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# *The* **NORTH CAROLINA REGISTER**

**IN THIS ISSUE.....**

**PROPOSED RULES**

**Human Resources**

**NRCD**

**FINAL RULES**

**Human Resources**

**Revenue**



**ISSUE DATE: MAY 2, 1988**

**Volume 3 • Issue 3 • Pages 109-118**

# INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

## NORTH CAROLINA REGISTER

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

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of ninety-five dollars (\$95.00) for 24 issues.

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

## ADOPTION, AMENDMENT, AND REPEAL OF RULES

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

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

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

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

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

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

## TEMPORARY RULES

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

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

## NORTH CAROLINA ADMINISTRATIVE CODE

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

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

The NCAC is available in two formats.

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

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

## NOTE

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

## CITATION TO THE NORTH CAROLINA REGISTER

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

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

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

# NORTH CAROLINA REGISTER



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## ISSUE CONTENTS

### I. PROPOSED RULES

#### Human Resources

Medical Assistance .....109

#### NRCD

Soil and Water Conservation...111

Wildlife Resources.....111

### II. FINAL RULES

#### Human Resources

Drug Commission.....113

#### Revenue

License and Excise Tax.....113

### III. CUMULATIVE INDEX.....117

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

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

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

**TITLE 10 - DEPARTMENT OF HUMAN RESOURCES**

*Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources/Division of Medical Assistance intends to amend regulations cited as 10 NCAC 50A .0201; and 10 NCAC 50B .0311.*

*The proposed effective date of this action is September 1, 1988.*

*The public hearing will be conducted at 1:30 p.m. on June 15, 1988 at North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 201, Raleigh, N.C. 27603.*

*Comment Procedures: Written comments concerning these amendments must be submitted by June 15, 1988 to: Director, Division of Medical Assistance, 1985 Umstead Drive, Raleigh, N.C. 27603. Oral comments may be presented at the hearing. In addition, a fiscal impact statement on these rule amendments are available upon written request from the same address.*

**CHAPTER 50 - MEDICAL ASSISTANCE**

**SUBCHAPTER 50A - GENERAL PROGRAM ADMINISTRATION**

**SECTION .0200 - DEFINITIONS**

**.0201 DEFINITIONS**

For purpose of this Chapter, are the following definitions:

(31) "Guardian" means an individual, corporation, or disinterested public agent appointed by the clerk of superior court to replace an individual's authority to make decisions about his person, family, or property when the individual does not have adequate capacity to make such decisions and has been adjudicated incompetent. A guardian can be a guardian of the person, a guardian of the estate, or a general guardian which is a guardian of both the person and the estate.

(34)(32) "Incapacity" means a physical or mental defect, illness or impairment which substantially reduces or eliminates a person's ability to support or care for an otherwise eligible child, and which is expected to last at least 30 days.

(32)(33) "Income" means money which is available to members of the budget unit for their needs.

(33)(34) "Income, Earned" means money received as a result of employment.

(34)(35) "Income, Gross" means total income before allowable deductions.

(35)(36) "Income, Net" means income after all allowable deductions.

(36)(37) "Income, Unearned" means money received from any source other than employment.

(38) "Incompetent Adult" means an adult who lacks sufficient capacity to manage his own affairs or to make or communicate important decisions concerning his person, family, or property whether such lack of capacity is due to mental illness, mental retardation, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or condition who has been adjudicated incompetent by the clerk of superior court.

(37)(39) "Inmate of a Public Institution" means a person who lives in an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control and which provides treatment or services, food and shelter.

(38)(40) "Life Estate Interest" means the right to use property and receive income from the property for the remainder of one's life.

(39)(41) "Long Term Care" means care in:

- (a) a general or specialty hospital in excess of 60 continuous days,
- (b) a state mental hospital,
- (c) a skilled nursing facility, or
- (d) an intermediate care facility.

(40)(42) "Patient's Monthly Liability" means the amount of a long term care patient's income that must be paid towards his cost of care.

(41)(43) "Reasonable Classification" means a grouping of individuals under age 19 who do not meet the AFDC dependent child definition, but are in need of assistance in foster homes or institutions or medical facilities.

(42)(44) "Remainder Interest" means ownership interest in property which will be inherited in full or jointly with other remainder interest holders at a life interest holder's death.

(43)(45) "Representative" means a person who acts on behalf of a client.

(44)(46) "Reserve" means assets owned by members of the budget unit and which have a market value.

- ~~(45)~~(47) "Residence" means the county or state where a client lives with intent to remain for an indefinite time. Also, a child has the residence of the person with whom he resides unless he is in the custody of a social services agency.
- ~~(46)~~(48) "Revocable Trust" means funds held in trust which are available for the client's use.
- ~~(47)~~(49) "RSDI (Retirement, Survivors, Disability Insurance)" means Social Security benefits.
- ~~(48)~~(50) "SDX" means State Data Exchange with the Social Security Administration for the purpose of providing a listing of all persons receiving supplemental security income, their current payment status and amount of SSI and other sources of income.
- ~~(49)~~(51) "Specified Relative" means a parent or a person in one of the following groups:
- (a) any blood relative, including those of half-blood, and including first cousins, nephews, or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;
  - (b) stepfather, stepmother, stepbrother, and stepsister;
  - (c) persons who legally adopt a child, their parents as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law;
  - (d) spouses of any persons named in the above groups even after the marriage is terminated by death or divorce.
- ~~(50)~~(52) "SSI" means Supplemental Security Income - A federal assistance payment for aged, blind and disabled persons administered by the Social Security Administration.
- ~~(51)~~(53) "Stepparent" means a person legally married to the parent of a child in the Medicaid budget unit.
- ~~(52)~~(54) "Timely Notice" means a written notice to inform the recipient of intended action. No action can be taken to reduce or terminate assistance until 10 work days following the date of the notice.
- ~~(53)~~(55) "Time Standard" means the requirement to process an application within 45 or 60 days from the date of application unless there is applicant or collateral delay in providing information.
- ~~(54)~~(56) "Verification" means the confirmation of facts and information used in determining eligibility.

SUBCHAPTER 50B - ELIGIBILITY DETERMINATION

SECTION .0300 - CONDITIONS FOR ELIGIBILITY

.0311 RESERVE

- (1) The value of resources that are currently available to any budget unit member is considered in determining financial eligibility. A resource is considered available when it is actually available and when the budget unit member has a legal interest in the resource and he, or someone acting in his behalf, can take any necessary action to make it available;
- (a) When a representative alleges that an applicant recipient or budget unit member is mentally and/or physically incompetent and does not have a legal representative appointed to act in his behalf, the resources held solely by the applicant recipient or budget unit member or held jointly with a non-budget unit member will not be considered legally available in determining countable reserve provided the following two conditions are met:
    - (i) The applicant recipient or budget unit member has been adjudicated by the Court to be legally incompetent; and
    - (ii) The Court must be petitioned for appointment of a legal guardian for the applicant recipient or budget unit member.
  - (b) Provided the conditions in (a)(i) and (a)(ii) are met, the applicant recipient's or budget unit member's resources which are held solely by the applicant recipient or budget unit member or held jointly with a non-budget unit member will not be counted in determining his eligibility for Medicaid from the date he actually became incompetent until:
    - (i) For AFDC related cases and aged, blind and disabled cases protected by grandfather provisions, the date the legal guardian is appointed;
    - (ii) For aged, blind and disabled cases not protected by grandfather provisions, the first day of the month following the month the legal guardian is appointed.
  - (c) In order for resources to be considered legally unavailable when it is alleged that an applicant recipient or budget unit member is incompetent, the petition to have an applicant recipient or budget unit member declared incompetent must be filed with the Court within 30 calendar

Statutory Authority G.S. 108A-25(b); 108A-54.

days of the date the applicant/recipient's or budget unit member's representative was informed of the procedure required to be followed.

(d) In order for resources to be considered legally unavailable when it is alleged that an applicant/recipient or budget unit member is incompetent, the petition to have a legal guardian appointed must be filed with the Court within 30 calendar days of the date the applicant/recipient's or budget unit member's representative was informed of the procedure required to be followed.

(e) When the applicant/recipient or budget unit member has excess resources or eligibility cannot be determined because the applicant/recipient or budget unit member has no legal representative who can obtain information required to determine eligibility, the county department of social services must assume responsibility for petitioning the Court for incompetency and the appointment of a guardian in the event the applicant/recipient or budget unit member has no representative willing to act in his behalf or the applicant/representative's or budget unit member's representative fails or refuses to take the required action to have the applicant/recipient or budget unit member declared to be incompetent and/or have a guardian appointed within the prescribed time frames.

Authority G.S. 108A-54; 108A-55; 108A-58; 42 U.S.C. 703, 704, 1396; 42 C.F.R. 435.121; 42 C.F.R. 435.210; 42 C.F.R. 435.711; 42 C.F.R. 435.712; 42 C.F.R. 435.734; 42 C.F.R. 435.823; 42 C.F.R. 435.840; 42 C.F.R. 435.841; 42 C.F.R. 435.845; 42 C.F.R. 445.850; 42 C.F.R. 435.851; 45 C.F.R. 233.20; 45 C.F.R. 233.51.

**TITLE 15 - DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT**

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Soil and Water Conservation intends to amend the regulation cited as 15 NCAC 6B .0003.

The proposed effective date of this action is September 1, 1988.

The public hearing will be conducted at 10:00 a.m. on June 1, 1988 at Fifth Floor Conference

Room, Archdale Building, 512 N. Salisbury Street, Raleigh, NC.

Comment Procedures: Written comments are encouraged to be submitted prior to or during the hearing. Oral comments may be presented by any interested party at the hearing. Additional information concerning the hearing or the proposal may be obtained by contacting Douglas G. Lewis, Division of Soil and Water Conservation, P.O. Box 27687, Raleigh, NC 27611-7687, (919) 733-2302.

**CHAPTER 6 - SOIL AND WATER CONSERVATION**

**SUBCHAPTER 6B - DISTRICT PROGRAMS: REORGANIZATION AND EXPENSES**

**.0003 REQUIREMENT FOR DISBURSEMENTS**

The commission shall not disburse "general expense" funds until the district

- (1) submits an "Audit Report," Form 205, accounting for any "general expense" funds received in previous fiscal year, satisfactory to the commission;
- (2) submits an "Application", Form 203, requesting the funds, properly signed by the chairman of the district or of the county committee, and properly notarized and signed by a county official stipulating the amount of county funds appropriated for the district.
- (3) submits a "Proposed Budget", Form 204, detailing the proposed expenditures of funds, satisfactory to the commission.

Statutory Authority G.S. 139-4(d); 143B-294.

\*\*\*\*\*

Notice is hereby given in accordance with G.S. 150B-12 that the Wildlife Resources Commission intends to adopt the regulation cited as 15 NCAC 10F .0355.

The proposed effective date of this action is September 1, 1988.

The public hearing will be conducted at 10:00 a.m. on June 1, 1988 at Wildlife Resources Commission Conference Room No. 386, 512 N. Salisbury Street, Archdale Building, Raleigh, NC 27611.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will

*be open for receipt of written comments from May 18, 1988, to June 16, 1988. Such written comments must be delivered or mailed to the Wildlife Resources Commission, 512 N. Salisbury St., Raleigh, NC 27611.*

**CHAPTER 10 - WILDLIFE RESOURCES AND  
WATER SAFETY**

**SUBCHAPTER 10F - MOTORBOATS AND  
WATER SAFETY**

**SECTION .0300 - LOCAL WATER SAFETY  
REGULATIONS**

**.0355 PERQUIMANS COUNTY**

(a) Regulated Area. This Rule applies to the canals of Holiday Island.

(b) Speed Limit. No person shall operate any motorboat or vessel at greater than no-wake speed within the regulated area described in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The Board of Commissioners of Perquimans County is designated a suitable agency for placement and maintenance of markers implementing this Rule.

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



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

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

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

**TITLE 10 - DEPARTMENT OF HUMAN RESOURCES**

**CHAPTER 45 - NORTH CAROLINA DRUG COMMISSION**

**SUBCHAPTER 45H - DRUG TREATMENT FACILITIES**

**SECTION .0200 - SCHEDULES OF CONTROLLED SUBSTANCES**

**.0202 SCHEDULE I**

(b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (12) Beta-hydroxy-3-methylfentanyl  
(other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide) 9831

*History Note: Statutory Authority G.S. 90-88; 90-89; 143B-147; Eff. June 30, 1978; Amended Eff. May 1, 1988; December 1, 1987; August 1, 1987; December 1, 1986.*

**TITLE 17 - DEPARTMENT OF REVENUE**

**CHAPTER 4 - LICENSE AND EXCISE TAX**

**SUBCHAPTER 4B - LICENSE TAXES**

**SECTION .1300 - PEDDLERS**

**.1303 FLEA MARKET**

*History Note: Statutory Authority G.S. 105-53; 105-262; Eff. February 1, 1976; Amended Eff. July 1, 1979; June 11, 1977; Repealed Eff. July 1, 1988.*

**.1305 OTHER APPLICABLE LICENSES DUE**

In addition to license under G.S. 105-53, a peddler, an itinerant merchant, or a flea market vendor is subject to other applicable privilege licenses for each location, depending upon the kind of merchandise sold or offered for sale.

*History Note: Statutory Authority G.S. 105-53; 105-262; Eff. February 1, 1976; Amended Eff. July 1, 1988.*

**.1308 LICENSE PROCUREMENT AND DISPLAY**

(a) To obtain a license under G.S. 105-53 as timely as possible, the peddler, itinerant merchant, flea market vendor, or flea market operator must apply directly to the nearest local state revenue office. In making application for license in this manner, an Official Receipt of Revenue Officer (Form RO 1000) will be issued upon providing:

- (1) a copy of applicant's current state privilege license, if renewing, from which the revenue officer can obtain the account number, name and address for completing the application for new license,
- (2) the identification required by subsection (h) of G.S. 105-53, and
- (3) payment for license by cash, money order, or certified check.

The receipt issued shall serve as a temporary license until the actual license is received by mail and shall identify the General Statute, the year, description of the license, amount paid and the statement "Temporary Statewide License Issued By The Secretary of Revenue" if for a flea market vendor license, or the statement "Temporary Countywide License Issued By The Secretary of Revenue For \_\_\_\_\_ County" if for either a peddler, itinerant merchant, or flea market operator license.

(b) The Official Receipt of Revenue Officer completed by the local revenue office as a temporary license shall be accepted by the flea market operator for registration purposes until the actual license is received by the flea market vendor.

(c) License issued under G.S. 105-53 is to be displayed or available for inspection in accord-

ance with the provisions of subsection (i) of that section.

*History Note: Statutory Authority G.S.  
105-53; 105-262;  
Eff. July 1, 1988.*

.1309 INFORMATION TO REVENUE  
DEPARTMENT

A peddler, an itinerant merchant, flea market vendor, or flea market operator applying for a license under G.S. 105-53 must provide all information required under subsection (h) to the Department of Revenue before the applicable license can be issued.

*History Note: Statutory Authority G.S.  
105-53; 105-262;  
Eff. July 1, 1988.*

**TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE**

<b>TITLE</b>	<b>DEPARTMENT</b>
1	Administration, Department of
2	Agriculture, Department of
3	Auditor, Department of State
4	Commerce, Department of
5	Corrections, Department of
6	Council of State
7	Cultural Resources, Department of
8	Elections, State Board of
9	Governor, Office of the
10	Human Resources, Department of
11	Insurance, Department of
12	Justice, Department of
13	Labor, Department of
14A	Crime Control and Public Safety, Department of
15	Natural Resources and Community Development, Department of
16	Education, Department of
17	Revenue, Department of
18	Secretary of State, Department of
19A	Transportation, Department of
20	Treasurer, Department of State
*21	Occupational Licensing Boards
22	Administrative Procedures
23	Community Colleges, Department of
24	Housing Finance Agency
25	State Personnel, Office of
26	Administrative Hearings, Office of

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

<b>CHAPTER</b>	<b>LICENSING BOARDS</b>
2	Architecture, Board of
4	Auctioneers, Commission for
6	Barber Examiners, Board of
8	Certified Public Accountant Examiners, Board of
10	Chiropractic Examiners, Board of
12	Contractors, Licensing Board for
14	Cosmetic Art Examiners, Board of
16	Dental Examiners, Board of
18	Electrical Contractors, Board of Examiners of
20	Foresters, Board of Registration for
21	Geologists, Board of
22	Hearing Aid Dealers and Fitters Board
26	Landscape Architects, Licensing Board of
28	Landscape Contractors, Registration Board of
31	Martial & Family Therapy Certification Board
32	Medical Examiners, Board of
33	Midwifery Joint Committee
34	Mortuary Science, Board of
36	Nursing, Board of
37	Nursing Home Administrators, Board of
38	Occupational Therapists, Board of
40	Opticians, Board of
42	Optometry, Board of Examiners in

44	Osteopathic Examination and Registration, Board of
46	Pharmacy, Board of
48	Physical Therapy, Examining Committee of
50	Plumbing and Heating Contractors, Board of
52	Podiatry Examiners, Board of
53	Practicing Counselors, Board of
54	Practicing Psychologists, Board of
56	Professional Engineers and Land Surveyors, Board of
58	Real Estate Commission
60	Refrigeration Examiners, Board of
62	Sanitarian Examiners, Board of
63	Social Work, Certification Board for
64	Speech and Language Pathologists and Audiologists, Board of Examiners of
66	Veterinary Medical Board

**CUMULATIVE INDEX**

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**CUMULATIVE INDEX**  
*(April 1988 - March 1989)*

1988 - 1989

Pages	Issue
1 - 25 . . . . .	1 - April
26 - 108 . . . . .	2 - April
109 - 118 . . . . .	3 - May

- AO - Administrative Order
- AG - Attorney General's Opinions
- C - Correction
- E - Errata
- EO - Executive Order
- FDL - Final Decision Letters
- FR - Final Rule
- GS - General Statute
- JO - Judicial Orders or Decision
- LRA - List of Rules Affected
- M - Miscellaneous
- NP - Notice of Petitions
- PR - Proposed Rule
- SO - Statements of Organization
- TR - Temporary Rule

**EXECUTIVE ORDERS**

Executive Orders 68 - 71, 1 EO

**FINAL DECISION LETTERS**

Voting Rights Act, 5 FDL, 26 FDL

**ADMINISTRATIVE HEARINGS**

Hearings Division, 76 PR

**CRIME CONTROL & PUBLIC SAFETY**

Alcohol Law Enforcement, 47 PR

**HUMAN RESOURCES**

Drug Commission, 113 FR  
Health Services, 7 PR  
Medical Assistance, 7 PR, 30 PR, 109 PR  
Office of the Secretary, 31 PR  
Social Services Commission, 27 PR

**INDEPENDENT AGENCIES**

Housing Finance, 21 PR

**INSURANCE**

Fire & Casualty, 32 PR

**LICENSING BOARDS**

CPA, 73 PR

Hearing Aid Dealers, 77 FR

**NATURAL RESOURCES AND COMMUNITY DEVELOPMENT**

Coastal Management, 11 PR, 67 PR

Community Assistance, 69 PR

Forest Resources, 68 PR

Marine Fisheries, 62 PR

Soil and Water Conservation, 111 PR

Wildlife Resources, 111 PR

**REVENUE**

License and Excise Tax, 113 FR

**STATE TREASURER**

Local Government Commission, 18 PR

# NOW AVAILABLE

## NORTH CAROLINA ADMINISTRATIVE CODE

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