionist.

(b) Notwithstanding any other provision of this Act, a dietitian registered by the CDR shall have the right to use the title registered dietitian and the designation RD.

Statutory Authority G.S. 90-356; 90-365.

.0003 QUALIFICATIONS FOR LICENSURE

Each applicant for an initial license as a licensed dietitian nutritionist shall either:

- (1) Provide evidence of current registration as a Registered Dietitian by the Commission on Dietetic Registration; or
- (2) Provide evidence of having:
  - (a) received a minimum of a baccalaureate degree with a major course of study in human nutrition, foods and nutrition, dietetics, community nutrition, public health nutrition, or an equivalent major course of study as approved by the Board. Equivalent major course of study as approved by the Board shall mean one which meets the current knowledge requirements of the Didactic Program in Dietetics as approved by the American Dietetic Association. Regardless of the course of study, applicants must have successfully completed the Board's minimum course requirements in food sciences, social and behavioral sciences, chemistry, biology, human nutrition, diet therapy, advanced nutrition, and food systems management; and
  - (b) successfully completed a planned, continuous program in approved clinical practice of not less than 900 hours under the supervision of a state's licensed dietitian nutritionist as approved by the Board. Practice program as approved by the Board shall mean one which meets the current standards of the supervised practice program in dietetics as accredited approved by the American Dietetic Association; and
  - (c) passed an examination as defined by the Board; or
- (3) Provide evidence of having:
  - (a) received a master's degree in human nutrition, nutrition education, foods and nutrition, public health nutrition or an equivalent major course of study as approved by the Board. Equivalent major course of study as approved by the Board shall mean one which meets the current knowledge requirements of the Didactic Program in Dietetics as approved by the American Dietetic Association; and
  - (b) successfully completed a documented supervised practice experience component in dietetics practice of not less than 900 hours under the supervision of a health care practitioner licensed in good standing by the state; and
  - (c) passed an examination as defined by the Board; or

- (4) Provide evidence of having received a doctorate degree in human nutrition, nutrition education, foods and nutrition, public health nutrition, or an equivalent major course of study as approved by the Board, or have received a Doctor of Medicine degree. Regardless of the course of study, applicants must have successfully completed the Board's minimum course requirements in social and behavioral sciences, chemistry, biology, human nutrition, diet therapy and advanced nutrition. Successful completion of minimum course requirements may include teaching of equivalent course as approved by the Board at an ADA-Approved Didactic Program in Dietetics or an ADA-Accredited Coordinated Program within the last five years.

*Statutory Authority G.S. 90-356; 90-357.*

**.0004 APPLICATIONS**

- (a) Each applicant for initial licensure or renewal shall file a completed application with the Board. The application must be upon the forms and in the manner prescribed by the Board.
- (b) Applications shall be typed or written in ink, signed under the penalty of perjury and accompanied by the appropriate nonrefundable fees and by such evidence, statements or documents showing to the satisfaction of the Board that applicant meets requirements.
- (c) Applications are to be submitted to the address designated by the Board.
- (d) Approved applications and all documents filed in support thereof shall become the property of the Board.
- (e) The Board will not consider an application as officially submitted until the applicant pays the application fee in full.
- (f) The Board must receive all required application materials from applicants seeking examination eligibility according to the following schedule:
  - (1) Applicant seeking examination eligibility from CDR must submit application materials at least 120 days prior to the date the applicant wishes to take the examination.
  - (2) Applicant seeking examination eligibility from the Board must submit application at least 180 days prior to the date the applicant wishes to take the examination.
  - (g) The Executive Secretary will send a notice to an applicant who does not complete the application which lists the additional materials required.

## PROPOSED RULES

(h) The application for a license shall contain such information as the Board may reasonably require.

(i) The submission of an application for licensing to the Board shall constitute and operate as an authorization and consent by the applicant to the Board to disclose and release any information or documentation set forth in or submitted with the applicant's application or obtained by the Board from other sources as required.

(j) Applicants, who must provide evidence of current registration as a Registered Dietitian by the CDR in G.S. 90-357(3)a, shall submit a notarized photocopy of the applicant's registration identification card.

(k) Applicants, who must provide evidence of completing academic requirements in G.S. 90-357(3)b.1, c.1 and d, shall either:

(1) Submit official transcripts and a verification statement which includes the original signature of the Program Director of a college or university in which the course of study has been approved as meeting the current knowledge requirements of the ADA; or

(2) Request, complete and submit documents for the evaluation of an equivalent major course of study to be approved by the Board and submitting official transcripts from all colleges attended.

(l) Applicants, who must provide evidence of completing supervised practice requirements in G.S. 90-367(3)b.2 and c.2, shall either:

(1) Submit a verification statement which includes the original signature of the Program Director or Sponsor of a supervised practice program or plan which has been approved accredited to meet the dietetic practice requirements of ADA; or

(2) Request, complete and submit documents for the evaluation of the supervised practice experience to be approved by the Board.

(m) Applicants who have obtained their education outside of the United States and its territories must:

(1) Have their academic degree evaluated by an approved credentialing evaluation agency, as equivalent to the baccalaureate or higher degree conferred by a U.S. college or university accredited by the regional accrediting agencies recognized by the Council on Postsecondary Accreditation and the U.S. Department of Education; and

(2) Have any diploma or other document required to be submitted to the Board which is not in the English language be

accompanied by a certified translation thereof in English by an approved credentials evaluation service; and

(3) Demonstrate satisfactory proof of proficiency in the English language.

(n) Applicant shall be deemed to have abandoned the application if the requirements for licensure are not completed within one year of the date on which application is received. An application submitted subsequent to an abandoned application shall be treated as a new application.

*Statutory Authority G.S. 90-356.*

### .0005 EXAMINATION FOR LICENSURE

(a) The Board approves the examination offered by the Commission on Dietetic Registration (CDR).

(b) The examination shall be offered at least twice each year to qualified applicants for licensing.

(c) The Board recognizes the passing score set by the CDR.

(d) The applicant shall meet the criteria established by the CDR for eligibility to take the examination.

(e) If an applicant has failed three or more examinations, the Board shall designate additional course work to be completed by the applicant prior to taking the examination again. The course work shall be in areas of weakness on the examination.

*Statutory Authority G.S. 90-356; 90-359.*

### .0006 GRANTING LICENSE WITHOUT EXAMINATION

If an applicant seeks licensure on the basis that the applicant currently holds a valid license as a licensed dietitian nutritionist issued by another state, political territory or jurisdiction with equivalent requirements, the applicant shall attach to the application evidence that:

(1) The applicant currently holds a license in good standing; and

(2) The requirements of the state, political territory or jurisdiction are equivalent to those of this state.

*Statutory Authority G.S. 90-356; 90-360.*

### .0007 PROVISIONAL LICENSE

(a) Applicants shall provide evidence of completing academic requirements by:

(1) Submitting official transcripts and a verification statement which includes the original signature of the Program Director

of a college or university in which the course of study has been approved as meeting the current knowledge requirements of the ADA; or

(2) Requesting, completing and submitting documents for the evaluation of an equivalent major course of study to be approved by the Board and submitting official transcripts from all colleges attended.

(b) Applicants shall provide evidence of completing supervised practice requirements by:

(1) Submitting a verification statement which includes the original signature of the Program Director or Sponsor of a supervised practice program or plan which has been approved accredited to meet the dietetic practice requirements of ADA; or

(2) Requesting, completing and submitting documents for the evaluation of the supervised practice experience to be approved by the Board.

(c) Applicants shall provide evidence of making application to take the examination.

(d) Provisional license may be issued for a period not exceeding one year and may be renewed from year to year for a period not to exceed three years upon payment of annual fees, submission of completed application as prescribed by the Board, and provision of evidence of making application to retake the examination.

(e) Provisional licensed dietitian nutritionist shall be under the direct supervision of licensed dietitians nutritionists for at least 80 percent of the hours employed.

(f) Following the successful completion of the licensing examination, the provisionally licensed dietitian nutritionist shall remit completed application for upgrading license, payment of fees, and evidence of passing examination approved by the Board.

(g) The Board will revoke a provisional license if the applicant fails to apply for the examination for licensure in a timely manner or does not take the examination.

Statutory Authority G.S. 90-356; 90-361.

**.0008 DISAPPROVED APPLICATION**

The Board shall not approve an applicant for licensure if the applicant:

(1) Has not completed the requirements in G.S. 90-350 through 90-369 including academic, experience and examination requirements.

(2) Has failed to remit any applicable fees.

(3) Has failed to comply with requests for supporting documentation prescribed by the Board.

(4) Has deliberately presented false information on application documents required by the Board to verify applicant's qualifications for licensure.

Statutory Authority G.S. 90-356; 90-358.

**.0009 ISSUANCE AND RENEWAL OF LICENSE**

(a) An applicant may be issued a license based on compliance with requirements stated in G.S. 90-357 and these Rules. The Board shall issue a license to any person who meets the requirements upon payment of the license fee prescribed. The Executive Secretary shall send each licensee whose credentials have been approved a license.

(b) Licensee shall notify the Board of any change in the licensee's personal or professional address within 30 days of that change.

(c) Licenses will expire on March 31 of every year. Beginning in 1993, the licenses shall be issued for a period of one year beginning April 1 and ending March 31.

(d) At least 30 days prior to the expiration date of the license, the licensee shall be sent written notice of the amount of renewal fee due, and a license renewal form which must be returned with the required fee.

(e) Licensee's renewal application must be postmarked prior to the expiration date in order to avoid the late renewal fee. Failure to receive renewal notice shall not be justification for late renewal.

(f) The Board shall not renew the license of a person who is in violation of the Act, or Board rules at the time of application for renewal.

(g) Applicants for renewal of licenses must provide documentation of having met continuing education requirements by submitting:

(1) A copy of the current CDR registration card certifying completion of 15 hours of continuing education approved by the CDR for a one year period ending August 31; or

(2) A Summary of Continuing Education on the form prescribed by the Board documenting completion of 15 hours of continuing education approved by the Board for a one year period ending August 31.

(h) A renewal license shall be furnished to each licensee who meets all renewal requirements by the expiration date.

(i) The Board may provide for the late renewal of a license upon the payment of a late fee within 60 days of the expiration date of March 31. If the license has been expired for 60 days or less, the license may be renewed by returning the license renewal form with all appropriate fees and

## PROPOSED RULES

documentation to the Board, postmarked on or before the end of the 60-day grace period.

*Statutory Authority G.S. 90-356; 90-362; 90-363.*

### .0010 LICENSURE CERTIFICATE

(a) The Board shall prepare and provide to each licensee a license certificate and license identification card. The identification card shall contain the person's name, license number and date of expiration.

(b) Official license certificates shall be signed by the Chair and Secretary-Treasurer and be affixed with the seal of the Board. Official identification cards shall bear the signature of the Chair.

(c) Any certificate or identification card issued by the Board shall remain the property of the Board and shall be surrendered to the Board on demand.

(d) The license certificate must be displayed in an appropriate and public manner as follows:

(1) The license certificate shall be displayed in the primary place of employment of the licensee; or

(2) In the absence of a primary place of employment or when the licensee is employed in multiple locations, the licensee shall carry a current, Board issued license identification card.

(e) Neither the licensee nor anyone else shall display a photocopy of a license identification card in lieu of the original license certificate or license identification card.

(f) Neither the licensee nor anyone else shall make any alteration on a license certificate or license identification card issued by Board.

(g) The Board shall replace a lost, damaged or destroyed license certificate or identification card upon receipt of a written request from the licensee and payment of the duplicate license fee.

(h) The licensee must submit a written request within 30 days of a name change to the Board who shall re-issue a license certificate and or license identification card. Requests shall be accompanied by duplicate license fee and appropriate documentation reflecting the change.

### .0013 FEES

In accordance with the provisions of the Act, the following fees, where applicable, are payable to the Board by check or money order. Fees are nonrefundable, except for the Issuance Fee, if application is not approved.

<u>Application Fee</u>	<u>\$ 25.00</u>
<u>Charter Issuance Fee (Paid by July 1, 1992)</u>	<u>45.00</u>
<u>Issuance Fee</u>	<u>75.00</u>
<u>License Renewal Fee</u>	<u>25.00</u>

*Statutory Authority G.S. 90-356; 90-362.*

### .0011 INACTIVE STATUS

(a) A licensee may have a license placed in inactive status by written request to the Board, signed by the holder of the license or the holder's legal guardian.

(b) While a license is in an inactive status, the licensee shall meet the continuing education requirements each year as required by the Board's rules, but is not required to pay the annual fee.

(c) A license may be withdrawn from inactive status by written request of the holder, completion of a renewal application, compliance with continuing education requirements and payment of the current licensing fee.

*Statutory Authority G.S. 90-356; 90-362.*

### .0012 SUSPENSION, REVOCATION AND DENIAL OF LICENSE

(a) The Board may refuse to issue a license, or suspend, revoke or impose probationary conditions and restrictions on the license of a person upon a finding of any of the causes provided in General Statute Chapter 90, Article 25.

(b) When the Board has probable cause to believe that a licensee applicant has violated any part of G.S. 90-350 through 90-369, the Board shall so advise the applicant in writing by certified mail, setting forth its grounds, specifying the sanctions which are sought and provide the licensee applicant with the opportunity for hearing pursuant to Chapter 150B of the General Statutes. The Board's findings of fact, its conclusions of law under these Rules and its decision as to the sanctions, if any, to be imposed shall be made in writing by certified mail and served upon the applicant.

(c) A suspended license shall be subject to expiration and may be renewed as provided in this Section, but such renewal shall not entitle the licensee to engage in the licensed activity until he she is reinstated. If a license revoked on disciplinary grounds is reinstated, the licensee must reapply and pay all applicable fees.

*Statutory Authority G.S. 90-356; 90-363.*

**PROPOSED RULES**

<u>Late Renewal Fee</u>	50.00
<u>Examination Fee</u>	100.00
<u>Provisional License Fee</u>	35.00
<u>Duplicate License Certificate Fee</u>	15.00
<u>Duplicate License Identification Card Fee</u>	10.00
<u>Returned Check Fee</u>	15.00
<u>Service Fee for Academic Program Approval</u>	50.00
<u>Service Fee for Supervised Practice Program Approval</u>	75.00
<u>Service Fee for Continuing Educational Prior Approval for Programs</u>	25.00
<u>Service Fee for Annual Continuing Education Approval for Licensee</u>	25.00

*Statutory Authority G.S. 90-356(9); 90-364.*

**.0014 CODE OF ETHICS FOR PROFESSIONAL PRACTICE AND CONDUCT**

Licensees, under the Act, shall comply with the following Code of Ethics in their professional practice and conduct. The Code which reflects the ethical principles of the dietetic nutrition professional and outlines obligations of the licensee to self, client, society and the profession.

- (1) The licensee shall provide professional services with objectivity and with respect for the unique needs and values of individuals.
- (2) The licensee shall avoid discrimination against other individuals on the basis of, but not limited to race, creed, religion, sex, age, national origin or handicap.
- (3) The licensee shall conduct all practices with honesty, integrity and fairness.
- (4) The licensee shall make and fulfill professional commitments in good faith.
- (5) The licensee shall practice dietetics nutrition based on scientific principles and current information.
- (6) The licensee shall assume responsibility and accountability for personal competence in practice.
- (7) The licensee shall inform the public and colleagues of services by use of factual information and shall not advertise in a misleading manner.
- (8) The licensee shall promote or endorse products only in a manner that is true and not misleading.
- (9) The licensee shall not make any false or misleading claims about the efficacy of any dietetic nutrition services or weight control services.
- (10) The licensee shall maintain confidentiality of information.
- (11) The licensee shall recognize and exercise professional judgment within the limits of the licensee's qualifications and seeks counsel or makes referrals as appropriate.
- (12) The licensee shall take reasonable action to inform a client's physician and any appropriate allied health care practitioner in

cases where a client's nutritional status indicates a change in health status.

- (13) The licensee shall provide sufficient information to enable clients to make their own informed decisions.
- (14) The licensee shall present substantiated information and interpret controversial information without personal bias, recognizing that legitimate differences of opinion exist.
- (15) The licensee shall accurately present professional qualifications and credentials.
  - (a) The licensee uses "LD", "LN", or "LDN" only when licensure is current and authorized by the North Carolina Board of Dietetics Nutrition.
  - (b) The licensee provides accurate information and complies with all requirements of the North Carolina Board of Dietetics Nutrition when seeking initial or continued credentials from the North Carolina Board of Dietetics Nutrition.
  - (c) The licensee is subject to disciplinary action for aiding another person in violating any North Carolina Board of Dietetics Nutrition requirements or aiding another person in representing himself herself as an "LD", "LN" or "LDN" when he she is not.
- (16) The licensee shall permit use of that licensee's name for the purpose of certifying that dietetic nutrition services have been rendered only if the licensee has provided or supervised those services.
- (17) The licensee shall remain free of conflict of interest while fulfilling the objectives and maintaining the integrity of the dietetic nutrition profession.
- (18) The licensee shall make all reasonable effort to avoid bias in any kind of professional evaluation.
- (19) When providing direct supervision to a student, trainee, provisional licensee, or person aiding the practice of dietetics nutrition, the licensee shall assume responsibility for

- the supervision in a manner which protects the public.
- (20) When licensee approves a weight control program, the licensee shall assume responsibility for the general program of weight control including the diet and the guidelines for instruction of customers.
- (21) The licensee shall comply with any order relating to the licensee which is issued by the Board.
- (22) The licensee shall comply with all laws and regulations concerning the profession, but shall seek to change them if the laws or regulations are inconsistent with the best interest of the public and the profession.
- (23) The licensee shall accept the obligation to protect society and the profession by upholding the Code of Ethics for professional practice and conduct and by reporting alleged misrepresentations and violations of the Code and the Act to the Board.
- (24) The licensee shall not interfere with an investigation of disciplinary proceeding by willful misrepresentation of facts to the Board or its authorized representative or by the use of threats or harassment against any person.
- (25) The licensee voluntarily withdraws from professional practice and notifies the Board under the following circumstances:
- (a) The licensee has engaged in any substance abuse that could affect his/her practice.
  - (b) The licensee has been adjudged by a court to be mentally incompetent.
  - (c) The licensee has an emotional or mental disability that affects his/her practice in a manner that could harm the client.
- (26) The licensee complies with all applicable laws and regulations concerning the profession. The licensee shall voluntarily withdraw from professional practice, notify the Board and be subject to disciplinary action under the following circumstances:
- (a) The licensee has been convicted of a crime under the laws of the United States which is a felony or a misdemeanor, an essential element of which is dishonesty and which is related to the practice of the profession.

- (b) The licensee has been disciplined by a state and at least one of the grounds for the discipline is the same or substantially equivalent to these principles.
- (c) The licensee has committed an act of misfeasance or malfeasance which is directly related to the practice of the profession as determined by a court of competent jurisdiction, a licensing board, or an agency of a governmental body.

*Statutory Authority G.S. 90-356(3).*

**.0015 EXEMPTIONS**

- (a) No person shall engage in the practice of dietetics nutrition in the State of North Carolina unless he/she possesses a current license or provisional license duly issued by the Board under the provisions of General Statutes Chapter 90, Article 25, unless exempted as defined in G.S. 90-368 of the Act.
- (b) A student or trainee in pursuit of fulfilling the academic and experience requirements for licensure shall be exempt when:
- (1) The student or trainee submits evidence of enrollment and forward progress toward fulfillment of requirements to the Board on an annual basis; and
  - (2) The student or trainee is under the direct supervision of licensed dietitians nutritionists for at least 80 percent of the supervised practical experience; and
  - (3) "Direct supervision" shall mean that licensed dietitians nutritionists:
    - (A) must be physically present in the locale when an act or function is being performed by the person supervised; and
    - (B) must provide supervision that is characterized by a direct, first-hand association which is unrestricted by an intervening position of influence; and
    - (C) must directly and personally examine, evaluate and approve the acts or functions of the person supervised; and
  - (4) The student or trainee is designated by a title which clearly indicates his/her status as a student or trainee.

*Statutory Authority G.S. 90-356; 90-368.*

## RRC OBJECTIONS

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

### ADMINISTRATION

#### State Construction

<i>1 NCAC 30F .0101 - Authority Agency Revised Rule</i>	<i>RRC Objection 10/17/91 Obj. Removed 11/21/91</i>
<i>1 NCAC 30F .0103 - Definitions Agency Revised Rule</i>	<i>RRC Objection 10/17/91 Obj. Removed 11/21/91</i>
<i>1 NCAC 30F .0202 - Pre-Bid Conferences and Site Reviews Agency Revised Rule</i>	<i>RRC Objection 10/17/91 Obj. Removed 11/21/91</i>
<i>1 NCAC 30F .0301 - Definitions Agency Revised Rule</i>	<i>RRC Objection 10/17/91 Obj. Removed 11/21/91</i>
<i>1 NCAC 30F .0302 - Overall Job Performance Agency Revised Rule</i>	<i>RRC Objection 10/17/91 Obj. Removed 11/21/91</i>
<i>1 NCAC 30F .0303 - Interim Contractor Evaluation Agency Revised Rule</i>	<i>RRC Objection 10/17/91 Obj. Removed 11/21/91</i>
<i>1 NCAC 30F .0305 - Report Compilation Agency Revised Rule</i>	<i>RRC Objection 10/17/91 Obj. Removed 11/21/91</i>
<i>1 NCAC 30F .0401 - Post-Occupancy Evaluation Agency Revised Rule</i>	<i>RRC Objection 10/17/91 Obj. Removed 11/21/91</i>
<i>1 NCAC 30F .0403 - Appeals of Assigned Eval or Disqual from Bidding Agency Revised Rule</i>	<i>RRC Objection 10/17/91 Obj. Removed 11/21/91</i>

#### State Employees Combined Campaign

<i>1 NCAC 35 .0103 - Organization of the Campaign Agency Revised Rule</i>	<i>RRC Objection 01/24/92 Obj. Removed 01/24/92</i>
<i>1 NCAC 35 .0202 - Criteria for Acceptance Agency Revised Rule</i>	<i>RRC Objection 01/24/92 Obj. Removed 01/24/92</i>
<i>1 NCAC 35 .0302 - Response Agency Revised Rule</i>	<i>RRC Objection 01/24/92 Obj. Removed 01/24/92</i>

### AGRICULTURE

#### Plant Industry

<i>2 NCAC 45E .0101 - Definitions Agency Revised Rule</i>	<i>RRC Objection 10/17/91 RRC Objection 10/17/91</i>
<i>Agency Responded</i>	<i>No Action 12/19/91</i>
<i>Agency Withdrew Rule</i>	<i>02/20/92</i>

### CRIME CONTROL AND PUBLIC SAFETY

#### State Highway Patrol

<i>14A NCAC 91H .0304 - Notifying Registered Owner No Response from Agency</i>	<i>RRC Objection 12/19/91 No Action 01/24/92</i>
<i>Agency Withdrew Rule</i>	<i>02/20/92</i>

## RRC OBJECTIONS

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### ECONOMIC AND COMMUNITY DEVELOPMENT

#### Credit Union Division

4 NCAC 6C .0407 - Business Loans	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	02/20/92

#### Savings Institutions Division: Savings Institutions Commission

4 NCAC 16A .0105 - Restrictions: Payment Dividends/Repurchase/Stock	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16C .0402 - Application: Guidelines/Approval/Administrator	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16C .0403 - General Policies	RRC Objection	01/24/92
4 NCAC 16D .0301 - General Policies	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16E .0103 - Composition of Board of Directors	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16E .0105 - Amendment of Converted Savings Bank's Charter	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16E .0301 - General Policies	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16E .0303 - Required Policies	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16E .0502 - Holding of Certificate or Passbook	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16G .0404 - Information Prior To Approval, Plan, Conversion	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16G .0510 - Use of Proxy Soliciting Material to be Authorized	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16G .0513 - Material Required to be Filed	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16G .0714 - Estimated Price Information: Proxy Statements	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16G .0720 - Period for Completion of Sale	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16G .0722 - Extensions of Time to Complete Offerings	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16G .0825 - Requirements as to Paper and Printing	RRC Objection	01/24/92
Agency Revised Rules	Obj. Removed	01/24/92
4 NCAC 16H .0002 - Grounds	RRC Objection	01/24/92
Agency Repealed Rule	Obj. Removed	01/24/92
4 NCAC 16H .0008 - Waiver	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16I .0702 - Definitions and Other Terms	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16I .0703 - Stds for Approval of Acquisition: Duties Conduct	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16I .0902 - Acquisition Procedure	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16I .1003 - Acquisition Procedure	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16I .1202 - Conversion Procedure	RRC Objection	01/24/92

**RRC OBJECTIONS**

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<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	01/24/92
4 NCAC 16J .0003 - Waiver	<i>RRC Objection</i>	01/24/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	01/24/92
4 NCAC 16K .0001 - Definitions	<i>RRC Objection</i>	01/24/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	01/24/92
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15A NCAC 7J .0302 - Petition For Contested Case Hearing	<i>RRC Objection</i>	02/20/92
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*RRC OBJECTIONS*

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LICENSING BOARDS AND COMMISSIONS

Certified Public Accountant Examiners

\* 21 NCAC 8G .0313 - Firm Name  
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RRC Objection 10/17/91  
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*This Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.*

**15A NCAC 7J .0301 - WHO IS ENTITLED TO A CONTESTED CASE HEARING**

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 7J .0301(b) void as applied in *Lucey R. Hanson, Stanley P. and Jean C. Szwed, Petitioners v. N.C. Department of Environment, Health, and Natural Resources, Division of Coastal Management, Respondent* (91 EHR 0551, 91 EHR 0557).

**15A NCAC 21D .0802(b)(2) - AVAILABILITY**

Robert Roosevelt Reilly Jr., Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 21D .0802(b)(2) void as applied in *Wilson's Supermarket #12, Petitioner v. Department of Environment, Health, and Natural Resources, Respondent* (91 EHR 0795).

**15A NCAC 21D .0805 - DECISION**

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 21D .0805 void as applied in *Glenn E. Davis Davis Grocery, Petitioner v. N.C. Department of Environment, Health, and Natural Resources, Division of Maternal and Child Health, WIC Section, Respondent* (91 EHR 0694).

*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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