

NORTH CAROLINA

IN THIS ISSUE



REGISTER

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This issue contains documents officially filed
through April 26, 2004

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NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

The North Carolina Administrative Code (NCAC) has four major classifications of rules. Three of these, titles, chapters, and sections are mandatory. The major classification 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. Subchapters are optional classifications to be used by agencies when appropriate.

NCAC TITLES		TITLE 21 LICENSING BOARDS	TITLE 24 INDEPENDENT AGENCIES
1	ADMINISTRATION	1 Acupuncture	1 Housing Finance
2	AGRICULTURE & CONSUMER SERVICES	2 Architecture	2 Agricultural Finance Authority
3	AUDITOR	3 Athletic Trainer Examiners	3 Safety & Health Review Board
4	COMMERCE	4 Auctioneers	4 Reserved
5	CORRECTION	6 Barber Examiners	5 State Health Plan Purchasing Alliance Board
6	COUNCIL OF STATE	8 Certified Public Accountant Examiners	
7	CULTURAL RESOURCES	10 Chiropractic Examiners	
8	ELECTIONS	11 Employee Assistance Professionals	
9	GOVERNOR	12 General Contractors	
10A	HEALTH AND HUMAN SERVICES	14 Cosmetic Art Examiners	
11	INSURANCE	16 Dental Examiners	
12	JUSTICE	17 Dietetics/Nutrition	
13	LABOR	18 Electrical Contractors	
14A	CRIME CONTROL & PUBLIC SAFETY	19 Electrolysis	
15A	ENVIRONMENT & NATURAL RESOURCES	20 Foresters	
16	PUBLIC EDUCATION	21 Geologists	
17	REVENUE	22 Hearing Aid Dealers and Fitters	
18	SECRETARY OF STATE	25 Interpreter/Transliterater (Reserved)	
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20	TREASURER	28 Landscape Contractors	
21*	OCCUPATIONAL LICENSING BOARDS	29 Locksmith Licensing	
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		58 Real Estate Commission	
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		61 Respiratory Care	
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		63 Social Work Certification	
		64 Speech & Language Pathologists & Audiologists	
		65 Therapeutic Recreation Certification	
		66 Veterinary Medical	
		68 Substance Abuse Professionals	
		69 Soil Scientists	

Note: Title 21 contains the chapters of the various occupational licensing boards and Title 24 contains the chapters of independent agencies.

NORTH CAROLINA REGISTER
 Publication Schedule for January 2004 – December 2004

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule (first legislative day of the next regular session)	270 th day from publication in the Register
18:13	01/02/04	12/08/03	01/17/04	03/02/04	03/22/04	05/01/04	05/10/04	09/28/04
18:14	01/15/04	12/19/03	01/30/04	03/15/04	03/22/04	05/01/04	05/10/04	10/11/04
18:15	02/02/04	01/09/04	02/17/04	04/02/04	04/20/04	06/01/04	01/26/05	10/29/04
18:16	02/16/04	01/26/04	03/02/04	04/16/04	04/20/04	06/01/04	01/26/05	11/12/04
18:17	03/01/04	02/09/04	03/16/04	04/30/04	05/20/04	07/01/04	01/26/05	11/26/04
18:18	03/15/04	02/23/04	03/30/04	05/14/04	05/20/04	07/01/04	01/26/05	12/10/04
18:19	04/01/04	03/11/04	04/16/04	06/01/04	06/21/04	08/01/04	01/26/05	12/27/04
18:20	04/15/04	03/24/04	04/30/04	06/14/04	06/21/04	08/01/04	01/26/05	01/10/05
18:21	05/03/04	04/12/04	05/18/04	07/02/04	07/20/04	09/01/04	01/26/05	01/28/05
18:22	05/17/04	04/26/04	06/01/04	07/16/04	07/20/04	09/01/04	01/26/05	02/11/05
18:23	06/01/04	05/10/04	06/16/04	08/02/04	08/20/04	10/01/04	01/26/05	02/26/05
18:24	06/15/04	05/24/04	06/30/04	08/16/04	08/20/04	10/01/04	01/26/05	03/12/05
19:01	07/01/04	06/10/04	07/16/04	08/30/04	09/20/04	11/01/04	01/26/05	03/28/05
19:02	07/15/04	06/23/04	07/30/04	09/13/04	09/20/04	11/01/04	01/26/05	04/11/05
19:03	08/02/04	07/12/04	08/17/04	10/01/04	10/20/04	12/01/04	01/26/05	04/29/05
19:04	08/16/04	07/26/04	08/31/04	10/15/04	10/20/04	12/01/04	01/26/05	05/13/05
19:05	09/01/04	08/11/04	09/16/04	11/01/04	11/22/04	01/01/05	01/26/05	05/29/05
19:06	09/15/04	08/24/04	09/30/04	11/15/04	11/22/04	01/01/05	01/26/05	06/12/05
19:07	10/01/04	09/10/04	10/16/04	11/30/04	12/20/04	02/01/05	05/00/06	06/28/05
19:08	10/15/04	09/24/04	10/30/04	12/14/04	12/20/04	02/01/05	05/00/06	07/12/05
19:09	11/01/04	10/11/04	11/16/04	12/31/04	01/20/05	03/01/05	05/00/06	07/29/05
19:10	11/15/04	10/22/04	11/30/04	01/14/05	01/20/05	03/01/05	05/00/06	08/12/05
19:11	12/01/04	11/05/04	12/16/04	01/31/05	02/21/05	04/01/05	05/00/06	08/28/05
19:12	12/15/04	11/22/04	12/30/04	02/14/05	02/21/05	04/01/05	05/00/06	09/11/05

EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) other information the Codifier of Rules determines to be helpful to the public.

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

END OF REQUIRED COMMENT PERIOD
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY: This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.

**EXECUTIVE ORDER NO. 57
AMENDING EXECUTIVE ORDER NO. 54
GOVERNOR'S TASK FORCE ON DRIVING WHILE IMPAIRED**

WHEREAS, the operation of motor vehicles on our highways by persons while impaired constitutes a serious threat to the health and safety of our citizens; and

WHEREAS, a large portion of the fatal crashes on our highways are alcohol related; and the "Booze It and Lose It" program has made driving while impaired a major area of emphasis; and;

WHEREAS, the State of North Carolina must consider strong measures designed to deter and prevent the operation of motor vehicles by persons while impaired;

NOW THEREFORE, by the power vested in me as Governor by the laws and Constitution of North Carolina, **IT IS ORDERED:**

Section 1 of Executive Order No. 54 issued by Governor Michael F. Easley on December 4, 2003, is hereby amended as follows:

Section 1. Establishment.

The Governor's Task Force on Driving While Impaired is hereby reestablished. The Task Force shall be composed of not more than thirty-five members appointed by the Governor to serve at the pleasure of the Governor. The Governor shall designate three of the members as Co-Chairs. Additional members shall include, but not be limited to, representatives of law enforcement, the judicial system and the General Assembly.

Section 2. Meetings.

The Task Force shall meet regularly at the call of the Co-Chairs and may hold special meetings at any time at the call of the Co-Chairs or the Governor. The Task Force is authorized to conduct public hearings.

Section 3. Expenses.

Members of the Task Force shall be reimbursed for such necessary travel and subsistence expenses as are authorized by N.C.G.S. 138-5. Funds for reimbursement of such expenses shall be made available from funds authorized by the Governor's Highway Safety Program.

Section 4. Duties.

The Task Force shall have the following duties:

- (a) Review the General Statutes of North Carolina applicable to driving while impaired;
- (b) Review proposals in other states designed to deter driving while impaired;
- (c) Consider legislative proposals to the North Carolina General Assembly;
- (d) Recommend actions to reduce driving while impaired; and
- (e) Other such duties as assigned by the Chair or the Governor.

Section 5. Reports.

The Task Force shall present an interim report to the Governor no later than August 16, 2004 and a final report no later than January 14, 2005. The Task Force shall be dissolved when its final report is presented to the Governor.

This Order shall be effective immediately.

Done in the Capitol City of Raleigh, North Carolina, this 16th day of April, 2004.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

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.

U.S. Department of Justice

Civil Rights Division

JDR:JR:ALP:par
DJ 166-012-3
2003-4321

*Voting Section – NWB.
950 Pennsylvania Ave., NW
Washington, D.C. 20530*

March 19, 2004

Jesse F. Pittard, Esq.
County Staff Attorney
P.O. Box 38
Halifax, North Carolina 27839

Dear Mr. Pittard:

This refers to the 2003 redistricting plan for Halifax County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on November 26, 2003; supplemental information was received through February 23, 2004.

The Attorney General does not interpose any objection to the specified change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.41).

Sincerely,

Joseph D. Rich
Chief, Voting Section

U.S. Department of Justice

Civil Rights Division

JDR:RSB:TGL:par
DJ 166-012-3
2004-0280

*Voting Section – NWB.
950 Pennsylvania Ave., NW
Washington, D.C. 20530*

March 17, 2004

Mr. Gary O. Bartlett
Executive Director
State Board of Elections
P.O. Box 27255
Raleigh, NC 27611-7255

Dear Mr. Pittard:

This refers to Session Laws 2003-403 and 423, which schedule the November 2, 2004, constitutional amendment election, for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on January 26, 2004.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.41).

Sincerely,

Joseph D. Rich
Chief, Voting Section

U.S. Department of Justice

Civil Rights Division

JDR:MSR:ALF:par
DJ 166-012-3
2004-0639

*Voting Section – NWB.
950 Pennsylvania Ave., NW
Washington, D.C. 20530*

April 9, 2004

David A. Holec, Esq.
City Attorney
P.O. Box 7207
Greenville, NC 27835-7207

Dear Mr. Holec:

This refers to 16 annexations (adopted between October 9, 2003 and January 8, 2004) and their designation to districts of the City of Greenville, in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on February 17, 2004.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.41 and 51.43).

Sincerely,

Joseph D. Rich
Chief, Voting Section

STATE OF NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION
1617 MAIL SERVICE CENTER
RALEIGH, NORTH CAROLINA 27699-1617

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

Public notice of intent to reissue expiring State National Pollutant Discharge Elimination System (NPDES) General Permits for Point Source Discharges of Stormwater and Wastewater for the following types of discharges:

NPDES General Permit No. NCG140000 for stormwater point source discharges and process wastewater discharges associated with activities classified as establishments primarily engaged in Ready Mixed Concrete [Standard Industrial Classification Code (SIC) 3273]. Also included in this General Permit are stormwater discharges from those areas at the facilities described above which are used for vehicle maintenance activities.

NPDES General Permit No. NCG160000 for stormwater point source discharges associated with activities classified as establishments primarily engaged in Asphalt Paving Mixtures and Blocks [standard industrial classification (SIC) 2951].

NPDES General Permit No. NCG170000 for stormwater point source discharges associated with activities classified as establishments primarily engaged in manufacture of textile mill products [standard industrial classifications (SIC) Major Group 22].

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 reissue 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:

William Mills
NC Div of Water Quality
1617 Mail Service Center
Raleigh, NC 27699-1617 919-733-5083, ext 548

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 June 17, 2004. 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 Water Quality finds a significant degree of public interest in any proposed permit issuance. The draft Permits, Fact Sheets and other information are on file at the Division of Water Quality, 512 N. Salisbury Street, Room 925, Archdale Building, Raleigh, North Carolina. They may be inspected during normal office hours. Copies of the information of 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, NCG140000, NCG160000 or NCG170000.

Date: _____

Alan Klimek, PE, Director
N.C. Division of Water Quality

Note from the Codifier: The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days.
Statutory reference: G.S. 150B-21.2.

TITLE 1 – DEPARTMENT OF ADMINISTRATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Domestic Violence Commission intends to adopt the rule cited as 01 NCAC 17 .0701-.0718 with changes from the proposed text noticed in the Register, Volume 18, Issue 08.

Proposed Effective Date: September 1, 2004

Reason for Proposed Action: SL 2002-105 amended G.S. 143B-394.16 to add subdivision (a)(8), which directs the Domestic Violence Commission to adopt rules for the approval of abuser treatment programs. The purpose of these rules as determined by the General Assembly is to establish a consistent level of performance from providers of abuser treatment programs and to ensure that approved programs enhance the Safety of Victims and hold those who perpetuate acts of domestic violence responsible.

Comment Procedures: Any written objections may be submitted to the Executive Director of the Domestic Violence Commission. Objections will be received by mail, delivery service, hand delivery or facsimile transmission. Objections may be directed to: Leslie Staroneck, Executive Director, N.C. Domestic Violence Commission, 526 N. Wilmington St., MSC 1320, Raleigh, NC 27699-1320. Fax (919)733-2464.

Comment Period ends July 16, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review: Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State
- Local
- Substantive (≥\$3,000,000)
- None

CHAPTER 17 - COUNCIL ON THE STATUS OF WOMEN

SECTION .0700 - ABUSER TREATMENT PROGRAMS

01 NCAC 17 .0701 PURPOSE

The purpose of the rules in this Section is to set minimum standards of practice for abuser treatment programs for domestic violence offenders.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16.

01 NCAC 17 .0702 AUTHORITY

The North Carolina Domestic Violence Commission ("Commission") is responsible for approving abuser treatment programs.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16.

01 NCAC 17 .0703 PROCEDURE FOR ABUSER TREATMENT PROGRAM APPROVAL

(a) In addition to initial approval, each abuser treatment program shall be reviewed annually by the Commission.

(b) In order to be approved, an abuser treatment program shall complete and submit an original and four copies of the approval application to the Commission for review. Applications may be obtained by contacting the Commission staff at 1320 Mail Service Center, Raleigh, NC 27699-1320, or by telephone at 919-733-2455, or by downloading the application at www.doa.state.nc.us/doa/cfw/cfw.htm.

(c) The Domestic Violence Commission shall approve applications semi-annually in March and September.

(d) As part of its application, a program shall demonstrate community support by submitting three letters of support from among the following: a local domestic violence victim program; a local domestic violence task force or coalition; or a local governmental agency that is directly associated with the problem of domestic violence (e.g., a local department of social services, district attorney's office, or law enforcement agency). Letters of support shall not be from agencies organizationally affiliated with the abuser treatment program.

(e) Every abuser treatment program shall provide documentation and assurances that it shall adhere to all program rules and program structure set out in this Section at the time of the submission of its application to the Commission. If a program is not in full compliance with any rule, its application shall be returned to the applicant with any rule deficiencies noted. Any deficiencies shall be corrected before the application is approved. If any deficiencies are not corrected during the review period for which the application was submitted, the program shall reapply in full at the next review period in order to be approved.

- (f) Before approving an abuser treatment program, the Commission may perform a site visit.
- (g) Each abuser treatment program submitting an application for approval shall receive a notice from the Commission indicating its approval status.
- (h) The Commission shall maintain the list of all approved abuser treatment programs and shall notify each District Court Judge and each Clerk of Superior Court of those approved programs semi-annually.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16.

01 NCAC 17 .0704 INTAKE AND ASSESSMENT

All abuser treatment programs shall establish and comply with written policies and procedures regarding abuser intake and assessment.

- (1) Intake: A comprehensive intake and assessment shall be administered to all participants. The intake shall include:
 - (a) family and social history;
 - (b) medical health history;
 - (c) relationship history;
 - (d) history of violent, abusive, and controlling behavior;
 - (e) history of past criminal behavior;
 - (f) substance abuse history and screening;
 - (g) assessment of participant's cognitive or social skills;
 - (h) any other factors that might interfere with the participation in a group program; and
 - (i) lethality assessment.
- (b) Lethality Assessment: Because of the severity of injuries and the number of deaths caused by domestic violence, lethality assessment shall be ongoing and not limited to intake. A lethality assessment shall include, but not be limited to, the following indicators of increased lethality risk:
 - (a) violence that increases in severity, frequency, and specificity;
 - (b) a high degree of ownership that the abuser expresses regarding the victim;
 - (c) violation of court orders and conditions of probation;
 - (d) change in access to and relationship with victim;
 - (e) accessibility to weapons, especially firearms;
 - (f) life stressors (e.g., divorce, chronic illness, death of loved one, and unemployment);
 - (g) frequent or severe intoxication from alcohol or other drugs;
 - (h) threatened or attempted homicide or suicide;
 - (i) stalking behavior;
 - (j) history of holding victim captive;

- (k) pet abuse;
 - (l) victim making plans to leave or has already left;
 - (m) extreme isolation of the victim;
 - (n) increased level of risk-taking by the abuser;
 - (o) history of sexual assault
 - (p) acute mental health problems, including depression and anti-social behavior;
 - (q) past use of weapons or objects;
 - (r) strangulation behaviors; and
 - (s) violence in the family of origin.
- (3) All abuser treatment programs shall also provide initial and ongoing referral services for participants who have concurrent substance abuse, medical, or mental health problems.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16.

01 NCAC 17 .0705 VICTIM SAFETY

All abuser treatment programs shall establish and comply with written policies and procedures regarding victim safety. These policies and procedures shall include the following:

- (1) The program shall make good faith attempts, which shall be documented, to make contact with the victim upon the participant's enrollment in the program. This contact must include information about the program and its limitations, victim confidentiality, and local resources for victims. The program shall attempt, in collaboration with the victim service agency, to contact the victim when the program participant has completed half of the sessions, and at termination, unless the victim declines contact or is unable to be located.
- (2) Program participants and persons who have been victimized by those participants may receive direct services from the same agency. In those instances, the same staff person or volunteer shall not provide services to both parties.
- (3) All information about or from the victim shall be kept confidential from the program participant, except with written permission from the victim.
- (4) The program shall not schedule victims' groups and abuser treatment groups to occur simultaneously at the same facility.
- (5) The abuser treatment program shall network with its local victim services program and have a current memorandum of understanding regarding cooperation with that program in place.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16.

01 NCAC 17 .0706 PROGRAM STRUCTURE

All abuser treatment programs shall establish and comply with written policies and procedures regarding program structure. These policies and procedures shall include the following:

- (1) Treatment shall be provided in group sessions unless same gender, age, geographic or language restrictions apply. Individual counseling sessions are not permitted in place of group sessions but may be provided as supplemental to group treatment.
- (2) Group Composition:
 - (a) Each group shall have at least two facilitators per session if the size of the group exceeds eight participants.
 - (b) Each group shall have no more than 16 participants.
 - (c) Female participants who are referred to the program shall not attend or be enrolled in groups with male participants.
- (3) Program Length:
 - (a) All abuser treatment programs shall provide intervention for a total of 39 hours of group treatment over a minimum period of 26 weeks.
 - (b) The 39 hours of group treatment shall be completed within 30 weeks.
 - (c) Each group session shall last at least one and one-half hours.
- (4) Fees: Programs shall establish locally-determined fees.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16.

01 NCAC 17 .0707 ABUSER TREATMENT PROGRAM CURRICULUM

All abuser treatment programs shall establish and comply with a written program curriculum. Written curricula shall define topics and content of sessions and shall include the following:

- (1) identification of all forms of physical, emotional, economic, sexual and verbal abuse and violence;
- (2) impact of domestic violence on the victim and the abuser;
- (3) impact of domestic violence on children including children who are abused and children who witness domestic violence;
- (4) emphasis on the responsibility of the batterer for his or her violence and abuse;
- (5) identification of the personal, societal, and cultural values and beliefs that legitimize and sustain violence and oppression;
- (6) alternatives to violence and controlling behaviors;
- (7) identification of healthy relationships;
- (8) promotion of accountability, self-examination, negotiation, and fairness;
- (9) the relationship between substance abuse and domestic violence;
- (10) the relationship between mental illness and domestic violence; and

- (11) identification of the behavioral, emotional, and physical cues that precede escalating violence.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16.

01 NCAC 17 .0708 PROHIBITED ACTIVITIES

(a) The following methods shall not be used by abuser treatment programs:

- (1) couples therapy or counseling;
- (2) any therapy or counseling which places the responsibility for adult behavior on the children or the victim;
- (3) any theoretical approaches that treat the violence as a mutual process; and
- (4) any counseling models that identify the violence as an addiction and the children or adult victim as enabling or codependent.

(b) The following methods shall not be the primary focus of intervention:

- (1) techniques that lay primary causality on anger;
- (2) theories or techniques that identify poor impulse control as the primary cause of the violence;
- (3) methods that identify psychopathology on either parties' part as a primary cause of violence;
- (4) interventions that base causation on a lack of communication skills; or
- (5) the gradual containment or de-escalation of violence.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16.

01 NCAC 17 .0709 PARTICIPANT TERMINATION

(a) Participant Termination: All abuser treatment programs shall establish and comply with written policies and procedures for terminating participants from further participation in the program. Without limiting a program's ability to make more stringent requirements, termination may occur when a participant:

- (1) has a known recurrence of violent conduct, intimidation, stalking or harassment behaviors;
- (2) fails to abide by the program rules and regulations, including absences and any other matter set forth in these standards;
- (3) fails to participate and attend sessions according to the program criteria;
- (4) fails to comply with the program's alcohol and drug policy; or
- (5) demonstrates increased risk of lethality as demonstrated by the lethality assessment.

(b) If a participant is terminated from the abuser treatment program, the program shall:

- (1) document the reasons for the termination without jeopardizing the victim's safety;
- (2) make specific recommendations to the probation officer or referring judge, including any alternatives such as weekend incarceration, community service hours,

- restitution, probation violation, or return to the program;
- (3) inform the victim of the participant's termination within two days, unless the victim declines contact or is unable to be located;
 - (4) inform the program from which the victim is receiving domestic violence services of the participant's termination within seven days;
 - (5) complete a risk assessment with the victim and make efforts to assist the victim in minimizing violence that may occur after the participant's termination, unless the victim declines contact or is unable to be located; and
 - (6) inform the probation officer and referring judge (or the Chief District Court Judge in the absence of the referring judge) and District Attorney's Office in writing of the participant's termination within seven days.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16.

01 NCAC 17 .0710 PROGRAM ASSESSMENT

Programs shall submit quarterly statistical reports to the agency to include a tracking of participants received by, accepted into and completing the program; the sources of referral; an analysis of completion rates and reasons for termination; an analysis of contacts with participants' victimized partners; and an assessment of program impact, including but not limited to re-offense rates.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16.

01 NCAC 17 .0711 PROVISION OF DIRECT SERVICES

All programs shall establish written policies and procedures for determining qualifications for all staff, consultants, or volunteers delivering direct services to participants. These policies shall address situations in which individuals have committed domestic violence and the program's guidelines for determining whether the conduct undermines the integrity of the program or will interfere with the individual's performance. All programs shall have a pre-service and continuing education plan for staff, consultants and volunteers.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16.

01 NCAC 17 .0712 CONTINUING EDUCATION

Group facilitators shall receive a minimum of 6 hours per year of continuing education or training on domestic violence. Direct Service Staff, including staff conducting assessments, shall receive a minimum of 20 hours per year of continuing education or training on domestic violence. This training may be obtained through a combination of internal (i.e., presented within the agency as an in-service) and external sources (i.e., regional or state conferences).

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16.

01 NCAC 17 .0713 PARTICIPANT CONFIDENTIALITY

(a) All abuser treatment programs shall establish and comply with written policies and procedures regarding participant confidentiality and provide notice of the policies and procedures to all who provide direct services and those with access to participant records. Except as noted in Paragraph (b) of this Rule, program staff shall not disclose, without the participant's consent, any confidential communications made by a participant to the program staff during the course of the program.

(b) Exceptions to Confidentiality: All participant information shall be kept strictly confidential except under the following conditions:

- (1) When a participant makes an overt or covert threat to harm self or others, the program staff shall warn the potential victim and law enforcement personnel. The program staff shall promptly contact the partner, any other potential victim, and law enforcement if the staff member believes someone is at risk. If the victim cannot be reached, the staff may contact the Commission or any local victim services program that may provide assistance in locating the victim. The program shall undertake ongoing assessment of the risk of danger to the victim, the children, or the participant him or herself. (See Rule 01 NCAC 17 .0704(3) regarding lethality assessment.)
- (2) If a participant is suspected of child abuse or neglect, program staff shall report such abuse or neglect to the director of social services in the county where the juvenile resides pursuant to G.S. 7B-301.
- (3) If a participant has been mandated to an abuser treatment program by a judge, program staff shall release information about acceptance to, attendance, compliance with program rules and guidelines, behavior in group, and current abuse or threats of abuse to an officer of the court, a probation officer, or a judge.
- (4) The program shall notify or make good faith attempts which shall be documented to notify the person identified as the victim of abuse of the participant's acceptance or rejection for enrollment in the abuser treatment program for the dual purposes of ensuring the safety of victims and providing information about the program.
- (5) The program may disclose information about a participant when the participant or his or her heirs, executors or administrators file a suit or complaint against the abuser treatment program that arises out of or is connected with the services rendered or denied to such participant by the program.

(c) Waiver of Confidentiality: Information may be shared according to the terms of Waivers of Confidentiality that may be signed by the participant in the course of the program.

(d) Group Confidentiality: All abuser treatment program counseling and educational groups are confidential and closed to those other than participants, program staff, and other

professionals necessary for the functioning of program services. Those providing services to the deaf, offering language translation and interpretation, or bringing information critical to the curriculum to the group may attend at the staff's discretion. Other people who wish to visit, including newspaper reporters, grant-makers, and the participant's family and friends may attend only when the participants unanimously agree to a visit, and upon a written warning by the staff that the program shall not be responsible for any breach of confidentiality. Program staff shall advise visitors and participants of the confidentiality policy and require visitors to execute an agreement not to disclose identity of participants or participant-specific information except as they receive written permission to do so.

(e) Separate Records: The abuser treatment program shall maintain separate locked files for participants and victims. There shall be no commingling of confidential information in victim and participant records.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16.

01 NCAC 17 .0714 VICTIM CONFIDENTIALITY

All abuser treatment programs shall keep all information provided by the victim confidential unless the victim gives written permission for the program to release the information. All information received by the victim shall be kept in separate files from the participant's files. If the victim tells the abuser treatment program that the participant has committed a new offense, the treatment program shall encourage the victim to contact:

- (1) appropriate law enforcement; and
- (2) the local victim services program or other support services.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16.

01 NCAC 17 .0715 ABUSER TREATMENT PROGRAM INVESTIGATIONS AND REMOVAL FROM APPROVED LIST

(a) A person who believes that an approved abuser treatment program has violated any provision of this Rule may file a written complaint with the Commission. The Commission may also initiate proceedings under this Rule without a third party complaint having been filed.

(b) The Commission shall dismiss any complaint it finds is unfounded, frivolous, or trivial.

(c) Unless the complaint is dismissed, pursuant to Paragraph (b) of this Rule, the Commission shall notify the program of the complaint in writing. Such notice shall be sent by certified mail with return receipt requested. The notice shall state the alleged facts as contained in the complaint, or may enclose a copy of the complaint, and shall contain a request that the program submit an answer in writing within 20 days from the date the notice of the complaint is received by the abuser treatment program.

(d) If the abuser treatment program acknowledges the violations in the complaint, the Commission shall accept the admission and shall issue a First Notice of Violation. Upon First Notice of Violation, the abuser treatment program shall enter into a probationary period. An abuser treatment program that is not in compliance with this Section shall have 60 days to bring its program into compliance.

(e) If the abuser treatment program does not respond to or denies the violations, the Commission shall investigate the allegations contained in the complaint. The program shall be given another opportunity to respond to the Commission's concerns. If the Commission finds that the program is in violation, the Commission shall issue a First Notice of Violation as in Paragraph (d) of this Rule.

(f) The Commission shall maintain the complaint, evidence, investigative findings, and disposition of each matter. If a First Notice of Violation has been issued, the Commission shall determine if the abuser treatment program has come into compliance within 60 days. If the abuser treatment program is still not in compliance as determined by the Commission, the Commission shall issue a Second Notice of Violation to the program, setting forth an additional 60 days for correcting the violations.

(g) If the Commission determines that the abuser treatment program is still not in compliance at the end of the time set forth in the Second Notice of Violation, the Commission shall remove the program from the list of approved programs effective as of the first day of the next calendar quarter and issue a Letter of Termination to the program. District court judges and clerks of court for the prosecutorial districts served by the program shall be notified immediately by Commission staff of the termination.
(h) All participants in a terminated abuser treatment program shall be remanded back to the referring court for referral to another program or other action deemed appropriate by the court. Any program so terminated may reapply to the Commission for inclusion on the approval list no sooner than the next application period.

(i) When a program is terminated from the approved list, the Commission shall notify relevant domestic violence and sexual assault agencies and North Carolina Providers of Abuser Treatment.

(j) All abuser treatment programs shall comply with any reporting requirements and requests for information regarding statistics and other data as may be requested by the Commission. Failure to comply with reporting deadlines and requests for information shall result in a program being deemed noncompliant, which shall lead to termination and removal from the approved abuser treatment program list.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16.

01 NCAC 17 .0716 RIGHT TO ACCESS

The Commission or any of its authorized representatives may have access to any books, documents, papers, participant or other records of any applicant abuser treatment program needed to make a determination during the approval process or any time thereafter unless otherwise protected by law. The right to access only relates to records regarding the program component governed by these rules and does not include other agency records.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16.

01 NCAC 17 .0717 RECORDKEEPING, DOCUMENTATION, AND REPORTS

In all instances where the rules in this Section require abuser treatment programs to establish and comply with written policies

and procedures, the program shall maintain documents and records demonstrating compliance with the requirements imposed by these Rules.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16.

01 NCAC 17 .0718 EQUAL OPPORTUNITY

(a) The Commission shall not discriminate against any abuser treatment program or its providers because of age, race, sex, creed, color, national origin, or disabling condition.

(b) No approved abuser treatment program shall deny services to any participant or its providers because of age, race, sex, creed, color, national origin, or disabling condition.

Authority G.S. 15A-1343(b1)(9a); 50B-3(a)(12); 143B-394.16.

present at the public hearing to make an oral comment in objection to the rule.

Written comments may be submitted to: Robert N. Brooks, PO Box 12827, Raleigh, NC 27605-2827, phone (919)733-1425, fax (919)733-4209 or email rnbrooks@bellsouth.net

Comment period ends: July 16, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review: Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 8 - BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of CPA Examiners intends to adopt the rule cited as 21 NCAC 08G .0410.

Proposed Effective Date: January 1, 2005

Public Hearing:

Date: June 22, 2004

Time: 10:00 a.m.

Location: 1101 Oberlin Road, Suite 104, Raleigh, NC

Reason for Proposed Action: *The purpose of this rule adoption is to require a portion of the annual CPE requirement to be on professional ethics and conduct.*

Procedure by which a person can object to the agency on a proposed rule: *A person may make a written comment and be*

Fiscal Impact

- State
- Local
- Substantive (≥\$3,000,000)
- None

21 NCAC 08G .0410 PROFESSIONAL ETHICS AND CONDUCT CPE

As part of the annual CPE requirement, all active CPAs shall complete two hours of CPE in a Board-approved group study format or four hours of CPE in a Board-approved self-study format on professional ethics and conduct in 21 NCAC 08N.

Authority G.S. 93-12(8b).

APPROVED RULES

*This Section includes the Register Notice citation to rules approved by the Rules Review Commission (RRC) at its meeting April 15, 2004, and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules are published below when the rules have been approved by RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register. The rules published in full text are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

These rules have been entered into the North Carolina Administrative Code.

APPROVED RULE CITATION				REGISTER CITATION TO THE NOTICE OF TEXT
10A	NCAC	09	.0705*	18:12 NCR
10A	NCAC	09	.1705*	18:12 NCR
10A	NCAC	13F	.0201	18:12 NCR
10A	NCAC	13F	.0202-.0204*	18:12 NCR
10A	NCAC	13F	.0205	18:12 NCR
10A	NCAC	13F	.0206-.0209*	18:12 NCR
10A	NCAC	13F	.0210	18:12 NCR
10A	NCAC	13F	.0211*	18:12 NCR
10A	NCAC	13F	.0212	18:12 NCR
10A	NCAC	13F	.0215*	18:12 NCR
10A	NCAC	13F	.0301-.0302*	18:12 NCR
10A	NCAC	13F	.0304*	18:12 NCR
10A	NCAC	13F	.0401	18:12 NCR
10A	NCAC	13F	.0402*	18:12 NCR
10A	NCAC	13F	.0404*	18:12 NCR
10A	NCAC	13F	.0406-.0407*	18:12 NCR
10A	NCAC	13F	.0501-.0503*	18:12 NCR
10A	NCAC	13F	.0505-.0506*	18:12 NCR
10A	NCAC	13F	.0508*	18:12 NCR
10A	NCAC	13F	.0512*	18:12 NCR
10A	NCAC	13F	.0601*	18:12 NCR
10A	NCAC	13F	.0701*	18:12 NCR
10A	NCAC	13F	.0703*	18:12 NCR
10A	NCAC	13F	.0801-.0802*	18:12 NCR
10A	NCAC	13F	.0902-.0904*	18:12 NCR
10A	NCAC	13F	.0908*	18:12 NCR
10A	NCAC	13F	.1202-.1203*	18:12 NCR
10A	NCAC	13F	.1204	18:12 NCR
10A	NCAC	13G	.0205*	18:12 NCR
10A	NCAC	13G	.0207*	18:12 NCR
10A	NCAC	13G	.0211*	18:12 NCR
10A	NCAC	13G	.0302*	18:12 NCR
10A	NCAC	13G	.0405-.0406*	18:12 NCR
10A	NCAC	13G	.0505-.0506*	18:12 NCR
10A	NCAC	13G	.0508*	18:12 NCR
10A	NCAC	13G	.0512*	18:12 NCR
10A	NCAC	13G	.0702*	18:12 NCR
10A	NCAC	13G	.0801-.0802*	18:12 NCR
10A	NCAC	13G	.0902-.0904*	18:12 NCR
10A	NCAC	13G	.1205	18:12 NCR
10A	NCAC	42A	.0107	18:13 NCR
10A	NCAC	70E	.0506*	18:14 NCR
10A	NCAC	70I	.0101*	18:14 NCR
11	NCAC	08	.1401*	18:13 NCR
11	NCAC	08	.1407-.1408	18:13 NCR
11	NCAC	08	.1415*	18:13 NCR
11	NCAC	08	.1433*	18:13 NCR
11	NCAC	12	.0601	18:13 NCR

APPROVED RULES

11	NCAC	12	.0602-.0604*	18:13 NCR
11	NCAC	12	.0605-.0606	18:13 NCR
11	NCAC	12	.0607-.0609*	18:13 NCR
11	NCAC	12	.0611-.0612*	18:13 NCR
12	NCAC	07D	.1201	18:10 NCR
12	NCAC	09B	.0202-.0203*	18:14 NCR
12	NCAC	09B	.0215*	18:14 NCR
12	NCAC	09B	.0237-.0240*	18:14 NCR
12	NCAC	09B	.0302*	18:14 NCR
12	NCAC	09B	.0404*	18:14 NCR
12	NCAC	09B	.0408-.0409*	18:14 NCR
12	NCAC	09B	.0414*	18:14 NCR
12	NCAC	09B	.0501*	18:14 NCR
12	NCAC	09C	.0308*	18:14 NCR
12	NCAC	09C	.0601*	18:14 NCR
12	NCAC	09C	.0607-.0608*	18:14 NCR
12	NCAC	09F	.0102*	18:14 NCR
12	NCAC	09F	.0104-.0106	18:14 NCR
15A	NCAC	03M	.0506	not required G.S. 150B-21.5(a)(5)
15A	NCAC	10A	.1001*	18:10 NCR
15A	NCAC	10B	.0105	18:10 NCR
15A	NCAC	10B	.0113	18:10 NCR
15A	NCAC	10B	.0203*	18:10 NCR
15A	NCAC	10B	.0209*	18:10 NCR
15A	NCAC	10C	.0205	18:10 NCR
15A	NCAC	10C	.0212*	18:10 NCR
15A	NCAC	10C	.0301	18:10 NCR
15A	NCAC	10C	.0305*	18:10 NCR
15A	NCAC	10C	.0401-.0402*	18:10 NCR
15A	NCAC	10D	.0102-.0103*	18:10 NCR
15A	NCAC	10F	.0318*	18:11 NCR
15A	NCAC	10F	.0324	18:11 NCR
15A	NCAC	10F	.0326	18:10 NCR
15A	NCAC	10F	.0336*	18:10 NCR
15A	NCAC	10F	.0343*	18:10 NCR
15A	NCAC	10F	.0352	18:10 NCR
15A	NCAC	10F	.0360	18:10 NCR
15A	NCAC	10F	.0370	18:11 NCR
15A	NCAC	10H	.1201-.1203*	18:10 NCR
15A	NCAC	10H	.1204	18:10 NCR
15A	NCAC	18A	.1935	18:11 NCR
15A	NCAC	18A	.1942*	18:11 NCR
15A	NCAC	18A	.1969*	18:11 NCR
15A	NCAC	18A	.3501-.3505*	18:14 NCR
15A	NCAC	18A	.3507*	18:14 NCR
15A	NCAC	18A	.3509	18:14 NCR
15A	NCAC	18A	.3510*	18:14 NCR
15A	NCAC	18A	.3511-.3512	18:14 NCR
15A	NCAC	18A	.3513-.3515*	18:14 NCR
15A	NCAC	18A	.3516-.3518	18:14 NCR
15A	NCAC	18A	.3519*	18:14 NCR
21	NCAC	10	.0209*	18:06 NCR
21	NCAC	14A	.0101*	18:11 NCR
21	NCAC	14J	.0501*	18:11 NCR
21	NCAC	14R	.0101-.0104*	18:11 NCR
21	NCAC	17	.0114*	18:11 NCR
21	NCAC	29	.0602*	18:06 NCR
21	NCAC	29	.0613*	18:06 NCR
21	NCAC	32S	.0109-.0110*	18:07 NCR

These rules are subject to the next Legislative Session. (See G.S. 150B-21.3(b1))

23	NCAC	02C	.0107*	17:21 NCR
23	NCAC	02D	.0201*	17:21 NCR
23	NCAC	02D	.0323-.0324*	17:21 NCR
23	NCAC	02E	.0204*	17:21 NCR
23	NCAC	02E	.0405	17:21 NCR
23	NCAC	02E	.0604*	17:21 NCR

TITLE 10A - DEPARTMENT OF HEALTH & HUMAN SERVICES

10A NCAC 09 .0705 SPECIAL TRAINING REQUIREMENTS

(a) At least one staff member shall be knowledgeable of and able to recognize common symptoms of illness.

(b) Staff who have completed within the last three years a course in basic first aid shall be present at all times children are present. The number of staff required to complete the course shall be based on the number of children present as shown in the following chart:

Number of children present	Number of staff trained in first aid required
1-29	1 staff
30-79	2 staff
80 and above	3 staff

Verification of each required staff person's completion of this course shall be maintained in the person's individual personnel file in the center. The basic first aid course at a minimum shall address principles for responding to emergencies, rescue breathing, and techniques for handling common childhood injuries, accidents and illnesses such as: choking, burns, fractures, bites and stings, wounds, scrapes, bruises, cuts and lacerations, poisoning, seizures, bleeding, allergic reactions, eye and nose injuries and sudden changes in body temperature.

(c) A first aid information sheet shall be posted in a prominent place for quick referral. An acceptable form may be requested free of charge from the North Carolina Child Care Health and Safety Resource Center by calling 1-800-CHOOSE-1.

(d) Each child care center shall have at least one person on the premises at all times, and at least one person who accompanies the children whenever they are off the premises, who has successfully completed within the last 12 months a cardiopulmonary resuscitation (CPR) course provided by either the American Heart Association or the American Red Cross or other organizations approved by the Division. Other organizations will be approved if the Division determines that the courses offered are substantially equivalent to those offered by the American Red Cross. Successfully completed is defined as demonstrating competency, as evaluated by the instructor, in performing CPR. The course shall provide training in CPR appropriate for the ages of children in care. Documentation of successful completion of the course from the American Heart Association, the American Red Cross, or other organization approved by the Division shall be on file in the center.

(e) Staff shall complete at least four clock hours of training in safety. At a minimum, this training shall address playground

safety hazards, playground supervision, maintenance and general upkeep of the outdoor area, and age and developmentally appropriate playground equipment. Staff counted to comply with this Rule shall have six months from the date of employment, or from the date a vacancy occurs, to complete the required safety training. The number of staff required to complete this training shall be as follows:

- (1) In centers with a licensed capacity of less than 30 children, at least one staff person shall complete this training.
- (2) In centers with a licensed capacity of 30 or more children, at least two staff, including the administrator, shall complete this training.

(f) In centers that are licensed to care for infants ages 12 months and younger:

- (1) the center director and any child care provider scheduled to work in the infant room, including volunteers counted in staff/child ratios, shall complete ITS-SIDS training;
- (2) ITS-SIDS training shall be completed within four months of the individual assuming responsibilities in the infant room or as an administrator, or within four months of these rules becoming effective, whichever is later, and shall be completed again every three years from the completion of previous ITS-SIDS training;
- (3) Completion of ITS-SIDS training may be included once every three years in the number of hours needed to meet annual in-service training requirements in Section .0700 of this Subchapter;
- (4) Individuals who have completed initial ITS-SIDS training prior to this rule becoming effective shall not be required to repeat the training until three years from the completion of initial ITS-SIDS training; and
- (5) Prior to an individual assuming responsibility for the care of an infant, the center's safe sleep policy for infants shall be reviewed with the individual as required by Rule .0707(a) of this Section.

History Note: Authority G.S. 110-91(1),(8); 143B-168.3; Eff. January 1, 1986; Amended Eff. January 1, 1996; January 1, 1992; January 1, 1991; January 1, 1987; Temporary Amendment Eff. October 1, 1997; Amended Eff. May 1, 2004; July 1, 1998.

**10A NCAC 09 .1705 HEALTH AND TRAINING
REQUIREMENTS FOR FAMILY CHILD CARE HOME
OPERATORS**

(a) Prior to receiving a license, each family child care home operator shall:

- (1) Complete and keep on file a health questionnaire which attests to the operator's physical and emotional ability to care for children. The Division may require a written statement or medical examination report signed by a licensed physician or other authorized health professional if there is reason to believe that the operator's health may adversely affect the care of the children.
- (2) Obtain written proof that he or she is free of active tuberculosis. The results indicating the individual is free of active tuberculosis shall be obtained within 12 months prior to applying for a license.
- (3) Complete within 12 months prior to applying for a license a basic first aid course that at a minimum, shall address principles for responding to emergencies, techniques for rescue breathing, and techniques for handling common childhood injuries, accidents and illnesses such as: choking, burns, fractures, bites and stings, wounds, scrapes, bruises, cuts and lacerations, poisoning, seizures, bleeding, allergic reactions, eye and nose injuries and sudden changes in body temperature.
- (4) Successfully complete within 12 months prior to applying for a license a course by the American Heart Association or the American Red Cross or other organizations approved by the Division, in cardiopulmonary resuscitation (CPR) appropriate for the ages of children in care. Other organizations will be approved if the Division determines that the courses offered are substantially equivalent to those offered by the American Red Cross. Successfully completed is defined as demonstrating competency, as evaluated by the instructor, in performing CPR. Documentation of successful completion of the course from the American Heart Association, the American Red Cross, or other organization approved by the Division shall be on file in the home.

(b) After receiving a license, an operator shall:

- (1) Update the health questionnaire referenced in Paragraph (a) of this Rule annually. The Division may require the operator to obtain written proof that he or she is free of active tuberculosis.
- (2) Complete a first aid course as referenced in Paragraph (a) of this Rule every three years.
- (3) Successfully complete a CPR course annually as referenced in Paragraph (a) of this Rule.
- (4) If licensed to care for infants ages 12 months and younger, complete ITS-SIDS training

within four months of receiving the license, or within four months of this Rule becoming effective, whichever is later, and complete it again every three years from the completion of previous ITS-SIDS training. Completion of ITS-SIDS training may be included once every three years in the number of hours needed to meet the annual in-service training requirement in Paragraph (b)(5) of this Rule. Individuals who have completed initial ITS-SIDS training prior to this Rule becoming effective shall not be required to repeat the training until three years from the completion of initial ITS-SIDS training.

- (5) Complete 12 clock hours of annual in-service training in the topic areas required by G.S. 110-91(11), except that persons with at least 10 years work experience as a caregiver in a regulated child care arrangement shall complete eight clock hours of annual in-service training.
 - (A) Only training which has been approved by the Division as referenced in Rule .0708 of this Subchapter shall count toward the required hours of annual in-service training.
 - (B) The operator shall maintain a record of annual in-service training activities in which he or she has participated. The record shall include the subject matter, the topic area in G.S. 110-91(11) covered, the name of the training provider or organization, the date training was provided and the number of hours of training completed. First aid training may be counted once every three years.

*History Note: Authority G.S. 110-88; 110-91; 143B-168.3; Eff. January 1, 1986;
Amended Eff. May 1, 2004; July 1, 1998; November 1, 1989;
January 1, 1987.*

10A NCAC 13F .0202 THE LICENSE

- (a) Except as otherwise provided in Rule .0203 of this Section, the Department shall issue an adult care home license to any person who submits the application material according to Rule .0204 of this Section and the Department determines that the applicant complies with the provisions of all applicable State adult care home licensure statutes and rules. All applications for a new license shall disclose the names of individuals who are co-owners, partners or shareholders holding an ownership or controlling interest of five percent or more of the applicant entity.
- (b) The license shall be conspicuously posted in a public place in the home.
- (c) When a provisional license is issued, the administrator shall post the provisional license and a copy of the notice from the

Division of Facility Services identifying the reasons for it, in place of the full license.

- (d) The license is not transferable or assignable.
- (e) The license shall be terminated when the home is licensed to provide a higher level of care or a combination of a higher level of care and adult care home level of care.

History Note: Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Temporary Amendment Eff. July 1, 2003; Amended Eff. June 1, 2004.

10A NCAC 13F .0203 PERSONS NOT ELIGIBLE FOR NEW ADULT CARE HOME LICENSES

No new license shall be issued for any adult care home to an applicant for licensure who is the owner, principal or affiliate of an adult care home that has had its admissions suspended until six months after the suspension is lifted.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334; 2002-0160; Temporary Adoption Eff. December 1, 1999; Eff. July 1, 2000; Temporary Amendment Eff. July 1, 2003; Amended Eff. June 1, 2004.

10A NCAC 13F .0204 APPLYING FOR A LICENSE TO OPERATE A FACILITY NOT CURRENTLY LICENSED

(a) Prior to submission of a license application, all Certificate of Need requirements shall be met according to G.S. 131E, Article 9.

(b) In applying for a license to operate an adult care home to be constructed or renovated or in an existing building that is not currently licensed, the applicant shall submit the following to the Division of Facility Services:

- (1) the Initial License Application which is available on the internet website, <http://facility-services.state.nc.us/gcpage.htm> or the Division of Facility Services, Adult Care Licensure Section, 2708 Mail Service Center, Raleigh, NC 27699-2708;
- (2) plans and specifications as required in Section .0300 of this Subchapter and a construction review fee according to G.S. 131E-267;
- (3) an approved fire and building safety inspection report from the local fire marshal to be submitted upon completion of construction or renovation;
- (4) an approved sanitation report or a copy of the permit to begin operation from the sanitation division of the county health department to be submitted upon completion of construction or renovation;
- (5) a nonrefundable license fee as required by G.S. 131D-2(b)(1); and
- (6) a certificate of occupancy or certification of compliance from the local building official to

be submitted upon completion of construction or renovation.

Note: Rule .0207 of this Section applies to obtaining a license to operate a currently licensed facility.

- (c) A pre-licensing survey shall be made by program consultants of the Division of Facility Services and an adult home specialist of the county department of social services.
- (d) The Division of Facility Services shall provide to the applicant written notification of the decision to license or not to license the adult care home.

History Note: Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; 2003-0284; Readopted Eff. October 31, 1977; Amended Eff. April 1, 1984; Temporary Amendment Eff. September 1, 2003; Amended Eff. June 1, 2004.

10A NCAC 13F .0206 CAPACITY

- (a) The licensed capacity of adult care homes licensed pursuant to this Subchapter is seven or more residents.
- (b) The total number of residents shall not exceed the number shown on the license.
- (c) A facility shall be licensed for no more beds than the number for which the required physical space and other required facilities in the building are available.
- (d) The bed capacity and services shall be in compliance with G.S. 131E, Article 9, regarding the certificate of need.

History Note: Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; 2003-0284; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Amended Eff. April 1, 1984; Temporary Amendment Eff. July 1, 2003; Amended Eff. June 1, 2004.

10A NCAC 13F .0207 CHANGE OF LICENSEE

When a licensee plans to sell the adult care home business, the following procedure is required.

- (1) The current licensee shall provide written notification of a planned change of licensee to the Division of Facility Services, the county department of social services and the residents or their responsible persons prior to the planned change of licensee.
- (2) If the prospective licensee plans to purchase the building, the prospective licensee shall provide the Certificate of Need Section of the Division of Facility Services with prior written notice as required by G.S. 13E-184(a)(8) prior to the purchase of the building.
- (3) If the licensee is changing but the ownership of the building is not, the applicant for the license shall request in writing an exemption from review from the Certificate of Need Section.
- (4) The prospective licensee shall submit the following license application material to the Division of Facility Services:

- (a) the Initial License Application which is available on the internet website, <http://facility-services.state.nc.us/gcpage.htm>, or from the Division of Facility Services, Adult Care Licensure Section, 2708 Mail Service Center, Raleigh, NC 27699-2708;
 - (b) a current fire and building safety inspection report from the local fire marshal;
 - (c) a current sanitation report from the sanitation division of the county health department; and
 - (d) a nonrefundable license fee as required by G.S. 131D-2(b)(1).
- (5) Following the licensing of the facility to the new licensee, a survey of the facility shall be made by program consultants of the Division of Facility Services and an adult home specialist of the county department of social services.

History Note: Authority G.S. 131D-2; 143B-165; S.L. 2002-160; 2003-0284; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Amended Eff. April 1, 1984; Temporary Amendment Eff. September 1, 2003; July 1, 2003; Amended Eff. June 1, 2004.

10A NCAC 13F .0208 RENEWAL OF LICENSE

- (a) The license shall be renewed annually, except as otherwise provided in Rule .0209 of this Subchapter, if the licensee submits an application for renewal on the forms provided by the Department with a nonrefundable annual license fee according to G.S. 131D-2(b)(1) and the Department determines that the licensee complies with the provisions of all applicable State adult care home licensure statutes and rules. When violations of licensure rules or statutes are documented and have not been corrected prior to expiration of license, the Department shall either approve a continuation or extension of a plan of correction, issue a provisional license, or revoke the license.
- (b) All applications for license renewal shall disclose the names of individuals who are co-owners, partners or shareholders holding an ownership or controlling interest of five percent or more of the applicant entity.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334; 2002-0160; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Temporary Amendment Eff. December 1, 1999; Amended Eff. July 1, 2000; Temporary Amendment Eff. July 1, 2003; Amended Eff. June 1, 2004.

10A NCAC 13F .0209 CONDITIONS FOR LICENSE RENEWAL

In determining whether to renew a license under G.S. 131D-2(b)(6), the Department shall take into consideration at least the following:

- (1) the compliance history of the applicant facility;
- (2) the compliance history of the owners, principals or affiliates in operating other adult care homes in the state;
- (3) the extent to which the conduct of a related facility is likely to affect the quality of care at the applicant facility; and
- (4) the hardship on residents of the applicant facility if the license is not renewed.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334; 2002-0160; Temporary Adoption Eff. December 1, 1999; Eff. July 1, 2000; Temporary Amendment Eff. July 1, 2003; Amended Eff. June 1, 2004.

10A NCAC 13F .0211 NOTIFICATION ABOUT CLOSING OF HOME

If a licensee plans to close a home, the licensee shall provide written notification of the planned closing to the Division of Facility Services, the county department of social services and the residents or their responsible persons at least 30 days prior to the planned closing. Written notification shall include date of closing and plans made for the move of the residents.

History Note: Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Temporary Amendment Eff. September 1, 2003; Amended Eff. June 1, 2004.

10A NCAC 13F .0215 ADMINISTRATIVE PENALTY DETERMINATION PROCESS

- (a) The county department of social services or the Division of Facility Services shall identify areas of non-compliance resulting from a complaint investigation or monitoring or survey visit which may be violations of residents' rights contained in G.S. 131D-21 or rules contained in this Subchapter. If the county department of social services or the Division of Facility Services decides that the violation is a Type B violation as defined in G.S. 131D-34(a)(2), it shall require a plan of correction pursuant to G.S. 131D-34(a)(2). If the county department of social services or the Division of Facility Services decides that the violation is a Type A violation as defined in G.S. 131D-34(a)(1), it shall follow the procedure required in G.S. 131D-34(a)(1)(a) through (c) and prepare an administrative penalty proposal for submission to the Department. The proposal shall include a copy of the written confirmation required in G.S. 131D-34(a)(1)(c) and documentation that the licensee was notified of the county department of social services' or the Division of Facility Services' intent to prepare and forward an administrative penalty proposal to the Department; offered an opportunity to provide additional information prior to the preparation of the proposal; after the proposal is prepared, given a copy of the

contents of the proposal; and then extended an opportunity to request a conference with the agency proposing the administrative penalty, allowing the licensee 10 days to respond prior to forwarding the proposal to the Department. The conference, if requested of the county department of social services, shall include the county department director or his designee. The licensee may request a conference and produce information to cause the agency recommending the administrative penalty to change its proposal. The agency recommending the administrative penalty may rescind its proposal; or change its proposal and submit it to the Department or submit it unchanged to the Department pursuant to G.S. 131D-34(c2).

(b) An assistant chief of the Adult Care Licensure Section shall receive the proposal, review it for completeness and evaluate it to determine the penalty amount. If the proposal is complete, the assistant chief shall make a decision on the amount of penalty to be submitted for consideration and whether to recommend training in lieu of an administrative penalty pursuant to G.S. 131D-34(g1). If the proposal is incomplete, the assistant chief shall contact the agency that submitted the proposal to request necessary changes or additional material. When the proposal is complete and the amount of penalty determined, the assistant chief shall forward the proposal to the administrative penalty monitor for processing. If the assistant chief recommends training in lieu of an administrative penalty pursuant to G.S. 131D-34(g1), the recommendation shall be forwarded with the proposal.

(c) The Department shall notify the licensee by certified mail within 10 working days from the time the proposal is received by the administrative penalty monitor that an administrative penalty is being considered.

(d) The licensee shall have 10 working days from receipt of the notification to provide both the Department and the county department of social services any additional information relating to the proposed administrative penalty.

(e) If a facility fails to correct a Type A or a Type B violation within the time specified on the plan of correction, an assistant chief of the Adult Care Licensure Section shall make a decision on the amount of penalty pursuant to G.S. 131D-34(b)(1) and (2) and submit a penalty proposal for consideration by the Penalty Review Committee.

(f) The Penalty Review Committee shall consider Type A violations and Type A and Type B violations that have not been corrected within the time frame specified on the plan of correction. Providers, complainants, affected parties and any member of the public may attend Penalty Review Committee meetings. The Penalty Review Committee chair may ask questions of any of these persons, as resources, during the meeting. Time shall be allowed during the meeting for individual presentations which provide pertinent additional information. The order in which presenters speak and the length of each presentation shall be at the discretion of the Penalty Review Committee chair.

(g) The Penalty Review Committee shall have for review the entire record relating to the penalty recommendation and shall make recommendations after review of administrative penalty proposals, any supporting evidence, any additional information submitted by the licensee as described in Paragraph (d) of this Rule and the factors specified in G.S. 131D-34(c).

(h) There shall be no taking of sworn testimony or cross-examination of anyone during the course of the Penalty Review Committee meetings.

(i) If the Penalty Review Committee determines that the licensee has violated applicable rules or statutes, the Penalty Review Committee shall recommend an administrative penalty for each violation pursuant to G.S. 131D-34. Recommendations for adult care home penalties shall be submitted to the Chief of the Adult Care Licensure Section who shall have five working days from the date of the Penalty Review Committee meeting to determine and impose administrative penalties for each violation or require staff training pursuant to G.S. 131D-34(g1) and notify the licensee by certified mail.

(j) The licensee shall have 60 days from receipt of the notification to pay the penalty or shall file a petition for a contested case with the Office of Administrative Hearings within 30 days of the mailing of the notice of penalty imposition as provided by G.S. 131D-34.

History Note: Authority G.S. 131D-2; 131D-34; 143B-165; S.L. 2002-0160; Eff. December 1, 1993; Temporary Amendment Eff. July 1, 2003; Amended Eff. June 1, 2004.

10A NCAC 13F .0301 LOCATION

(a) An adult care home shall be in a location approved by local zoning boards and be a safe distance from streets, highways, railroads, open lakes and other hazards. It shall be located on a street, road or highway accessible by car.

(b) Plans for the building and site shall be reviewed and approved by the Construction Section of the Division of Facility Services.

(c) An adult care home may be located in an existing building or in a building newly constructed specifically for that purpose.

(d) The building and site are to be reviewed and approved by the Construction Section of the Division of Facility Services.

History Note: Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Amended Eff. January 1, 1991; April 1, 1984; Temporary Amendment Eff. July 1, 2003; Amended Eff. June 1, 2004.

10A NCAC 13F .0302 CONSTRUCTION

(a) Any building licensed for the first time shall meet the requirements of the North Carolina State Building Code for new construction as well as all of the rules of this Section. No horizontal exits shall be permitted in newly constructed facilities or new additions to existing facilities.

(b) In a facility licensed before April 1, 1984, the building shall meet and be maintained to meet all the requirements for new construction required by the North Carolina State Building Code in effect at the time the building was constructed. Where code requirements require a modification of the building's structural system, an alternative method may be used to meet the intent of the code.

(c) In a facility licensed before April 1, 1984 and constructed prior to January 1, 1975, the building, in addition to meeting the requirements of the North Carolina State Building Code in effect at the time the building was constructed, shall be provided with the following:

- (1) A fire alarm system with pull stations near each exit and sounding devices which are audible throughout the building must be provided.
- (2) Products of combustion (smoke) U/L listed detectors in all corridors. The detectors must be no more than 60 feet from each other and no more than 30 feet from any end wall.
- (3) Heat detectors or products of combustion detectors in all storage rooms, kitchens, living rooms, dining rooms and laundries.
- (4) All detection systems interconnected with the fire alarm system.
- (5) Emergency power for the fire alarm system, heat detection system, and products of combustion detection system. The emergency power for these systems may be a manual start system capable of monitoring the building for 24 hours and sound the alarm for five minutes at the end of that time. The emergency power for the emergency lights shall be a manual start generator or a U/L approved trickle charge battery system capable of providing light for 1-1/2 hours when normal power fails.

(d) The building shall meet sanitation requirements in 15A NCAC 18A .1300 Sanitation of Hospitals, Nursing homes, Adult Care Homes and Other Institutions.

(e) Effective July 1, 1987, resident bedrooms and resident services shall not be permitted on the second floor of any facility licensed prior to April 1, 1984 and classified as two-story wood frame construction by the North Carolina State Building Code.

(f) The facility shall have current sanitation and fire and building safety inspection reports which shall be maintained in the facility and available for review.

History Note: Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Amended Eff. July 1, 1990; September 1, 1986; April 1, 1984; Temporary Amendment Eff. September 1, 2003; Amended Eff. June 1, 2004.

10A NCAC 13F .0304 HOUSEKEEPING AND FURNISHINGS

(a) Adult care homes shall:

- (1) have walls, ceilings, and floors or floor coverings kept clean and in good repair;
- (2) have no chronic unpleasant odors;
- (3) have furniture clean and in good repair;
- (4) have an approved sanitation classification from the North Carolina Division of Environmental Health at all times in facilities with 12 beds or less and sanitation scores of 85 or above from the North Carolina Division of

Environmental Health at all times in facilities with 13 beds or more;

- (5) be maintained in an uncluttered, clean and orderly manner, free of all obstructions and hazards;
- (6) have a supply of bath soap, clean towels, washcloths, sheets, pillow cases, blankets, and additional coverings on hand at all times for all residents;
- (7) make available the following items as needed through any means other than charge to the personal funds of recipients of State-County Special Assistance:
 - (A) protective sheets and clean, absorbent, soft and smooth pads;
 - (B) bedpans, urinals, hot water bottles, and ice caps; and
 - (C) bedside commodes, walkers, and wheelchairs;
- (8) have television and radio, each in good working order; and
- (9) have curtains, draperies or blinds on windows in areas of resident use.

(b) Residents shall be allowed to bring their own furniture and personal belongings if permitted by the home.

(c) Each bedroom shall have the following furnishings in good repair and clean for each resident:

- (1) A single bed equipped with box springs and mattress or solid link springs and no-sag innerspring or foam mattress. A hospital bed shall be arranged for as needed. A double bed is allowed if used only for single occupancy, unless occupied by husband and wife. A water bed is allowed if requested by a resident and permitted by the home. Each bed shall have the following:
 - (A) at least one pillow with clean pillow case;
 - (B) clean top and bottom sheets on the bed, with bed changed as often as necessary but at least once a week; and
 - (C) clean bedspread and other clean coverings as needed;
- (2) a bedside type table;
- (3) chest of drawers or bureau when not provided as built-ins, or a double chest of drawers or double dresser for two residents;
- (4) a wall or dresser mirror that can be used by each resident;
- (5) at least one comfortable chair (rocker or straight, arm or without arms, as preferred by resident), high enough from floor for easy rising;
- (6) additional chairs available, as needed, for use by visitors;
- (7) individual clean towel and wash cloth, and towel bar; and
- (8) a light overhead of bed with a switch within reach of the person lying on the bed or a lamp.

The light shall be of 30 foot-candle power for reading.

- (d) The living room shall have the following furnishings:
- (1) functional living room furnishings for the comfort of aged and disabled persons, with coverings easily cleanable;
 - (2) recreational equipment, supplies for games, books, and reasonably current magazines;
 - (3) an easily readable clock; and
 - (4) a newspaper.
- (e) The dining room shall have the following furnishings:
- (1) tables serving from two to eight persons and chairs to seat all residents eating in the dining room; tables and chairs equal to the resident capacity of the home shall be on the premises; and
 - (2) movable, non-folding chairs designed to minimize tilting.

History Note: Authority G.S. 131D-2; 143B-165;
 S.L. 2002-0160;
 Eff. January 1, 1977;
 Readopted Eff. October 31, 1977;
 Amended Eff. April 1, 1987; April 1, 1984;
 Temporary Amendment Eff. September 1, 2003;
 Amended Eff. June 1, 2004.

10A NCAC 13F .0401 CERTIFICATION OF ADMINISTRATOR

The administrator of an adult care home licensed on or after January 1, 2000, shall be certified by the Department under the provisions of G.S. 90, Article 20A.

History Note: Authority G.S. 90-288; 131D-2; 143B-165;
 S.L. 1999-0334; S.L. 1999-0443; S.L. 2002-0160;
 Temporary Adoption Eff. December 1, 1999;
 Eff. July 1, 2000;
 Amended Eff. June 1, 2004.

10A NCAC 13F .0402 QUALIFICATIONS OF ADMINISTRATOR-IN-CHARGE

The administrator-in-charge, who is responsible to the administrator for carrying out the program in an adult care home in the absence of the administrator, shall meet the following requirements:

- (1) be 21 years or older;
- (2) be a high school graduate or certified under the G.E.D. program or have passed an alternative examination established by the Department;
- (3) have six months training or experience related to management or supervision in long term care or health care settings or be a licensed health professional, licensed nursing home administrator or certified assisted living administrator; and
- (4) earn 12 hours a year of continuing education credits related to the management of adult care homes or care of aged and disabled persons.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165;

S.L. 2002-0160; 2003-0284;
 Eff. January 1, 1977;
 Readopted Eff. October 31, 1977;
 Temporary Amendment Eff. December 1, 1999;
 Amended Eff. July 1, 2000;
 Temporary Amendment Eff. July 1, 2003;
 Amended Eff. June 1, 2004.

10A NCAC 13F .0404 QUALIFICATIONS OF ACTIVITIES COORDINATOR

An adult care home shall have a designated activities coordinator who shall:

- (1) be 18 years of age or older;
- (2) be a high school graduate or certified under the GED Program or pass an alternative examination established by the Department of Health & Human Services;
- (3) complete within 18 months of employment or assignment to this position a program for adult care home activity coordinators or directors offered through the community colleges, have a degree in recreational administration or a related field or have completed the required program before the effective date of this Rule; and
- (4) be willing to work with bona fide inspectors and the monitoring and licensing agencies toward meeting and maintaining the rules of this Subchapter and other legal requirements.

History Note: Authority G.S. 131D-2; 143B-165;
 S.L. 2002-0160;
 Eff. January 1, 1977;
 Readopted Eff. October 31, 1977;
 Amended Eff. April 1, 1987; April 1, 1984;
 Temporary Amendment Eff. July 1, 2003;
 Amended Eff. June 1, 2004.

10A NCAC 13F .0406 TEST FOR TUBERCULOSIS

(a) Upon employment or living in an adult care home, the administrator and all other staff and any live-in non-residents shall be tested for tuberculosis disease in compliance with control measures adopted by the Commission for Health Services as specified in 10A NCAC 41A .0205 including subsequent amendments and editions. Copies of the rule are available at no charge by contacting the Department of Health and Human Services Tuberculosis Control Program, 1902 Mail Service Center, Raleigh, NC 27699-1902.

(b) There shall be documentation on file in the home that the administrator, all other staff and any live-in non-residents are free of tuberculosis disease that poses a direct threat to the health or safety of others.

History Note: Authority G.S. 131D-2; 143B-165;
 S.L. 2002-0160;
 Eff. January 1, 1977;
 Readopted Eff. October 31, 1977;
 Temporary Amendment Eff. September 1, 2003; July 1, 2003;
 Amended Eff. June 1, 2004.

**10A NCAC 13F .0407 OTHER STAFF
QUALIFICATIONS**

- (a) Each staff person at an adult care home shall:
- (1) have a job description that reflects actual duties and responsibilities and is signed by the administrator and the employee;
 - (2) be able to apply all of the home's accident, fire safety and emergency procedures for the protection of the residents;
 - (3) be informed of the confidential nature of resident information and shall protect and preserve such information from unauthorized use and disclosure.
Note: G.S. 131D-2(b)(4), 131D-21(6), and 131D-21.1 govern the disclosure of such information;
 - (4) not hinder or interfere with the exercise of the rights guaranteed under the Declaration of Residents' Rights in G.S. 131D-21;
 - (5) have no substantiated findings listed on the North Carolina Health Care Personnel Registry according to G.S. 131E-256;
 - (6) have documented annual immunization against influenza virus according to G.S. 131D-9, except as documented otherwise according to exceptions in this law;
 - (7) have a criminal background check in accordance with G.S. 114-19.10 and 131D-40;
 - (8) maintain a valid driver's license if responsible for transportation of residents; and
 - (9) be willing to work with bona fide inspectors and the monitoring and licensing agencies toward meeting and maintaining the rules of this Subchapter.

(b) Any staff member left in charge of the care of residents shall be 18 years or older.

(c) If licensed practical nurses are employed by the facility and practicing in their licensed capacity as governed by their practice act and occupational licensing laws, there shall be continuous availability of a registered nurse consistent with Rules 21 NCAC 36 .0224(i) and 21 NCAC 36 .0225.

Note: The practice of licensed practical nurses is governed by their occupational licensing laws.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-334; S.L. 2002-160; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Amended Eff. April 1, 1984; Temporary Amendment Eff. September 1, 2003; July 1, 2003. Amended Eff. June 1, 2004.

**10A NCAC 13F .0501 PERSONAL CARE TRAINING
AND COMPETENCY**

(a) An adult care home shall assure that staff who provide or directly supervise staff who provide personal care to residents successfully complete an 80-hour personal care training and competency evaluation program established by the Department. Directly supervise means being on duty in the facility to oversee or direct the performance of staff duties. Copies of the 80-hour

training and competency evaluation program are available at the cost of printing and mailing by contacting the Division of Facility Services, Adult Care Licensure Section, 2708 Mail Service Center, Raleigh, NC 27699-2708.

(b) The facility shall assure that training specified in Paragraph (a) of this Rule is successfully completed within six months after hiring for staff hired after September 1, 2003. Documentation of the successful completion of the 80-hour training and competency evaluation program shall be maintained in the facility and available for review.

(c) The Department shall exempt staff from the 80-hour training and competency evaluation program who are:

- (1) licensed health professionals;
- (2) listed on the Nurse Aide Registry; or
- (3) documented as having successfully completed a 40-45 hour or 75-80 hour training program or competency evaluation program approved by the Department since January 1, 1996 according to Rule .0502 of this Section.

(d) The facility shall assure that staff who perform or directly supervise staff who perform personal care receive on-the-job training and supervision as necessary for the performance of individual job assignments prior to meeting the training and competency requirements of this Rule. Documentation of the on-the-job training shall be maintained in the facility and available for review.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334; 2002-0160; Temporary Adoption Eff. January 1, 1996; Eff. May 1, 1997; Temporary Amendment Eff. December 1, 1999; Amended Eff. July 1, 2000; Temporary Amendment Eff. September 1, 2003; Amended Eff. June 1, 2004.

**10A NCAC 13F .0502 PERSONAL CARE TRAINING
CONTENT AND INSTRUCTORS**

(a) The 80-hour training specified in Rule .0501 of this Section shall consist of at least 34 hours of classroom instruction or and at least 34 hours of supervised practical experience. Competency evaluation shall be conducted in each of the following areas:

- (1) observation and documentation;
- (2) basic nursing skills, including special health-related tasks;
- (3) personal care skills;
- (4) cognitive, behavioral and social care for all residents and, including interventions to reduce behavioral problems for residents with mental disabilities;
- (5) basic restorative services; and
- (6) residents' rights as established by G.S. 131D-21.

(b) The following requirements shall apply to the 80-hour training specified in Rule .0501 of this Section:

- (1) The training shall be conducted by an individual or a team of instructors with a coordinator. The supervisor of practical experience and instructor of content having to

do with personal care tasks or basic nursing skills shall be a registered nurse with a current, unencumbered license in North Carolina and with two years of clinical or direct patient care experience working in a health care, home care or long term care setting. The program coordinator and any instructor of content that does not include instruction on personal care tasks or basic nursing skills shall be a registered nurse, licensed practical nurse, physician, gerontologist, social worker, psychologist, mental health professional or other health professional with two years of work experience in adult education or in a long term care setting; or a four-year college graduate with four years of experience working in the field of aging or long term care for adults.

- (2) A trainee participating in the classroom instruction and supervised practical experience in the setting of the trainee's employment shall not be considered on duty and counted in the staff-to-resident ratio.
- (3) Training shall not be offered without an instructor on site.
- (4) Classroom instruction shall include the opportunity for demonstration and practice of skills.
- (5) Supervised practical experience shall be conducted in a licensed adult care home or in a facility or laboratory setting comparable to the work setting in which the trainee will be performing or supervising the personal care skills.
- (6) All skills shall be performed on humans except for intimate care skills, such as perineal and catheter care, which may be conducted on a mannequin.
- (7) There shall be no more than 10 trainees for each instructor for the supervised practical experience.
- (8) A written examination prepared by the instructor shall be used to evaluate the trainee's knowledge of the content portion of the classroom training. The trainee shall score at least 70 on the written examination. Oral testing shall be provided in the place of a written examination for trainees lacking reading or writing ability.
- (9) The trainee shall satisfactorily perform all of the personal care skills required in the training program. The instructor shall use a skills performance checklist for this competency evaluation. Satisfactory performance of the personal care skills and interpersonal and behavioral intervention skills means that the trainee performed the skill unassisted; explained the procedure to the resident; explained to the instructor, prior to or after the procedure, what was being done and why it

was being done in that way; and incorporated the principles of good body mechanics, medical asepsis and resident safety and privacy.

- (10) The training provider shall issue to all trainees who successfully complete the training a certificate, signed by the registered nurse who conducted the skills competency evaluation, stating that the trainee successfully completed the 80-hour training. The trainee's name shall be on the certificate. The training provider shall maintain copies of the certificates and the skills evaluation checklists for a minimum of five years.

(c) An individual, agency or organization seeking to provide the 80-hour training and competency evaluation specified in Rule .0501 of this Section shall submit an application which is available at no charge from the Division of Facility Services, Adult Care Licensure Section, 2708 Mail Service Center Raleigh, North Carolina 27699-2708.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334; S.L. 2002-0160; Temporary Adoption Eff. January 1, 1996; Eff. May 1, 1997; Temporary Amendment Eff. December 1, 1999; Amended Eff. July 1, 2000; Temporary Amendment Eff. September 1, 2003; Amended Eff. June 1, 2004.

10A NCAC 13F .0503 MEDICATION ADMINISTRATION COMPETENCY

(a) The competency evaluation for medication administration required in Rule .0403 of this Subchapter shall consist of a written examination and a clinical skills evaluation to determine competency in the following areas:

- (1) medical abbreviations and terminology;
- (2) transcription of medication orders;
- (3) obtaining and documenting vital signs;
- (4) procedures and tasks involved with the preparation and administration of oral (including liquid, sublingual and inhaler), topical (including transdermal), ophthalmic, otic, and nasal medications;
- (5) infection control procedures;
- (6) documentation of medication administration;
- (7) monitoring for reactions to medications and procedures to follow when there appears to be a change in the resident's condition or health status based on those reactions;
- (8) medication storage and disposition;
- (9) regulations pertaining to medication administration in adult care facilities; and
- (10) the facility's medication administration policy and procedures.

(b) An individual shall score at least 90% on the written examination which shall be a standardized examination established by the Department.

(c) A certificate of successful completion of the written examination shall be issued to each participant successfully

completing the examination. A copy of the certificate shall be maintained and available for review in the facility. The certificate is transferable from one facility to another as proof of successful completion of the written examination. A medication study guide for the written examination is available at no charge by contacting the Division of Facility Services, Adult Care Licensure Section, 2708 Mail Service Center, Raleigh, NC 27699-2708.

(d) The clinical skills validation portion of the competency evaluation shall be conducted by a registered nurse or a registered pharmacist consistent with their occupational licensing laws and who has a current unencumbered license in North Carolina. This validation shall be completed for those medication administration tasks to be performed in the facility. Competency validation by a registered nurse is required for unlicensed staff who perform any of the personal care tasks related to medication administration specified in Rule .0903 of this Subchapter.

(e) The Medication Administration Skills Validation Form shall be used to document successful completion of the clinical skills validation portion of the competency evaluation for those medication administration tasks to be performed in the facility employing the medication aide. Copies of this form and instructions for its use may be obtained at no cost by contacting the Adult Care Licensure Section, Division of Facility Services, 2708 Mail Service Center, Raleigh, NC 27699-2708. The completed form shall be maintained and available for review in the facility and is not transferable from one facility to another.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334; 2002-0160; Temporary Adoption Eff. January 1, 2000; December 1, 1999; Eff. July 1, 2000; Temporary Amendment Eff. July 1, 2003; Amended Eff. June 1, 2004.

10A NCAC 13F .0505 TRAINING ON CARE OF DIABETIC RESIDENTS

An adult care home shall assure that training on the care of residents with diabetes is provided to unlicensed staff prior to the administration of insulin as follows:

- (1) Training shall be provided by a registered nurse, registered pharmacist or prescribing practitioner.
- (2) Training shall include at least the following:
 - (a) basic facts about diabetes and care involved in the management of diabetes;
 - (b) insulin action;
 - (c) insulin storage;
 - (d) mixing, measuring and injection techniques for insulin administration;
 - (e) treatment and prevention of hypoglycemia and hyperglycemia, including signs and symptoms;
 - (f) blood glucose monitoring; universal precautions;
 - (g) universal precautions;
 - (h) appropriate administration times; and
 - (i) sliding scale insulin administration.

History Note: Authority 131D-2; 143B-165; S.L. 2002-0160; Temporary Adoption Eff. September 1, 2003; Eff. June 1, 2004.

10A NCAC 13F .0506 TRAINING ON PHYSICAL RESTRAINTS

(a) An adult care home shall assure that all staff responsible for caring for residents with medical symptoms that warrant restraints are trained on the use of alternatives to physical restraint use and on the care of residents who are physically restrained.

(b) Training shall be provided by a registered nurse and shall include the following:

- (1) alternatives to physical restraints;
- (2) types of physical restraints;
- (3) medical symptoms that warrant physical restraint;
- (4) negative outcomes from using physical restraints;
- (5) correct application of physical restraints;
- (6) monitoring and caring for residents who are restrained; and
- (7) the process of reducing restraint time by using alternatives.

History Note: Authority 131D-2; 143B-165; S.L. 2002-0160; Temporary Adoption Eff. September 1, 2003; Eff. June 1, 2004.

10A NCAC 13F .0508 ASSESSMENT TRAINING

The person or persons designated by the administrator to perform resident assessments as required by Rule .0801 of this Subchapter shall successfully complete training on resident assessment established by the Department before performing the required assessments. Registered nurses are exempt from the assessment training. The instruction manual on resident assessment is available on the internet website, <http://facility-services.state.nc.us/gcpage.htm>, or it is available at the cost of printing and mailing from the Division of Facility Services, Adult Care Licensure Section, 2708 Mail Service Center, Raleigh, NC 27699-2708.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 2002-0160; Temporary Adoption Eff. September 1, 2003; Eff. June 1, 2004.

10A NCAC 13F .0512 DOCUMENTATION OF TRAINING AND COMPETENCY VALIDATION

An adult care home shall maintain documentation of the training and competency validation of staff required by the rules of this Section in the facility and available for review.

History Note: Authority 131D-2; 143B-165; S.L. 2002-0160; Temporary Adoption Eff. September 1, 2003; Eff. June 1, 2004.

10A NCAC 13F .0601 MANAGEMENT OF FACILITIES

WITH A CAPACITY OR CENSUS OF SEVEN TO THIRTY RESIDENTS

(a) The administrator is responsible for the total operation of an adult care home and is also responsible to the licensing agency and the monitoring agency for meeting and maintaining the rules of this Subchapter. The co-administrator, when there is one, shares equal responsibility with the administrator for the operation of the home and for meeting and maintaining the rules of this Subchapter. The term administrator also refers to co-administrator where it is used in this Subchapter.

(b) At all times there shall be one administrator or administrator-in-charge who is directly responsible for assuring that all required duties are carried out in the home and for assuring that at no time is a resident left alone in the home without a staff member. One of the following arrangements shall be used to manage a facility with a capacity of 7 to 30 residents:

- (1) The administrator is in the home or within 500 feet of the home and immediately available. To be immediately available, the administrator shall be on stand-by and have direct access to either a two-way intercom system or a two-way intercom line on the existing telephone system that connects the licensed home with the private residence of the administrator. The equipment installed shall be in working condition and must be located in the bedroom of the administrator; or
- (2) An administrator-in-charge is in the home or within 500 feet of the home and is immediately available. The conditions of being "immediately available" cited in Subparagraph (b)(1) of this Rule shall apply to this arrangement; or
- (3) When there is a cluster of licensed homes, each with a capacity of 7 to 12 residents, located adjacently on the same site, there shall be at least one staff member, either live-in or on a shift basis in each of these homes. In addition, there shall be at least one administrator or administrator-in-charge who is within 500 feet of each home immediately available, and directly responsible for assuring that all required duties are carried out in each home. To be immediately available, the administrator or administrator-in-charge shall be on stand-by and have direct access to either a two-way intercom system or a two-way intercom line on the existing telephone system that connects these homes with each other and with the residence of the administrator or administrator-in-charge. The equipment installed shall be in working condition and shall be located in the bedroom of the administrator or administrator-in-charge.

(c) When the administrator or administrator-in-charge is absent from the home or not immediately available, the following apply:

- (1) If the administrator or administrator-in-charge is absent temporarily (not to exceed 24 hours

per week), a relief-person-in-charge shall be designated by the administrator to be in the home and in charge of it during the absence. The administrator shall assure that the relief-person-in-charge is prepared to respond in case of an emergency in the home. The relief-person-in-charge shall be 21 years or older; and

- (2) When the administrator or administrator-in-charge will be away from the home for an extended absence (more than 24 hours per week), a relief-administrator-in-charge shall be designated by the administrator to be in charge of the home during the absence. The relief-administrator-in-charge shall meet all of the qualifications required for the administrator-in-charge as specified in Rule .0402 of this Subchapter with the exception of Item (4) pertaining to the continuing education requirement.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334; 2002-0160; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Amended Eff. July 1, 1990; April 1, 1987; April 1, 1984; Temporary Amendment Eff. January 1, 2000; December 1, 1999; Amended Eff. July 1, 2000; Temporary Amendment Eff. July 1, 2003; Amended Eff. June 1, 2004.

10A NCAC 13F .0701 ADMISSION OF RESIDENTS

(a) Any adult (18 years of age or over) who, because of a temporary or chronic physical condition or mental disability, needs a substitute home may be admitted to an adult care home when, in the opinion of the resident, physician, family or social worker, and the administrator the services and accommodations of the home will meet his particular needs.

(b) People shall not be admitted:

- (1) for treatment of mental illness, or alcohol or drug abuse;
- (2) for maternity care;
- (3) for professional nursing care under continuous medical supervision;
- (4) for lodging, when the personal assistance and supervision offered for the aged and disabled are not needed; or
- (5) who pose a direct threat to the health or safety of others.

History Note: Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Temporary Amendment Eff. July 1, 2003; Amended Eff. June 1, 2004.

10A NCAC 13F .0703 TUBERCULOSIS TEST,

MEDICAL EXAMINATION AND IMMUNIZATIONS

(a) Upon admission to an adult care home, each resident shall be tested for tuberculosis disease in compliance with the control measures adopted by the Commission for Health Services as specified in 10A NCAC 41A .0205 including subsequent amendments and editions. Copies of the rule are available at no charge by contacting the Department of Health and Human Services, Tuberculosis Control Program, 1902 Mail Service Center, Raleigh, North Carolina 27699-1902.

(b) Each resident shall have a medical examination prior to admission to the facility and annually thereafter.

(c) The results of the complete examination required in Paragraph (b) of this Rule are to be entered on the FL-2, North Carolina Medicaid Program Long Term Care Services, or MR-2, North Carolina Medicaid Program Mental Retardation Services, which shall comply with the following:

- (1) The examining date recorded on the FL-2 or MR-2 shall be no more than 90 days prior to the person's admission to the home.
- (2) The FL-2 or MR-2 shall be in the facility before admission or accompany the resident upon admission and be reviewed by the facility before admission except for emergency admissions.
- (3) In the case of an emergency admission, the medical examination and completion of the FL-2 or MR-2 as required by this rule shall be within 72 hours of admission as long as current medication and treatment orders are available upon admission or there has been an emergency medical evaluation, including any orders for medications and treatments, upon admission.
- (4) If the information on the FL-2 or MR-2 is not clear or is insufficient, the facility shall contact the physician for clarification in order to determine if the services of the facility can meet the individual's needs.
- (5) The completed FL-2 or MR-2 shall be filed in the resident's record in the home.
- (6) If a resident has been hospitalized, the facility shall have a completed FL-2 or MR-2 or a transfer form or discharge summary with signed prescribing practitioner orders upon the resident's return to the facility from the hospital.

(d) Each resident shall be immunized against pneumococcal disease and annually against influenza virus according to G.S. 13D-9, except as otherwise indicated in this law.

(e) The facility shall make arrangements for any resident, who has been an inpatient of a psychiatric facility within 12 months before entering the home and who does not have a current plan for psychiatric care, to be examined by a local physician or a physician in a mental health center within 30 days after admission and to have a plan for psychiatric follow-up care when indicated.

History Note: Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; Temporary Adoption Eff. September 1, 2003;

Eff. June 1, 2004.

10A NCAC 13F .0801 RESIDENT ASSESSMENT

(a) An adult care home shall assure that an initial assessment of each resident is completed within 72 hours of admission using the Resident Register.

(b) The facility shall assure an assessment of each resident is completed within 30 days following admission and at least annually thereafter using an assessment instrument established by the Department or an instrument approved by the Department based on it containing at least the same information as required on the established instrument. The assessment to be completed within 30 days following admission and annually thereafter shall be a functional assessment to determine a resident's level of functioning to include psychosocial well-being, cognitive status and physical functioning in activities of daily living. Activities of daily living are bathing, dressing, personal hygiene, ambulation or locomotion, transferring, toileting and eating. The assessment shall indicate if the resident requires referral to the resident's physician or other licensed health care professional or community resource.

(c) The facility shall assure an assessment of a resident is completed within 10 days following a significant change in the resident's condition using the assessment instrument required in Paragraph (b) of this Rule. For the purposes of this Subchapter, significant change in the resident's condition is determined as follows:

- (1) Significant change is one or more of the following:
 - (A) deterioration in two or more activities of daily living;
 - (B) change in ability to walk or transfer;
 - (C) change in the ability to use one's hands to grasp small objects;
 - (D) deterioration in behavior or mood to the point where daily problems arise or relationships have become problematic;
 - (E) no response by the resident to the treatment for an identified problem;
 - (F) initial onset of unplanned weight loss or gain of five percent of body weight within a 30-day period or 10 percent weight loss or gain within a six-month period;
 - (G) threat to life such as stroke, heart condition, or metastatic cancer;
 - (H) emergence of a pressure ulcer at Stage II, which is a superficial ulcer presenting an abrasion, blister or shallow crater, or higher;
 - (I) a new diagnosis of a condition likely to affect the resident's physical, mental, or psychosocial well-being such as initial diagnosis of Alzheimer's disease or diabetes;
 - (J) improved behavior, mood or functional health status to the extent that the established plan of care no longer matches what is needed;

- (K) new onset of impaired decision-making;
 - (L) continence to incontinence or indwelling catheter; or
 - (M) the resident's condition indicates there may be a need to use a restraint and there is no current restraint order for the resident.
- (2) Significant change is not any of the following:
- (A) changes that suggest slight upward or downward movement in the resident's status;
 - (B) changes that resolve with or without intervention;
 - (C) changes that arise from easily reversible causes;
 - (D) an acute illness or episodic event;
 - (E) an established, predictive, cyclical pattern; or
 - (F) steady improvement under the current course of care.

(d) If a resident experiences a significant change as defined in Paragraph (c) of this Rule, the facility shall refer the resident to the resident's physician or other appropriate licensed health professional such as a mental health professional, nurse practitioner, physician assistant or registered nurse in a timely manner consistent with the resident's condition but no longer than 10 days from the significant change, and document the referral in the resident's record.

(e) The assessments required in Paragraphs (b) and (c) of this Rule shall be completed and signed by the person designated by the administrator to perform resident assessments.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334; Temporary Adoption Eff. January 1, 1996; Eff. May 1, 1997; Temporary Amendment Eff. September 1, 2003; July 1, 2003; Amended Eff. June 1, 2004.

10A NCAC 13F .0802 RESIDENT CARE PLAN

(a) An adult care home shall assure a care plan is developed for each resident in conjunction with the resident assessment to be completed within 30 days following admission according to Rule .0801 of this Section. The care plan is an individualized, written program of personal care for each resident.

(b) The care plan shall be revised as needed based on further assessments of the resident according to Rule .0801 of this Section.

(c) The care plan shall include the following:

- (1) a statement of the care or service to be provided based on the assessment or reassessment; and
- (2) frequency of the service provision.

(d) The assessor shall sign the care plan upon its completion.

(e) The facility shall assure that the resident's physician authorizes personal care services and certifies the following by signing and dating the care plan within 15 calendar days of completion of the assessment:

- (1) the resident is under the physician's care; and

- (2) the resident has a medical diagnosis with associated physical or mental limitations that justify the personal care services specified in the care plan.

History Note: Authority G.S. 131D-2; 131D-4.3; 131D-4.5; 143B-165; S.L. 99-0334; 2002-0160; Temporary Adoption Eff. January 1, 1996; Eff. May 1, 1997; Temporary Amendment Eff. September 1, 2003; July 1, 2003; Amended Eff. June 1, 2004.

10A NCAC 13F .0902 HEALTH CARE

(a) An adult care home shall provide care and services in accordance with the resident's care plan.

(b) The facility shall assure documentation of the following in the resident's record:

- (1) facility contacts with the resident's physician, physician service or other licensed health professional when illnesses or accidents occur and any other facility contacts with a physician or licensed health professional regarding resident care;
- (2) all visits of the resident to or from the resident's physician, physician service or other licensed health professional of which the facility is aware.
- (3) written procedures, treatments or orders from a physician or other licensed health professional; and
- (4) implementation of procedures, treatments or orders specified in Subparagraph (b)(3) of this Rule.

(c) The following shall apply to the resident's physician or physician service:

- (1) The resident or the resident's responsible person shall be allowed to choose a physician or physician service to attend the resident.
- (2) When the resident cannot remain under the care of the chosen physician or physician service, the facility shall assure that arrangements are made with the resident or responsible person for choosing and securing another physician or physician service within 45 days or prior to the signing of the care plan as required in Rule .0802 of this Subchapter.

History Note: Authority G.S. 131D-2; 143B-165; S.L. 99-0334; 2002-0160; 2003-0284; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Temporary Amendment September 1, 2003; July 1, 2003; Amended Eff. June 1, 2004.

10A NCAC 13F .0903 LICENSED HEALTH PROFESSIONAL SUPPORT

(a) An adult care home shall assure that an appropriate licensed health professional participates in the on-site review and evaluation of the residents' health status, care plan and care

provided for residents requiring one or more of the following personal care tasks:

- (1) applying and removing ace bandages, ted hose, binders, and braces and splints;
- (2) feeding techniques for residents with swallowing problems;
- (3) bowel or bladder training programs to regain continence;
- (4) enemas, suppositories, break-up and removal of fecal impactions, and vaginal douches;
- (5) positioning and emptying of the urinary catheter bag and cleaning around the urinary catheter;
- (6) chest physiotherapy or postural drainage;
- (7) clean dressing changes, excluding packing wounds and application of prescribed enzymatic debriding agents;
- (8) collecting and testing of fingerstick blood samples;
- (9) care of well-established colostomy or ileostomy (having a healed surgical site without sutures or drainage);
- (10) care for pressure ulcers up to and including a Stage II pressure ulcer which is a superficial ulcer presenting as an abrasion, blister or shallow crater;
- (11) inhalation medication by machine;
- (12) forcing and restricting fluids;
- (13) maintaining accurate intake and output data;
- (14) medication administration through a well-established gastrostomy feeding tube (having a healed surgical site without sutures or drainage and through which a feeding regimen has been successfully established);
- (15) medication administration through injection;
Note: Unlicensed staff may only administer subcutaneous injections, excluding anticoagulants such as heparin.
- (16) oxygen administration and monitoring;
- (17) the care of residents who are physically restrained and the use of care practices as alternatives to restraints;
- (18) oral suctioning;
- (19) care of well-established tracheostomy, not to include indo-tracheal suctioning;
- (20) administering and monitoring of tube feedings through a well-established gastrostomy tube (see description in Subparagraph(a)(14) of this Rule);
- (21) the monitoring of continuous positive air pressure devices (CPAP and BIPAP);
- (22) application of prescribed heat therapy;
- (23) application and removal of prosthetic devices except as used in early post-operative treatment for shaping of the extremity;
- (24) ambulation using assistive devices that requires physical assistance;
- (25) range of motion exercises;
- (26) any other prescribed physical or occupational therapy;

- (27) transferring semi-ambulatory or non-ambulatory residents; or
- (28) nurse aide II tasks according to the scope of practice as established in the Nursing Practice Act and rules promulgated under that act in 21 NCAC 36.

(b) The appropriate licensed health professional, as required in Paragraph (a) of this Rule, is:

- (1) a registered nurse licensed under G.S. 90, Article 9A, for tasks listed in Subparagraphs (a)(1) through (28) of this Rule;
- (2) an occupational therapist licensed under G.S. 90, Article 18D or physical therapist licensed under G.S. 90-270.24, Article 18B for tasks listed in Subparagraphs (a)(17) and (22) through (27) of this Rule;
- (3) a respiratory care practitioner licensed under G.S. 90, Article 38, for tasks listed in Subparagraphs (a)(6), (11), (16), (18), (19) and (21) of this Rule; or
- (4) a registered nurse licensed under G.S. 90, Article 9A, for tasks that can be performed by a nurse aide II according to the scope of practice as established in the Nursing Practice Act and rules promulgated under that act in 21 NCAC 36;

(c) The facility shall assure that participation by a registered nurse, occupational therapist or physical therapist in the on-site review and evaluation of the residents' health status, care plan and care provided, as required in Paragraph (a) of this Rule, is completed within the first 30 days of admission or within 30 days from the date a resident develops the need for the task and at least quarterly thereafter, and includes the following:

- (1) performing a physical assessment of the resident as related to the resident's diagnosis or current condition requiring one or more of the tasks specified in Paragraph (a) of this Rule;
- (2) evaluating the resident's progress to care being provided;
- (3) recommending changes in the care of the resident as needed based on the physical assessment and evaluation of the progress of the resident; and
- (4) documenting the activities in Subparagraphs (1) through (3) of this Paragraph.

(d) The facility shall assure action is taken in response to the licensed health professional review and documented, and that the physician or appropriate health professional is informed of the recommendations when necessary.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334; 2002-0160; Temporary Adoption Eff. January 1, 1996; Eff. May 1, 1997; Temporary Amendment Eff. September 1, 2003; July 1, 2003; Amended Eff. June 1, 2004.

10A NCAC 13F .0904 NUTRITION AND FOOD SERVICE

- (a) Food Procurement and Safety in Adult Care Homes:

- (1) The kitchen, dining and food storage areas shall be clean, orderly and protected from contamination.
 - (2) All food and beverage being procured, stored, prepared or served by the facility shall be protected from contamination.
 - (3) All meat processing shall occur at a USDA-approved processing plant.
 - (4) There shall be at least a three-day supply of perishable food and a five-day supply of non-perishable food in the facility based on the menus, for both regular and therapeutic diets.
- (b) Food Preparation and Service in Adult Care Homes:
- (1) Sufficient staff, space and equipment shall be provided for safe and sanitary food storage, preparation and service.
 - (2) Table service shall include a napkin and non-disposable place setting consisting of at least a knife, fork, spoon, plate and beverage containers. Exceptions may be made on an individual basis and shall be based on documented needs or preferences of the resident.
 - (3) Hot foods shall be served hot and cold foods shall be served cold.
 - (4) If residents require feeding assistance, food shall be maintained at serving temperature until assistance is provided.
- (c) Menus in Adult Care Homes:
- (1) Menus shall be prepared at least one week in advance with serving quantities specified and in accordance with the Daily Food Requirements in Paragraph (d) of this Rule.
 - (2) Menus shall be maintained in the kitchen and identified as to the current menu day and cycle for any given day for guidance of food service staff.
 - (3) Any substitutions made in the menu shall be of equal nutritional value, appropriate for therapeutic diets and documented to indicate the foods actually served to residents.
 - (4) Menus shall be planned to take into account the food preferences and customs of the residents.
 - (5) Menus as served and invoices or other receipts of purchases shall be maintained in the facility for 30 days.
 - (6) Menus for all therapeutic diets shall be planned or reviewed by a registered dietitian. The facility shall maintain verification of the registered dietitian's approval of the therapeutic diets which shall include an original signature by the registered dietitian and the registration number of the dietitian.
 - (7) The facility shall have a matching therapeutic diet menu for all physician-ordered therapeutic diets for guidance of food service staff.
- (d) Food Requirements in Adult Care Homes:
- (1) Each resident shall be served a minimum of three nutritionally adequate, palatable meals a day at regular hours with at least 10 hours between the breakfast and evening meals.
 - (2) Foods and beverages that are appropriate to residents' diets shall be offered or made available to all residents as snacks between each meal for a total of three snacks per day and shown on the menu as snacks.
 - (3) Daily menus for regular diets shall include the following:
 - (A) Homogenized whole milk, low fat milk, skim milk or buttermilk: One cup (8 ounces) of pasteurized milk at least twice a day. Reconstituted dry milk or diluted evaporated milk may be used in cooking only and not for drinking purposes due to risk of bacterial contamination during mixing and the lower nutritional value of the product if too much water is used.
 - (B) Fruit: Two servings of fruit (one serving equals 6 ounces of juice; ½ cup of raw, canned or cooked fruit; 1 medium-size whole fruit; or ¼ cup dried fruit). One serving shall be a citrus fruit or a single strength juice in which there is 100% of the recommended dietary allowance of vitamin C in each six ounces of juice. The second fruit serving shall be of another variety of fresh, dried or canned fruit.
 - (C) Vegetables: Three servings of vegetables (one serving equals ½ cup of cooked or canned vegetable; 6 ounces of vegetable juice; or 1 cup of raw vegetable). One of these shall be a dark green, leafy or deep yellow three times a week.
 - (D) Eggs: One whole egg or substitute (e.g., 2 egg whites or ¼ cup of pasteurized egg product) at least three times a week at breakfast.
 - (E) Protein: Two to three ounces of pure cooked meat at least two times a day for a minimum of 4 ounces. A substitute (e.g., 4 tablespoons of peanut butter, 1 cup of cooked dried peas or beans or 2 ounces of pure cheese) may be served three times a week but not more than once a day, unless requested by the resident.
Note: Bacon is considered to be fat and not meat for the purposes of this Rule.
 - (F) Cereals and Breads: At least six servings of whole grain or enriched cereal and bread or grain products a day. Examples of one serving are as follows: 1 slice of bread; ½ of a

bagel, English muffin or hamburger bun; one 1 ½ -ounce muffin, 1- ounce roll, 2-ounce biscuit or 2-ounce piece of cornbread; ½ cup cooked rice or cereal (e.g., oatmeal or grits); ¾ cup ready-to-eat cereal; or one waffle, pancake or tortilla that is six inches in diameter. Cereals and breads offered as snacks may be included in meeting this requirement.

(G) Fats: Include butter, oil, margarine or items consisting primarily of one of these (e.g., icing or gravy).

(H) Water and Other Beverages: Water shall be served to each resident at each meal, in addition to other beverages.

(e) Therapeutic Diets in Adult Care Homes:

(1) All therapeutic diet orders including thickened liquids shall be in writing from the resident's physician. Where applicable, the therapeutic diet order shall be specific to calorie, gram or consistency, such as for calorie controlled ADA diets, low sodium diets or thickened liquids, unless there are written orders which include the definition of any therapeutic diet identified in the facility's therapeutic menu approved by a registered dietitian.

(2) Physician orders for nutritional supplements shall be in writing from the resident's physician and be brand specific, unless the facility has defined a house supplement in its communication to the physician, and shall specify quantity and frequency.

(3) The facility shall maintain an accurate and current listing of residents with physician-ordered therapeutic diets for guidance of food service staff.

(4) All therapeutic diets, including nutritional supplements and thickened liquids, shall be served as ordered by the resident's physician.

(f) Individual Feeding Assistance in Adult Care Homes:

(1) Sufficient staff shall be available for individual feeding assistance as needed.

(2) Residents needing help in eating shall be assisted upon receipt of the meal and the assistance shall be unhurried and in a manner that maintains or enhances each resident's dignity and respect.

(g) Variations from the required three meals or time intervals between meals to meet individualized needs or preferences of residents shall be documented in the resident's record.

History Note: Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Amended Eff. April 1, 1984; Temporary Amendment Eff. July 1, 2003; Amended Eff. June 1, 2004.

10A NCAC 13F .0908 COOPERATION WITH CASE MANAGERS

The adult care home administrator shall cooperate with and assure the cooperation of facility staff with case managers in their provision of case management services to residents.

History Note: Authority G.S. 131D-2; 131D-4.3; 143B-165; S.L. 2002-0160; Temporary Adoption Eff. January 1, 1996; Eff. May 1, 1997; Temporary Amendment Eff. July 1, 2003; Amended Eff. June 1, 2004.

10A NCAC 13F .1202 DISPOSAL OF RESIDENT RECORDS

(a) All adult care home records may be purged of material more than three years old unless the home has been asked by the Division of Facility Services to keep it for a longer period.

(b) After a resident has left the home or died, the resident's records shall be filed in a safe place in the home for a period of three years and then may be destroyed.

History Note: Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Temporary Amendment Eff. July 1, 2003; Amended Eff. June 1, 2004.

10A NCAC 13F .1203 REPORT OF ADMISSIONS AND DISCHARGES

When there is an admission or discharge of a resident of an adult care home, the administrator or supervisor-in-charge shall notify the county department of social services by the fifth day of the month following admission or discharge. Notification shall be made by submitting a form for reporting admissions and discharges. A form does not need to be submitted if there have not been any admissions or discharges.

History Note: Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Temporary Amendment Eff. July 1, 2003; Amended Eff. June 1, 2004.

10A NCAC 13G .0205 APPLICATION TO LICENSE A NEWLY CONSTRUCTED OR RENOVATED BUILDING

(a) An application for a license to operate a family care home which is to be constructed, added to or renovated shall be made at the county department of social services where the home is to be located.

(b) For information on the forms and reports to be submitted by the county department of social services to the Division of Facility Services, see Rule .0204(b) of this Subchapter. All of these forms and reports apply to a home which is to be constructed, added to or renovated, including one set of schematic floor plans or blueprints, and photographs of each side of the building for renovations or additions.

(c) If it does not appear that the licensure requirements for the home can be met, the county department of social services shall so inform the applicant, indicating in writing the reason, and give the applicant an opportunity to withdraw the application. Upon the applicant's request, the application shall be completed and submitted to the Division of Facility Services for consideration.

(d) Upon receipt of copies of approval letters from the Department of Insurance and the Division of Environmental Health in the North Carolina Department of Environment and Natural Resources, indicating the applicant's plans are in full compliance with the applicable requirements of the North Carolina State Building Code and the sanitation requirements of the Division of Environmental Health, the Division of Facility Services shall make the final determination as to whether the rules of this Subchapter have been met and, if so, shall give written approval and authorization to begin construction.

(e) Any changes made during construction shall require the approval of the Division of Facility Services to assure that licensing requirements are maintained.

(f) A pre-licensing visit and subsequent recommendation shall be made by a program consultant, and in some cases a construction consultant, of the Division of Facility Services, in conjunction with the adult homes specialist of the county department of social services.

History Note: Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Amended Eff. July 1, 1990; April 1, 1984; Temporary Amendment Eff. September 1, 2003; Amended Eff. June 1, 2004.

10A NCAC 13G .0207 CHANGE OF LICENSEE

When a licensee wishes to sell or lease the family care home business, the following procedure is required:

- (1) The licensee shall notify the county department of social services that a change is desired. When there is a plan for a change of licensee and another person applies to operate the home immediately, the licensee shall notify the county department and the residents or their responsible persons. The county department shall talk with the residents, giving them the opportunity to make other plans if they so desire.
- (2) The county department of social services shall submit all forms and reports specified in Rule .0204 (b) of this Subchapter to the Division of Facility Services.
- (3) The Division of Facility Services shall review the records of the facility and may visit the home.
- (4) The licensee and prospective licensee shall be advised by the Division of Facility Services of any changes which must be made to the building before licensing to a new licensee can be recommended.

- (5) Frame or brick veneer buildings over one story in height with resident services and accommodations on the second floor shall not be considered for re-licensure.

History Note: Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Amended Eff. July 1, 1990; April 1, 1984; Temporary Amendment Eff. September 1, 2003; Amended Eff. June 1, 2004.

10A NCAC 13G .0211 CLOSING OF HOME

If a licensee plans to close a family care home, the licensee shall provide written notification of the planned closing to the Division of Facility Services, the county department of social services and the residents or their responsible persons at least 30 days prior to the planned closing. Written notification shall include date of closing and plans made for the move of the residents.

History Note: Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Amended Eff. July 1, 1990; April 1, 1984; Temporary Amendment Eff. September 1, 2003; Amended Eff. June 1, 2004.

10A NCAC 13G .0302 CONSTRUCTION

(a) A family care home shall meet applicable requirements of the North Carolina State Building Code in force at the time of initial licensure.

(b) The home shall be one story in height, or two stories in height and meet the following requirements:

- (1) Each floor shall be less than 1800 square feet in area;
- (2) Residents shall not be housed on the second floor;
- (3) Required resident facilities shall not be located on the second floor;
- (4) A complete fire alarm system with pull stations on each floor and sounding devices which are audible throughout the building shall be provided. The fire alarm system shall be able to transmit an automatic signal to the local fire department where possible; and
- (5) Interconnected U.L. approved products of combustion detectors directly wired to the house current shall be installed on each floor.

- (c) The basement shall not be used for residents' storage or sleeping.
- (d) The attic shall not be used for storage or sleeping.
- (e) The ceiling shall be at least seven and one-half feet from the floor.
- (f) In facilities licensed on or after April 1, 1984, all required resident areas shall be on the same floor level. Steps between levels are not permitted.

(g) The door width shall be a minimum of two feet and six inches in the kitchen, dining room, living rooms, bedrooms and bathrooms.

(h) The building shall meet sanitary requirements as determined by the North Carolina Department of Environment and Natural Resources; Division of Environmental Health..

(1) All windows shall be maintained operable.

(j) The home shall have current sanitation and fire and building safety inspection reports which shall be maintained in the home and available for review.

History Note: Authority G.S. 131D-2; 143B-165;

S.L. 2002-0160;

Eff. January 1, 1977;

Readopted Eff. October 31, 1977;

Amended Eff. July 1, 1990; April 1, 1984; January 1, 1983;

Temporary Amendment Eff. September 1, 2003;

Amended Eff. June 1, 2004.

10A NCAC 13G .0405 TEST FOR TUBERCULOSIS

(a) Upon employment or living in a family care home, the administrator, all other staff and any live-in non-residents shall be tested for tuberculosis disease in compliance with control measures adopted by the Commission for Health Services as specified in 10A NCAC 41A .0205 including subsequent amendments and editions. Copies of the rule are available at no charge by contacting the Department of Health and Human Services. Tuberculosis Control Program, 1902 Mail Service Center, Raleigh, NC 27699-1902.

(b) There shall be documentation on file in the home that the administrator, all other staff and any live-in non-residents are free of tuberculosis disease that poses a direct threat to the health or safety of others.

History Note: Authority G.S. 131D-2; 143B-165;

S.L. 2002-0160;

Eff. January 1, 1977;

Amended Eff. October 1, 1977; April 22, 1977;

Readopted Eff. October 31, 1977;

Amended Eff. December 1, 1993; April 1, 1984;

Temporary Amendment Eff. September 1, 2003;

Amended Eff. June 1, 2004.

10A NCAC 13G .0406 OTHER STAFF

QUALIFICATIONS

(a) Each staff person of a family care home shall:

- (1) have a job description that reflects actual duties and responsibilities and is signed by the administrator and the employee;
- (2) be able to apply all of the home's accident, fire safety and emergency procedures for the protection of the residents;
- (3) be informed of the confidential nature of resident information and shall protect and preserve such information from unauthorized use and disclosure;

Note: G.S. 131D-2(b)(4), G.S. 131D-21(6), and G.S. 131D-21.1 govern the disclosure of such information;

(4) not hinder or interfere with the exercise of the rights guaranteed under the Declaration of Residents' Rights in G.S. 131D-21;

(5) have no substantiated findings listed on the North Carolina Health Care Personnel Registry according to G.S. 131E-256;

(6) have documented annual immunization against influenza virus according to G.S. 131D-9, except as documented otherwise according to exceptions in this law.

(7) have a criminal background check in accordance with G.S. 114-19.10 and G.S. 131D-40;

(8) maintain a valid driver's license if responsible for transportation of residents; and

(9) be willing to work with bona fide inspectors and the monitoring and licensing agencies toward meeting and maintaining the rules of this Subchapter.

(b) Any staff member left in charge of the care of residents shall be 18 years or older.

(c) If licensed practical nurses are employed by the facility and practicing in their licensed capacity as governed by their practice act and occupational licensing laws, there shall be continuous availability of a registered nurse consistent with Rules 21 NCAC 36 .0224(i) and 21 NCAC 36 .0225.

Note: The practice of licensed practical nurses is governed by their occupational licensing laws.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165;

S.L. 1999-0334; 2002-0160;

Eff. January 1, 1977;

Readopted Eff. October 31, 1977;

Amended Eff. April 1, 1984;

Temporary Amendment Eff. December 1, 1999;

Amended Eff. July 1, 2000;

Temporary Amendment Eff. September 1, 2003;

Amended Eff. June 1, 2004.

10A NCAC 13G .0505 TRAINING ON CARE OF DIABETIC RESIDENTS

A family care home shall assure that training on the care of residents with diabetes is provided to unlicensed staff prior to the administration of insulin as follows:

- (1) Training shall be provided by a registered nurse, registered pharmacist or prescribing practitioner.
- (2) Training shall include at least the following:
 - (a) basic facts about diabetes and care involved in the management of diabetes;
 - (b) insulin action;
 - (c) insulin storage;
 - (d) mixing, measuring and injection techniques for insulin administration;
 - (e) treatment and prevention of hypoglycemia and hyperglycemia, including signs and symptoms;

- (f) blood glucose monitoring; universal precautions; appropriate administration times; and
- (g) sliding scale insulin administration.

Eff. June 1, 2004.

10A NCAC 13G .0702 TUBERCULOSIS TEST AND MEDICAL EXAMINATION

(a) Upon admission to a family care home each resident shall be tested for tuberculosis disease in compliance with the control measures adopted by the Commission for Health Services as specified in 10A NCAC 41A .0205 including subsequent amendments and editions. Copies of the rule are available at no charge by contacting the Department of Health and Human Services, Tuberculosis Control Program, 1902 Mail Service Center, Raleigh, North Carolina 27699-1902.

(b) Each resident shall have a medical examination prior to admission to the home and annually thereafter.

(c) The results of the complete examination are to be entered on the FL-2, North Carolina Medicaid Program Long Term Care Services, or MR-2, North Carolina Medicaid Program Mental Retardation Services, which shall comply with the following:

- (1) The examining date recorded on the FL-2 or MR-2 shall be no more than 90 days prior to the person's admission to the home.
- (2) The FL-2 or MR-2 shall be in the facility before admission or accompany the resident upon admission and be reviewed by the administrator or supervisor-in-charge before admission except for emergency admissions.
- (3) In the case of an emergency admission, the medical examination and completion of the FL-2 or MR-2 shall be within 72 hours of admission as long as current medication and treatment orders are available upon admission or there has been an emergency medical evaluation, including any orders for medications and treatments, upon admission.
- (4) If the information on the FL-2 or MR-2 is not clear or is insufficient, the administrator or supervisor-in-charge shall contact the physician for clarification in order to determine if the services of the facility can meet the individual's needs.
- (5) The completed FL-2 or MR-2 shall be filed in the resident's record in the home.
- (6) If a resident has been hospitalized, the facility shall have a completed FL-2 or MR-2 or a transfer form or discharge summary with signed prescribing practitioner orders upon the resident's return to the facility from the hospital.

(d) Each resident shall be immunized against pneumococcal disease and annually against influenza virus according to G.S. 131D-9, except as otherwise indicated in this law.

(e) The home shall make arrangements for any resident, who has been an inpatient of a psychiatric facility within 12 months before entering the home and who does not have a current plan for psychiatric care, to be examined by a local physician or a physician in a mental health center within 30 days after admission and to have a plan for psychiatric follow-up care when indicated.

History Note: Authority G.S. 131D-2; 143B-165;

History Note: Authority 131D-2; 143B-165; S.L. 2002-0160; Temporary Adoption Eff. September 1, 2003; Eff. June 1, 2004.

10A NCAC 13G .0506 TRAINING ON PHYSICAL RESTRAINTS

(a) A family care home shall assure that all staff responsible for caring for residents with medical symptoms that warrant restraints are trained on the use of alternatives to physical restraint use and on the care of residents who are physically restrained.

(b) Training shall be provided by a registered nurse and shall include the following:

- (1) alternatives to physical restraints;
- (2) types of physical restraints;
- (3) medical symptoms that warrant physical restraint;
- (4) negative outcomes from using physical restraints;
- (5) correct application of physical restraints;
- (6) monitoring and caring for residents who are restrained; and
- (7) the process of reducing restraint time by using alternatives.

History Note: Authority 131D-2; 143B-165; S.L. 2002-0160; Temporary Adoption Eff. September 1, 2003; Eff. June 1, 2004.

10A NCAC 13G .0508 ASSESSMENT TRAINING

The person or persons designated by the administrator to perform resident assessments as required by Rule .0801 of this Subchapter shall successfully complete training on resident assessment established by the Department before performing the required assessments. Registered nurses are exempt from the assessment training. The instruction manual on resident assessment is available on the internet website, <http://facility-services.state.nc.us/gcpage.htm>, or it is available at the cost of printing and mailing from the Division of Facility Services, Adult Care Licensure Section, 2708 Mail Service Center, Raleigh, NC 27699-2708.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 2002-0160; Temporary Adoption Eff. September 1, 2003; Eff. June 1, 2004.

10A NCAC 13G .0512 DOCUMENTATION OF TRAINING AND COMPETENCY VALIDATION

A family care home shall maintain documentation of the training and competency validation of staff required by the rules of this Section in the facility and available for review.

History Note: Authority 131D-2; 143B-165; S.L. 2002-0160; Temporary Amendment Eff. September 1, 2003;

S.L. 2002-0160;
Eff. January 1, 1977;
Readopted Eff. October 31, 1977;
Amended Eff. December 1, 1993; July 1, 1990; April 1, 1987;
April 1, 1984;
Temporary Amendment Eff. September 1, 2003;
Amended Eff. June 1, 2004.

10A NCAC 13G .0801 RESIDENT ASSESSMENT

(a) A family care home shall assure that an initial assessment of each resident is completed within 72 hours of admission using the Resident Register.

(b) The facility shall assure an assessment of each resident is completed within 30 days following admission and at least annually thereafter using an assessment instrument established by the Department or an instrument approved by the Department based on it containing at least the same information as required on the established instrument. The assessment to be completed within 30 days following admission and annually thereafter shall be a functional assessment to determine a resident's level of functioning to include psychosocial well-being, cognitive status and physical functioning in activities of daily living. Activities of daily living are bathing, dressing, personal hygiene, ambulation or locomotion, transferring, toileting and eating. The assessment shall indicate if the resident requires referral to the resident's physician or other licensed health care professional or community resource.

(c) The facility shall assure an assessment of a resident is completed within 10 days following a significant change in the resident's condition using the assessment instrument required in Paragraph (b) of this Rule. For the purposes of this Subchapter, significant change in the resident's condition is determined as follows:

- (1) Significant change is one or more of the following:
 - (A) deterioration in two or more activities of daily living;
 - (B) change in ability to walk or transfer;
 - (C) change in the ability to use one's hands to grasp small objects;
 - (D) deterioration in behavior or mood to the point where daily problems arise or relationships have become problematic;
 - (E) no response by the resident to the treatment for an identified problem;
 - (F) initial onset of unplanned weight loss or gain of five percent of body weight within a 30-day period or 10 percent weight loss or gain within a six-month period;
 - (G) threat to life such as stroke, heart condition, or metastatic cancer;
 - (H) emergence of a pressure ulcer at Stage II, which is a superficial ulcer presenting an abrasion, blister or shallow crater, or higher;
 - (I) a new diagnosis of a condition likely to affect the resident's physical, mental, or psychosocial well-being

over a period of time such as initial diagnosis of Alzheimer's disease or diabetes;

- (J) improved behavior, mood or functional health status to the extent that the established plan of care no longer matches what is needed;
 - (K) new onset of impaired decision-making;
 - (L) continence to incontinence or indwelling catheter; or
 - (M) the resident's condition indicates there may be a need to use a restraint and there is no current restraint order for the resident.
- (2) Significant change is not any of the following:
- (A) changes that suggest slight upward or downward movement in the resident's status;
 - (B) changes that resolve with or without intervention;
 - (C) changes that arise from easily reversible causes;
 - (D) an acute illness or episodic event;
 - (E) an established, predictive, cyclical pattern; or
 - (F) steady improvement under the current course of care.

(d) If a resident experiences a significant change as defined in Paragraph (c) of this Rule, the facility shall refer the resident to the resident's physician or other appropriate licensed health professional such as a mental health professional, nurse practitioner, physician assistant or registered nurse in a timely manner consistent with the resident's condition but no longer than 10 days from the significant change, and document the referral in the resident's record.

(e) The assessments required in Paragraphs (b) and (c) of this Rule shall be completed and signed by the person designated by the administrator to perform resident assessments.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334;
Temporary Adoption Eff. January 1, 1996;
Temporary Amendment Eff. December 1, 1999;
Amended Eff. July 1, 2000;
Temporary Amendment Eff. September 1, 2003;
Amended Eff. June 1, 2004.

10A NCAC 13G .0802 RESIDENT CARE PLAN

(a) A family care home shall assure a care plan is developed for each resident in conjunction with the resident assessment to be completed within 30 days following admission according to Rule .0801 of this Section. The care plan shall be an individualized, written program of personal care for each resident.

(b) The care plan shall be revised as needed based on further assessments of the resident according to Rule .0801 of this Subchapter.

(c) The care plan shall include the following:

- (1) a statement of the care or service to be provided based on the assessment or reassessment; and
 - (2) frequency of the service provision.
- (d) The assessor shall sign the care plan upon its completion.
- (e) The facility shall assure that the resident's physician authorizes personal care services and certifies the following by signing and dating the care plan within 15 calendar days of completion of the assessment:
- (1) the resident is under the physician's care; and
 - (2) the resident has a medical diagnosis with associated physical or mental limitations that justify the personal care services specified in the care plan.

History Note: Authority G.S. 131D-2; 131D-4.3; 131D-4.5; 143B-165; S.L. 99-0334; 2002-0160;
Temporary Adoption Eff. January 1, 1996;
Eff. May 1, 1997;
Temporary Amendment Eff. January 1, 2001;
Temporary Amendment Expired October 13, 2001;
Temporary Amendment Eff. September 1, 2003;
Amended Eff. June 1, 2004.

10A NCAC 13G .0902 HEALTH CARE

- (a) A family care home shall provide care and services in accordance with the resident's care plan.
- (b) The facility shall assure arrangements are made to enable the resident to be in the best possible health condition as evidenced by documentation of the following in the resident's record:
- (1) facility contacts with the resident's physician, physician service or other licensed health professional when illnesses or accidents occur and any other facility contacts with a physician or licensed health professional regarding resident care;
 - (2) all visits of the resident to or from the resident's physician, physician service or other licensed health professional of which the facility is aware;
 - (3) written procedures, treatments or orders from a physician or other licensed health professional; and
 - (4) implementation of procedures, treatments or orders specified in Subparagraph (b)(3) of this Rule.
- (c) The following shall apply to the resident's physician or physician service:
- (1) The resident or the resident's responsible person shall be allowed to choose a physician or physician service to attend the resident.
 - (2) When the resident cannot remain under the care of the chosen physician or physician service, the facility shall assure that arrangements are made with the resident or responsible person for choosing and securing another physician or physician service within 45 days or prior to the signing of the care plan as required in Rule .0802 of this Subchapter.

History Note: Authority G.S. 131D-2; 143B-165; S.L. 99-0334; 2002-0160;
Eff. January 1, 1977;
Readopted Eff. October 31, 1977;
Amended Eff. December 1, 1993; May 1, 1992; July 1, 1990;
September 1, 1987;
Temporary Amendment Eff. December 1, 1999;
Amended Eff. July 1, 2000;
Temporary Amendment Eff. September 1, 2003;
Amended Eff. June 1, 2004.

10A NCAC 13G .0903 LICENSED HEALTH PROFESSIONAL SUPPORT

- (a) A family care home shall assure that an appropriate licensed health professional, participates in the on-site review and evaluation of the residents' health status, care plan and care provided for residents requiring one or more of the following personal care tasks:
- (1) applying and removing ace bandages, ted hose, binders, and braces and splints;
 - (2) feeding techniques for residents with swallowing problems;
 - (3) bowel or bladder training programs to regain continence;
 - (4) enemas, suppositories, break-up and removal of fecal impactions, and vaginal douches;
 - (5) positioning and emptying of the urinary catheter bag and cleaning around the urinary catheter;
 - (6) chest physiotherapy or postural drainage;
 - (7) clean dressing changes, excluding packing wounds and application of prescribed enzymatic debriding agents;
 - (8) collecting and testing of fingerstick blood samples;
 - (9) care of well-established colostomy or ileostomy (having a healed surgical site without sutures or drainage);
 - (10) care for pressure ulcers, up to and including a Stage II pressure ulcer which is a superficial ulcer presenting as an abrasion, blister or shallow crater;
 - (11) inhalation medication by machine;
 - (12) forcing and restricting fluids;
 - (13) maintaining accurate intake and output data;
 - (14) medication administration through a well-established gastrostomy feeding tube (having a healed surgical site without sutures or drainage and through which a feeding regimen has been successfully established);
 - (15) medication administration through injection;
 Note: Unlicensed staff may only administer subcutaneous injections as stated in Rule .1004(q) of this Subchapter;
 - (16) oxygen administration and monitoring;
 - (17) the care of residents who are physically restrained and the use of care practices as alternatives to restraints;
 - (18) oral suctioning;

- (19) care of well-established tracheostomy, not to include indo-tracheal suctioning;
- (20) administering and monitoring of tube feedings through a well-established gastrostomy tube (see description in Subparagraph (14) of this Paragraph);
- (21) the monitoring of continuous positive air pressure devices (CPAP and BIPAP);
- (22) application of prescribed heat therapy;
- (23) application and removal of prosthetic devices except as used in early post-operative treatment for shaping of the extremity;
- (24) ambulation using assistive devices that requires physical assistance;
- (25) range of motion exercises;
- (26) any other prescribed physical or occupational therapy;
- (27) transferring semi-ambulatory or non-ambulatory residents; or
- (28) nurse aide II tasks according to the scope of practice as established in the Nursing Practice Act and rules promulgated under that act in 21 NCAC 36.

(b) The appropriate licensed health professional, as required in Paragraph (a) of this Rule, is:

- (1) a registered nurse licensed under G.S. 90, Article 9A, for tasks listed in Subparagraphs (a)(1) through (28) of this Rule;
- (2) an occupational therapist licensed under G.S. 90, Article 18D or physical therapist licensed under G.S. 90-270.24, Article 18B for tasks listed in Subparagraphs (a)(17) and (a)(22) through (27) of this Rule;
- (3) a respiratory care practitioner licensed under G.S. 90, Article 38, for tasks listed in Subparagraphs (a)(6), (11), (16), (18), (19) and (21) of this Rule; or
- (4) a registered nurse licensed under G.S. 90, Article 9A, for tasks that can be performed by a nurse aide II according to the scope of practice as established in the Nursing Practice Act and rules promulgated under that act in 21 NCAC 36.

(c) The facility shall assure that participation by a registered nurse, occupational therapist or physical therapist in the on-site review and evaluation of the residents' health status, care plan and care provided, as required in Paragraph (a) of this Rule, is completed within the first 30 days of admission or within 30 days from the date a resident develops the need for the task and at least quarterly thereafter, and includes the following:

- (1) performing a physical assessment of the resident as related to the resident's diagnosis or current condition requiring one or more of the tasks specified in Paragraph (a) of this Rule;
- (2) evaluating the resident's progress to care being provided;
- (3) recommending changes in the care of the resident as needed based on the physical assessment and evaluation of the progress of the resident; and

- (4) documenting the activities in Subparagraphs (1) through (3) of this Paragraph.

(d) The facility shall assure action is taken in response to the licensed health professional review and documented, and that the physician or appropriate health professional is informed of the recommendations when necessary.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334; Temporary Adoption Eff. January 1, 1996; Eff. May 1, 1997; Temporary Amendment Eff. December 1, 1999; Amended Eff. July 1, 2000; Temporary Amendment Eff. September 1, 2003; Amended Eff. June 1, 2004.

10A NCAC 13G .0904 NUTRITION AND FOOD SERVICE

(a) Food Procurement and Safety in Family Care Homes:

- (1) The kitchen, dining and food storage areas shall be clean, orderly and protected from contamination.
- (2) All food and beverage being procured, stored, prepared or served by the facility shall be protected from contamination.
- (3) All meat processing shall occur at a USDA-approved processing plant.
- (4) There shall be at least a three-day supply of perishable food and a five-day supply of non-perishable food in the facility based on the menus, for both regular and therapeutic diets.

(b) Food Preparation and Service in Family Care Homes:

- (1) Sufficient staff, space and equipment shall be provided for safe and sanitary food storage, preparation and service.
- (2) Table service shall include a napkin and non-disposable place setting consisting of at least a knife, fork, spoon, plate and beverage containers. Exceptions may be made on an individual basis and shall be based on documented needs or preferences of the resident.
- (3) Hot foods shall be served hot and cold foods shall be served cold.
- (4) If residents require feeding assistance, food shall be maintained at serving temperature until assistance is provided.

(c) Menus in Family Care Homes:

- (1) Menus shall be prepared at least one week in advance with serving quantities specified and in accordance with the Daily Food Requirements in Paragraph (d) of this Rule.
- (2) Menus shall be maintained in the kitchen and identified as to the current menu day and cycle for any given day for guidance of food service staff.
- (3) Any substitutions made in the menu shall be of equal nutritional value, appropriate for therapeutic diets and documented to indicate the foods actually served to residents.

- (4) Menus shall be planned to take into account the food preferences and customs of the residents.
 - (5) Menus as served and invoices or other receipts of purchases shall be maintained in the facility for 30 days.
 - (6) Menus for all therapeutic diets shall be planned or reviewed by a registered dietitian. The facility shall maintain verification of the registered dietitian's approval of the therapeutic diets which shall include an original signature by the registered dietitian and the registration number of the dietitian.
 - (7) The facility shall have a matching therapeutic diet menu for all physician-ordered therapeutic diets for guidance of food service staff.
- (d) Food Requirements in Family Care Homes:
- (1) Each resident shall be served a minimum of three nutritionally adequate, palatable meals a day at regular hours with at least 10 hours between the breakfast and evening meals.
 - (2) Foods and beverages that are appropriate to residents' diets shall be offered or made available to all residents as snacks between each meal for a total of three snacks per day and shown on the menu as snacks.
 - (3) Daily menus for regular diets shall include the following:
 - (A) Homogenized whole milk, low fat milk, skim milk or buttermilk: One cup (8 ounces) of pasteurized milk at least twice a day. Reconstituted dry milk or diluted evaporated milk may be used in cooking only and not for drinking purposes due to risk of bacterial contamination during mixing and the lower nutritional value of the product if too much water is used.
 - (B) Fruit: Two servings of fruit (one serving equals 6 ounces of juice; ½ cup of raw, canned or cooked fruit; 1 medium-size whole fruit; or ¼ cup dried fruit). One serving shall be a citrus fruit or a single strength juice in which there is 100% of the recommended dietary allowance of vitamin C in each six ounces of juice. The second fruit serving shall be of another variety of fresh, dried or canned fruit.
 - (C) Vegetables: Three servings of vegetables (one serving equals ½ cup of cooked or canned vegetable; 6 ounces of vegetable juice; or 1 cup of raw vegetable). One of these shall be a dark green, leafy or deep yellow three times a week.
 - (D) Eggs: One whole egg or substitute (e.g., 2 egg whites or ¼ cup of pasteurized egg product) at least three times a week at breakfast.
- (E) Protein: Two to three ounces of pure cooked meat at least two times a day for a minimum of 4 ounces. A substitute (e.g., 4 tablespoons of peanut butter, 1 cup of cooked dried peas or beans or 2 ounces of pure cheese) may be served three times a week but not more than once a day, unless requested by the resident.
Note: Bacon is considered to be fat and not meat for the purposes of this Rule.
 - (F) Cereals and Breads: At least six servings of whole grain or enriched cereal and bread or grain products a day. Examples of one serving are as follows: 1 slice of bread; ½ of a bagel, English muffin or hamburger bun; one 1 ½ -ounce muffin, 1-ounce roll, 2-ounce biscuit or 2-ounce piece of cornbread; ½ cup cooked rice or cereal (e.g., oatmeal or grits); ¾ cup ready-to-eat cereal; or one waffle, pancake or tortilla that is six inches in diameter. Cereals and breads offered as snacks may be included in meeting this requirement.
 - (G) Fats: Include butter, oil, margarine or items consisting primarily of one of these (e.g., icing or gravy).
 - (H) Water and Other Beverages: Water shall be served to each resident at each meal, in addition to other beverages.
- (e) Therapeutic Diets in Family Care Homes:
- (1) All therapeutic diet orders including thickened liquids shall be in writing from the resident's physician. Where applicable, the therapeutic diet order shall be specific to calorie, gram or consistency, such as for calorie controlled ADA diets, low sodium diets or thickened liquids, unless there are written orders which include the definition of any therapeutic diet identified in the facility's therapeutic menu approved by a registered dietitian.
 - (2) Physician orders for nutritional supplements shall be in writing from the resident's physician and be brand specific, unless the facility has defined a house supplement in its communication to the physician, and shall specify quantity and frequency.
 - (3) The facility shall maintain an accurate and current listing of residents with physician-ordered therapeutic diets for guidance of food service staff.
 - (4) All therapeutic diets, including nutritional supplements and thickened liquids, shall be served as ordered by the resident's physician.

- (f) Individual Feeding Assistance in Family Care Homes:
- (1) Sufficient staff shall be available for individual feeding assistance as needed.
 - (2) Residents needing help in eating shall be assisted upon receipt of the meal and the assistance shall be unhurried and in a manner that maintains or enhances each resident's dignity and respect.

(g) Variations from the required three meals or time intervals between meals to meet individualized needs or preferences of residents shall be documented in the resident's record.

History Note: Authority G.S. 131D-2; 143B-165; S.L. 2002-0160;

Eff. January 1, 1977;

Amended Eff. October 1, 1977; April 22, 1977;

Readopted Eff. October 31, 1977;

Amended Eff. August 3, 1992; July 1, 1990; September 1, 1987; April 1, 1987;

Temporary Amendment Eff. July 1, 2003;

Amended Eff. June 1, 2004.

10A NCAC 70E .0506 REVOCATION OR DENIAL

(a) The Department of Health and Human Services may revoke licenses when an agency authorized by law to investigate allegations of abuse or neglect finds the foster parent has abused or neglected a child.

(b) The Department of Health and Human Services may revoke a license when the foster family home is not in compliance with licensing standards.

(c) The Department of Health and Human Services shall base the revocation on the following:

- (1) a child's circumstances;
- (2) a child's permanency plan;
- (3) the nature of the non-compliance; and
- (4) the circumstances of the placement.

(d) When foster parents' license have been revoked, they must submit their license to the agency for it to be returned to the Division of Social Services, Family Support and Child Welfare Services Section.

(e) The Department of Health and Human Services may deny licensure to an applicant when it is determined that an applicant meets any of the following conditions:

- (1) the Department has initiated revocation or summary suspension proceedings against any facility licensed pursuant to G.S. 122C, Article 2, G.S. 131D, Articles 1 or 1A, or G.S. 110, Article 7 which was previously held by the applicant and the applicant voluntarily relinquished the license;
- (2) there is a pending appeal of a denial, revocation or summary suspension of any facility licensed pursuant to G.S. 122C, Article 2, G.S. 131D, Articles 1 or 1A, or G.S. 110, Article 7 which is owned by the applicant;
- (3) the applicant has an individual as part of its governing body or management who previously held a license which was revoked or summarily suspended under G.S. 122C, Article 2, G.S. 131D, Articles 1 or 1A, and

G.S. 110, Article 7 and the rules adopted under these laws; or

- (4) the applicant is an individual who has a finding or pending investigation by the Health Care Personnel Registry in accordance with G.S. 131E-256.

(f) The denial of licensure pursuant to Paragraph (e) of this Rule shall be in accordance with G.S. 122C-23(e1) and G.S. 131D-10.3(h). A copy of these statutes may be obtained through the internet at <http://www.ncleg.net/Statutes/Statutes.html>. Appeal procedures specified in 10A NCAC 70L .0102, WAIVER OF LICENSING RULES AND APPEAL PROCEDURES, shall be applicable for persons seeking an appeal to the Department's decision to revoke or deny a license. If the action is reversed on appeal, the application shall be approved back to the date of the denied application if all qualifications are met.

History Note: Authority G.S. 131D-10.5; 143B-153 (See S. L. 2002-164);

Eff. July 1, 1982;

Amended Eff. May 1, 1990; February 1, 1986;

Temporary Amendment Eff. February 1, 2002;

Amended Eff. July 18, 2002;

Temporary Amendment Eff. July 1, 2003;

Amended Eff. May 1, 2004 (this amendment replaces the amendment approved by RRC on October 16, 2003).

10A NCAC 70I .0101 LICENSING ACTIONS

(a) License.

- (1) The Department of Health and Human Services shall issue a license when it determines that the residential child-care facility is in compliance with rules in Subchapters 70I and 70J.
- (2) A license shall remain in effect for one year.
- (3) The Department of Health and Human Services shall automatically provide a 90 day grace period at the expiration date of the license.
- (4) If licensure materials are submitted after the license expires, but within the 90 day grace period, the Department of Health and Human Services shall issue a license one year from the expiration date of the previous license.

(b) Changes in any information on the license.

- (1) The Department of Health and Human Services shall change a license during the period of time it is in effect if the change is in compliance with rules in Subchapters 70I and 70J.
- (2) The Department of Health and Human Services shall not change a license during the 90 day grace period.
- (3) A residential child-care facility must notify the Children's Services Section in writing of its request for a change in license, including such information as is necessary to assure that the change is in compliance with the rules in Subchapters 70I and 70J.

(c) Termination.

- (1) When a residential child-care facility voluntarily discontinues child caring operations, either temporarily or permanently, the residential child-care facility must notify the Children's Services Section in writing of the date, reason and anticipated length of closing.
- (2) If a license is not renewed by the end of the 90 day grace period, the Department of Health and Human Services shall automatically terminate the license.

(d) Adverse Licensure Action.

- (1) The Department of Health and Human Services shall deny, suspend or revoke a license when a residential child-care facility is not in compliance with the rules in Subchapters 70I and 70J unless the child-care provider within 10 working days from the date the child-care facility initially received the deficiency report from the Division of Social Services submits a plan of correction. The plan of correction shall specify the following:
 - (A) the measures that will be put in place to correct the deficiency;
 - (B) the systems that will be put in place to prevent a re-occurrence of the deficiency;
 - (C) the individual or individuals who will monitor the corrective action; and
 - (D) the date the deficiency will be corrected which shall be no later than 60 days from the date the routine monitoring was concluded.
- (2) The Department of Health and Human Services shall notify a residential child-care facility in writing of the decision to deny, suspend or revoke a license.
- (3) Appeal procedures specified in 10A NCAC 70L .0107, WAIVER OF LICENSING RULES AND APPEAL PROCEDURES, are applicable for persons seeking an appeal to the Department's decision to deny, suspend or revoke a license.

(e) Licensure Restriction.

- (1) Licensure may be denied when it is determined that an applicant meets any of the following conditions:
 - (A) owns a facility or agency licensed under G.S. 122C and that facility or agency incurred a penalty for a Type A or B violation under Article 3 of G.S. 122C; or
 - (B) the Department has initiated revocation or summary suspension proceedings against any facility licensed pursuant to G.S. 122C, Article 2, G.S. 131D, Articles 1 or 1A, or G.S. 110, Article 7 that was previously held by the applicant and

- (C) the applicant voluntarily relinquished the license;
 - (C) there is a pending appeal of a denial, revocation or summary suspension of any facility licensed pursuant to G.S. 122C, Article 2, G.S. 131D, Articles 1 or 1A, or G.S. 110, Article 7 that is owned by the applicant;
 - (D) the applicant has an individual as part of their governing body or management who previously held a license that was revoked or summarily suspended under G.S. 122C, Article 2, G.S. 131D, Articles 1 or 1A, and G.S. 110, Article 7 and the rules adopted under these laws; or
 - (E) the applicant is an individual who has a finding or pending investigation by the Health Care Personnel Registry in accordance with G.S. 131E-256.
- (2) The denial of licensure pursuant to this Paragraph shall be in accordance with G.S. 122C-23(e1) and G.S. 131D-10.3(h). A copy of these statutes may be obtained through the internet at <http://www.ncleg.net/Statutes/Statutes.html>.

History Note: Authority G.S. 131D-10.3; 131D-10.5; 143B-153; Eff. July 1, 1999 (See S. L. 1999, c. 237, s. 11.30); Temporary Amendment Eff. July 1, 2003; Amended Eff. May 1, 2004 (this amendment replaces the amendment approved by RRC on December 18, 2003).

TITLE 11 - DEPARTMENT OF INSURANCE

11 NCAC 08 .1401 DEFINITIONS

As used in this Section:

- (1) "Board" means the North Carolina Manufactured Housing Board, as defined in G.S. 143-143.9(1).
- (2) "CE Administrator" means a person designated by the Board to receive all applications for course approval, course reports, course application and renewal fees, on behalf of the Board for the CE program.
- (3) "Continuing education" or "CE" means any educational activity approved by the Board to be a continuing education activity.
- (4) "Course" means a continuing education course directly related to manufactured housing principles and practices or a course designed and approved for licensees.
- (5) "Credit hour" means at least 50 minutes of continuing education instruction.
- (6) "Distance education course" or "distance learning course" means a continuing education course approved by the Board in which instruction is accomplished through the use of

- media whereby teacher and student are separated by distance and sometimes by time.
- (7) "Licensee" means a manufactured housing salesperson or set-up contractor who holds a license issued by the Board in accordance with G.S. 143-143.11, but does not include a licensed manufacturer or dealer.
 - (8) "Qualifier" means the person or persons having passed the written Set-Up Contractor's Examination as administered by the Board and authorized in G.S. 143-143.11(h), and as defined in 11 NCAC 08 .0912(e), or a person who meets the requirements of 11 NCAC 08 .0912(e) and is designated by a licensee to obtain CE credits.
 - (9) "Sponsor" means an organization or individual who has submitted information to the Board as specified in this Section and has been approved by the Board to provide instruction for the purpose of CE.
 - (10) "Staff" means designated employees of the Manufactured Building Division of the Department of Insurance who are authorized to act on behalf of the Board with regard to continuing education matters.

History Note: Authority G.S. 143-143.10; 143-143.11B; Eff. August 1, 2002; Amended Eff. May 1, 2004.

11 NCAC 08 .1415 CE REQUIREMENTS

(a) In order to renew an active manufactured housing salesperson or set-up contractor license for license periods beginning on or after July 1, 2003, and in accordance with G.S. 143-143.11B(a), a licensee shall have completed the number of credit hours specified in this Paragraph, by June 30 of the previous license year. Salespersons shall complete six credit hours and set-up contractors shall complete four credit hours. If a licensee exceeds the number of credit hours specified in this Paragraph, the excess credit hours may be carried forward into the next license year, but the number of carry over credit hours may not exceed the number specified in this Paragraph. In addition to the specific requirements stated in this Rule, a Law and Administration course consisting of at least six hours of continuing education for salespersons and at least four hours of continuing education for set-up contractors shall be required to be taken for continuing education credit at least once in every five year period beginning July 1, 2004. In license periods in which a salesperson or set-up contractor takes an approved Law and Administration course, no additional courses shall be required during that license period. All Law and Administration courses taken for credit shall be submitted to and approved by the Board in accordance with 11 NCAC 08 .1405 and 11 NCAC 08 .1433.

(b) For set-up contractors originally licensed on or after July 15, 1999, the person obtaining the required credit hours must be a qualifier. If a set-up contractor licensed on or after July 15, 1999 has more than one qualifier, each qualifier must obtain the required number of CE credits for the license period. For set-up contractors originally licensed prior to July 15, 1999, the

licensee shall designate an individual, known as the "qualifier," who is associated with the licensee and is actively engaged in the work of the licensee for a minimum of 20 hours per week or a majority of the hours operated by the licensee, whichever is less. The qualifier shall be the person who obtains CE credits on behalf of the licensee. Each licensee shall notify the Board in writing within 10 days after the qualifier no longer meets the preceding requirements. If a qualifier has obtained excess credit hours which may be carried over into the subsequent license year, and no longer meets the requirements of this Section, the carry over credits shall not apply to the licensee. If the qualifier becomes employed by another licensee and meets the requirements of this Section, the qualifier's carry over credit hours may be applied to the licensee with whom the qualifier is newly employed for the current license year. A licensee whose qualifier no longer meets the requirements of this Section must designate another qualifier who shall obtain the required credit hours for the subsequent license year.

(c) A licensee who is initially licensed on or after January 1 in any license year is exempt from this Section for the license period expiring on the next June 30.

(d) A licensee who is qualified as an instructor in accordance with 11 NCAC 08 .1418 and who serves as an instructor for an approved CE course shall receive the maximum credits for the course taught by the instructor that are awarded to a student for the course. However, teaching credit is valid for teaching an approved CE course or seminar for the first time only.

History Note: Authority G.S. 143-143.10; 143-143.11B; Eff. August 1, 2002; Amended Eff. May 1, 2004.

11 NCAC 08 .1433 DISTANCE EDUCATION COURSES

A sponsor requesting approval of a distance education course shall comply with 11 NCAC 08 .1405. Additionally, the proposed distance education course shall satisfy the following criteria, as applicable:

- (1) The course shall be designed to assure that students have defined learning objectives. If the nature of the subject matter is such that the learning objectives cannot be reasonably accomplished without some direct interaction between the instructor and students, then the course shall be designed to provide for such interaction.
- (2) A course that does not provide the opportunity for continuous audio and visual communication between instructor and all students during the course presentation shall utilize testing processes that assure student mastery of the subject material.
- (3) A course that involves students completing the course on a self-paced study basis shall be designed so that the time required for a student of average ability to complete the course will be not less than six hours for salespersons and four hours for set-up contractors. The sponsor shall utilize a system that assures that students have actually performed all tasks required for

completion and mastery of the subject material.

- (4) The sponsor shall provide technical support to enable students to satisfactorily complete the course.
- (5) The approved course instructor(s) shall be available to respond in a timely manner to student questions about the subject matter of the course. Instructors shall have training in the proper use of the instructional delivery method utilized in the course, including the use of computer hardware and software or other applicable equipment and systems.
- (6) The sponsor shall provide students an orientation or information package containing all pertinent information regarding requirements unique to completing a distance education course, including any requirements with regard to computer hardware and software or other equipment, and outlining in detail the instructor and technical support that will be available when taking the course.
- (7) The sponsor shall utilize procedures that provide reasonable assurance that the student receiving continuing education credit for completing the course actually performed, on his or her own, all the work required to complete the course. For courses that involve independent study by students, certification that the student personally completed all required course work shall be provided by the student to the sponsor, either by a signed statement (on a form provided by the sponsor) or, in the case of Internet or computer based courses, by electronic means that are indicated in the software or on the website. Signed course completion statements or records of electronic certification shall be retained by the sponsor together with any other course records required by this Section.
- (8) In addition to the information required in 11 NCAC 08 .1405, sponsors seeking approval of distance education courses must submit to the Board a complete copy of the course in the medium that is to be utilized, including all computer software that will be used in presenting the course and administering tests. If the course is to be Internet based, the Board must be provided access to the course via the Internet and shall not be charged a fee for such access.
- (9) All reporting of completed distance education courses shall be in full accordance with 11 NCAC 08 .1426. Students shall not be reported for continuing education credit for distance education courses until the signed form from the student or electronic certification, as described in Item (7) of this Rule, has been received.

History Note: Authority G.S. 143-143.10; 143-143.11B; Eff. May 1, 2004.

11 NCAC 12 .0602 DEFINITION OF REPLACEMENT (effective August 1, 2004)

When used in the rules in this Section, "replacement" means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:

- (1) lapsed, forfeited, surrendered, or partially surrendered, assigned to the replacing insurer or otherwise terminated;
- (2) converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
- (3) amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
- (4) reissued with any reduction in cash value; or
- (5) used in a financed purchase.

History Note: Authority G.S. 58-2-40; 58-3-115; 58-58-1; 58-58-40; Eff. October 1, 1985 Amended Eff. August 1, 2004.

11 NCAC 12 .0603 OTHER DEFINITIONS (effective until August 1, 2004)

- (a) "Conservation" means any attempt by the existing insurer or its agent or broker to dissuade a policyowner from the replacement of existing life insurance or annuity. Conservation does not include routine administrative procedures such as late payment reminders, late payment offers or reinstatement offers.
- (b) "Deposit Fund" means an arrangement under which amounts to accumulate as interest are paid in addition to life insurance premiums or annuity considerations under provisions of individual life insurance policies or annuity contracts.
- (c) "Direct-Response Sales" means any sale of life insurance or annuity where the insurer does not utilize an agent in the sale or delivery of the policy.
- (d) "Existing Insurer" means the insurance company whose policy is or will be changed or terminated in such a manner as described within the definition of "replacement".
- (e) "Existing Life Insurance or Annuity" means any life insurance or annuity in force, including life insurance under a binding or conditional receipt or a life insurance policy or annuity that is within an unconditional refund period.
- (f) "Replacing Insurer" means the insurance company that issues or proposes to issue a new policy or contract which is a replacement of existing life insurance or annuity.
- (g) "Registered Contract" means variable annuities, investment annuities, variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account, or any other contracts

issued by life insurance companies which are registered with the Federal Securities and Exchange Commission.

History Note: Authority G.S. 58-2-40; 58-3-115; 58-58-1; 58-58-40; Eff. October 1, 1985.

11 NCAC 12 .0603 OTHER DEFINITIONS

(effective August 1, 2004)

When used in the rules in this Section:

- (1) "Direct-response solicitation" means a solicitation through a sponsoring or endorsing entity, or individually, solely through mails, telephone, the Internet or other mass communication media.
- (2) "Existing insurer" means the insurance company whose policy or contract is or will be changed or affected in a manner described within the definition of "replacement" in 11 NCAC 12 .0602.
- (3) "Existing policy or contract" means an individual life insurance policy (policy) or annuity contract (contract) in force, including a policy under a binding or conditional receipt or a policy or contract that is within an unconditional refund period.
- (4) "Financed purchase" means the purchase of a new policy involving the actual or intended use of funds obtained by the withdrawal or surrender of, or by borrowing from values of an existing policy to pay all or part of any premium due on the new policy. For purposes of a regulatory review of an individual transaction only, if a withdrawal, surrender or borrowing involving the policy values of an existing policy is used to pay premiums on a new policy owned by the same policyholder and issued by the same company within four months before or 13 months after the effective date of the new policy, it shall be deemed prima facie evidence of the policyholder's intent to finance the purchase of the new policy with existing policy values. This prima facie standard is not intended to increase or decrease the monitoring obligations contained in 11 NCAC 12 .0607(1)(e).
- (5) "Illustration" means a presentation or depiction that includes non-guaranteed elements of a policy of life insurance over a period of years as defined in 11 NCAC 04 .0501(b)(8).
- (6) "Policy summary" means:
 - (a) For policies or contracts other than universal life policies, a written statement regarding a policy or contract which contains, to the extent applicable, the following information:
 - (i) current death benefit;
 - (ii) annual contract premium;
 - (iii) current cash surrender value;
 - (iv) current dividend;

- (v) application of current dividend; and
- (vi) amount of outstanding loan.
- (b) For universal life policies, a written statement that contains the following information:
 - (i) the beginning and end date of the current report period;
 - (ii) the policy value at the end of the previous report period and at the end of the current report period;
 - (iii) the total amounts that have been credited or debited to the policy value during the current report period, identifying each by type (e.g., interest, mortality, expense and riders);
 - (iv) the current death benefit at the end of the current report period on each life covered by the policy;
 - (v) the net cash surrender value of the policy as of the end of the current report period; and
 - (vi) the amount of outstanding loans, if any, as of the end of the current report period.
- (7) "Producer" includes duly licensed agents and brokers as defined by G.S. 58-33-10(7).
- (8) "Replacing insurer" means the insurance company that issues or proposes to issue a new policy or contract that replaces an existing policy or contract or is a financed purchase.
- (9) "Registered contract" means a variable annuity contract or variable life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.
- (10) "Sales material" means a sales illustration and any other written, printed or electronically presented information created, or completed or provided by the company or producer and used in the presentation to the policy or contract owner related to the policy or contract purchased.

History Note: Authority G.S. 58-2-40; 58-3-115; 58-58-1; 58-58-40; Eff. October 1, 1985; Amended Eff. August 1, 2004.

11 NCAC 12 .0604 EXEMPTIONS

(effective until August 1, 2004)

Unless the statutes state otherwise, this Chapter shall not apply to transactions involving:

- (1) Credit life insurance; G.S. 58-57-1 through G.S. 58-57-90;

- (2) Group life insurance or group annuities; G.S. 58-58-1 through G.S. 58-58-165;
 - (3) An application to the existing insurer that issued the existing life insurance and a contractual change or a conversion privilege is being exercised, where replacing and existing insurer are same, or subsidiaries or affiliates under common ownership or control;
 - (4) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;
 - (5) Transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control; provided, however, agents or brokers proposing replacement shall comply with the requirements of 11 NCAC 12 .0605(a);
 - (6) Life insurance policies and annuities issued in connection with a pension, profit-sharing or other benefit plan qualifying for tax deductibility under the provisions of Sec. 401 of the Internal Revenue Code; provided, however, that full and complete disclosure of all material facts shall be given to the administrator or policyowner, if other than the insured, of any plan to be replaced.
- (5) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;
 - (6) Policies or contracts used to fund:
 - (A) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
 - (B) A plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;
 - (C) A governmental or church plan defined in Section 414 of the Internal Revenue Code, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the Internal Revenue Code; or
 - (D) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

History Note: Authority G.S. 58-2-40; 58-3-115; 58-58-1; 58-58-40; Eff. October 1, 1985; Amended Eff. April 8, 2002; November 1, 1989.

11 NCAC 12 .0604 EXEMPTIONS (effective August 1, 2004)

- (a) Unless the statutes state otherwise, this Section shall not apply to transactions involving:
 - (1) Credit life insurance;
 - (2) Group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer. Direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating or enrolling individuals or, when initiated by an individual member of the group, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual. Group life insurance or group annuity certificates marketed through direct response solicitation shall be subject to the provisions of 11 NCAC 12 .0608;
 - (3) Group life insurance and annuities used to fund prearranged funeral contracts;
 - (4) An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same

- (7) Where new coverage is provided under a life insurance policy or annuity contract and the cost is borne wholly by the insured's employer or by an association of which the insured is a member;
- (8) Existing life insurance that is a non-convertible term life insurance policy that will expire in five years or less and cannot be renewed;
- (9) Immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities purchased with proceeds from an existing policy are not exempt from the rules in this Section; or
- (10) Structured settlements.

(b) Notwithstanding 11 NCAC 12 .0604(a)(6), the rules in this Section shall apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after tax-basis, and where the insurer has been notified that plan participants may chose from among two or more insurers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy. As used in this Paragraph, direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement, or when initiated by an individual employee, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual employee.

(c) Registered contracts shall be exempt from the requirements of 11 NCAC 12 .0606(2) and 12 .0612(a)(2) with respect to the provision of illustrations or policy summaries; however,

premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required instead.

History Note: Authority G.S. 58-2-40; 58-3-115; 58-58-1; 58-58-40; Eff. October 1, 1985; Amended Eff. August 1, 2004; April 8, 2002; November 1, 1989.

11 NCAC 12 .0607 DUTIES OF INSURERS THAT USE AGENTS OR BROKERS (effective until August 1, 2004)

Each insurer that uses an agent or broker in a life insurance or annuity sale shall:

- (1) Require with or as part of each completed applicant for life insurance or annuity, a statement signed by the agent or broker as to whether he or she knows replacement is or may be involved in the transaction.
- (2) Where a replacement is involved:
 - (a) Require from the agent or broker with the application for life insurance or annuity:
 - (i) a list of all of the applicant's existing life insurance or annuity to be replaced; and
 - (ii) a copy of the Replacement Notice provided the applicant pursuant to 11 NCAC 12 .0605(b)(1).

Such existing life insurance or annuity shall be identified by name of insurer, insured and contract number. If a number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

- (b) Send to each existing insurer a written communication advising of the replacement or proposed replacement and the identification information obtained pursuant to 11 NCAC 12 .0607(2)(a) and a Policy Summary, Contract Summary or ledger statement containing Policy Data as required by G.S. 58-60-1 through G.S. 58-60-30 and for an annuity a contract summary as required in 11 NCAC 12 .0607(2)(c). Cost indices and equivalent level annual dividend figures need not be included in the Policy Summary or ledger statement. The aforementioned Policy Summary, Contract Summary or ledger statement shall be based upon the EXACT face amount, plan, premium and supplemental riders or agreements, if any, contained in the applicant's application to the replacing insurer. In the event that multiple applications are made by or

for an applicant, Policy Summary, Contract Summary or ledger statement shall be provided for each. All required items shall be sent within five working days of the date the application is received in the replacing insurer's home or regional office, or the date the proposed policy or contract is issued, whichever is sooner.

- (c) Where annuities are involved, the Contract Summary must be a separate document. All information required to be disclosed must be set out in such a manner as not to minimize or render any portion thereof obscure. Any amounts which remain level for two or more contract years may be represented by a single number if it is clearly indicated what amounts are applicable for each contract year. Amounts in items (2)(c)(i) and (iii) in this Rule, in the case of flexible premium annuity contracts, shall be determined either according to an anticipated pattern of consideration payments of on the assumption that considerations payable will be one hundred dollars (\$100.00) a month or one thousand dollars (\$1,000.00) a year. "Contract Summary" means a written statement describing the elements of the annuity contract and deposit fund, including but not limited to where applicable, the following items:
 - (i) One of the options under the contract available for annuity payout.
 - (ii) A prominent statement that the contract does not provide cash surrender values if such is the case.
 - (iii) The following amounts, where applicable, for the first ten contract years and representative contract years thereafter sufficient to clearly illustrate the patterns of considerations and benefits, including but not limited to, the twentieth contract year and at least one year from age 60 to 70 and at the scheduled commencement of annuity payments:
 - (A) The gross annual or single consideration for the annuity

- contract. Any additional considerations for optional benefits, such as disability premium waiver, should be shown separately.
- (B) Scheduled annual or single deposit for the deposit fund, if any.
- (C) The total guaranteed death benefit and cash surrender value at the end of the year or, if no guaranteed cash surrender values are provided, the total guaranteed paid-up annuity at the end of the year. Values for deposit fund must be shown separately from those for a basic contract.
- (D) The total illustrative death benefit and cash surrender value or paid-up annuity at the end of the year, not greater in amount than that based on:
- (I) the current dividend scale and the interest rate credited by the insurer, and
 - (II) current annuity purchase rates.
- (v) A statement of the interest rates used in calculating the guaranteed and illustrative contract or fund values.
- (vi) The date on which the Contract Summary is prepared.
- (d) Each existing insurer or such insurer's agent or broker that undertakes a conversion shall furnish the policy-owner with a Policy Summary for the existing life insurance or ledger statement containing Policy Data on the existing policy and/or annuity. Such Policy Summary or ledger statement shall be completed in accordance with the provisions of G.S. 58-60-1 through G.S. 58-60-30, except that information relating to premiums, cash values, death benefits and dividends, if any, shall be computed from the current policy year of the existing life insurance. The Policy Summary or ledger statement shall include the amount of any outstanding indebtedness, and the sum of any dividend accumulations or additions, and may include any other information that is not in violation of any regulation or statute. Cost indices and equivalent level annual dividend figures need not be included. When annuities are involved, the disclosure information shall be that required in Subparagraph (2)(c) in this Rule. The replacing insurer may request the existing insurer to furnish it with a copy of the Summaries or ledger statement, which shall be done within five working days of the receipt of the request.
- (3) The replacing insurer shall maintain evidence of the "Notice Regarding Replacement", the Policy Summary, the Contract Summary and any ledger statements used, and a replacement register, listing the replacing agent and existing insurer to be replaced. The existing insurer shall maintain evidence of Policy Summaries, Contract Summaries or ledger statements used in any conversion. Evidence that all requirements were met shall be maintained for at least three years or until the conclusion of the next succeeding regular examination by the Insurance Department of its state of domicile, whichever is earlier.
- (4) The replacing insurer shall provide in its policy or in a separate written notice which is

A dividend scale or excess interest rate which has been publicly declared by the insurer with an effective date not more than two months subsequent to the date of declaration shall be considered a current dividend scale or current excess interest rate.

- (iv) A Contract Summary which includes values based on the current dividend scale or the current dividend accumulation or excess interest rate, and a statement that such values are for

delivered with the policy a statement that the applicant has a right to an unconditional refund of all premiums paid, which right may be exercised within a period of twenty days commencing from the date of delivery of the policy.

- (5) Registered contracts shall be exempt from the requirements of 11 NCAC 12 .0607(2)(b),(c) and (d) requiring provision of Policy Summary or ledger statement information; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required in lieu thereof.

History Note: Authority G.S. 58-2-40; 58-3-115; 58-58-1; 58-58-40; Eff. October 1, 1985; Amended Eff. April 8, 2002; November 1, 1989.

11 NCAC 12 .0607 DUTIES OF INSURERS THAT USE PRODUCERS (effective August 1, 2004)

Each insurer shall:

- (1) Maintain a system of supervision and control to insure compliance with the requirements of the rules in this section that shall include the following:
- (a) Information to its producers of the requirements of the rules in this section and incorporation of the requirements of the rules in this Section into all relevant producer training manuals prepared by the insurer;
 - (b) Provision to each producer of a written statement of the company's position with respect to the acceptability of replacements providing guidance to its producer as to the appropriateness of these transactions;
 - (c) A system to review the appropriateness of each replacement transaction that the producer does not indicate is in accord with Sub-item (1)(b) of this Rule.
 - (d) Procedures to confirm that the requirements of the rules in this Section have been met; and
 - (e) Procedures to detect transactions that are replacements of existing policies or contracts by the existing insurer, but that have not been reported as such by the applicant or producer. Compliance may include systematic customer surveys, interviews, confirmation letters, or programs of internal monitoring;

- (2) Have the capacity to monitor each producer's life insurance policy and annuity contract replacements for that insurer, and shall produce, upon request, and make such records available to the Department. The capacity to monitor shall include the ability to produce records for each producer's:
 - (a) Life replacements, including financed purchases, as a percentage of the producer's total annual sales for life insurance;
 - (b) Number of lapses of policies by the producer as a percentage of the producer's total annual sales for life insurance;
 - (c) Annuity contract replacements as a percentage of the producer's total annual annuity contract sales;
 - (d) Number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the company's monitoring system as required by Sub-item (1)(e) of this Rule; and
 - (e) Replacements, indexed by replacing producer and existing insurer.
- (3) Require with or as a part of each application for life insurance or an annuity a signed statement by both the applicant and the producer as to whether the applicant has existing policies or contracts;
- (4) Require with each application for life insurance or an annuity that indicates an existing policy or contract, a completed notice regarding replacements as required in 11 NCAC 12.0611;
- (5) When the applicant has existing policies or contracts, be able to produce copies of any sales material required by 11 NCAC 12 .0605(e), the basic illustration and any supplemental illustrations related to the specific policy or contract that is purchased, and the producer's and applicant's signed statements with respect to financing and replacement for at least five years after the termination or expiration of the proposed policy or contract;
- (6) Ascertain that the sales material and illustrations required by 11 NCAC 12 .0605(e) meet the requirements of the rules in this Section and are complete and accurate for the proposed policy or contract;
- (7) If an application does not meet the requirements of the rules in this Section, notify the producer and applicant and fulfill the outstanding requirements; and
- (8) Maintain records in paper, photograph, micro process, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

History Note: Authority G.S. 58-2-40; 58-3-115; 58-58-1; 58-58-40; Eff. October 1, 1985; Amended Eff. August 1, 2004; April 8, 2002; November 1, 1989.

11 NCAC 12 .0608 DUTIES OF INSURERS WITH RESPECT TO DIRECT RESPONSE SALES (effective until August 1, 2004)

(a) If in the solicitation of a direct response sale, the insurer did not propose the replacement, and a replacement is involved, the insurer shall send to the applicant with the policy a Replacement Notice as described in Exhibit A or other substantially similar form approved by the Commissioner. In such instances the insurer may delete the last sentence and the references to signatures from Exhibit A without having to obtain approval of the form from the Commissioner.

- (b) If the insurer proposed the replacement it shall:
- (1) Provide to applicants or prospective applicants with or as a part of the application a Replacement Notice as described in Exhibit A or other substantially similar form approved by the Commissioner.
 - (2) Request from the applicant with or as part of the application, a list of all existing life insurance or annuity to be replaced and properly identified by name of insurer and insured.
 - (3) Comply with the requirements of Rule .0607(2)(b) and (c) of this Section, if the applicant furnishes the names of the existing insurers, and the requirements of Rule .0607(3) of this Section, except that it need not maintain a replacement register.

History Note: Authority G.S. 58-2-40; 58-3-115; 58-58-1; 58-58-40; Eff. October 1, 1985; Amended Eff. October 1, 1989.

11 NCAC 12 .0608 DUTIES OF INSURERS WITH RESPECT TO DIRECT RESPONSE SOLICITATIONS (effective August 1, 2004)

(a) In the case of an application that is initiated as a result of a direct response solicitation, the insurer shall require, with or as part of each completed application for a policy or contract, a statement asking whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue, or change an existing policy or contract. If the applicant indicates a replacement or change is not intended or if the applicant fails to respond to the statement, the insurer shall send the applicant, with the policy or contract, a notice regarding replacement as required in 11 NCAC 12 .0611.

(b) If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall:

- (1) Provide to applicants or prospective applicants with the policy or contract a notice, as required in 11 NCAC 12 .0611. In these instances, the insurer may delete the reference to producer,

including the producer's signature, and references not applicable to the product being sold or replaced, without having to obtain approval of the form from the Commissioner. The insurer's obligation to obtain the applicant's signature shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the notice referred to in this Paragraph. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed notice referred to in this Section; and

- (2) Comply with the requirements of 11 NCAC 12 .0612(a)(2), if the applicant furnishes the names of the existing insurers, and the requirements of 11 NCAC 12 .0612(a)(3), 12 .0612(a)(4), and 12 .0612(b).

History Note: Authority G.S. 58-2-40; 58-3-115; 58-58-1; 58-58-40; Eff. October 1, 1985; Amended Eff. August 1, 2004; October 1, 1989.

11 NCAC 12 .0609 PENALTIES (effective until August 1, 2004)

(a) A violation of these rules shall occur if an agent, broker or insurer recommends the replacement or conversion of an existing policy by use of a substantially inaccurate presentation or comparison of an existing contract's premiums and benefits or dividends and values, if any. Any insurer, agent, representative, officer or employee of such insurer failing to comply with the requirements of these rules shall be subject to such penalties as may be appropriate under the insurance laws.

(b) Patterns of action by policyowners who purchase replacing policies from the same agent or broker, after indicating on applications that replacement is not involved, shall be deemed prima facie evidence of the agent's or broker's knowledge that replacement was intended in connection with the sale of those policies, and such patterns of action shall be deemed prima facie evidence of the agent's or broker's intent to violate this Regulation.

(c) These rules do not prohibit the use of additional material other than that which is required that is not in violation of these rules or any other statute or rule.

History Note: Authority G.S. 58-2-40; 58-3-100; 58-3-115; 58-33-45; 58-33-75; 58-58-1; 58-58-40; Eff. October 1, 1985; Amended Eff. October 1, 1989.

11 NCAC 12 .0609 VIOLATIONS AND PENALTIES (effective August 1, 2004)

(a) Any failure to comply with the rules in this Section shall be considered a violation of G.S. 58-63-15(1). Violations include:

- (1) Any deceptive or misleading information set forth in sales material;

- (2) Failing to ask the applicant in completing the application the pertinent questions regarding the possibility of financing or replacement;
- (3) The intentional incorrect recording of an answer;
- (4) Advising an applicant to respond negatively to any question regarding replacement in order to prevent notice to the existing insurer; or
- (5) Advising a policy or contract owner to write directly to the company in such a way as to attempt to obscure the identity of the replacing producer or company.

(b) Policy and contract owners may replace existing life insurance policies or annuity contracts after indicating in or as a part of applications for new coverage that replacement is not their intention; however, patterns of such action by policy or contract owners of the same producer shall be deemed prima facie evidence of the producer's knowledge that replacement was intended in connection with the identified transactions, and these patterns of action shall be deemed prima facie evidence of the producer's intent to violate the rules in this Section.

(c) Where it is determined that the requirements of the rules in this Section have not been met, the replacing insurer shall provide to the policy owner:

- (1) Either:
 - (A) An in force illustration if available; or
 - (B) A policy summary for the replacement policy; or
 - (C) An available disclosure document for the replacement contract; and
- (2) The appropriate notice regarding replacements as required in 11 NCAC 12 .0611.

(d) Violations of the rules in this Section shall subject the violators to penalties that may include the revocation or suspension of a producer's or company's license, monetary fines and the forfeiture of any commissions or compensation paid to a producer as a result of the transaction in connection with which the violations occurred.

History Note: Authority G.S. 58-2-40; 58-3-100; 58-3-115; 58-33-45; 58-33-75; 58-58-1; 58-58-40; Eff. October 1, 1985; Amended Eff. August 1, 2004; October 1, 1989.

11 NCAC 12 .0611 NOTICE REGARDING REPLACEMENT (effective until August 1, 2004)

A notice regarding replacement shall be prepared by the replacing agent whenever replacement of life insurance or annuities are involved. This form shall include at a minimum a statement that the insured understands all the relevant facts, the name of the replacing company, the contract number, the name of the insured, the signature of the replacing agent, the signature of the contract owner, and the date signed. A sample form can be obtained by calling the Senior Deputy Commissioner at (919) 733-4935 or writing him at Room 347, Dobbs Building, 430 N. Salisbury Street, Raleigh, N.C. 27611.

History Note: Authority G.S. 58-2-40; 58-3-115; 58-58-1; 58-58-40; Eff. October 1, 1985.

11 NCAC 12 .0611 NOTICE REGARDING REPLACEMENT (effective August 1, 2004)

Notice regarding replacement shall be the most current format adopted by the NAIC Life Insurance and Annuities Replacement Model Regulation. A copy of the notice may be obtained at the Department's website: <http://www.ncdoi.com/Industry/Life/LAH/RateFilings/Annuity/AppendixABC.pdf> or in writing from the Life and Health Division of the North Carolina Department of Insurance at 1201 Mail Service Center, Raleigh, NC 27699-1201.

History Note: Authority G.S. 58-2-40; 58-3-115; 58-58-1; 58-58-40; Eff. October 1, 1985; Amended Eff. August 1, 2004.

11 NCAC 12 .0612 DUTIES OF REPLACING INSURERS THAT USE PRODUCERS

(a) Where a replacement is involved in a transaction, the replacing insurer shall:

- (1) Verify that the required forms are received and are in compliance with the rules in this section.
- (2) Notify any other existing insurer that may be affected by the proposed replacement within five business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application, and mail a copy of the available illustration or policy summary for the proposed policy or available disclosure document for the proposed contract within five business days of a request from an existing insurer;
- (3) Be able to produce copies of the notification regarding replacement required in 11 NCAC 12 .0605(b), indexed by producer, for at least five years or until the next regular examination by the insurance department of a company's state of domicile, whichever is later; and
- (4) Provide to the policy or contract owner notice of the right to return the policy or contract within 30 days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it, including any policy fees or charges; or, in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations, or imposed under such policy or contract; such notice may be included in the notice required by 11 NCAC 12.0611.

(b) In transactions where the replacing insurer and the existing insurer are the same or subsidiaries or affiliates under common ownership or control, the replacing insurer shall allow credit for the period of time that has elapsed under the replaced policy's or contract's incontestability and suicide periods up to the face amount of the existing policy or contract. With regard to

financed purchases, the credit may be limited to the amount the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.

(c) If an insurer prohibits the use of sales material other than that approved by the company, as an alternative to the requirements made of an insurer pursuant to 11 NCAC 12 .0605(e), the insurer may:

- (1) Require with each application a statement signed by the producer that:
 - (A) Represents that the producer used only company-approved sales material; and
 - (B) States that copies of all sales material were left with the applicant in accordance with 11 NCAC 12 .0605(d); and
- (2) Within 10 days of the issuance of the policy or contract:
 - (A) Notify the applicant by sending a letter or by verbal communication with the applicant by a person whose duties are separate from the marketing area of the insurer, that the producer has represented that copies of all sales material have been left with the applicant in accordance with 11 NCAC 12 .0605(d);
 - (B) Provide the applicant with a toll free number to contact the company; and
 - (C) Stress the importance of retaining copies of the sales material for future reference.

(d) An insurer shall retain and be able to produce a copy of the letter or other verification referenced in Part (c)(2)(A) of this Rule in the policy or contract file for at least five years after the termination or expiration of the policy or contract.

History Note: Authority G.S. 58-2-40; 58-3-100; 58-3-115; 58-33-45; 58-33-75; 58-58-1; 58-58-40; Eff. August 1, 2004.

TITLE 12 - DEPARTMENT OF JUSTICE

12 NCAC 09B .0202 RESPONSIBILITIES OF THE SCHOOL DIRECTOR

(a) In planning, developing, coordinating, and delivering each Commission-certified criminal justice training course, the School Director shall:

- (1) Formalize and schedule the course curriculum in accordance with the curriculum standards established in this Subchapter. The "Criminal Justice Instructor Training Course" shall be presented with 40 hours of instruction each week during consecutive calendar weeks until course requirements are completed;
- (2) Select and schedule instructors who are certified by the Commission;
- (3) Provide each instructor with a current Commission course outline and all necessary

additional information concerning the instructor's duties and responsibilities;

- (4) Review each instructor's lesson plans and other instructional materials for conformance to Commission standards and to minimize repetition and duplication of subject matter;
- (5) Arrange for the timely availability of appropriate audiovisual aids and materials, publications, facilities, and equipment for training in all topic areas;
- (6) Develop, adopt, reproduce, and distribute any supplemental rules, regulations, and requirements determined by the school to be necessary or appropriate for:
 - (A) effective course delivery;
 - (B) establishing responsibilities and obligations of agencies or departments employing or sponsoring course trainees; and
 - (C) regulating trainee participation and demeanor and ensuring trainee attendance and maintaining performance records.
- (7) If appropriate, recommend housing and dining facilities for trainees;
- (8) Administer the course delivery in accordance with Commission procedures and standards, give consideration to advisory guidelines issued by the Commission, and ensure that the training offered is safe and effective;
- (9) Maintain direct supervision, direction, and control over the performance of all persons to whom any portion of the planning, development, presentation, or administration of a course has been delegated; and
- (10) Report the completion of each presentation of a Commission-accredited criminal justice training course to the Commission.

(b) In addition to Paragraph (a) of this Rule, in planning developing, coordinating and delivering each Commission-accredited Basic Law Enforcement Training Course, the School Director shall:

- (1) Schedule course presentation to include 12 hours of instruction each week during consecutive calendar weeks except that there may be as many as three one-week breaks until course requirements are completed; and
- (2) Schedule only those instructors certified by the Commission to teach those high liability areas as specified in 12 NCAC 09B .0304(a) as either the lead instructor or in any other capacity; and
- (3) With the exception of the First Responder, Physical Fitness, Electrical and Hazardous Materials, and topical areas as outlined in 12 NCAC 09B .0304(a) of this Subchapter, schedule one specialized certified instructor for each six trainees while actively engaged in a practical performance exercise; and

- (4) Schedule one specialized certified instructor for each eight trainees while actively engaged in a practical performance exercise in the topical area "Subject Control Arrest Techniques;" and
- (5) Not schedule any single individual to instruct more than 35 percent of the total hours of the curriculum during any one delivery of the Basic Law Enforcement Training Course presentation; and
- (6) Not less than 15 days before commencing delivery of the Basic Law Enforcement Training Course, submit to the Commission a Pre-Delivery Report of Training Course Presentation as set out in 12 NCAC 09C .0211 along with the following attachments:
 - (A) a course schedule showing arrangement of topical presentations and proposed instructional assignments.
 - (B) a copy of any rules, regulations, and requirements for the school. A copy of such rules shall also be given to each trainee and to the executive officer of each trainee's employing or sponsoring agency or department at the time the trainee enrolls in the course.

The Director of the Standards Division shall review the submitted Pre-Delivery Report together with all attachments and notify the School Director of any apparent deficiency.
- (7) Monitor, or designate a certified instructor to monitor, the presentations of all instructors during course delivery and prepare written evaluations on their performance and suitability for subsequent instructional assignments:
 - (A) for probationary instructors, these evaluations shall be prepared on Commission forms and forwarded to the Commission. Based on this evaluation, the School Director shall recommend approval or denial of requests for General Instructor Certification;
 - (B) for all other instructors, these evaluations shall be prepared on Commission forms in accordance with Commission standards as set out in this Chapter. These evaluations shall be kept on file by the school for a period of three years and shall be made available for inspection by a representative of the Commission upon request;
 - (C) any designated certified instructor who is evaluating the instructional presentation of another instructor shall hold certification in the same instructional topic area as that for which the instructor is being evaluated.
- (8) Administer or designate a staff person to administer appropriate tests as determined necessary at various intervals during course delivery:
 - (A) to determine and record the level of trainee comprehension and retention of instructional subject- matter;
 - (B) to provide a basis for a final determination or recommendation regarding the minimum degree of knowledge and skill of each trainee to function as an inexperienced law enforcement officer; and
 - (C) to determine subject or topic areas of deficiency for the application of 12 NCAC 09B .0405(a)(3); and
- (9) During a delivery of Basic Law Enforcement Training, make available to the Commission four hours of scheduled class time and classroom facilities for the administration of a written examination to those trainees who have satisfactorily completed all course work.
- (10) Not more than 10 days after receiving from the Commission's representative the Report of Examination Scores, submit to the Commission a Post-Delivery Report of Training Course Presentation (Form F-10B) which shall include:
 - (A) a "Student Course Completion" form for each individual enrolled on the day of orientation.
 - (B) a "Certification and Test Score Release" form.

(c) In addition to Paragraph (a) of this Rule, in planning, developing, coordinating and delivering each Commission-accredited "Criminal Justice Instructor Training Course" the School Director shall:

 - (1) Schedule course presentation to include 40 hours of instruction each week during consecutive calendar weeks until course requirements are completed;
 - (2) Schedule at least one evaluator for each six trainees:
 - (A) no evaluator shall be assigned more than six trainees during a course delivery.
 - (B) each evaluator, as well as the instructors, must have successfully completed a Commission-accredited instructor training course or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise; and

- (C) each instructor and evaluator must document successful participation in a program presented by the Justice Academy for purposes of familiarization and supplementation relevant to delivery of the instructor training course and trainee evaluation.
- (3) Not less than 30 days before commencing delivery of the course, submit to the Commission a Pre-Delivery Report of Training Course Presentation [Form F-10A(ITC)] with the following attachments:
 - (A) a course schedule showing arrangement of topical presentations and proposed instructional assignments;
 - (B) the names and social security numbers of all instructors and evaluators; and
 - (C) a copy of any rules, regulations, and requirements for the school. The Director of the Standards Division shall review the submitted Pre-Delivery Report together with all attachments and notify the School Director of any apparent deficiency.
- (4) Not more than 10 days after course completion the School Director shall submit to the Commission a Post-Delivery Report [Form F-10B(ITC)] containing the following:
 - (A) class enrollment roster;
 - (B) a course schedule with designation of instructors and evaluators utilized in delivery;
 - (C) scores recorded for each trainee on both the 80 minute skill presentation and the final written examination; and
 - (D) designation of trainees who successfully completed the course in its entirety and whom the School Director finds to be competent to instruct.

(d) In addition to Paragraph (a) of this Rule, in planning, developing, coordinating and delivering each Commission-accredited radar, radar and time-distance, time-distance, or lidar speed measurement operator training course or re-certification course, the School Director shall:

- (1) select and schedule radar, time-distance, or lidar speed measurement instrument instructors who are certified by the Commission as instructors for the specific speed measurement instruments in which the trainees are to receive instruction. The following requirements apply to operator certification training:
 - (A) provide to the instructor the Commission form(s) for motor-skill examination on each trainee;
 - (B) require the instructor to complete the motor-skill examination form on each

trainee indicating the level of proficiency obtained on each specific instrument; and

- (C) require each instructor to sign each individual form and submit the original to the School Director.
- (2) not less than 30 days before the scheduled starting date submit to the Director of the Standards Division a Request for Training Course Presentation:
 - (A) the request shall contain a period of course delivery including the proposed starting date, course location and the number of trainees to be trained in each type of approved speed-measurement instrument; and
 - (B) the Director of the Standards Division shall review the request and notify the School Director of the accepted delivery period unless a conflict exists with previously scheduled programs.
- (3) during the delivery of the training course, make available to the Commission two hours of scheduled class time and classroom facilities for the administration of a written examination to the trainee; and
- (4) upon completing delivery of the Commission-accredited course, and not more than 10 days after receiving from the Commission's representative the Report of Examination Scores, the School Director shall notify the Commission regarding the progress and achievements of each trainee by submitting a Post-Delivery Report of Training Course Presentation. This report shall include the original motor-skill examination form(s) completed and signed by the certified instructor responsible for administering the motor-skill examination to the respective trainee.

History Note: Authority G.S. 17C-6; Eff. January 1, 1981; Amended Eff. November 1, 1981; Readopted w/change Eff. July 1, 1982; Amended Eff. May 1, 2004; August 1, 2000; January 1, 1996; November 1, 1993; December 1, 1987; January 1, 1985.

12 NCAC 09B .0203 ADMISSION OF TRAINEES

- (a) The school director shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course who is not a citizen of the United States.
- (b) The school shall not admit any individual younger than 20 years of age as a trainee in any non-academic basic criminal justice training course. Individuals under 20 years of age may be granted authorization for early enrollment as trainees in a presentation of the Basic Law Enforcement Training Course with prior written approval from the Director of the Standards Division. The Director shall approve early enrollment as long as

the individual turns 20 years of age prior to the date of the State Comprehensive Examination for the course.

(c) The school shall give priority admission in certified criminal justice training courses to individuals holding full-time employment with criminal justice agencies.

(d) The school may not admit any individual as a trainee in a presentation of the "Criminal Justice Instructor Training Course" who does not meet the education and experience requirements for instructor certification under Rule .0302(1) of this Subchapter within three months of successful completion of the Instructor Training State Comprehensive Examination.

(e) The school shall administer the reading component of a standardized test which reports a grade level for each trainee participating in the Basic Law Enforcement Training Course. The specific type of test instrument shall be determined by the School Director and shall be administered no later than by the end of the first two weeks of a presentation of the Basic Law Enforcement Training Course.

(f) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course unless as a prerequisite the individual has provided to the School Director a medical examination report, properly completed by a physician licensed to practice medicine in North Carolina, a physician's assistant, or a nurse practitioner, to determine the individual's fitness to perform the essential job functions of a criminal justice officer. The Director of the Standards Division may grant an exception to this standard for a period of time not to exceed the commencement of the physical fitness topical area when failure to timely receive the medical examination report is not due to neglect on the part of the trainee.

(g) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course unless as a prerequisite the individual is a high school graduate or has passed the General Educational Development Test indicating high school equivalency. High school diplomas earned through correspondence enrollment are not recognized toward the educational requirements.

(h) The school shall not admit any individual trainee in a presentation of the Basic Law Enforcement Training Course unless as a prerequisite the individual has provided the certified School Director a certified criminal record check for local and state records for the time period since the trainee has become an adult and from all locations where the trainee has resided since becoming an adult. An Administrative Office of the Courts criminal record check or a comparable out-of-state criminal record check will satisfy this requirement.

(i) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course who has been convicted of the following:

- (1) a felony; or
- (2) a crime for which the punishment could have been imprisonment for more than two years; or
- (3) a crime or unlawful act defined as a "Class B Misdemeanor" within the five year period prior to the date of application for employment unless the individual intends to seek certification through the North Carolina Sheriffs' Education and Training Standards Commission; or

(4) four or more crimes or unlawful acts as defined as "Class B Misdemeanors" regardless of the date of conviction; or

(5) four or more crimes or unlawful acts defined as "Class A Misdemeanors" except the trainee may be enrolled if the last conviction occurred more than two years prior to the date of enrollment; or

(6) a combination of four or more "Class A Misdemeanors" or "Class B Misdemeanors" regardless of the date of conviction unless the individual intends to seek certification through the North Carolina Criminal Justice Education and Training Standards Commission.

(j) Individuals charged with crimes as specified in Paragraph (i) of this Rule, and such offenses were dismissed or the person was found not guilty, may be admitted into the Basic Law Enforcement Training Course but completion of the Basic Law Enforcement Training Course will not ensure that certification as a law enforcement officer or justice officer through the North Carolina Criminal Justice Education and Training Standards Commission will be issued. Every individual who is admitted as a trainee in a presentation of the Basic Law Enforcement Training Course shall notify the School Director of all criminal offenses which the trainee is arrested for or charged with, pleads no contest to, pleads guilty to or is found guilty of, and notify the School Director of all Domestic Violence Orders (G.S. 50B) which are issued by a judicial official that provide an opportunity for both parties to be present. This shall include all criminal offenses except minor traffic offenses and shall specifically include any offense of Driving Under the Influence (DUI) or Driving While Impaired (DWI). A minor traffic offense is defined, for the purposes of this Paragraph, as an offense where the maximum punishment allowable by law is 60 days or less. Other offenses under G.S. 20 (Motor Vehicles) or other similar laws of other jurisdictions which shall be reported to the School Director expressly include G.S. 20-139 (persons under influence of drugs), G.S. 20-28 (driving while license permanently revoked or permanently suspended), G.S. 20-30(5) (fictitious name or address in application for license or learner's permit), G.S. 20-37.8 (fraudulent use of a fictitious name for a special identification card), G.S. 20-102.1 (false report of theft or conversion of a motor vehicle), G.S. 20-111(5) (fictitious name or address in application for registration), G.S. 20-130.1 (unlawful use of red or blue lights), G.S. 20-137.2 (operation of vehicles resembling law enforcement vehicles), G.S. 20-141.3 (unlawful racing on streets and highways), G.S. 20-141.5 (speeding to elude arrest), and G.S. 20-166 (duty to stop in event of accident). The notifications required under this Paragraph must be in writing, must specify the nature of the offense, the court in which the case was handled, the date of the arrest or criminal charge, the date of issuance of the Domestic Violence Order (G.S. 50B), the final disposition, and the date thereof. The notifications required under this Paragraph must be received by the School Director within 30 days of the date the case was disposed of in court. The requirements of this Paragraph shall be applicable at all times during which the trainee is enrolled in a Basic Law Enforcement Training Course. The requirements of this Paragraph are in addition to the notifications required under 12 NCAC 10B .0301 and 12 NCAC 09B .0101(8).

History Note: Authority G.S. 17C-6; 17C-10; Eff. January 1, 1981; Amended Eff. July 1, 2004; August 1, 2002; August 1, 2000; January 1, 1995; March 1, 1992; July 1, 1989; January 1, 1985.

12 NCAC 09B .0215 SUPPLEMENTAL SMI TRAINING

(a) The supplemental speed measuring instrument (SMI) training course for law enforcement officers shall be designed to allow officers an opportunity to be certified on additional speed measurement instruments not included on the officers' initial speed measurement instrument certification. The course shall be designed to provide the trainee with the skills and knowledge to proficiently perform those tasks essential to function as an instructor or operator using the additional speed measuring instrument(s).

(b) Each applicant for supplemental speed measuring instrument training shall:

- (1) possess a valid radar, time -distance, or lidar speed measuring instrument instructor or operator certification as a result of successful completion of 12 NCAC 09B .0210, .0211, .0212, .0213, .0214, .0237, or .0238;
- (2) present the endorsement of a Commission-recognized school director or agency executive officer or his designee.

(c) The supplemental SMI training course required for certification, on the additional instrument(s), shall include the topic areas and number of hours as outlined in The Supplemental SMI Training Course. To qualify for certification, on the additional instrument(s), an applicant shall meet the requirements as outlined in The Supplemental SMI Training Course and meet the requirements of 12 NCAC 09B .0409.

(d) Certification as instructor or operator of the additional speed measuring instruments shall expire on midnight of the date of expiration of the instructor or operator certification referred to in 12 NCAC 09B .0215(b) and .0310(a).

(e) The "Supplemental SMI Training Course" as published by the North Carolina Justice Academy shall be applied as basic curriculum for the supplemental SMI training course for SMI instructors or operators as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
114 West Edenton Street
Post Office Drawer 149
Raleigh, North Carolina 27602

and may be obtained at a cost of seven dollars and twelve cents (\$7.12) from the Academy at the following address:

North Carolina Justice Academy
Post Office Box 99
Salemberg, North Carolina 28385

(f) Commission-certified schools that are certified to offer the "Supplemental SMI Training Course" for Instructors are: The North Carolina Justice Academy.

History Note: Authority G.S. 17C-6; Eff. November 1, 1981;

Readopted Eff. July 1, 1982; Amended Eff. May 1, 2004; August 1, 2002; April 1, 1999.

12 NCAC 09B .0237 LIDAR INSTRUCTOR TRAINING COURSE

(a) The Lidar Instructor Training Course shall be designed to provide the trainee with the skills and knowledge to proficiently perform the function of a lidar instructor. This course shall be for a period not to exceed six consecutive weeks.

(b) The Lidar Instructor Training Course required for lidar instructor certification shall include the topic areas and number of hours as outlined in the Lidar Instructor Training Course. To qualify for lidar instructor certification, an applicant shall meet the requirements as outlined in The Lidar Instructor Training Course and meet the requirements of 12 NCAC 09B .0408 and .0409.

(c) Each applicant for lidar instructor training shall:

- (1) Present the endorsement of a Commission-recognized school director or agency executive officer or his designee.
- (2) Possess criminal justice General Instructor Certification as required in 12 NCAC 09B .0302.
- (3) Possess a current and valid lidar operator certification.

(d) The "Lidar Instructor Training Course" as published by the North Carolina Justice Academy is to be applied as basic curriculum for the lidar instructor training course for lidar instructors as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
114 West Edenton Street
Old Education Building
Post Office Drawer 149
Raleigh, North Carolina 27602

and may be obtained at a cost of sixteen dollars and five cents (\$16.05) from the Academy at the following address:

North Carolina Justice Academy
Post Office Box 99
Salemberg, North Carolina 28385

(e) Commission-certified schools that are certified to offer the Lidar Instructor Training Course are: The North Carolina Justice Academy.

History Note: Authority G.S. 17C-6; Eff. May 1, 2004.

12 NCAC 09B .0238 CERTIFICATION TRAINING FOR LIDAR OPERATORS

(a) The Lidar Operator Training Course for law enforcement officers shall be designed to provide the trainee with the skills and knowledge to proficiently perform the function of a law enforcement lidar operator. This course shall be for a period not to exceed four consecutive weeks.

(b) Only employed or appointed personnel of a law enforcement agency shall be enrolled in the Lidar Operator Training Course. Such a trainee shall not be certified as a lidar operator until the Basic Law Enforcement Training Course has been successfully completed and probationary or general law enforcement

certification has been granted. Sheriffs, deputy sheriffs and federal law enforcement personnel, including armed forces personnel, shall be allowed to participate in lidar operator training courses on a space available basis at the discretion of the school director without having enrolled in or having successfully completed the Basic Law Enforcement Training Course and without being currently certified in a probationary status or holding general law enforcement certification. The Lidar Operator Training Course required for lidar operator certification shall include the topic areas and number of hours as outlined in the Lidar Operator Training Course. To qualify for lidar operator certification, an applicant shall meet the requirements as outlined in the Lidar Operator Training Course and meet the requirements of 12 NCAC 09B .0408 and .0409.

(c) The "Lidar Operator Training Course" as published by the North Carolina Justice Academy is to be applied as basic curriculum for the Lidar Operator Training Course for lidar operators as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
114 West Edenton Street
Old Education Building
Post Office Drawer 149
Raleigh, North Carolina 27602

and may be obtained at a cost of sixteen dollars and five cents (\$16.05) from the Academy at the following address:
North Carolina Justice Academy
Post Office Box 99
Salemberg, North Carolina 28385

*History Note: Authority G.S. 17C-6;
Eff. May 1, 2004.*

12 NCAC 09B .0239 RE-CERTIFICATION TRAINING COURSE FOR LIDAR INSTRUCTORS

(a) The Lidar Instructor Re-Certification Training Course shall be designed to provide the instructor with the skills and knowledge to continue to proficiently perform the function of a lidar instructor. This course shall be presented within a period not to exceed one week.

(b) Each applicant for a Lidar Instructor Re-Certification Training Course shall:

- (1) possess criminal justice General Instructor Certification as required in 12 NCAC 09B .0302; and
- (2) have been certified as a lidar instructor within the three years preceding the completion date of the re-certification training course.

(c) The Lidar Instructor Re-Certification Training Course required for lidar instructor re-certification shall include the topic areas and number of hours as outlined in the Lidar Instructor Training Course. To qualify for lidar instructor re-certification, an applicant shall meet the requirements as outlined in the Lidar Instructor Training Course and meet the requirements of 12 NCAC 09B .0408 and .0409.

(d) The "Lidar Instructor Training Course" as published by the North Carolina Justice Academy shall be applied as basic curriculum for the Lidar Instructor Re-Certification Training Course for lidar instructors as administered by the Commission.

Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
114 West Edenton Street
Post Office Drawer 149
Raleigh, North Carolina 27602

and may be obtained at a cost of sixteen dollars and five cents (\$16.05) from the Academy at the following address:

North Carolina Justice Academy
Post Office Box 99
Salemberg, North Carolina 28385

(e) Commission-certified schools that are certified to offer the Lidar Instructor Re-Certification Training Course are: The North Carolina Justice Academy.

*History Note: Authority G.S. 17C-6;
Eff. May 1, 2004.*

12 NCAC 09B .0240 RE-CERTIFICATION TRAINING COURSE FOR LIDAR OPERATORS

(a) The Lidar Operator Re-Certification Training Course shall be designed to provide the law enforcement officer with the skills and knowledge to continue to proficiently perform the function of a lidar operator. This course shall be presented within a period not to exceed one week.

(b) Each applicant for a Lidar Operator Re-Certification Training Course shall meet the requirements of 12 NCAC 09C .0308(c) and (d).

(c) Federal law enforcement personnel shall be allowed to participate in Lidar Operator Re-Certification Training Courses at the discretion of the school director without meeting the requirements specified in 12 NCAC 09B .0238(b), but such personnel must have successfully completed the Lidar Operator Training Course.

(d) The Lidar Operator Re-Certification Training Course required for lidar operator re-certification shall include the topic areas and number of hours as outlined in the Lidar Operator Training Course. To qualify for lidar operator re-certification, an applicant shall meet the requirements as outlined in the Lidar Operator Training Course and meet the requirements of 12 NCAC 09B .0408 and .0409.

(e) The "Lidar Operator Training Course" as published by the North Carolina Justice Academy shall be applied as basic curriculum for the Lidar Operator Re-Certification Training Course for lidar operators as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
114 West Edenton Street
Post Office Drawer 149
Raleigh, North Carolina 27602

and may be obtained at a cost of sixteen dollars and five cents (\$16.05) from the Academy at the following address:

North Carolina Justice Academy
Post Office Box 99
Salemberg, North Carolina 28385

History Note: Authority G.S. 17C-6;

Eff. May 1, 2004.

12 NCAC 09B .0302 GENERAL INSTRUCTOR CERTIFICATION

(a) Certifications issued in this category after December 31, 1984 shall be limited to those topics which are not expressly incorporated under the Specific Instructor Certification category. Individuals certified under the general instructor category are not authorized to teach any of the subjects specified in Rule 9B .0304, entitled "Specific Instructor Certification". To qualify for issuance of General Instructor Certification, an applicant shall demonstrate a combination of education and experience in criminal justice and proficiency in the instructional process to the satisfaction of the Commission. The applicant shall meet the following requirements for General Instructor Certification:

- (1) Present documentary evidence showing that the applicant:
 - (A) is a high school graduate, or has passed the General Education Development Test (GED) indicating high school equivalency, and
 - (B) has acquired four years of practical experience as a criminal justice officer or as an administrator or specialist in a field directly related to the criminal justice system.
- (2) Present evidence showing successful completion of a Commission-certified instructor training program or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise.

(b) Applications for General Instructor Certification shall be submitted to the Standards Division within 60 days of the date the applicant successfully passed the state comprehensive examination administered at the conclusion of the Commission-certified instructor training program or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise.

(c) Persons having completed a Commission-certified instructor training course or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise, and not having made application within 60 days of completion of the course shall complete a subsequent Commission-certified instructor training course in its entirety.

History Note: Authority G.S. 17C-6; Eff. January 1, 1981; Amended Eff. May 1, 2004; August 1, 2000; July 1, 1991; December 1, 1987; October 1, 1985; January 1, 1985.

12 NCAC 09B .0404 TRAINEE ATTENDANCE

(a) Each trainee enrolled in a certified Basic Law Enforcement Training Course shall attend all class sessions. The school

director shall monitor the trainee's regular attendance at criminal justice training courses in which the trainee is enrolled.

(b) The school director may excuse a trainee from attendance at specific class sessions. However, in no case may excused absences exceed five percent of the total class hours for the course offering. A trainee shall not be eligible for administration of the state comprehensive examination and shall be dismissed from the course if the cumulative total of class absences exceeds five percent regardless of the prior completion of make-up work.

(c) If the school director grants an excused absence from a class session, he shall schedule make-up work and ensure the satisfactory completion of such work during the current course presentation. The school director shall schedule instructors and reimburse those instructors for the purpose of completion of the make up work. Absences which occur during the last forty hours of the training course may be made up in a subsequent delivery; however, the school director shall notify the Standards Division prior to scheduling the make up work.

(d) A school director may terminate a trainee from course participation or may deny certification of successful course completion where the trainee is tardy to or departs early from class meetings or field exercises.

(e) Where a trainee is enrolled in a program as required in 12 NCAC 09B .0212, .0213, .0214, .0215, .0218, .0219, .0220, .0221, .0222, .0237, .0238, .0239, or .0240, and the scheduled course hours exceed the requirements of the Commission, the trainee, upon the authorization of the school director, may be deemed to have satisfactorily completed the required number of hours for attendance provided the trainee's attendance is not less than 100 percent of the instructional hours as required by the Commission.

(f) A trainee enrolled in a presentation of the "Criminal Justice Instructor Training Course" under Rule .0209 of this Subchapter shall not be absent from class attendance for more than 10 percent of the total scheduled delivery period in order to receive successful course completion.

(g) A trainee, enrolled in a presentation of the "Specialized Firearms Instructor Training" course under Rule .0226 of this Subchapter, the "Specialized Driving Instructor Training" course under Rule .0227 of this Subchapter, or the "Specialized Subject Control Arrest Techniques Instructor Training" course under Rule .0232 of this Subchapter, shall not be absent from class attendance for more than 10 percent of the total scheduled delivery period in order to receive successful course completion. Make-up work must be completed during the current course presentation for all absenteeism.

(h) A trainee, enrolled in a presentation of the "Radar Instructor Training Course" under Rule .0210 of this Subchapter, the "Time-Distance Speed Measurement Instrument Instructor Training Course" under Rule .0211 of this Subchapter, or the "Lidar Speed Measurement Instrument Instructor Course" under Rule .0235 of this Subchapter shall not be absent from class attendance for more than 10 percent of the total scheduled delivery period in order to receive successful course completion. Make-up work must be completed during the current course presentation for all absenteeism.

History Note: Authority G.S. 17C-2; 17C-6; 17C-10; Eff. January 1, 1981; Amended Eff. November 1, 1981;

*Readopted Eff. July 1, 1982;
Amended Eff. May 1, 2004; August 1, 2000; April 1, 1999;
November 1, 1993; July 1, 1989; February 1, 1987; June 1,
1986.*

**12 NCAC 09B .0408 COMPREHENSIVE WRITTEN
EXAMINATION -- BASIC SMI CERTIFICATION**

(a) At the conclusion of the classroom instruction portion of a school's offering of any speed measurement instrument operators' courses and re-certification courses, an authorized representative of the Commission shall administer to all candidates for certification as operators a comprehensive written examination.

(b) The examination shall be an objective test covering the topic areas contained in the certified course curriculum.

(c) The Commission's representative shall submit to the school director within five days of the administration of the examination a report of the results of the test for each candidate for certification.

(d) A trainee shall pass the operator training course as required in 12 NCAC 09B .0212, .0213, .0214, or .0238 by achieving 70 percent correct answers.

(e) An operator seeking recertification shall pass the operator training recertification courses as specified in 12 NCAC 09B .0220, .0221, .0222 or .0240 by achieving 75 percent correct answers.

(f) A trainee who has fully participated in a scheduled delivery of a certified training course and has demonstrated 100 percent competence in each motor-skill or performance area of the course curriculum but has failed to achieve the prescribed score, as specified in Paragraph (d) of this Rule, on the Commission's comprehensive written examination may request the director of the Standards Division to authorize a re-examination of the trainee.

(g) The trainee's request for re-examination shall be made in writing on the Commission's form and shall be received by the Standards Division within 30 days of the examination.

(h) The trainee's request for re-examination shall include the favorable recommendation of the school director who administered the course.

(i) A trainee shall have, within 90 days of the original examination, only one opportunity for re-examination and shall satisfactorily complete the subsequent examination in its entirety.

(j) The trainee shall be notified by the Standards Division staff of a place, time, and date for re-examination.

(k) If the trainee fails to achieve the prescribed minimum score on the re-examination, the trainee may not be recommended for certification and shall enroll and complete a subsequent course offering in its entirety before further examination may be permitted.

*History Note: Authority G.S. 17C-6;
Eff. November 1, 1981;
Readopted Eff. July 1, 1982;
Amended Eff. May 1, 2004; April 1, 1999; December 1, 1987;
October 1, 1983; April 1, 1983.*

**12 NCAC 09B .0409 SATISFACTION OF TRAINING
-- SMI OPERATORS**

(a) To satisfy the training requirements for operator certification, a trainee shall complete all of the following:

- (1) achieve a score of 70 percent correct answers on the comprehensive written examination, provided for in 12 NCAC 09B .0408(d).
- (2) demonstrate successful completion of a certified offering of courses as prescribed under either 12 NCAC 09B .0212, .0213, .0214, .0215, or .0238 as shown by the certification of the school director.
- (3) demonstrate 100 percent proficiency in the motor-skill and performance subject areas as demonstrated to a certified Speed Measurement Instrument (SMI) instructor and further evidenced through documentation on the Commission's SMI forms and by the subscribing instructor's certification of trainee competence.
- (4) present evidence showing prior North Carolina certification in a Commission-certified operator training course as prescribed in 12 NCAC 09B .0212 or 12 NCAC 09B .0213, or present evidence showing prior certification which meets or exceeds North Carolina certification, or present evidence showing completion of 16 hours of supervised field practice within 90 days after completing a Commission-certified radar operator training course as prescribed in 12 NCAC 09B .0212 or 12 NCAC 09B .0213.

(b) Any trainee failing to achieve 100 percent proficiency in the motor-skill area may request written permission from the Director of the Standards Division for re-examination. The trainee's request for re-examination shall be made in writing and must be received by the Standards Division within 30 days of the original examination. The trainee's request for re-examination shall be made in writing and must be received by the Standards Division within 30 days of the original examination. The trainee's request for re-examination shall include the favorable recommendation of the school director who administered the course. A trainee shall have, within 90 days of the original examination, only one opportunity for motor-skill re-examination and must satisfactorily complete each identified area of deficiency on the original motor-skill examination. The trainee shall be notified by the Standards Division staff of a place, time and date for re-examination. If the trainee fails to achieve the prescribed score on the examination, the trainee shall not be recommended for certification and shall enroll and complete a subsequent course offering in its entirety before further examination may be permitted.

(c) To satisfy the training requirements for operator re-certification, an operator seeking re-certification shall:

- (1) Achieve a score of 75 percent correct answers on the comprehensive written examination provided for in 12 NCAC 09B .0408(e).
- (2) Demonstrate successful completion of a certified offering of courses as prescribed under either 12 NCAC 09B .0218, .0219, .0220, .0221, .0222, .0239, or .0240 as shown by the certification of the school director.

- (3) Satisfy all motor-skill requirements as required in 12 NCAC 09B .0409(a)(3).

(d) At the time a trainee seeking operator re-certification fails to achieve the prescribed requirements on the comprehensive written examination as specified in 12 NCAC 09B .0409(c)(1), certification of the officer automatically and immediately terminates and that officer shall not be re-certified until successful completion of a subsequent course offering as prescribed under either 12 NCAC 09B .0212, .0213, .0214, or .0238 before further examination may be permitted.

(e) At the time a trainee seeking operator re-certification fails to achieve the prescribed motor-skill requirements as specified in 12 NCAC 09B .0409(c)(3), certification of the officer automatically and immediately terminates and that officer shall not be re-certified until successful completion of the required motor-skill testing. Provided, however, such an officer may request re-examination as prescribed in 12 NCAC 09B .0409(b).

History Note: Authority G.S. 17C-6; Eff. November 1, 1981;

Readopted w/change Eff. July 1, 1982;

Amended Eff. May 1, 2004; April 1, 1999; December 1, 1987; August 1, 1984; October 1, 1983; April 1, 1983.

12 NCAC 09B .0414 COMPREHENSIVE WRITTEN EXAM - SPECIALIZED INSTRUCTOR TRAINING

(a) At the conclusion of a school's offering of the "Specialized Firearms Instructor Training" course, "Specialized Driver Instructor Training" course, "Specialized Subject Control Arrest Techniques Instructor Training" course, "Specialized Physical Fitness Instructor Training" course, the "Radar Instructor Training Course," the "Criminal Justice TD/SMI Instructor Training Course," the "Lidar Instructor Training Course", the "Re-Certification Training for Radar Instructors" course, the "Re-Certification Training for TD/SMI Instructors" course, and the "Re-Certification Training for Lidar Instructors" course, in its entirety, the Commission shall administer a comprehensive written examination to each trainee who has satisfactorily completed all of the required course work. A trainee cannot be administered the comprehensive written examination until such time as all of the pertinent course work is completed.

(b) The examination shall be an objective test consisting of multiple-choice, true-false, or similar questions covering the topic areas contained in the certified course curriculum.

(c) The Commission's representative shall submit to the school director within five days of the administration of the examination a report of the results of the test for each trainee examined.

(d) A trainee shall successfully complete the comprehensive written examination if he/she achieves 75 percent correct answers.

(e) A trainee who fails to achieve a score of 75 percent on the Commission's comprehensive written examination shall not be given successful course completion and shall enroll and successfully complete a subsequent offering of the specialized instructor training course in its entirety before further examination may be permitted.

History Note: Authority G.S. 17C-6; 17C-10; Eff. February 1, 1987;

Amended Eff. May 1, 2004; August 1, 2000; April 1, 1999; July 1, 1989.

12 NCAC 09B .0501 CERTIFICATION OF SCHOOL DIRECTORS

(a) Any person designated to act as, or who performs the duties of, a school director in the delivery or presentation of a Commission-certified criminal justice training course shall be and continuously remain certified by the Commission as a school director.

(b) To qualify for initial certification as a criminal justice school director, an applicant shall:

- (1) Attend and successfully complete a Commission-certified instructor training course or an equivalent instructor training program as determined by the Commission (if certified after July 1, 2004); and
- (2) Present documentary evidence showing that the applicant:
 - (A) is a high school graduate or has passed the General Education Development Test (GED) indicating high school equivalency and has acquired five years of practical experience as a criminal justice officer or as an administrator or specialist in a field directly related to the criminal justice system. At least one year of the required five years experience must have been while actively participating in criminal justice training as a Commission-certified instructor; or
 - (B) has been awarded an associate degree and has acquired four years of practical experience as a criminal justice officer or as an administrator or specialist in a field directly related to the criminal justice system. At least one year of the required four years experience must have been while directly participating in criminal justice training as a Commission-certified instructor; or
 - (C) has been awarded a baccalaureate degree from a regionally accredited institution of higher learning;
- (3) Attend or must have attended the most current offering of the school director's orientation as developed and presented by the Commission staff, otherwise an individual orientation with a staff member shall be required.
- (4) Submit a written request for the issuance of such certification executed by the executive officer of the institution or agency currently certified, or which may be seeking certification, by the Commission to make presentation of certified training programs and for whom the applicant will be the designated school director.

(c) To qualify for certification as a school director in the presentation of the "Criminal Justice Instructor Training Course" an applicant shall:

- (1) Document that he/she has been awarded a baccalaureate degree from a regionally accredited institution of higher learning; and
- (2) Present evidence showing successful completion of a Commission-certified instructor training course or an equivalent instructor training program as determined by the Commission; and
- (3) Be currently certified as a criminal justice instructor by the Commission; and
- (4) Document successful participation in a special program presented by the Justice Academy for purposes of familiarization and supplementation relevant to delivery of the instructor training course and trainee evaluation.

*History Note: Authority G.S. 17C-6;
Eff. January 1, 1985;
Amended Eff. July 1, 2004.*

12 NCAC 09C .0308 SPEED MEASUREMENT INSTRUMENT (SMI) OPERATORS CERTIFICATION PROGRAM

(a) Standards Division staff shall issue certification in one of the following categories:

- (1) radar operator Speed Measurement Instrument (SMI) certification or re-certification requiring successful completion of the training program as required in 12 NCAC 09B .0210, .0211, .0212, .0213, .0218, .0219, .0220, .0221, or .0222;
- (2) radar and time-distance speed measurement instrument operator certification or re-certification requiring successful completion of the training program as required in 12 NCAC 09B .0211, .0213, .0219, or .0221;
- (3) time-distance speed measurement instrument operator certification or re-certification requiring successful completion of the training program as required in 12 NCAC 09B .0211, .0213, .0214, .0219, .0221, or .0222.
- (4) lidar speed measurement instrument operator certification or re-certification requiring successful completion of the training program as required in 12 NCAC 09B .0238 or .0240.

(b) Certification in either category reflects operational proficiency in the designated type(s) of approved equipment for which the trainee has been examined and tested. Such certification shall be for a three year period from the date of issue and re-certifications shall be for a three year period from the date of issue, unless sooner terminated by the Commission. The applicant shall meet the following requirements for operator certification or re-certification within 90 days of course completion and upon the presentation of documentary evidence showing that the applicant:

- (1) has successfully completed the training program as required in 12 NCAC 09B .0210, .0211, .0212, .0213, .0214, .0218, .0219, .0220, .0221, .0222, .0237, .0238, .0239, or .0240; and
- (2) has successfully completed a Commission-certified basic law enforcement training course as required in 12 NCAC 09B .0400 and is currently certified in a probationary status or holds general law enforcement certification; or
- (3) if the applicant is a sheriff, deputy sheriff, or other sworn appointee with arrest authority governed by the provisions of G.S. 17E has met and is in total compliance with the then current employment and training standards as established and made effective for such position by the North Carolina Sheriffs' Education and Training Standards Commission.

(c) Certified operators shall be notified by the Commission not less than 90 days prior to expiration of certification. All applicants for re-certification shall successfully complete a Commission-approved re-certification course within 12 months from the expiration of the previous certification. If re-certification is not obtained within the 12 month period, successful completion of the appropriate operator training programs as required by 12 NCAC 09B .0409(a) shall be required to obtain operator certification. This prescribed 12 month period shall not extend the operator certification period beyond its specified expiration date. When a re-certification course is successfully completed prior to the expiration of the previous certification, the new certification shall be issued by the Criminal Justice Standards Division effective upon the receipt of the Post-delivery Report of Training Course Presentation.

(d) Operator re-certification shall be issued only to officers with current law enforcement certification.

(e) All certifications issued pursuant to this Rule and the standards in effect between November 1, 1981 and July 1, 1982 shall continue with full force and effect; however, said certifications shall be subject to the provisions of 12 NCAC 09C .0308(c) and (d).

*History Note: Authority G.S. 17C-6;
Eff. November 1, 1981;
Readopted w/change Eff. July 1, 1982;
Temporary Amendment Eff. February 24, 1984, for a period of 120 days to expire on June 22, 1984;
Amended Eff. May 1, 2004; April 1, 1999; November 1, 1993;
March 1, 1992; February 1, 1991;
December 1, 1987.*

12 NCAC 09C .0601 APPROVED SPEED-MEASURING INSTRUMENTS

The following procedures shall be adhered to for approval of speed-measuring instruments:

- (1) Prior to the inclusion as an approved speed-measuring instrument, the manufacturer of said instrument shall certify in writing to the Criminal Justice Standards Division that said

instrument meets or exceeds the applicable standards set out in the "Model Performance Specifications for Police Traffic Radar Devices" as published by the National Highway Traffic Safety Administration, United States Department of Transportation (as in effect July 1, 1982) which is hereby incorporated by reference, and shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
 North Carolina Department of Justice
 114 West Edenton Street
 Old Education Building
 Post Office Drawer 149
 Raleigh, North Carolina 27602

and may be obtained at no cost from the National Highway Traffic Safety Administration at the following address:

National Highway Traffic Safety Administration
 400 Seventh Street, SW
 Washington, DC 20590

The manufacturer shall provide evidence that the instrument meets or exceeds the applicable standards published by the National Highway Traffic Safety Administration, United States Department of Transportation.

- (2) All speed-measuring instruments shall be evaluated by representatives from the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Department of Crime Control and Public Safety. A summary of the findings shall be submitted in writing to the Criminal Justice Standards Division's Radar Program Administrator.
- (3) A current list of all approved speed-measuring instruments shall be included in Appendix "A" of the Supplement for Speed Measurement Instrument Training Courses published by the North Carolina Justice Academy.
- (4) The "Speed-Measurement Instrument Operator Training Course Manuals" as published by the North Carolina Justice Academy shall be applied as the basic curriculum for the speed-measuring instrument operator training courses for speed-measuring instrument operators as administered by the North Carolina Criminal Justice Education and Training Standards Commission. Copies of these publications may be inspected at the office of the agency:

Criminal Justice Standards Division
 North Carolina Department of Justice
 114 West Edenton Street
 Old Education Building
 Post Office Drawer 149
 Raleigh, North Carolina 27602

and may be obtained at a cost of twenty-six dollars and twenty-five cents (\$26.25) for the Radar Operator Training Course, twenty dollars and sixty cents (\$20.60) for the Time-Distance Operator Training Course, sixteen dollars and five cents (\$16.05) for the Lidar Operator Training Course, and seven dollars and twelve cents (\$7.12) for the Supplement for Speed Measurement Instrument Training Courses from the Academy at the following address:

North Carolina Justice Academy
 Post Office Box 99
 Salemburg, North Carolina 28385

*History Note: Authority G.S. 17C-6;
 Eff. November 1, 1981;
 Readopted w/change Eff. July 1, 1982;
 Amended Eff. May 1, 2004; November 1, 1998; August 1, 1998;
 August 1, 1995; January 1, 1995; November 1, 1993;
 February 1, 1991.*

12 NCAC 09C .0607 SPEED-MEASURING INSTRUMENT ACCURACY TEST

The purpose of this Rule is to establish the minimum requirements and test methods for determining the accuracy of speed-measuring instruments used by law enforcement agencies to measure the speed of vehicles for enforcement of speed laws and regulations. All requirements and tests shall conform with G.S. 8-50.2 and G.S. 17C-6.

- (1) Accuracy test standard:
 - (a) Annual tests of all speed-measuring instruments shall be in conformance with G.S. 8-50.2(c). The results of these tests shall be recorded on forms provided by the Commission.
 - (b) Daily tests of all speed-measuring instruments shall be in conformance with G.S. 8-50.2(b)(4) and G.S. 17C-6(13).
- (2) Accuracy requirements and test methods:
 - (a) Annual:

The annual tests for accuracy requirements for each specific Radar, Time-Distance, and Lidar speed-measuring instrument, as outlined in Appendix "B" of the Supplement for Speed Measurement Instrument Training Courses published by the North Carolina Justice Academy, are hereby incorporated by reference, and shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
 North Carolina Department of Justice
 114 West Edenton Street
 Old Education Building
 Post Office Drawer 149
 Raleigh, North Carolina 27602

and may be obtained at a cost of seven dollars and twelve cents (\$7.12) from the Academy at the following address:

North Carolina Justice Academy
Post Office Box 99
Salemberg, North Carolina 28385

- (b) Daily:
The daily tests for accuracy requirements for each specific Radar, Time-Distance, and Lidar speed-measuring instrument, as outlined in Appendix "C" of the Supplement for Speed Measurement Instrument Training Courses published by the North Carolina Justice Academy, are hereby incorporated by reference, and shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
114 West Edenton Street
Old Education Building
Post Office Drawer 149
Raleigh, North Carolina 27602

and may be obtained at a cost of seven dollars and twelve cents (\$7.12) from the Academy at the following address:

North Carolina Justice Academy
Post Office Box 99
Salemberg, North Carolina 28385

*History Note: Authority G.S. 8-50.2; 17C-6;
Eff. August 1, 1998;
Amended Eff: May 1, 2004.*

12 NCAC 09C .0608 SPEED-MEASURING INSTRUMENT OPERATING PROCEDURES

The purpose of this Rule is to establish the minimum requirements for operating speed-measuring instruments used by law enforcement officers to measure the speed of vehicles for enforcement of speed laws and regulations. All operating procedures shall conform with G.S. 8-50.2 and 17C-6. The operating procedures for each specific Radar, Time-Distance, and Lidar speed-measuring instrument, as outlined in Appendix "C" of the Supplement for Speed Measurement Instrument Training Courses published by the North Carolina Justice Academy, are hereby incorporated by reference, and shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
114 West Edenton Street
Old Education Building
Post Office Drawer 149
Raleigh, North Carolina 27602

and may be obtained at a cost of seven dollars and twelve cents (\$7.12) from the Academy at the following address:

North Carolina Justice Academy
Post Office Box 99
Salemberg, North Carolina 28385

*History Note: Authority G.S. 8-50.2; 17C-6;
Eff. August 1, 1998;
Amended Eff: May 1, 2004.*

12 NCAC 09F .0102 TOPICAL AREAS

The course entitled "Concealed Carry Handgun Training" shall consist of eight hours of instruction and shall include the following identified topical areas:

- (1) Legal Issues (two hours): The student shall be able to demonstrate a general knowledge of North Carolina law on concealed handguns, handgun safety, and use of deadly force. The instructor shall use the lesson plan and training videos produced by the North Carolina Justice Academy. The instructor shall determine the student's level of understanding of the relevant legal issues by a written examination.
- (2) Handgun Nomenclature: The students shall be able to either verbally or in writing list the primary parts of their personal handgun.
- (3) Handgun Safety: The students shall be able to:
 - (a) list at least four rules of safe gun handling and demonstrate all of these procedures during range exercises;
 - (b) list four methods of safely storing the handgun and choose the method most appropriate for their personal use;
 - (c) describe safety issues relating to the safe carry of a handgun; and
 - (d) determine the proper storage of their weapon when there are minors in the home.
- (4) Handgun Fundamentals: The students shall be able to:
 - (a) demonstrate how to properly load both a revolver and a semiautomatic handgun;
 - (b) demonstrate how to properly unload both a revolver and a semiautomatic handgun;
 - (c) describe the operational characteristics of their handgun; and
 - (d) successfully complete a proficiency test administered by the instructor as prescribed in 12 NCAC 09F .0105.
- (5) Marksmanship Fundamentals: The student shall be able to:
 - (a) demonstrate a proper handgun grip;
 - (b) demonstrate either the Weaver or Isosceles Stance;
 - (c) describe the elements of sight alignment and sight picture; and
 - (d) demonstrate trigger control in a dry fire exercise.

- (6) Presentation Techniques: The students shall be able to demonstrate the draw or presentation with their handgun.
- (7) Cleaning and Maintenance: The students shall be able to:
 - (a) demonstrate how to "field strip" the handgun if their weapon can be field stripped;
 - (b) describe how to perform a "Function Check" on their personal handgun; and
 - (c) based on the manufacturer's recommendations, list the lubrication points of their specific handgun.
- (8) Ammunition: The students shall be able to list the four components of handgun ammunition.
- (9) Proficiency Drills: The students shall be able to:
 - (a) demonstrate how to properly check the handgun in order to ensure that it is safe;
 - (b) demonstrate how to fire the weapon from a ready position;
 - (c) demonstrate the ability to fire the handgun from various distances; and
 - (d) successfully complete a proficiency test administered by the instructor as prescribed in 12 NCAC 09F .0105(7).

(b) Warning Tickets Permitted. In accordance with the conditions provided in G.S. 113-140(c) and where there is a contemporaneous occurrence of more than three violations of the motorboat statutes or administrative rules, Wildlife Enforcement Officers may issue a citation on the two most serious violations and a warning ticket on the lesser violation(s). In addition, Wildlife Enforcement Officers may issue warning tickets for the following offenses:

- (1) Boating Violations:
 - (A) number missing, lack of contrast, not properly spaced or less than three inches in height;
 - (B) no validation decal affixed or incorrect placement;
 - (C) fire extinguisher not charged or non-approved;
 - (D) no fire extinguisher on boats with false bottoms not completely sealed to hull or filled with flotation material;
 - (E) failure to notify North Carolina Wildlife Resources Commission of change of address of boat owner;
 - (F) personal flotation device not Coast Guard approved;
 - (G) failure to display navigation lights when there is evidence that lights malfunctioned while underway;
 - (H) no sound device (on Class I boats only);
 - (I) muffler not adequate;
 - (J) loaded firearm on access area;
 - (K) parking on access area in other than designated parking area, provided traffic to ramp not impeded;
 - (L) motorboat registration expired 10 days or less;
 - (M) no Type IV throwable personal flotation device on board, but other personal flotation device requirements met;
 - (N) violation of no-wake speed zone when mitigating circumstances present;
 - (O) running lights on motorboat are obstructed, not visible or improperly configured;
 - (P) personal flotation device is not readily accessible on board motorboat;
 - (Q) failure to wear a kill-switch lanyard on personal watercraft;
 - (R) exceeding capacity of personal watercraft while towing a skier;
 - (S) allowing youth under the age of 12 to operate a personal watercraft while accompanied by an adult; or
 - (T) wearing an inflatable personal flotation device while operating a personal watercraft.

*History Note: Authority G.S. 14-415.12;
 Temporary Adoption Eff. November 1, 1995;
 Eff. May 1, 1996;
 Amended Eff. May 1, 2004.*

**TITLE 15A - DEPARTMENT OF ENVIRONMENT
 & NATURAL RESOURCES**

15A NCAC 10A .1001 PARTICULAR OFFENSES

- (a) Warning Tickets Prohibited. Wildlife Enforcement Officers shall not issue warning tickets for the following offenses, classes of offenses or offenses committed in a particular manner:
- (1) second offense of a similar charge;
 - (2) hunting, fishing, or trapping without a license, except as listed in this Rule;
 - (3) exceeding bag or creel limits;
 - (4) taking fish or wildlife by use of poison, explosives, or electricity;
 - (5) hunting, fishing, or trapping in closed season;
 - (6) hunting on Game Lands during closed days;
 - (7) firelighting deer;
 - (8) unlawful taking or possession of antlerless deer;
 - (9) unlawful taking or possession of bear or wild turkey;
 - (10) unlawful purchase or sale of wildlife;
 - (11) unlawful taking of fox; or
 - (12) taking wildlife with the aid of or from a motor vehicle or boat under power or while in motion.

- (2) License Violations:
 - (A) persons under 16 hunting, trapping, or trout fishing without meeting statutory requirements;
 - (B) senior citizens hunting or fishing without valid license(s) (Senior citizens are those persons 65 years old or older);
 - (C) when it appears evident that the wrong license was purchased or issued by mistake;
 - (D) failure to carry required license or identification on person, if positive identification can be established;
 - (E) non-resident hunting, fishing, or trapping with resident license, if domicile is established, but not 60 days;
 - (F) hunting, fishing, or trapping on Game Lands or fishing in Designated Trout Waters that are not properly posted or have been posted for no more than 30 days; or
 - (G) persons who are 18 years or older or who do not reside with their parents, when such persons are taking wildlife upon their parent's land without a license as required by G.S. 113-270.2, 113-270.3(b) except for subdivision (5), 113-270.5, 113-271, or 113-272.
 - (3) Game Lands Violations:
 - (A) camping on Game Lands in other than designated area; or
 - (B) possession of weapons readily available for use while on game land thoroughfare, during closed season.
 - (4) Trapping Violations:
 - (A) improper chain length at dry land sets;
 - (B) trap tag not legible;
 - (C) trap tag missing, but with a group of properly tagged traps;
 - (D) trap tag missing, but evidence that animal destroyed;
 - (E) improper jawsize;
 - (F) failure to comply with "offset" jaw requirement for traps with jaw spread of more than 5 ½ inches;
 - (G) failure to attend traps daily, during severe weather (ice, high water, heavy snow); or
 - (H) no written permission, but on right-of-way of public road.
 - (5) Miscellaneous Violations:
 - (A) allowing dogs, not under the control of the owner to chase deer during closed season;
 - (B) attempting to take deer with dogs, or allowing dogs to chase deer in restricted areas;
 - (C) using dogs to track wounded deer during primitive weapon season;
 - (D) failure to report big game kill to nearest cooperater agent, when game is tagged and subject is enroute to another agent;
 - (E) training dogs or permitting them to run unleashed on Game Lands west of I-95 during the period of April 1 through August 15;
 - (F) violation of newly adopted regulations, when not readily available to the public;
 - (G) violation of local laws, when information not available to the public;
 - (H) all permits (except for fox depredation permit);
 - (I) closed season, if misprinted in digest or suddenly changed;
 - (J) minor record violation (taxidermist);
 - (K) failure to put name and address on marker (trotline); or
 - (L) failure to put name and address on nets.
- (c) Special Consideration. Special consideration may be given in local areas where the offender is hunting or fishing out of his normal locality and is unfamiliar with the local law. Consideration may also be given for violations on newly opened or established Game Lands and on reclassified or newly Designated Mountain Trout Waters. Special consideration may be given to offenders under 18 years of age.

History Note: Authority G.S. 113-140; Eff. April 1, 1991; Amended Eff. May 1, 2004; November 2, 1992; November 1, 1991.

15A NCAC 10B .0203 DEER (WHITE-TAILED)

- (a) Closed Season. All counties and parts of counties not listed under the open seasons in Paragraph (b) in this Rule shall be closed to deer hunting.
- (b) Open Seasons (All Lawful Weapons)
 - (1) Deer With Visible Antlers. Deer with antlers or spikes protruding through the skin, as distinguished from knobs or buttons covered by skin or velvet, may be taken during the following seasons:
 - (A) Saturday on or nearest October 15 through January 1 in all of Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus*, Craven, Currituck, Dare, Duplin, Edgecombe, Franklin, Gates, Greene, Halifax, Hertford, Hoke, Hyde, Johnston, Jones, Lenoir, Martin, Nash, New Hanover, Northampton,

Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Richmond**, Robeson, Sampson, Scotland**, Tyrrell, Vance, Wake, Warren, Washington, Wayne, and Wilson counties, and the following parts of counties:

Cumberland: All of the county except that part east of US 401, north of NC 24, and west of I-95;

Harnett: That part west of NC 87;

Moore**: All of the county except that part north of NC 211 and west of US 1;

*Unlawful to hunt or kill deer in Lake Waccamaw or within 50 yards of its shoreline.

**Refer to 15A NCAC 10D .0103(f)(53)(B) for seasons on Sandhills Game Land.

- (B) Saturday before Thanksgiving through the fourth Saturday after Thanksgiving Day in all Alexander, Alleghany, Ashe, Catawba, Davie, Forsyth, Gaston, Iredell, Lincoln, Stokes, Surry, Watauga, Wilkes, and Yadkin counties.
- (C) Monday of Thanksgiving week through the third Saturday after Thanksgiving Day in all of Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Swain, Transylvania, and Yancey counties.
- (D) Two Saturdays before Thanksgiving through January 1 in all of Alamance, Anson, Cabarrus, Caswell, Chatham, Davidson, Durham, Granville, Guilford, Lee, Mecklenburg, Montgomery, Orange, Person, Randolph, Rockingham, Rowan, Stanly, and Union counties, and in the following parts of counties:
Cumberland: That part east of US 401, north of NC 24 and west of I-95;
Harnett: That part east of NC 87;
Moore: That part north of NC 211 and west of US 1;
- (E) Saturday on or nearest September 10 through January 1 in those parts of Camden, Gates and Pasquotank counties known as the Dismal Swamp National Wildlife Refuge, in those parts of Hyde, Tyrrell and Washington counties known as the Pocosin Lakes National Wildlife Refuge, in those parts of Anson and Richmond counties known as the Pee

Dee National Wildlife Refuge, and in that part of Currituck County known as the Mackay Island National Wildlife Refuge;

- (F) Monday of Thanksgiving week through the fifth Saturday after Thanksgiving Day in all of Cleveland and Rutherford counties, except for South Mountain Game Land.
- (2) Deer of Either Sex. Except on Game Lands, deer of either sex may be taken during the open seasons and in the counties and portions of counties listed in this Subparagraph (Refer to 15A NCAC 10D .0103 for either sex seasons on Game Lands):
- (A) The open either-sex deer hunting dates established by the U.S. Fish and Wildlife Service during the period from the Saturday on or nearest September 10 through January 1 in those parts of Camden, Gates and Pasquotank counties known as the Dismal Swamp National Wildlife Refuge, in those parts of Hyde, Tyrrell and Washington counties known as the Pocosin Lakes National Wildlife Refuge, in those parts of Anson and Richmond counties known as the Pee Dee National Wildlife Refuge, and in that part of Currituck County known as the Mackay Island National Wildlife Refuge.
 - (B) The open either-sex deer hunting dates established by the appropriate military commands during the period from Saturday on or nearest October 15 through January 1 in that part of Brunswick County known as the Sunny Point Military Ocean Terminal, in that part of Craven County known and marked as Cherry Point Marine Base, in that part of Onslow County known and marked as the Camp Lejeune Marine Base, on Fort Bragg Military Reservation, and on Camp Mackall Military Reservation.
 - (C) Youth either sex deer hunts. First Saturday in October for youth either sex deer hunting by permit only on a portion of Belews Creek Steam Station in Stokes County designated by agents of the Commission and the third Saturday in October for youth either-sex deer hunting by permit only on Mountain Island State Forest in Lincoln and Gaston counties; and the second Saturday in November for youth either-sex deer hunting by permit only on a portion of Warrior

- Creek located on W. Kerr Scott Reservoir, Wilkes County designated by agents of the Commission.
- (D) The last open day of the Deer with Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Avery, Buncombe, Haywood, Henderson, Madison, Mitchell, Transylvania, and Yancey counties and the following parts of counties:
 Dare, except the Outer Banks north of Whalebone.
 Robeson: That part south of NC 211 and west of I-95.
 Scotland: That part south of US 74.
- (E) The last six open days of the Deer With Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Burke, Caldwell, Catawba, Gaston, Lincoln, McDowell, Polk and Watauga and the following parts of counties:
 Camden: That part south of US 158.
- (F) The first six open days and the last six open days of the Deer with Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Carteret, Cleveland, Hoke, Richmond, Rutherford, counties and in the following parts of counties:
 Columbus: That part west of US 74, SR 1005, and SR 1125.
 Cumberland: That part west of I-95.
 Harnett: That part west of NC 87.
 Moore: All of the county except that part north of NC 211 and west of US 1.
 Robeson: All of the county except that part south of NC 211 and west of I-95.
 Scotland: That part north of US 74.
- (G) All the open days of the Deer With Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Alamance, Alexander, Alleghany, Anson, Ashe, Beaufort, Bertie, Bladen, Brunswick, Cabarrus, Caswell, Chatham, Chowan, Craven, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gates, Granville, Greene, Guilford, Halifax, Hertford, Hyde, Iredell, Johnston, Jones, Lee, Lenoir, Martin, Mecklenburg, Montgomery, Nash, New Hanover, Northampton, Onslow, Orange, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Randolph, Rockingham, Rowan, Sampson, Stanly, Stokes, Surry, Tyrrell, Union, Vance, Wake, Warren, Washington, Wilkes, Wayne,

- Wilson, and Yadkin counties, and in the following parts of counties:
 Buncombe: That part east of NC 191, south of the French Broad and Swannanoa Rivers, west of US 25, and north of NC 280.
 Camden: That part north of US 158.
 Columbus: That part east of a line formed by US 74, SR 1005, and SR 1125.
 Cumberland: That part east of I-95.
 Currituck: All of the county except the Outer Banks.
 Dare: That part of the Outer Banks north of Whalebone.
 Harnett: That part east of NC 87.
 Henderson. That part east of NC 191 and north and west of NC 280.
 Moore: That part north of NC 211 and west of US 1.
 Richmond: That part west of Little River.

(c) Open Seasons (Bow and Arrow)

- (1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph and the bag limits set out in Paragraph (e) of this Rule, deer of either sex may be taken with bow and arrow during the following seasons:
- (A) Saturday on or nearest September 10 to the fourth Friday thereafter in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (A) of Subparagraph (b)(1) of this Rule, except on the Sandhills Game Land and the area known as the Outer Banks in Currituck County.
- (B) Saturday on or nearest September 10 to the second Friday before Thanksgiving in the counties and parts of counties having the open seasons for Deer with Visible Antlers specified by Part (B) of Subparagraph (b)(1) of this Rule.
- (C) Monday on or nearest September 10 to the fourth Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (C) of Subparagraph (b)(1) of this Rule and in Cleveland and Rutherford counties.
- (D) Saturday on or nearest September 10 to the third Friday before Thanksgiving in the counties and parts of counties having the open

season for Deer With Visible Antlers specified by Part (D) of Subparagraph (b)(1) of this Rule, and on Sandhills Game Land.

- (2) Restrictions
 - (A) Dogs may not be used for hunting deer during the bow and arrow season.
 - (B) It is unlawful to carry any type of firearm while hunting with a bow during the bow and arrow deer hunting season.
 - (C) Only bows and arrows of the types authorized in 15A NCAC 10B .0116 for taking deer may be used during the bow and arrow deer hunting season.

(d) Open Seasons (Muzzle -Loading Rifles and Shotguns)

- (1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph, deer may be taken only with muzzle-loading firearms (except that bow and arrow may be used on designated and posted game land Archery Zones) during the following seasons:
 - (A) The Saturday on or nearest October 8 to the following Friday in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (A) of Subparagraph (b)(1) of this Rule, except on Sandhills Game Land and the area known as the Outer Banks in Currituck County.
 - (B) The second Saturday preceding Thanksgiving until the following Friday in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (B) of Subparagraph (b)(1) of this Rule.
 - (C) Monday on or nearest October 8 to the following Saturday in Cleveland and Rutherford counties and in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part C of Subparagraph (b)(1) of this Rule.
 - (D) The third Saturday preceding Thanksgiving until the following Friday in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (D) of Subparagraph (b)(1) of this Rule, and on Sandhills Game Land.
- (2) Restrictions
 - (A) Deer of either sex may be taken during muzzle-loading firearms season in and east of the following counties: Polk, Rutherford,

McDowell, Burke, Caldwell, Wilkes, and Ashe. Deer of either sex may be taken on the last day of muzzle-loading firearms season in all other counties.

- (B) Dogs shall not be used for hunting deer during the muzzle-loading firearms seasons.
- (C) Pistols shall not be carried while hunting deer during the muzzle-loading firearms seasons.

(e) In those counties or parts of counties listed in Part (b)(1)(A) of Subparagraph (b)(1) of this Rule and those counties or parts of counties listed in Part (b)(1)(D) of this Rule in which hunting deer with dogs is allowed, the daily bag limit shall be two and the possession limit six, two of which shall be antlerless. The season limit shall be six, two of which shall be antlerless. In all other counties or parts of counties, the daily bag limit shall be two and the possession limit six, four of which shall be antlerless. The season limit shall be six, four of which shall be antlerless. Antlerless deer include males with knobs or buttons covered by skin or velvet as distinguished from spikes protruding through the skin. The antlerless bag limits described above do not apply to antlerless deer harvested in areas covered in the Deer Management Assistance Program as described in G.S. 113-291.2(e). Individual daily antlerless bag limits on these areas shall be determined by the number of special tags, issued by the Division of Wildlife Management as authorized by the Executive Director, that shall be in the possession of the hunter. Season antlerless bag limits shall be set by the number of tags available. All antlerless deer harvested on these areas, regardless of the date of harvest, shall be tagged with these special tags but the hunter does not have to validate the Big Game Harvest Report Card provided with the hunting license.

(f) Kill Reports. The kill shall be validated at the site of kill and the kill reported as provided by 15A NCAC 10B .0113.

History Note: Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.1; 113-291.2; Eff. February 1, 1976; Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996, July 1, 1995; December 1, 1994; July 1, 1994; July 1, 1993; Temporary Amendment Eff. July 1, 1999; Amended Eff. July 1, 2000; Temporary Amendment Eff. July 1, 2001; Temporary Amendment Eff. July 1, 2002; Amended Eff. August 1, 2002 (Approved by RRC on 06/21/01 and 04/18/02); Temporary Amendment Eff. June 1, 2003 Amended Eff. June 1, 2004 (this amendment replaces the amendment approved by RRC on July 17, 2003).

15A NCAC 10B .0209 WILD TURKEY

- (a) Open Seasons:
 - (1) Winter Either-Sex Wild Turkey Season shall be from the Monday on or nearest to January 15 through the following Saturday on bearded or beardless turkeys in Alleghany, Ashe, Caswell, Granville, Person, Rockingham,

Stokes, Surry, Watauga and Wilkes counties except on Game Lands.

- (2) Spring Wild Turkey Season shall be from the Second Saturday in April through the Saturday of the fourth week thereafter on bearded turkeys only in all counties statewide.

(b) Bag Limits: The daily bag limit shall be one bird and the annual bag limit shall be two birds only one of which may be taken during the Winter Either-Sex Wild Turkey Season. Possession limit is two birds.

(c) Dogs: The use of dogs for hunting wild turkeys during the Spring Wild Turkey Season shall be prohibited.

(d) Kill Reports. The kill shall be validated at the site of kill and the kill reported as provided by 15A NCAC 10B .0113.

History Note: Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.2; 113-291.5;

Eff. February 1, 1976;

Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996;

July 1, 1995; July 1, 1994; July 1, 1993; July 1, 1992;

Temporary Amendment Eff. July 1, 1999;

Amended Eff. July 1, 2000;

Temporary Amendment Eff. July 1, 2001.

Temporary Amendment Eff. July 1, 2002;

Amended Eff. August 1, 2002 (approved by RRC on 06/21/01

15A NCAC 10C .0305 OPEN SEASONS: CREEL AND SIZE LIMITS

(a) Generally. Subject to the exceptions listed in Paragraph (b) of this Rule, the open seasons and creel and size limits are as indicated in the following table:

GAME FISHES	DAILY CREEL LIMITS	MINIMUM SIZE LIMITS	OPEN SEASON
Mountain Trout:			
Wild Trout Waters	4	7 in.	ALL YEAR (exc. 2)
Hatchery Supported Trout Waters and undesignated waters	7 (exc. 2)	None (exc. 2)	All year, except March 1 to 6:00 a.m. on first Saturday in April (exc. 2)
Muskellunge	2	30 in.	ALL YEAR
Chain Pickerel (Jack)	None	None	ALL YEAR
Walleye	8 (exc. 8)	None (exc. 8)	ALL YEAR
Sauger	8	15 in.	ALL YEAR
Black Bass:			
Largemouth	5	14 in. (excs. 7 & 9)	ALL YEAR (exc. 16)
Smallmouth and Spotted	5	12 in. (excs. 7 & 9)	ALL YEAR
White Bass	25	None	ALL YEAR
Sea Trout (Spotted or Speckled)	10	12 in.	ALL YEAR
Flounder	None	13 in.	ALL YEAR
Red drum (channel bass, red fish, puppy drum)	1	18 in. (exc 18)	ALL YEAR
Striped Bass	8 aggregate	16 in.	ALL YEAR

and 04/18/02);

Temporary Amendment Eff. June 1, 2003;

Amended Eff. June 1, 2004 (this amendment replaces the amendment approved by RRC on July 17, 2003).

15A NCAC 10C .0212 FISH HATCHERIES

It is unlawful to fish by any method or at any time in the waters of Bones Creek from the Lake Rim Dam to the US 401 Bypass (Raeford Road) or upon any property used in conjunction with any state fish hatchery, except McKinney Lake Reservoir at McKinney Lake State Fish Hatchery, or except as part of fishing events authorized by the North Carolina Wildlife Resources Commission. On Lake Rim it is unlawful to use power-driven boats, except those powered by electric motors, to swim or bathe at any time, or to use, or have in possession, any minnows or other species of fish except golden shiners (shad roaches) for use as bait.

History Note: Authority G.S. 113-134; 113-264; 113-292; Eff. February 1, 1976;

Amended Eff. July 1, 1998; May 1, 1992;

Amended Eff. June 1, 2004 (this amendment replaces the amendment approved by RRC on July 17, 2003).

APPROVED RULES

and their hybrids (Morone Hybrids)	(excs. 1, 4,5,10 &12)	(excs. 1, 4,5,10 &12)	(excs. 5, 12 &14)
Shad: (American and hickory)	10 aggregate	None	ALL YEAR (exc. 17)
Kokanee Salmon	7	None	ALL YEAR
Panfishes	None (excs. 3, 11 & 15)	None (exc. 11)	ALL YEAR (exc. 3)
NONGAME FISHES	None (excs. 13 & 19)	None (exc. 19)	ALL YEAR (exc. 6)

(b) Exceptions

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| <p>(1) In the Dan River upstream from its confluence with Bannister River to the Brantly Steam Plant Dam, the Cape Fear River upstream of Buckhorn Dam and the Deep and Haw rivers to the first impoundment and in John H. Kerr, Gaston, Roanoke Rapids and B. Everett Jordan reservoirs and Lake Norman, the creel limit on striped bass and Morone hybrids is four in the aggregate and the minimum size limit is 20 inches.</p> <p>(2) In designated public mountain trout waters the season for taking all species of fish is the same as the trout fishing season. There is no closed season on taking trout from Nantahala River and all tributaries (excluding impoundments) upstream from Nantahala Lake, Linville River from Linville Falls to the NC 126 bridge, Catawba River from Muddy Creek to the City of Morganton water intake dam, and the impounded waters of power reservoirs and municipally-owned water supply reservoirs open to the public for fishing. In Lake Lure the daily creel limit for trout is five fish and minimum size limit for trout is 15 inches.</p> <p>(3) On Mattamuskeet Lake, special federal regulations apply.</p> <p>(4) In the inland fishing waters of Cape Fear, Neuse, Pee Dee, Pungo and Tar Pamlico rivers and their tributaries extending upstream to the first impoundment of the main course on the river or its tributaries, and Lake Mattamuskeet, the daily creel limit for striped bass and their hybrids is three fish in aggregate and the minimum length limit is 18 inches. In the Tar-Pamlico River and its tributaries upstream of the Grimesland bridge and in the Neuse River and its tributaries upstream of the NC 55 bridge in Lenoir County, no striped bass or striped bass hybrids between the lengths of 22 inches and 27 inches shall be retained during the period April 1 through May 31.</p> <p>(5) In the inland and joint fishing waters [as identified in 15A NCAC 10C .0107(1)(e)] of the Roanoke River Striped Bass Management Area, which includes the Roanoke, Cashie, Middle and Eastmost rivers and their tributaries, the open season for taking and possessing striped bass and their hybrids is March 1 through April 15 from the joint-</p> | <p>coastal fishing waters boundary at Albemarle Sound upstream to the US 258 bridge and is March 15 through April 30 from the US 258 bridge upstream to Roanoke Rapids Lake dam. During the open season the daily creel limit for striped bass and their hybrids is two fish in aggregate, the minimum size limit is 18 inches. No fish between 22 inches and 27 inches in length shall be retained in the daily creel limit. Only one fish larger than 27 inches may be retained in the daily creel limit.</p> <p>(6) See 15A NCAC 10C .0407 for open seasons for taking nongame fishes by special devices.</p> <p>(7) The maximum combined number of black bass of all species that may be retained per day is five fish, no more than two of which may be smaller than the applicable minimum size limit. The minimum size limit for all species of black bass is 14 inches, with no exception in Lake Luke Marion in Moore County, Reedy Creek Park lakes in Mecklenburg County, Lake Rim in Cumberland County, in the entire Lumber River from the Camp MacKall bridge (SR 1225, at the point where Richmond, Moore, Scotland, and Hoke counties join) to the South Carolina State line and in all public fishing waters east of I-95, except Tar River Reservoir in Nash County, the Yadkin-Pee Dee River from Idols Dam to the South Carolina State line including High Rock Lake, Tuckertown Lake, Badin Lake, Falls Lake, Lake Tillery and Blewett Falls Lake, and the following waters and their tributaries: the New River in Onslow County, Roanoke Sound, Croatan Sound, Currituck Sound, Albemarle Sound, Alligator River, Scuppernong River, Chowan River, Cashie River, Roanoke River downstream of U.S. 258 bridge, Lake Mattamuskeet, Pungo Lake, Alligator Lake and New Lake. In and west of Madison, Buncombe, Henderson and Polk Counties and in designated public mountain trout waters the minimum size limit is 12 inches. In B. Everett Jordan Reservoir, in Falls of the Neuse Reservoir, east of SR 1004, in Lake Lure, and Buckhorn Reservoir in Wilson and Nash counties the minimum size limit for largemouth bass is 16 inches, with no exception. In Lake Lure the minimum size limit for smallmouth bass is 14 inches, with no</p> |
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- exception. In Lake Phelps and Shearon Harris Reservoir no black bass between 16 and 20 inches shall be possessed.
- (8) A minimum size limit of 15 inches applies to walleye taken from Lake James and its tributaries, and the daily creel limit for walleye is four fish in Linville River upstream from the NC 126 bridge above Lake James.
- (9) The minimum size limit for all black bass, with no exception, is 18 inches in the following trophy bass lakes:
- (A) Cane Creek Lake in Union County;
- (B) Lake Thom-A-Lex in Davidson County; and
- (C) Sutton Lake in New Hanover County.
- (10) In all impounded inland waters and their tributaries, except those waters described in Exceptions (1) and (4), the daily creel limit of striped bass and their hybrids may include not more than two fish of smaller size than the minimum size limit.
- (11) A daily creel limit of 20 fish and a minimum size limit of 10 inches apply to crappie in B. Everett Jordan Reservoir. A daily creel limit of 20 fish and a minimum size limit of eight inches apply to crappie in the following waters: the Yadkin-Pee Dee River from Idols Dam to the South Carolina State line including High Rock Lake, Tuckertown Lake, Badin Lake, Falls Lake, Lake Tillery, and Blewett Falls Lake, Lake Norman, Lake Hyco, Lake Ramseur, Cane Creek Lake, and the following waters and all their tributaries: Roanoke Sound, Croatan Sound, Currituck Sound, Albemarle Sound, Alligator River, Scuppernong River, Chowan River, Cashie River, Roanoke River downstream of U. S. 258 bridge, lake Mattamuskeet, Lake Phelps, Pungo Lake, Alligator Lake and New Lake. In and west of Madison, Buncombe and Rutherford counties, in Lake James and in Buckhorn Reservoir in Wilson and Nash counties a daily creel limit of 20 fish applies to crappie.
- (12) In designated inland fishing waters of Roanoke Sound, Croatan Sound, Albemarle Sound, Chowan River, Currituck Sound, Alligator River, Scuppernong River, and their tributaries (excluding the Roanoke River and Cashie River and their tributaries), striped bass fishing season, size limits and creel limits shall be the same as those established by duly adopted rules or proclamations of the Marine Fisheries Commission in adjacent joint or coastal fishing waters.
- (13) The daily creel limits for channel, white, and blue catfish in designated urban lakes are stated in 15A NCAC 10C .0401(e).
- (14) The Executive Director may, by proclamation, suspend or extend the hook-and-line season for

- striped bass in the inland and joint waters of coastal rivers and their tributaries. It is unlawful to violate the provisions of any proclamation issued under this authority.
- (15) In the entire Lumber River from the Camp MacKall bridge (SR 1225, at the point where Richmond, Moore, Scotland, and Hoke counties join) to the South Carolina state line and in all public fishing waters east of I95, except Tar River Reservoir in Nash County, the daily creel limit for sunfish is 30 in aggregate, no more than 12 of which shall be redbreast sunfish.
- (16) In Sutton Lake, no largemouth bass shall be retained from December 1 through March 31.
- (17) The season for taking American and hickory shad with dip nets and bow nets is March 1 through April 30.
- (18) No red drum greater than 27 inches in length may be retained.
- (19) The daily possession limit for herring (alewife and blueback in aggregate) greater than six inches in length is specified in 15A NCAC 10C .0401(a) and in 15A NCAC 10C .0402(d).

History Note: Authority G.S. 113-134; 113-292; 113-304; 113-305; Eff. February 1, 1976; Temporary Amendment Eff. May 10, 1990, for a period of 180 days to expire on November 1, 1990; Temporary Amendment Eff. May 22, 1990, for a period of 168 days to expire on November 1, 1990; Temporary Amendment Eff. May 1, 1991, for a period of 180 days to expire on November 1, 1991; Amended Eff. July 1, 1994; July 1, 1993; October 1, 1992; Temporary Amendment Eff. December 1, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996; July 1, 1995; Temporary Amendment Eff. November 1, 1998; Amended Eff. April 1, 1999; Temporary Amendment Eff. July 1, 1999; Amended Eff. July 1, 2000; Temporary Amendment Eff. July 1, 2001; Temporary Amendment Eff. March 8, 2002 [This rule replaces the rule proposed for permanent amendment effective July 1, 2002 and approved by RRC in May 2001]; Amended Eff. August 1, 2002 (approved by RRC in April 2002); Temporary Amendment Eff. June 1, 2003; Amended Eff. June 1, 2004 (this amendment replaces the amendment approved by RRC on July 17, 2003).

15A NCAC 10C .0401 MANNER OF TAKING NONGAME FISHES: PURCHASE AND SALE

- (a) Except as permitted by the rules in this Section, it is unlawful to take nongame fishes from the inland fishing waters of North Carolina in any manner other than with hook and line or grabbling. Nongame fishes may be taken by hook and line or

grabbling at any time without restriction as to size limits or creel limits, with the following exceptions:

- (1) Blue crabs must have a minimum carapace width of five inches (point to point):
- (2) No person shall take or possess during one day more than 25 herring (alewife and blueback in aggregate) that are greater than 6 inches in length from the inland fishing waters of coastal rivers and their tributaries up to the first impoundment dam of the main course on the rivers. First impoundment dams are: Roanoke Rapids Dam on Roanoke River, Rocky Mount Mill Dam on Tar River, Milburnie Dam on Neuse River, Buckhorn Dam on Cape Fear River, Lake Waccamaw Dam on Waccamaw River and Blewett Falls Dam on Pee-Dee River.
- (3) Grass carp may not be possessed on Lake James and Mountain Island, Gaston and Roanoke Rapids reservoirs.
- (4) No trotlines or set-hooks shall be used in the impounded waters located on the Sandhills Game Land or in designated public mountain trout waters.
- (5) In Lake Waccamaw, trotlines or set-hooks may be used only from October 1 through April 30.

(b) The season for taking nongame fishes by other hook and line methods in designated public mountain trout waters shall be the same as the trout fishing season.

(c) Nongame fishes, except alewife and blueback herring (greater than six inches in length) and bowfin, taken by hook and line, grabbling or by licensed special devices may be sold. Alewife and blueback herring less than 6 inches in length may be sold except in those waters specified in Paragraph (d) of Rule .0402 of this Section, where their possession is prohibited. Eels less than six inches in length may not be taken from inland waters for any purpose.

(d) Freshwater mussels, including the Asiatic clam (*Corbicula fluminea*), may only be taken from impounded waters, except mussels shall not be taken in Lake Waccamaw and in University Lake in Orange County. It shall be unlawful to possess more than 200 freshwater mussels.

(e) It is unlawful to use boats powered by gasoline engines on impoundments located on the Barnhill Public Fishing Area.

(f) In the posted Community Fishing Program waters listed below it is unlawful to take channel, white or blue catfish (forked tail catfish) by means other than hook and line; the daily creel limit for forked tail catfish is six fish in aggregate:

- Cedarrock Pond, Alamance County
- Lake Tomahawk, Buncombe County
- Frank Liske Park Pond, Cabarrus County
- Lake Rim, Cumberland County
- Etheridge Pond on the Barnhill Public Fishing Area, Edgecombe County
- Indian Lake, Edgecombe County
- Newbold Pond on the Barnhill Public Fishing Area, Edgecombe County
- C.G. Hill Memorial Park Pond, Forsyth County
- Kernersville Lake, Forsyth County

- Winston Pond, Forsyth County
- Bur-Mil Park Ponds, Guilford County
- Hagan-Stone Park Ponds, Guilford County
- Oka T. Hester Pond, Guilford County
- San-Lee Park Ponds, Lee County
- Kinston Neuseway Park Pond, Lenoir County
- Freedom Park Pond, Mecklenburg County
- Hornet's Nest Pond, Mecklenburg County
- McAlpine Lake, Mecklenburg County
- Park Road Pond, Mecklenburg County
- Reedy Creek Park Ponds, Mecklenburg County
- Lake Luke Marion, Moore County
- Anderson Community Park, Orange County
- Lake Michael, Orange County
- River Park North Pond, Pitt County
- Ellerbe Community Lake, Richmond County
- Hamlet City Lake, Richmond County
- Salisbury Community Lake, Rowan County
- Big Elkin Creek, Surry County
- Apex Community Lake, Wake County
- Bass Lake, Wake County
- Bond Park Lake, Wake County
- Lake Crabtree, Wake County
- Shelley Lake, Wake County
- Simpkins Pond, Wake County
- Lake Toisnot, Wilson County
- Harris Lake County Park Ponds, Wake County

History Note: Authority G.S. 113-134; 113-272; 113-292; Eff. February 1, 1976; Amended Eff. July 1, 1994; July 1, 1993; May 1, 1992; Temporary Amendment Eff. December 1, 1994; Amended Eff. July 1, 1998; July 1, 1996; July 1, 1995; Temporary Amendment Eff. July 1, 1999; Amended Eff. July 1, 2000; Temporary Amendment Eff. July 1, 2001; Temporary Amendment Eff. July 1, 2002; Amended Eff. August 1, 2002 (approved by RRC on 06/21/01 and 04/18/02) Temporary Amendment Eff. June 1, 2003; Amended Eff. May 1, 2004 (this amendment replaces the amendment approved by RRC on July 17, 2003).

15A NCAC 10C .0402 TAKING NONGAME FISHES FOR BAIT

(a) It is unlawful to take nongame fish for bait in the inland waters of North Carolina using equipment other than:

- (1) a net of dip net design not greater than six feet across;
- (2) a seine of not greater than 12 feet in length (except in Lake Waccamaw where there is no length limitation) and with a bar mesh measure of not more than one-fourth inch;
- (3) a cast net; or
- (4) minnow traps not exceeding 12 inches in diameter and 24 inches in length, with funnel openings not exceeding one inch in diameter, and which are under the immediate control and attendance of the individual operating them.

(b) It is unlawful to sell nongame fishes or aquatic animals taken under this Subchapter.

(c) Game fishes and their young taken while netting for bait shall be immediately returned unharmed to the water.

(d) No person shall take or possess during one day more than 200 nongame fish in aggregate for bait, subject to the following restrictions:

- (1) No more than 50 eels, none of which may be less than six inches in length, from inland fishing waters; and
- (2) No more than 200 herring (alewife and blueback in aggregate), no more than 25 of which may be greater than six inches in length, from the inland fishing waters of coastal rivers and their tributaries up to the first impoundment dam of the main course on the river. First impoundment dams are Roanoke Rapids Dam on Roanoke River, Rocky Mount Mill Dam on Tar River, Milburnie Dam on Neuse River, Buckhorn Dam on Cape Fear River, Lake Waccamaw Dam on Waccamaw River and Blewett Falls Dam on Pee-Dee River.

(e) Any fishes taken for bait purposes are included within the daily possession limit for that species, if one is specified.

(f) It is unlawful to take nongame fish for bait or any other fish bait from designated public mountain trout waters and:

- (1) Chatham County
Deep River
Rocky River
Bear Creek
- (2) Lee County
Deep River
- (3) Moore County
Deep River
- (4) Randolph County
Deep River below the Coleridge Dam
Fork Creek

(g) In the waters of the Little Tennessee River, the Catawba River upstream of Lookout Shoals Dam, including all the tributaries and impoundments thereof, and on adjacent shorelines, docks, access ramps and bridge crossings, it is unlawful to transport, possess or release live alewife or live blueback herring.

History Note: Authority G.S. 113-134; 113-135; 113-135.1; 113-272; 113-272.3; 113-292;

Eff. February 1, 1976;

Amended Eff. July 1, 2000; July 1, 1998; July 1, 1993; July 1, 1992; May 1, 1992; July 1, 1989.

Temporary Amendment Eff. July 1, 2001;

Amended Eff. July 18, 2002;

Temporary Amendment Eff. June 1, 2003;

Amended Eff. June 1, 2004 (this amendment replaces the amendment approved by RRC on July 17, 2003).

15A NCAC 10D .0102 GENERAL REGULATIONS REGARDING USE

(a) Trespass. Entry on game lands for purposes other than hunting, trapping or fishing shall be as authorized by the

landowner and there shall be no removal of any plants or parts thereof, or other materials, without the written authorization of the landowner. The Wildlife Resources Commission may designate areas on game lands as either an Archery Zone, Safety Zone; Restricted Firearms Zone, or Restricted Zone.

- (1) Archery Zone. On portions of game lands posted as "Archery Zones" hunting is limited to bow and arrow hunting and falconry only.
- (2) Safety Zone. On portions of game lands posted as "Safety Zones" hunting is prohibited. No person shall hunt or discharge a firearm or bow and arrow within, into, or across a posted safety zone on any game land. Falconry is exempt from this provision.
- (3) Restricted Firearms Zone. On portions of game lands posted as "Restricted Firearms Zones" the use of centerfire rifles is prohibited.
- (4) Restricted Zone. Portions of game lands posted as "Restricted Zones" are closed to all use by the general public, and entry upon such an area for any purpose is prohibited without first having obtained specific written approval of such entry or use from an authorized agent of the Wildlife Resources Commission. Entry shall be authorized only when such entry will not compromise the primary purpose for establishing the Restricted Zone and the person or persons requesting entry can demonstrate a valid need or such person is a contractor or agent of the Commission conducting official business. "Valid need" includes issues of access to private property, scientific investigations, surveys, or other access to conduct activities in the public interest.
- (5) Establishment of Archery, Restricted Firearms, and Restricted Zones. The Commission shall conduct a public input meeting in the area where the game land is located before establishing any archery, restricted firearms or restricted zone. After the input meeting the public comments shall be presented to an official Commission meeting for final determination.

(b) Littering. No person shall deposit any litter, trash, garbage, or other refuse at any place on any game land except in receptacles provided for disposal of such refuse at designated camping and target-shooting areas. No garbage dumps or sanitary landfills shall be established on any game land by any person, firm, corporation, county or municipality, except as permitted by the landowner.

(c) Possession of Hunting Devices. It is unlawful to possess a firearm or bow and arrow on a game land at any time except during the open hunting seasons or hunting days for game birds or game animals, other than fox, thereon unless said device is cased or not immediately available for use, provided that such devices may be possessed and used by persons participating in field trials on field trial areas and on target shooting areas designated by the landowner, and possessed in designated

camping areas for defense of persons and property; and provided further that .22 caliber pistols with barrels not greater than seven and one-half inches in length and shooting only short, long, or long rifle ammunition may be carried as side arms on game lands at any time other than by hunters during the special bow and arrow and muzzle-loading firearms deer hunting seasons and by individuals training dogs during closed season without field trial authorization. This Rule shall not prevent possession or use of a bow and arrow as a licensed special fishing device in those waters where such use is authorized. During the closed firearms seasons on big game (deer, bear, boar, wild turkey), no person shall possess a shotgun shell containing larger than No. 4 shot or any rifle or pistol larger than a .22 caliber rimfire while on a game land, except that shotgun shells containing any size steel or non-toxic shot may be used while waterfowl hunting. Furthermore, only shotguns with any size shot may be possessed during the big game season for turkey. No person shall hunt with or have in possession any shotgun shell containing lead or toxic shot while hunting on any posted waterfowl impoundment on any game land, or while hunting waterfowl on Butner-Falls of Neuse Game Land or New Hope Game Land, except shotgun shells containing lead buckshot may be used while deer hunting.

(d) Game Lands License: Hunting and Trapping

- (1) Requirement. Except as provided in Subparagraph (2) of this Paragraph, any person entering upon any game land for the purpose of hunting, trapping, or participating in dog training or field trial activities shall have in his possession a game lands license in addition to the appropriate hunting or trapping licenses.
- (2) Exceptions
 - (A) A person under 16 years of age may hunt on game lands on the license of his parent or legal guardian.
 - (B) The resident and nonresident sportsman's licenses include game lands use privileges.
 - (C) Judges and nonresidents participating in field trials under the circumstances set forth in Paragraph (e) of this Rule may do so without the game lands license.
 - (D) On the game lands described in Rule .0103(e)(2) of this Section the game lands license is required only for hunting doves; all other activities are subject to the control of the landowners.

(e) Field Trials and Training Dogs. A person serving as judge of a field trial which, pursuant to a written request from the sponsoring organization, has been officially authorized in writing and scheduled for occurrence on a game land by an authorized representative of the Wildlife Resources Commission, and any nonresident participating therein may do so without procuring a game lands license, provided such nonresident has in his possession a valid hunting license issued by the state of his residence. Any individual or organization sponsoring a field trial on the Sandhills Field Trial grounds or the Laurinburg Fox Trial facility shall file with the commission's

agent an application to use the area and facility accompanied by the facility use fee computed at the rate of one hundred dollars (\$100.00) for each scheduled day of the trial. The total facility use fee shall cover the period from 12:00 noon of the day preceding the first scheduled day of the trial to 10:00 a.m. of the day following the last scheduled day of the trial. The facility use fee shall be paid for all intermediate days on which for any reason trials are not run but the building or facilities are used or occupied. A fee of twenty-five dollars (\$25.00) per day shall be charged to sporting, educational, or scouting groups for scheduled events utilizing the club house only. No person or group of persons or any other entity shall enter or use in any manner any of the physical facilities located on the Laurinburg Fox Trial or the Sandhills Field Trial grounds without first having obtained specific written approval of such entry or use from an authorized agent of the Wildlife Resources Commission, and no such entry or use of any such facility shall exceed the scope of or continue beyond the specific approval so obtained. The Sandhills Field Trial facilities shall be used only for field trials scheduled with the approval of the Wildlife Resources Commission. No more than 16 days of field trials may be scheduled for occurrence on the Sandhills facilities during any calendar month, and no more than four days may be scheduled during any calendar week; provided, that a field trial requiring more than four days may be scheduled during one week upon reduction of the maximum number of days allowable during some other week so that the monthly maximum of 16 days is not exceeded. Before October 1 of each year, the North Carolina Field Trial Association or other organization desiring use of the Sandhills facilities between October 22 and November 18 and between December 3 and March 31 shall submit its proposed schedule of such use to the Wildlife Resources Commission for its consideration and approval. The use of the Sandhills Field Trial facilities at any time by individuals for training dogs is prohibited; elsewhere on the Sandhills Game Lands dogs may be trained only on Mondays, Wednesdays and Saturdays from October 1 through April 1. Dogs may not be trained or permitted to run unleashed from April 1 through August 15 on any game land located west of I-95, except when participating in field trials sanctioned by the Wildlife Resources Commission. Additionally, on game lands located west of I-95 where special hunts are scheduled for sportsmen participating in the Disabled Sportsman Program, dogs may not be trained or allowed to run unleashed during legal big game hunting hours on the dates of the special hunts.

A field trial shall be authorized when such field trial does not conflict with other planned activities on the Game Land or field trial facilities and the applying organization can demonstrate their experience and expertise in conducting genuine field trial activities. Entry to physical facilities, other than by field trial organizations under permit, shall be granted when they do not conflict with other planned activities previously approved by the Commission and they do not conflict with the primary goals of the agency.

(f) Trapping. Subject to the restrictions contained in 15A NCAC 10B .0110, .0302 and .0303, trapping of furbearing animals is permitted on game lands during the applicable open seasons, except that trapping is prohibited:

- (1) on the field trial course of the Sandhills Game Land;

- (2) on the Harmon Den and Sherwood bear sanctuaries in Haywood County;
- (3) in posted "safety zones" located on any game land;
- (4) by the use of multiple sets (with anchors less than 15 feet apart) or bait on the National Forest Lands bounded by the Blue Ridge Parkway on the south, US 276 on the north and east, and NC 215 on the west;
- (5) on Cowan's Ford Waterfowl Refuge in Gaston, Lincoln and Mecklenburg Counties;
- (6) on the Hunting Creek Swamp Waterfowl Refuge;
- (7) on the John's River Waterfowl Refuge in Burke County;
- (8) on the Dupont State Forest Game Lands. On those areas of state-owned land known collectively as the Roanoke River Wetlands controlled trapping is allowed under a permit system.

(g) **Use of Weapons.** In addition to zone restrictions described in Paragraph (a) no person shall discharge a weapon from a vehicle, or within 150 yards of any Game Lands building or designated Game Lands camping area, except where posted otherwise, or within 150 yards of any residence located on or adjacent to game lands.

(h) **Vehicular Traffic.** No person shall drive a motorized vehicle on any game land except on those roads constructed, maintained and opened for vehicular travel and those trails posted for vehicular travel, unless such person:

- (1) is a participant in scheduled bird dog field trials held on the Sandhills Game Land; or
- (2) holds a Disabled Access Program Permit as described in Paragraph (n) of this Rule and is abiding by the rules described in that paragraph.

(i) **Camping.** No person shall camp on any game land except on an area designated by the landowner for camping. Camping and associated equipment in designated Hunter Camping Areas at Butner-Falls of the Neuse, Caswell, and Sandhills Game Lands is limited to Sept. 1 - Feb. 29 and Apr. 7 - May 14.

(j) **Swimming.** Swimming is prohibited in the lakes located on the Sandhills Game Land.

(k) **Disabled Sportsman Program.** In order to qualify for special hunts for disabled sportsmen listed in 15A NCAC 10D .0103 an individual shall have in their possession a Disabled Sportsman permit issued by the Commission. In order to qualify for the permit, the applicant shall provide medical certification of one or more of the following disabilities:

- (1) amputation of one or more limbs;
- (2) paralysis of one or more limbs;
- (3) dysfunction of one or more limbs rendering the person unable to perform the task of grasping and lifting with the hands and arms or unable to walk without mechanical assistance, other than a cane;
- (4) disease or injury or defect confining the person to a wheelchair, walker, or crutches; or

- (5) legal deafness, meaning the inability to hear or understand oral communications with or without assistance of amplification devices.

Participants in the program, except those qualifying by deafness, may operate vehicles on ungated or open-gated roads normally closed to vehicular traffic on Game Lands owned by the Wildlife Resources Commission. Each program participant may be accompanied by one able-bodied companion provided such companion has in his possession the companion permit issued with the Disabled Sportsman permit.

(l) **Release of Animals and Fish.** It is unlawful to release pen-raised animals or birds, wild animals or birds, or hatchery-raised fish on game lands without prior written authorization. Also, it is unlawful to move wild fish from one stream to another on game lands without prior written authorization. Written authorization shall be given when release of such animals is determined by a North Carolina Wildlife Resources Commission biologist not to be harmful to native wildlife in the area and such releases are in the public interest or advance the programs and goals of the Wildlife Resources Commission.

(m) **Non-Highway Licensed Vehicles.** It is unlawful to operate motorized land vehicles not licensed for highway use on Game Lands except for designated areas on National Forests. People who have obtained a Disabled Access Program permit are exempt from this rule but must comply with the terms of their permit.

(n) **Disabled Access Program.** Permits issued under this program shall be based upon medical evidence submitted by the person verifying that a handicap exists that limits physical mobility to the extent that normal utilization of the game lands is not possible without vehicular assistance. Persons meeting this requirement may operate electric wheel chairs, all terrain vehicles, and other passenger vehicles on ungated or open-gated roads otherwise closed to vehicular traffic on game lands owned by the Wildlife Resources Commission and on game lands whose owners have agreed to such use. Those game lands where this special rule applies shall be designated in the game land rules and map book. This special access rule for disabled sportsmen does not permit vehicular access on fields, openings, roads, paths, or trails planted to wildlife food or cover. One able-bodied companion, who is identified by a special card issued to each qualified disabled person, may accompany a disabled person to provide assistance, provided the companion is at all times in visual or verbal contact with the disabled person. The companion may participate in all lawful activities while assisting a disabled person, provided license requirements are met. Any vehicle used by a qualified disabled person for access to game lands under this provision shall prominently display the vehicular access permit issued by the Wildlife Resources Commission in the passenger area of the vehicle. It shall be unlawful for anyone other than those holding a Disabled Access Permit to hunt, during waterfowl season, within 100 yards of a waterfowl blind designated by the Wildlife Resources Commission as a Disabled Sportsman's hunting blind.

(o) **Public nudity.** Public nudity, including nude sunbathing, is prohibited on any Game Land, including land or water. For the purposes of this Section, "public nudity" means a person's intentional failure to cover with a fully opaque covering the person's genitals, pubic area, anal area, or female breasts below a point from the top of the areola while in a public place.

(p) Definitions: For the purpose of this Subchapter "Permanent Hunting Blind" shall be defined as any structure that is used for hunter concealment, constructed from man made or natural materials, and that is not disassembled and removed at the end of each day's hunt.

History Note: Authority G.S. 113-134; 113-264; 113-270.3; 113-291.2; 113-291.5; 113-305; 113-306;
Eff. February 1, 1976;
Amended Eff. July 1, 1993; April 1, 1992;
Temporary Amendment Eff. October 11, 1993;
Amended Eff. July 1, 1998; July 1, 1996; July 1, 1995;
July 1, 1994;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. July 1, 2000;
Temporary Amendment Eff. August 31, 2001;
Amended Eff. August 1, 2002;
Amended Eff. June 1, 2004 (this amendment replaces the amendment approved by RRC on July 17, 2003).

15A NCAC 10D .0103 HUNTING ON GAME LANDS

(a) Safety Requirements. No person while hunting on any designated game land shall be under the influence of alcohol or any narcotic drug, or fail to comply with special restrictions enacted by the National Park Service regarding the use of the Blue Ridge Parkway where it adjoins game lands listed in this Rule.

(b) Traffic Requirements. No person shall park a vehicle on game lands in such a manner as to block traffic, gates or otherwise prevent vehicles from using any roadway.

(c) Tree Stands. It is unlawful to erect or to occupy, for the purpose of hunting, any tree stand or platform attached by nails, screws, bolts or wire to a tree on any game land designated herein. This prohibition shall not apply to lag-screw steps or portable stands that are removed after use with no metal left remaining in or attached to the tree.

(d) Time and Manner of Taking. Except where closed to hunting or limited to specific dates by this Chapter, hunting on game lands is permitted during the open season for the game or furbearing species being hunted. On managed waterfowl impoundments, hunters shall not enter the posted impoundment areas earlier than 4:00 a.m. on the permitted hunting dates, and hunting is prohibited after 1:00 p.m. on such hunting dates; decoys shall not be set out prior to 4:00 a.m. and must be removed by 3:00 p.m. each day. No person shall operate any vessel or vehicle powered by an internal combustion engine on a managed waterfowl impoundment. No person shall attempt to obscure the sex or age of any bird or animal taken by severing the head or any other part thereof, or possess any bird or animal which has been so mutilated. No person shall place, or cause to be placed on any game land, salt, grain, fruit, or other foods without prior written authorization of the commission or its agent. A decision to grant or deny authorization shall be made based on the best management practices for the wildlife species in question. No person shall take or attempt to take any game birds or game animals attracted to such foods. No live wild animals or wild birds shall be removed from any game land.

(e) Definitions:

- (1) For purposes of this Section "Eastern" season refers to seasons set for those counties or parts

of counties listed in 15A NCAC 10B .0203(b)(1)(A); "Central" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(D); "Northwestern" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(B); "Western" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(C).

- (2) For purposes of this Section, "Dove Only Area" refers to a Game Land on which doves may be taken and dove hunting is limited to Mondays, Wednesdays, Saturdays and to Thanksgiving, Christmas and New Year's Days within the federally-announced season.

- (3) For purposes of this Section, "Three Days per Week Area" refers to a Game Land on which any game may be taken during the open seasons and hunting is limited to Mondays, Wednesdays, Saturdays and Thanksgiving, Christmas and New Year's Days. These "open days" also apply to either-sex hunting seasons listed under each game land. Raccoon and opossum hunting may continue until 7:00 a.m. on Tuesdays, until 7:00 a.m. on Thursdays, and until midnight on Saturdays.

- (4) For purposes of this Section, "Six Days per Week Area" refers to a Game Land on which any game may be taken during the open seasons, except that:

- (A) Bears shall not be taken on lands designated and posted as bear sanctuaries;

- (B) Wild boar shall not be taken with the use of dogs on such bear sanctuaries, and wild boar may be hunted only during the bow and arrow seasons, the muzzle-loading deer season and the regular gun season on deer on bear sanctuaries;

- (C) On game lands open to deer hunting located in or west of the counties of Rockingham, Guilford, Randolph, Montgomery and Anson, the following rules apply to the use of dogs during the regular season for hunting deer with guns:

- (i) Except for the counties of Cherokee, Clay, Graham, Jackson, Macon, Madison, Polk, and Swain, game birds may be hunted with dogs.

- (ii) In the counties of Cherokee, Clay, Graham, Jackson, Macon, Madison, Polk, and Swain, small game in season may be hunted with dogs on

- all game lands except on bear sanctuaries.
- (iii) Additionally, raccoon and opossum may be hunted when in season on Uwharrie Game Lands;
- (D) On bear sanctuaries in and west of Madison, Buncombe, Henderson and Polk counties dogs shall not be trained or allowed to run unleashed between March 1 and the Monday on or nearest October 15.
- (f) The listed seasons and restrictions apply in the following game lands:
- (1) Alcoa Game Land in Davidson, Davie, Montgomery, Rowan and Stanly counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season in that portion in Montgomery county and deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season in those portions in Davie, Davidson, Rowan and Stanly counties.
 - (2) Alligator River Game Land in Tyrrell County
 - (A) Six Day per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season.
 - (3) Angola Bay Game Land in Duplin and Pender counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (4) Bachelor Bay Game Land in Bertie and Washington counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (5) Bertie County Game Land in Bertie County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (6) Bladen Lakes State Forest Game Land in Bladen County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (7) Broad River Game Land in Cleveland County.
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer with Visible Antlers Season.
 - (C) Use of centerfire rifles is prohibited.
 - (8) Brunswick County Game Land in Brunswick County: Permit Only Area
 - (9) Buckridge Game Land in Tyrrell County.
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days of the second week of the December Bear Season.
 - (10) Bullard and Branch Hunting Preserve Game Lands in Robeson County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - (11) Butner - Falls of Neuse Game Land in Durham, Granville and Wake counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl may be taken only on Tuesdays, Thursdays and Saturdays; Christmas and New Year's Days, and on the opening and closing days of the applicable waterfowl seasons. Waterfowl shall not be taken after 1:00 p.m. On the posted waterfowl

- impoundments a special permit is required for all waterfowl hunting after November 1.
- (D) Horseback riding, including all equine species, is prohibited.
 - (E) Target shooting is prohibited
 - (F) Wild turkey hunting is by permit only.
- (12) Cape Fear Game Land in Pender County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Turkey Hunting is by permit only on that portion known as the Roan Island Tract.
- (13) Caswell Game Land in Caswell County
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season. Deer of either sex may also be taken the Friday preceding the Central muzzle-loading season by participants in the Disabled Sportsman Program.
 - (C) Horseback riding is allowed only during June, July, and August and on Sundays during the remainder of the year except during open turkey and deer seasons. Horseback riding is allowed only on roads opened to vehicular traffic. Participants must obtain a game lands license prior to engaging in such activity.
 - (D) Bearded or beardless turkeys may be taken from the Monday on or nearest to January 15 through the following Saturday by permit only.
 - (E) The area encompassed by the following roads is closed to all quail and woodcock hunting and all bird dog training: From Yanceyville south on NC 62 to the intersection of SR 1746, west on SR1746 to the intersection of SR 1156, south on SR 1156 to the intersection of SR 1783, east on SR 1783 to the intersection of NC 62, north on NC62 to the intersection of SR 1736, east on SR 1736 to the intersection of SR 1730, east on SR 1730 to NC 86, north on NC 86 to NC 62.
- (14) Caswell Farm Game Land in Lenoir County-Dove-Only Area
- (A) Dove hunting is by permit only from opening day through either the first Saturday or Labor Day which ever comes last of the first segment of dove season.
- (15) Catawba Game Land in Catawba County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (C) Deer may be taken with bow and arrow only from the tract known as Molly's Backbone.
 - (16) Chatham Game Land in Chatham and Harnett counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Wild turkey hunting is by permit only.
 - (D) Horseback riding, including all equine species, is allowed only during June, July, and August and on Sundays during the remainder of the year except during open turkey and deer seasons.
 - (17) Cherokee Game Land in Ashe County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - (18) Chowan Game Land in Chowan County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the days of the applicable Deer With Visible Antlers Season.
 - (19) Chowan Swamp Game Land in Gates County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (20) Cold Mountain Game Land in Haywood County
 - (A) Six Days per Week Area
 - (B) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.
 - (21) Columbus County Game Land in Columbus County.
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (22) Croatan Game Land in Carteret, Craven and Jones counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.

- (C) Waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons.
- (23) Currituck Banks Game Land in Currituck County
 - (A) Six Days per Week Area
 - (B) Permanent waterfowl blinds in Currituck Sound on these game lands shall be hunted by permit only after November 1.
 - (C) Licensed hunting guides may accompany the permitted individual or party provided the guides do not possess or use a firearm.
 - (D) The boundary of the Game Land shall extend 5 yards from the edge of the marsh or shoreline.
 - (E) Dogs shall be allowed only for waterfowl hunting by permitted waterfowl hunters on the day of their hunt.
 - (F) No screws, nails, or other objects penetrating the bark shall be used to attach a tree stand or blind to a tree.
- (24) Dare Game Land in Dare County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last day of the Deer With Visible Antlers Season.
 - (C) No hunting on posted parts of bombing range.
 - (D) The use and training of dogs is prohibited from March 1 through June 30.
- (25) Dupont State Forest Game Lands in Henderson and Transylvania counties
 - (A) Hunting is by Permit only.
 - (B) The training and use of dogs for hunting except during scheduled small game permit hunts for squirrel, grouse, rabbit, or quail is prohibited.
 - (C) Participants of the Disabled Sportsman Program may also take deer of either sex with any legal weapon on the Saturday prior to the first segment of the Western bow and arrow season.
- (26) Dysartsville Game Land in McDowell and Rutherford counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (27) Elk Knob Game Land in Ashe and Watauga counties
 - (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (28) Goose Creek Game Land in Beaufort and Pamlico counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) On posted waterfowl impoundments waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the duck hunting seasons. After November 1, on the Pamlico Point, Campbell Creek, Hunting Creek and Spring Creek impoundments, a special permit is required for hunting on opening and closing days of the duck seasons, Saturdays of the duck seasons, and on Thanksgiving and New Year's Day.
 - (D) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both designated and posted as camping areas.
- (29) Green River Game Land in Henderson, and Polk counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited except on designated trails May 16 through- August 31 and all horseback riding is prohibited from September 1 through May 15. This rule includes all equine species.
- (30) Green Swamp Game Land in Brunswick County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (31) Gull Rock Game Land in Hyde County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) On the posted waterfowl impoundments of Gull Rock Game Land hunting of any species of wildlife is limited to Mondays, Wednesdays, Saturdays; Thanksgiving, Christmas, and New Year's Days; and the opening and closing days of the applicable waterfowl seasons.

- (D) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both designated and posted as camping areas.
 - (F) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season on the Long Shoal River Tract of Gull Rock Game Land.
- (32) Holly Shelter Game Land in Pender County
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season. Deer of either sex may also be taken the Friday preceding the Eastern muzzle-loading season with any legal weapon and the Saturday preceding Eastern bow season with bow and arrow by participants in the Disabled Sportsman Program
 - (C) Waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons regardless of the day of the week on which they occur.
 - (D) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both designated and posted as camping areas.
- (33) Hyco Game land in Person County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (34) J. Morgan Futch Game Land in Tyrrell County, Permit Only Area.
- (35) Jordan Game Land in Chatham, Durham, Orange and Wake counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons.
 - (D) Horseback riding, including all equine species, is prohibited except on those areas posted as American Tobacco Trail and other areas specifically posted for equestrian use. Unless otherwise posted, horseback riding is permitted on posted portions
- of the American Tobacco Trail anytime the trail is open for use. On all other trails posted for equestrian use, horseback riding is allowed only during June, July and August, and on Sundays the remainder of the year except during open turkey and deer seasons.
- (E) Target shooting is prohibited.
 - (F) Wild turkey hunting is by permit only.
- (36) Lantern Acres Game Land in Tyrrell and Washington counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Wild turkey hunting is by permit only.
- (37) Lee Game Land in Lee County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (38) Linwood Game Land in Davidson County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken on all of the open days of the applicable Deer With Visible Antlers Season.
- (39) Mayo Game Land in Person County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl may be taken only on Tuesdays, Thursdays and Saturdays; Christmas and New Year's Days, and on the opening and closing days of the applicable waterfowl seasons.
- (40) Nantahala Game Land in Cherokee, Clay, Graham, Jackson, Macon, Swain and Transylvania counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season in that portion located in Transylvania County.
 - (C) Raccoon and opossum may be hunted only from sunset Friday until sunrise on Saturday and from sunset until 12:00 midnight on Saturday on Fires Creek Bear Sanctuary in Clay County and in that part of Cherokee County north of US 64 and NC 294, east of Persimmon Creek and Hiwassee Lake, south of Hiwassee Lake and west of Nottely River; in the same

- part of Cherokee County dog training is prohibited from March 1 to the Monday on or nearest October 15.
- (41) Neuse River Game Land in Craven County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (42) New Lake Game Land in Hyde County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (43) North River Game Land in Currituck and Camden counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season except in that part in Camden County south of US 158 where the season is the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) The boundary of the Game Land shall extend five yards from the edge of the marsh or shoreline.
 - (D) Wild turkey hunting is by permit only on that portion in Camden County.
 - (44) Northwest River Marsh Game Land in Currituck County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) The boundary of the Game Land shall extend five yards from the edge of the marsh or shoreline.
 - (45) Pee Dee River Game Land in Anson, Montgomery, Richmond and Stanly counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Use of centerfire rifles prohibited in that portion in Anson and Richmond counties North of US-74.
 - (46) Perkins Game Land in Davie County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (47) Pisgah Game Land in Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Madison, McDowell, Mitchell, Transylvania, Watauga and Yancey counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season except on that portion in Avery and Yancey counties and that portion in Haywood County encompassed by US 276 on the north, US 74 on the west, and the Blue Ridge Parkway on the south and east.
 - (C) Harmon Den and Sherwood Bear Sanctuaries in Haywood County are closed to hunting raccoon, opossum and wildcat. Training raccoon and opossum dogs is prohibited from March 1 to the Monday on or nearest October 15 in that part of Madison County north of the French Broad River, south of US 25-70 and west of SR 1319.
 - (48) Pungo River Game Land in Hyde County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (49) Roanoke River Wetlands in Bertie, Halifax and Martin counties
 - (A) Hunting is by Permit only.
 - (B) Vehicles are prohibited on roads or trails except those operated on official Commission business or by permit holders.
 - (C) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both designated and posted as camping areas.
 - (50) Roanoke Sound Marshes Game Land in Dare County-Hunting is by permit only.
 - (51) Robeson Game Land in Robeson County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - (52) Sampson Game Land in Sampson County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (53) Sandhills Game Land in Hoke, Moore, Richmond and Scotland counties
 - (A) Three Days per Week Area
 - (B) The Deer With Visible Antlers season for deer consists of the open hunting days from the second Saturday before Thanksgiving through the third Saturday after Thanksgiving except on the field trial grounds where the gun season is open days from the second Monday before Thanksgiving through the Saturday following

- Thanksgiving. Deer may be taken with bow and arrow on all open hunting days during the bow and arrow season, as well as during the regular gun season. Deer may be taken with muzzle-loading firearms on open days beginning the third Saturday before Thanksgiving through the following Wednesday, and during the Deer With Visible Antlers season.
- (C) Gun either-sex deer hunting is by permit only. For participants in the Disabled Sportsman Program, either-sex deer hunting with any legal weapon is permitted on all areas the Thursday and Friday prior to the muzzle-loading season described in the preceding paragraph. Except for the deer, opossum, rabbit, and raccoon seasons specifically indicated for the field trial grounds in this Rule and Disabled Sportsman Program hunts, the field trial grounds are closed to all hunting during the period October 22 to March 31.
- (D) In addition to the regular hunting days, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons
- (E) Wild turkey hunting is by permit only.
- (F) Dove hunting on the field trial grounds will be prohibited from the second Sunday in September through the remainder of the hunting season.
- (G) Opossum and raccoon hunting on the field trial grounds will be allowed on open days from the second Monday before Thanksgiving through the Saturday following Thanksgiving and rabbit season on the field trial grounds will be from the Saturday preceding Thanksgiving through the Saturday following Thanksgiving.
- (H) The following areas are closed to all quail and woodcock hunting and dog training on birds: In Richmond County: that part east of US 1; In Scotland County: that part east of east of SR 1001 and west of US 15/501.
- (I) Horseback riding on field trial grounds from October 22 through March 31 shall be prohibited except by participants in authorized field trials.
- (54) Scuppernong Game Land in Tyrrell and Washington counties
 (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (55) Shearon Harris Game Land in Chatham and Wake counties
 (A) Six Days per Week Area
 (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 (C) Waterfowl may be taken only on Tuesdays, Fridays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons.
 (D) The use or construction of permanent hunting blinds is prohibited.
 (E) Wild turkey hunting is by permit only.
- (56) Shocco Creek Game Land in Franklin and Warren counties
 (A) Six Days per Week Area
 (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (57) South Mountains Game Land in Burke, Cleveland, McDowell and Rutherford counties
 (A) Six Days per Week Area
 (B) The Deer With Visible Antlers season for deer consists of the open hunting days from the Monday before Thanksgiving through the third Saturday after Thanksgiving.
 (C) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 (D) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.
 (E) That part of South Mountains Game Land in Cleveland, McDowell, and Rutherford counties is closed to all grouse, quail and woodcock hunting and all bird dog training.
- (58) Suggs Mill Pond Game Land in Bladen County;
 (A) Hunting is by Permit only.
 (B) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both designated and posted as camping areas.
- (59) Sutton Lake Game Land in New Hanover County
 (A) Six Days per Week Area

- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (60) Three Top Mountain Game Land in Ashe County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.
- (61) Thurmond Chatham Game Land in Wilkes County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season. Participants of the Disabled Sportsman Program may also take either-sex deer with bow and arrow on the Saturday prior to Northwestern bow and arrow season.
- (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species. Participants must obtain a game lands license prior to horseback riding on this area.
- (62) Toxaway Game Land in Transylvania County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season. Participants of the Disabled Sportsman Program may also take deer of either sex with any legal weapon on the Saturday prior to the first segment of the Western bow and arrow season.
- (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.
- (63) Uwharrie Game Land in Davidson, Montgomery and Randolph counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last open six days of the applicable Deer With Visible Antlers Season.
- (64) Vance Game Land in Vance County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) The use of dogs, centerfire rifles and handguns for hunting deer is prohibited on the Nutbush Peninsula tract.
- (65) Van Swamp Game Land in Beaufort and Washington counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (66) White Oak River Impoundment Game Land in Onslow County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the statewide waterfowl hunting seasons. After October 1, a special permit is required for hunting waterfowl on opening and closing days of the duck seasons, Saturdays of the duck seasons, and on Thanksgiving and New Year's day.
- (g) On permitted type hunts deer of either sex may be taken on the hunt dates indicated on the permit. Completed applications must be received by the Commission not later than the first day of September next preceding the dates of hunt. Permits shall be issued by random computer selection, shall be mailed to the permittees prior to the hunt, and shall be nontransferable. A hunter making a kill must validate the kill and report the kill to a wildlife cooperater agent or by phone.
- (h) The following game lands and refuges shall be closed to all hunting except to those individuals who have obtained a valid and current permit from the Wildlife Resources Commission:
- Bertie, Halifax and Martin counties--Roanoke River Wetlands
 - Bertie County--Roanoke River National Wildlife Refuge
 - Bladen County—Suggs Mill Pond Game Lands
 - Burke County—John's River Waterfowl Refuge
 - Dare County--Dare Game Lands (Those parts of bombing range posted against hunting)
 - Dare County--Roanoke Sound Marshes Game Lands
 - Davie--Hunting Creek Swamp Waterfowl Refuge
 - Gaston, Lincoln and Mecklenburg counties--Cowan's Ford Waterfowl Refuge
 - Henderson and Transylvania counties--Dupont State Forest Game Lands

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-305; Eff. February 1, 1976; Temporary Amendment Eff. October 3, 1991;

Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996; September 1, 1995; July 1, 1995; September 1, 1994; July 1, 1994;
Temporary Amendment Eff. October 1, 1999; July 1, 1999;
Amended Eff. July 1, 2000;
Temporary Amendment Eff. July 1, 2001;
Temporary Amendment Eff. July 1, 2002;
Amended Eff. August 1, 2002 (approved by RRC on 06/21/01 and 04/18/02);
Temporary Amendment Eff. June 1, 2003;
Amended Eff. June 1, 2004 (this amendment replaces the amendment approved by RRC on July 17, 2003).

15A NCAC 10F .0318 WARREN COUNTY

- (a) Regulated Area. This Rule applies only to that portion of Lake Gaston which lies within the boundaries of Warren County.
- (b) Speed Limit Near Ramps. No person shall operate a vessel at greater than no-wake speed within 50 yards of any public boat launching ramp while on the waters of Gaston Lake in Warren County.
- (c) Speed Limit in Mooring Areas. No person shall operate a vessel at greater than no-wake speed while within a lawfully marked mooring area on the waters of Gaston Lake in Warren County.
- (d) Restricted Swimming Areas. No person operating or responsible for the operation of a vessel shall permit it to enter any lawfully marked public swimming area on the waters of Gaston Lake in Warren County.
- (e) Speed Limit in Specific Zones. No person shall operate a vessel at greater than no-wake speed within 50 yards of the following marked zone located on the regulated area described in Paragraph (a) of this Rule: the entrance of the Camp Willow Run Canoe/Sail Cove; and the shoreline of the Mariner's Cove Subdivision 50 yards across State Road 1498 off Hubquarter Creek on Lake Gaston.
- (f) Placement and Maintenance of Markers. The Board of Commissioners of Warren County is designated a suitable agency for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers. With regard to marking Gaston Lake, all of the supplementary standards listed in Rule .0301(g) of this Section shall apply.

History Note: Authority G.S. 75A-3; 75A-15;
Eff. February 1, 1976;
Amended Eff. October 1, 1992; March 25, 1978;
Temporary Amendment Eff. June 17, 2002;
Amended Eff. May 1, 2004 (this amendment replaces the amendment approved by RRC on February 20, 2003).

15A NCAC 10F .0336 NORTHAMPTON AND WARREN COUNTIES

- (a) Regulated Area. This Rule applies only to that portion of Lake Gaston which lies within the boundaries of Northampton and Warren Counties.
- (b) Speed Limit in Mooring Areas. No person shall operate a vessel at greater than no-wake speed while within a marked mooring area established with the approval of the Executive

Director, or his representative, on the waters of Gaston Lake in Northampton and Warren Counties.

(c) Speed Limit Near Shore Facilities. No person shall operate a vessel at greater than no-wake speed within 50 yards of any marked boat launching area, dock, pier, bridge, marina, boat storage structure, or boat service area on the waters of the regulated areas described in Paragraph (a) of this Rule.

(d) Speed Limit in specific waters. No person shall operate a vessel at greater than no-wake speed within the following bodies of water.

- (1) the North Point Cove Section B located on the north shore of Gaston Lake within Northampton County at the end of "Vincent Lane";
- (2) Big Stonehouse Creek at State Road 1357;
- (3) Songbird Creek at State Road 1360;
- (4) Six Pound Creek at State Road 1334;
- (5) Lizard Creek at SR 1362.

(e) Restricted Swimming Areas. No person operating or responsible for the operation of a vessel shall permit it to enter any marked public swimming area on the waters of Gaston Lake in Northampton and Warren Counties.

(f) Placement and Maintenance of Markers. The Board of Commissioners of Northampton County and Warren County are designated as suitable agencies for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and United States Army Corps of Engineers. With regard to marking Gaston Lake, all of the supplementary standards listed in Rule .0301(g) of this Section shall apply.

History Note: Authority G.S. 75A-3; 75A-15;
Eff. March 29, 1981;
Amended Eff. June 1, 1994; March 1, 1993; September 1, 1989;
Temporary Amendment Eff. March 15, 2003;
Temporary Amendment Expired October 12, 2003;
Amended Eff. May 1, 2004.

15A NCAC 10F .0343 CHATHAM COUNTY

(a) Definitions. In addition to the definitions set forth in Paragraph (b) of Rule .0301 of this Section, the following definitions apply in this Rule:

- (1) Corps - Corps of engineers, United States Army;
 - (2) Regulated Area - That portion of the B. Everette Jordan Reservoir located within the boundaries of Chatham County.
- (b) Speed Limit. No person shall operate a vessel at greater than no-wake speed on the regulated area as follows:
- (1) within 50 yards of any public boat launching ramp;
 - (2) within the restricted zone adjacent to the Crosswinds Marina located north of US 64 and west of SR 1008 as indicated by markers;
 - (3) within 100 feet of all bridges;
 - (4) within the restricted zone at the Ebenezer Church Road access point.

(c) Restricted Swimming Areas. No person operating or responsible for the operation of any vessel, surfboard or water

skis shall permit the same to enter any marked swimming area located on the regulated area.

(d) Placement and Maintenance of Markers. The Board of Commissioners of Chatham County is designated a suitable agency for placement and maintenance of the markers implementing this Rule, subject to the approval of the corps. With regard to marking the regulated area described in Paragraph (a) of this Rule, the supplementary standards listed in Subparagraphs (1) through (8) of Rule .0301(g) of this Section shall apply.

History Note: Authority G.S. 75A-3; 75A-15; Eff. March 1, 1983; Amended Eff. May 1, 2004; September 1, 1989; April 1, 1984; June 1, 1983.

15A NCAC 10H.1201 LICENSE TO OPERATE

(a) It shall be unlawful for any individual, firm, association or corporation to operate a controlled fox hunting preserve without first obtaining from the North Carolina Wildlife Resources Commission a license for this purpose.

(b) A controlled fox hunting preserve license shall entitle the holder or holders and their guests, to hunt foxes and coyotes at any time within the fenced area. Controlled fox hunting preserve licenses shall not be transferable, either as to operator or as to site of operation

(c) Applicants shall be prepared to show proof of ownership of the land contained in the proposed controlled fox hunting preserve or that they have this land under lease for the duration of the license period. Applications for controlled fox hunting preserve licenses shall be made on forms obtained from the Commission.

(d) Upon receipt of an application accompanied by the statutory fee, the Commission shall issue a license, provided it is determined that the location and operation of such a hunting preserve is consistent with the wildlife conservation program and in the public interest; and further provided that all regulations herein regarding establishment of such areas have been complied with.

History Note: Authority G.S. 113-134; 113-273(g); Eff. August 1, 1990; Amended. Eff. June 1, 2004.

15A NCAC 10H .1202 ESTABLISHMENT AND OPERATION

(a) Size of Preserve. Controlled fox hunting preserves operated for commercial purposes shall be an area of not less than 500 acres except that smaller areas containing terrain and topographical features which offer escape cover to the fox and coyote populations are allowed under specific approval by the Wildlife Resources Commission.

(b) Boundary of Preserve. A controlled fox hunting preserve must be enclosed with a dog-proof fence that is also designed to prevent the escape of foxes and coyotes released within the pen. This fencing must be maintained at all times.

(c) Stocking Preserve With Game:

- (1) In addition to purchasing live foxes and coyotes as provided in G.S. 113-273(g), operators of controlled fox hunting preserves

may also purchase live foxes and coyotes from licensed controlled fox hunting preserves, licensed North Carolina fur propagators, or persons holding foxes legally under a North Carolina wildlife captivity license.

- (2) Licensed controlled fox hunting preserve operators may hold legally obtained foxes and coyotes under rules that apply to a captivity license and may transport legally acquired foxes and coyotes from the place of purchase to the controlled fox hunting preserve.
- (3) Foxes and coyotes may not be imported into North Carolina for release into controlled fox hunting preserves.
- (4) The release of exotic wildlife into the controlled fox hunting preserves is specifically prohibited.
- (5) The possession of exotic wildlife on controlled fox hunting preserves is specifically prohibited.

History Note: Authority G.S. 113-134; 113-273(g); Eff. August 1, 1990; Amended Eff. June 1, 2004.

15A NCAC 10H .1203 QUALITY OF FOXES AND COYOTES RELEASED

All foxes and coyotes purchased or raised for release on controlled fox hunting preserves shall be healthy and free from disease of any kind. An examination and inspection of the foxes and coyotes by the Wildlife Resources Commission may be conducted at any time. All dead foxes and coyotes, except those killed by dogs during a hunt, or diseased foxes and coyotes found within the pen shall be submitted to a North Carolina Department of Agriculture diagnostic lab for diagnosis. A copy of the diagnostic report shall be mailed to the Wildlife Resources Commission. Possession of unhealthy or diseased foxes and coyotes shall be grounds for revocation or denial of a controlled fox hunting preserve license. The Commission may quarantine any controlled fox hunting preserve where contagious diseases are located.

History Note: Authority G.S. 113-134; 113-273(g); Eff. August 1, 1990; Amended Eff. June 1, 2004.

15A NCAC 18A .1942 SOIL WETNESS CONDITIONS

(a) Soil wetness conditions caused by seasonal high-water table, perched water table, tidal water, seasonally saturated soil or by lateral water movement shall be determined by field evaluation for soil wetness colors and field observations, and may be assessed by well monitoring, computer modeling, or a combination of monitoring and modeling as required by this Rule. All sites shall be evaluated by an Authorized Agent of the Department using Basic Field Evaluation Procedures pursuant to Paragraph (b) of this Rule.

(b) Basic Field Evaluation Procedures:

- (1) A soil wetness condition shall be determined by the indication of colors of chroma 2 or less (Munsell Color Charts) at =2% of soil volume

in mottles or matrix of a horizon or horizon subdivision. However, colors of chroma 2 or less which are relic from minerals of the parent material shall not be considered indicative of a soil wetness condition.

- (2) A Soil wetness condition shall also be determined by the periodic direct observation or indication of saturated soils or a perched water table, or lateral water movement flowing into a bore hole, monitoring well, or open excavation above a less permeable horizon or horizon subdivision, that may occur without the presence of colors of chroma 2 or less. A soil wetness condition caused by saturated soils or a perched water table shall be confirmed to extend for at least three consecutive days. The shallowest depth to soil wetness condition determined by Subparagraph (b)(1) or (b)(2) of this Rule shall take precedence.

(c) Site Suitability as to Soil Wetness: Initial suitability of the site as to soil wetness shall be determined based upon the findings of the Basic Field Evaluation Procedures made pursuant to Paragraph (b) of this Rule. Sites where soil wetness conditions are greater than 48 inches below the naturally occurring soil surface shall be considered SUITABLE with respect to soil wetness. Sites where soil wetness conditions are between 36 and 48 inches below the naturally occurring soil surface shall be considered PROVISIONALLY SUITABLE with respect to soil wetness. Sites where soil wetness conditions are less than 36 inches below the naturally occurring soil surface shall be considered UNSUITABLE with respect to soil wetness. Sites where a soil wetness condition is determined based upon the observation or indication of lateral water movement within 48 inches of the naturally occurring soil surface shall be considered UNSUITABLE, except when such water can be intercepted in accordance with 15A NCAC 18A .1956(4).

(d) Alternative Procedures for Soil Wetness Determination: The Owner or the Owner's Legal Representative (Applicant) shall have the opportunity to submit documentation that the soil wetness condition and resultant site classification be alternately determined and reclassified by direct monitoring, computer modeling, or a combination of monitoring and modeling, in accordance with a Direct Monitoring Procedure, Monitoring and Modeling Procedure, or Modeling Procedure made pursuant to Paragraphs (e), (f), or (g) of this Rule. This determination shall take precedence over the determination made pursuant to the Basic Field Evaluation Procedures [Paragraph (b) of this Rule], when the conditions of Paragraphs (e), (f), or (g) of this Rule are met. Determination by one of these Monitoring or Modeling procedures shall also be required when:

- (1) the Owner proposes to use a wastewater system requiring a deeper depth to a soil wetness condition than the depth determined by the Basic Field Evaluation Procedures pursuant to Paragraph (b) of this Rule; or
- (2) the Owner proposes to use sites with Group III or IV soil within 36 inches of the surface and where drainage modifications are proposed to be made, including the installation of

subsurface drain tile, open drainage ditches, or surface landscape modifications, or on such sites when fill is proposed to be used in conjunction with existing or proposed drainage modifications. Final determination of soil wetness condition for these sites shall be made pursuant to the Modeling Procedure in Paragraph (g) of this Rule

(e) Direct Monitoring Procedure. Soil wetness conditions may be determined by direct observation of the water surface in wells during periods of typically high water elevations utilizing the following monitoring procedures and interpretation method.

- (1) The applicant shall notify the local health department of the intent to monitor water surface elevations by submitting a proposal that includes a site plan, well and soil profile at each monitoring location, and a monitoring plan no later than 30 days prior to the monitoring period. An applicant other than the property owner shall have written authorization from the owner to be the owner's legal representative. Soil wetness and rainfall monitoring shall be conducted under the responsible charge of a third-party consultant or by the property owner or the owner's agent. A third party consultant is qualified when licensed or registered in accordance with G.S. 89C (Engineers), G.S. 89E (Geologists), G.S. 89F (Soil Scientists), or G.S. 90A Article 4 (Registered Sanitarians), if required. The Owner shall submit the name(s) of the consultant(s) performing any monitoring on their behalf to the local health department.
- (2) The applicant shall submit a site plan showing proposed sites for wastewater system, shall provide the longitude and latitude of the site, location of monitoring wells, and all drainage features that may influence the soil wetness conditions, and specify any proposed fill and drainage modifications.
- (3) The applicant shall submit a monitoring plan indicating the proposed number, installation depth, screening depth, soil and well profile, materials and installation procedures for each monitoring well, and proposed method of analysis. A minimum of three water level monitoring wells shall be installed for water surface observation at each site. Additional wells shall be required for sites handling systems with a design flow greater than 600 gallons per day (minimum of one additional well per 600 gallons per day increment).
- (4) The local health department shall be given the opportunity to conduct a site visit and verify the appropriateness of the proposed plan. Well locations shall include portions of the initial and replacement drainfield site(s) containing the most limiting soil/site conditions. Prior to installation of the wells the local health department shall approve the plan. If the plan

is disapproved, the local health department shall include specific changes necessary for approval of the monitoring plan.

- (5) Wells shall extend at least five feet below the natural soil surface, or existing soil surface for fill installed prior to July 1, 1977 meeting the requirements for consideration of a site with existing fill of G.S. 130A-341 and the rules adopted pursuant thereto. However, a well or wells which extend(s) down only 40 inches may be used if they provide a continuous record of the water table for at least half of the monitoring period, and one or more shallower wells may be required on sites where shallow lateral water movement or perched soil wetness conditions are anticipated.
- (6) Water surface in the monitoring wells shall be recorded at least daily from January 1 to April 30, taken at the same time during the day (plus or minus three hours). A rain (precipitation) gauge is required within one-half mile of the site. At least daily rainfall shall be recorded beginning no later than December 1 through April 30 (the end of the well monitoring period).
- (7) Interpretation Method for Direct Monitoring Procedure: The following method of determining depth to soil wetness condition from water surface observations in wells shall be used when the 60-day weighted rainfall index for the January through April monitoring period equals or exceeds the site's long-term (historic) 60-day weighted rainfall index for January to April rainfall with a 30 percent recurrence frequency (wetter than the 9th driest year of 30, on average). The 60-day weighted rainfall index for the monitoring period and historic rainfall record shall be computed as:

$$WRI_{60} = 0.5P_D + P_J + P_F + P_M + 0.5P_A$$

Recurrence Frequency Range January to April 60-Day Weighted Rainfall Index	Number of Consecutive Days of Continuous Saturation for Soil Wetness Condition
30% to 49.9%	3 days or 72 hours
50% to 69.9%	6 days or 144 hours
70% to 79.9%	9 days or 216 hours
80% to 100%	14 days or 336 hours

Where WRI_{60} = 60-day weighted rainfall index for January to April

- P_D = Total December rainfall
- P_J = Total January rainfall
- P_F = Total February rainfall
- P_M = Total March rainfall
- P_A = Total April rainfall

The Department shall prepare contour maps for each county where this interpretation procedure is proposed. Contours shall be prepared following standard interpolation procedures using normalized data collected from all National Weather Service Stations, or equivalent, from which appropriate data are available, at least prior to February 1 of the monitoring season. Data from each station shall be normalized by fitting a 2-parameter gamma distribution to the 60-day weighted rainfall index computed for at least the most recent three decades of historic data, in accordance with procedures outlined in Chapter 18 of the National Engineering Handbook, NRCS, USDA. From this fitted distribution, the 60-day weighted rainfall index for January through April rainfall with a 30%, 50%, 70% and 80% recurrence frequency shall be computed for each Station, to provide the raw data points from which the contour maps shall be prepared. From these maps, the site's 60-day weighted rainfall index for the January through April monitoring period shall be compared to the long-term (historic) January to April 60-day weighted rainfall index at different expected recurrence frequencies. The soil wetness condition shall be determined as the highest level that is continuously saturated for the number of consecutive days during the January through April monitoring period shown in the following table:

- (8) If monitoring well data is collected during monitoring periods that span multiple years, the year which yields the highest (shallowest) soil wetness condition shall be applicable.
- (f) Monitoring and Modeling Procedure: A combination of monitoring and modeling may be used to determine a soil wetness condition utilizing the following monitoring procedures and interpretation method.
 - (1) The procedures described for the Direct Monitoring Procedure in Subparagraphs (e)(1),

(2), (3), (4), (5), and (6) of this Rule shall be used to monitor water surface elevation and precipitation for determining soil wetness conditions by a combination of direct observation and modeling, except that the rainfall gauge and each monitoring well shall use a recording device and a data file (DRAINMOD-compatible) shall be submitted with the report to the local health department (devices shall record rainfall at least hourly and well water level at least daily).

- (2) The ground water simulation model DRAINMOD shall be used to predict daily water levels over at least a 30 year historic time period after the model is calibrated using the water surface and rainfall observations made on-site during the monitoring period. The soil wetness condition shall be determined as the highest level predicted by the model to be saturated for a 14-day continuous period between January 1 and April 30 with a recurrence frequency of 30 percent (an average of at least 9 years in 30).
- (A) Weather input files, required to run the DRAINMOD, shall be developed from hourly rainfall gauge data taken within a half-mile of the site and from daily temperature and hourly or daily rainfall data collected over a minimum 30-year period from the closest available National Weather Service, or equivalent, measuring station to the site. DRAINMOD weather data files on file with the Department shall be made available upon request to the applicant or applicant's consultants. Daily maximum and minimum temperature data for the January 1 through April 30 monitoring period, plus for at least 30 days prior to this period, shall be obtained from the closest available weather station.
- (B) Soil and Site inputs for DRAINMOD, including a soils data file closest to the soil series identified, depths of soil horizons, estimated saturated hydraulic conductivity of each horizon, depth and spacing of drainage features and depression storage, shall be selected in accordance with procedures outlined in the DRAINMOD Users Guide, and guidance is also available in Reports 333 and 342 of the University of North Carolinas Water Resources Research Institute. DRAINMOD soils data files on file with the Department shall be made available upon request to the applicant or applicant's consultants.
- (C) Inputs shall be based upon site specific soil profile descriptions. Soil and site input factors shall be adjusted during the model calibration process to achieve a best fit by least squares analysis of the daily observations over the whole monitoring period (mean absolute deviation between measured and predicted values no greater than eight inches), and to achieve the best possible match between the highest water table depth during the monitoring period (measured-vs-predicted) that is saturated for 14 consecutive days.
- (D) For sites intended to receive over 1500 gallons per day, the soil wetness determination using DRAINMOD shall take into consideration the impact of wastewater application on the projected water table surface.
- (E) The ground water simulation analysis shall be prepared and submitted to the local health department by individuals qualified to use DRAINMOD by training and experience and who are licensed or registered in North Carolina if required in G.S. 89C (Engineers), G.S. 89E (Geologists), and G.S. 89F (Soil Scientists). The local health department or Owner may request a technical review by the Department prior to approval of the soil wetness condition determination.
- (g) Modeling Procedure: A soil wetness condition may be determined by application of DRAINMOD to predict daily water levels over at least a 30 year historic time period after all site-specific input parameters have been obtained, as outlined in the DRAINMOD Users Guide. This modeling procedure shall be used when a ground water lowering system is proposed for a site with Group III or IV soils within 36 inches of the naturally occurring soil surface. This procedure shall also be used to evaluate sites with Group III or IV soils within 36 inches of the naturally occurring soil surface, where the soil wetness condition was initially determined using a procedure described in Paragraphs (e) or (f) of this Rule and where drainage modifications are proposed or when fill is proposed to be used in conjunction with existing or proposed drainage modifications. The soil wetness condition shall be determined as the highest level predicted by the model to be saturated for a 14-day continuous period between January 1 and April 30 with a recurrence frequency of 30 percent (an average of at least 9 years in 30).
- (1) Weather input files, required to run DRAINMOD, shall consist of hourly rainfall and daily temperature data collected over the entire period of record but for at least a 30-year period from the closest available National Weather Service, or equivalent, measuring station to the site. DRAINMOD weather data files on file with the Department shall be made available upon request to the applicant or applicant's consultants.
- (2) Soil and Site inputs for DRAINMOD, including a soils data file closest to the soil series identified, depths of soil horizons, hydraulic conductivity of each horizon, depth and spacing of proposed drainage features and surface storage and drainage parameters, shall

be selected in accordance with procedures outlined in the DRAINMOD User's Guide. DRAINMOD soils data files on file with the Department shall be made available upon request to the applicant or applicant's consultants. Inputs shall include:

- (A) Soil input file with the soil moisture characteristic curve and data for the soil profile that is closest to the described soil profile that is present on the site;
- (B) Soil horizon depths determined on site;
- (C) Site measured or proposed drain depth and spacing, and drain outlet elevation;
- (D) In-situ saturated hydraulic conductivity measurements for at least three representative locations on the site and at each location for at least three most representative soil horizons within five feet of the surface. Conductivity measurements shall be for one representative soil horizon at or above redoximorphic depletion features and two representative soil horizons at and below redoximorphic concentration features at each location on the site;
- (E) All other model parameters based upon the DRAINMOD User's Guide, or other accepted values consistent with the simulation model; and
- (F) A sensitivity analysis shall be conducted for the following model parameters:
 - (i) Soil input files for at least two other most closely related soil profiles;
 - (ii) Saturated hydraulic conductivity of each of horizons measured on-site;
 - (iii) Drain depth and spacing; and
 - (iv) Surface storage and depth of surface flow inputs.

The sensitivity analysis shall be used to evaluate the range of soil and site characteristics for choosing input parameters related to the soil profiles, hydraulic conductivity input values based upon the range of hydraulic conductivity values measured on the site, and inputs for surface and subsurface drainage features based upon the range of possible elevations and distances that occur or may occur after installation of improvements. The sensitivity analysis shall establish which parameters are most critical for determination of the depth to soil wetness condition. Conservative values for the most critical

parameters shall be used in applying the model to the site.

- (3) For sites designed to receive over 600 gallons per day, the soil wetness determination using DRAINMOD shall take into consideration the impact of wastewater application on the projected water table surface.
- (4) The ground water simulation analysis shall be prepared and submitted to the local health department by individuals qualified to use DRAINMOD by training and experience and who are licensed or registered in North Carolina if required in G.S. 89C (Engineers), G.S. 89E (Geologists), and G.S. 89F (Soil Scientists). The local health department shall submit the ground water simulation analysis to the Department for technical review prior to approval of the soil wetness condition determination.

(h) A report of the investigations made for the Direct Monitoring Procedure, Monitoring and Modeling Procedure or Modeling Procedure pursuant to Paragraphs (e), (f), or (g) of this Rule shall be prepared prior to approval of the soil wetness condition determination. Reports prepared by a licensed or registered professional shall bear the professional seal of the person(s) whom conducted the investigation (Engineer, Geologist, Soil Scientist or Registered Sanitarian). A request for technical review of the report by the Department shall include digital copies of monitoring data and digital copies of model inputs, output data, and graphic results, as applicable.

(j) Where the site is UNSUITABLE with respect to soil wetness conditions, it may be reclassified PROVISIONALLY SUITABLE if a modified, alternative or innovative system can be installed in accordance with 15A NCAC 18A .1956, .1957, or .1969.

History Note: Authority G.S. 130A-335(e); Eff. July 1, 1982;

Amended Eff. January 1, 1990;

Temporary Amendment Eff. June 24, 2003; April 17, 2002;

Amended Eff. May 1, 2004.

15A NCAC 18A .1969 APPROVAL AND PERMITTING OF ON-SITE SUBSURFACE WASTEWATER SYSTEMS, TECHNOLOGIES, COMPONENTS, OR DEVICES

Experimental, controlled demonstration, innovative, and accepted wastewater systems (hereinafter referred to as E & I systems) are any wastewater systems, system components, or devices that are not specifically described in Rules .1955, .1956, .1957, or .1958 of this Section, including any system for which reductions are proposed in the minimum horizontal or vertical separation requirements or increases are proposed to the maximum long-term acceptance rates of this Section; or any E & I systems as defined by G.S. 130A-343(a) and approved pursuant to applicable Laws and this Rule. This Rule shall provide for the approval and permitting of E & I systems.

- (1) An application shall be submitted in writing to the State for an E & I system. The application shall include the information required by G.S.

130A-343(e), (f), and (g), and the following, as applicable:

- (a) specification of the type of approval requested as either innovative, controlled demonstration, experimental, accepted or a combination;
 - (b) description of the system, including materials used in construction, and its proposed use;
 - (c) summary of pertinent literature, published research, and previous experience and performance with the system;
 - (d) results of any available testing, research or monitoring of pilot systems or full-scale operational systems conducted by a third party research or testing organization;
 - (e) identity and qualifications of any proposed research or testing organization and the principal investigators, and an affidavit certifying that the organization and principal investigators have no conflict of interest and do not stand to gain financially from the sale of the E & I system;
 - (f) objectives, methodology, and duration of any proposed research or testing;
 - (g) specification of the number of systems proposed to be installed, the criteria for site selection, and system monitoring and reporting procedures;
 - (h) operation and maintenance procedures, system classification, proposed management entity and system operator;
 - (i) procedure to address system malfunction and replacement or premature termination of any proposed research or testing;
 - (j) notification of any proprietary or trade secret information, system, component, or device; and
 - (k) Fee payment as required by G.S. 130A-343(k), by corporate check, money order or cashier's check made payable to: North Carolina On-Site Wastewater System Account or NC OSWW System Account, and mailed to the On-Site Wastewater Section, 1642 Mail Service Center, Raleigh, NC 27699-1642 or hand delivered to Rm. 1A-245, Parker Lincoln Building, 2728 Capital Blvd., Raleigh, NC.
- (2) The State shall review all applications submitted and evaluate at least the following:
- (a) the completeness of the application, and whether additional information is needed to continue the review;
 - (b) whether the system meets the standards of an innovative system under G.S. 130A-343(a)(5), G.S. 130A-343, and Item (3) of this Rule, or whether the system meets the standards of an experimental or controlled demonstration system under G.S. 130A-343(e) or (f) and Item (4) of this Rule, as applicable.
- (3) **INNOVATIVE SYSTEMS:** Innovative systems, technologies, components, or devices shall be reviewed and approved by the State, and the local health department shall permit innovative systems in accordance with the following:
- (a) The State shall approve the system as an innovative system if the following standards have been met;
 - (i) The system, shall have been demonstrated to perform equal or superior to a system, which is described in Rules .1955, .1956, .1957, or .1958, of this Section, based upon controlled pilot-scale research studies or statistically-valid monitoring of full-scale operational systems.
 - (ii) Materials used in construction shall be equal or superior in physical properties and chemical durability, compared to materials used for similar proposed systems, specifically described in Rules .1955, .1956, .1957, or .1958 of this Section.
 - (b) When a system is approved as innovative by the State, the applicant shall be notified in writing. Such notice shall include any conditions for permitting, siting, installation, use, monitoring, and operation.
 - (c) A local health department shall issue an Improvement Permit and a Construction Authorization for any innovative system approved by the State upon a finding that the provisions of this Section including any conditions of the approval are met. Use of an innovative system and any conditions shall be described on the Improvement Permit, Construction Authorization, or Operation Permit.

(4) **EXPERIMENTAL AND CONTROLLED DEMONSTRATION SYSTEMS:** A system may be approved for use as an experimental or controlled demonstration system as part of a research or testing program which has been approved by the State. The research or testing program shall be conducted by a third party research or testing organization which has knowledge and experience relevant to the proposed research or testing and has no conflict of interest and does not stand to gain financially from the sale of the proposed system.

(a) To be approved by the State, the proposed research or testing program shall include the following:

- (i) The research program shall be designed such that, if the objectives were met, the system would satisfy the standards for approval as an innovative system under Item (3) of this Rule.
- (ii) Research design and testing methodology shall have a reasonable likelihood of meeting the objectives.

(b) The State shall notify the applicant and the applicable local health departments when the proposed research or testing program has been approved for an experimental or controlled demonstration system. Such notice shall include, but not be limited to, conditions for permitting, siting, operation, monitoring and maintenance, and number of systems which can be installed.

(c) A local health department shall issue an Improvement Permit and Construction Authorization for an experimental or controlled demonstration system when the following conditions are met:

- (i) There is an application for an Improvement Permit in accordance with Rule .1937(c) of this Section, with the proposed use of an experimental system specified.
- (ii) The proposed site is included as part of an approved research or testing program and any conditions specified for use of the system have been met.
- (iii) When an experimental or controlled demonstration system is proposed to serve a

residence, place of business or place of public assembly, there shall be a repair area using a non-experimental or non-controlled

demonstration backup system in accordance with the provisions of Rule .1945(b) or an accepted system of this Rule, except:

(A) When an existing and properly functioning wastewater system is available for immediate use, including connection to a public or community wastewater system; or

(B) When the experimental or controlled demonstration system is used as a repair to an existing malfunctioning system; or

(C) When for a controlled demonstration system sufficient available space shall be reserved for the installation of a replacement system at least equal to the initial controlled demonstration system, or the State or Local Health Department otherwise determines that the manufacturer can provide an acceptable alternative method for collection, treatment, and disposal of the wastewater.

(iv) When an experimental or controlled demonstration system is proposed to serve a residence, place of business or place of public assembly,

there shall be a repair system in accordance with the provisions of Rule .1945(b) or an innovative or accepted system of this Rule, except:

- (A) When an existing and properly functioning wastewater system is available for immediate use, including connection to a public or community wastewater system; or
- (B) When the experimental or controlled demonstration system is used as a repair to an existing malfunctioning system when there are no other approved or accepted repair options; or
- (C) As provided in G.S. 130A-343(f) for Controlled Demonstration Systems.
- (iv) When an experimental or controlled demonstration system is proposed which shall not serve a residence, place of business, or place of public assembly, a repair area or backup system shall not be required.
- (v) The application for an experimental system shall include statements that the property owner is aware of its experimental nature, that the local health department and State do not guarantee or warrant that these systems will function in a satisfactory manner for any period of time, and that use of the system may need to be discontinued if the system malfunctions and is found to be non-repairable, or if the proposed research or testing program is prematurely

terminated. Such statements shall be signed by the owner.

- (vi) The owner of the site on which an experimental system is proposed shall execute a easement granting rights of access to the system at reasonable hours for monitoring and evaluation to the research or testing organization. This easement shall specify that it is granted for the purposes of researching and testing an experimental wastewater system and shall remain valid as long as the system is to be part of the proposed research or testing program. The easement shall be recorded with the county register of deeds.
- (vii) Provisions shall be made for operation and maintenance of the system.
- (viii) Any special conditions required for the installation of the experimental or controlled demonstration system shall be specified in the Improvement Permit and the Construction Authorization. Use of an experimental or controlled demonstration system and any conditions shall be described on the Improvement Permit, Construction Authorization and any subsequent operation permits, with provisions for a repair area and backup system specified. A condition of the Improvement Permit and Construction Authorization shall be that the installation be under the direct field supervision of the research or testing organization.
- (ix) The proposed Improvement Permit, Construction Authorization and any subsequent operation permits for experimental or controlled demonstration systems shall be reviewed by the State and found to be consistent with the approved research or testing program

warranty shall be valid for a minimum of five-years from the date the warranty system is placed into operation.

- (b) The Manufacturer shall issue the Performance Warranty to the property owner through its authorized installer who shall sign the Performance Warranty indicating the system has been installed in accordance with the manufacturer's specifications, any conditions of the system approval granted by the Department, and all conditions of the Authorization to Construct a Wastewater System by the local health department. The installer or contractor shall promptly return a copy of the signed Performance Warranty to the Manufacturer indicating the physical address or location of the facility served by the warranty system, date the system was installed or placed into use, and type and model of system installed.
- (c) The Performance Warranty shall provide that the manufacturer furnishes all materials and labor necessary to repair or replace a malfunctioning warranty system as defined in Rule .1961(a) of this Section or a warranty system that failed to meet any performance conditions of the approval with a fully functional wastewater system at no cost to the Owner, in accordance with this Section and applicable Laws.
- (d) Performance Warranty repairs such as full replacement of the nitrification system, extension of the nitrification system or other repairs shall be completed pursuant to a repair Authorization to Construct that is issued by the local health department in accordance with this Section.
- (e) The Performance Warranty shall be attached to the Operation Permit issued by the Health Department for the wastewater system. The Performance Warranty remains in effect, notwithstanding change in ownership, to the end of the five-year warranty period.
- (10) Manufacturers of proprietary systems approved under this Rule shall provide a list of manufacturer's authorized installers to the Department and applicable local health departments, and update this list whenever there are additions or deletions. No Operation

Permit shall be issued for a proprietary system installed by a person not authorized by the Manufacturer, unless the Manufacturer of the proprietary system specifically approves the installation in writing.

History Note: Authority G. S. 130A-335(e),(f); 130A-343; Eff. April 1, 1993; Temporary Amendment Eff. June 24, 2003; February 1, 2003; Amended Eff. May 1, 2004.

15A NCAC 18A .3501 DEFINITIONS

The following definitions shall apply throughout this Section:

- (1) "Approved" means food which complies with requirements of the NC Department of Agriculture or the US Department of Agriculture and the requirements of the Rules of this Section. "Approved" also means equipment determined by the Department to be in compliance with the Rules of this Section. Food service equipment which meets and is installed in accordance with National Sanitation Foundation Standards or equal shall be approved. These standards may be obtained from the National Sanitation Foundation, P.O. Box 130140, Ann Arbor, Michigan 48113— 140 and are also available for inspection at the Division of Environmental Health, 1632 Mail Service Center, Raleigh, NC 27699-1632.
- (2) "Department of Environment and Natural Resources" or "Department" means the North Carolina Department of Environment and Natural Resources or its authorized representative. For purposes of any notices required pursuant to the Rules of this Section, notice shall be mailed to "Division of Environmental Health, Environmental Health Services Section, North Carolina Department of Environment and Natural Resources," 1632 Mail Service Center, Raleigh, NC 27699-1632.
- (3) "Employee" means any camp personnel who handles food or drink during preparation or serving, or comes in contact with any eating or cooking utensils, or is employed by the camp at any time in which food or drink is prepared or served.
- (4) "Environmental Health Specialist" shall mean a person authorized to represent the Department on the local or state level in making inspections pursuant to state laws and rules.
- (5) "Equipment" shall mean refrigerators, insulated coolers, buckets, cooking appliances, serving utensils, or any other devices used to serve, hold or prepare food or drink.
- (6) "Food" means any raw, cooked, or processed edible substance, ice, beverage, or ingredient

- used or intended for use or for sale in whole or in part for human consumption.
- (7) "Good Repair" means capable of being cleaned, sanitized, and used for the intended purpose.
 - (8) "Local Health Director" means the administrative head of a local health department or his authorized representative.
 - (9) "Off-site" includes packouts, cookouts, or any activity where food is prepared outside the base camp.
 - (10) "Permanent sleeping quarters" includes those buildings, cabins, platform tents, covered wagons and teepees that remain in a fixed location during the operating season and are used as primary residences for campers, staff, or user groups.
 - (11) "Permit to Operate" means a permit issued by the Department upon review and approval of the operating primitive experience camp plan of operation.
 - (12) "Person" means an individual, firm, association, organization, partnership, business trust, corporation, or company.
 - (13) "Plan of Operation" means the procedures, methodologies and measures specifically related to food preparation and protection, drinking water, waste disposal and other general sanitation issues the primitive experience camp will employ to protect the health of campers.
 - (14) "Potentially hazardous food" means any food or ingredient, natural or synthetic, in a form capable of supporting the growth of infectious or toxigenic microorganisms, including *Clostridium botulinum*. This term includes raw or heat treated foods of animal origin, raw seed sprouts, and treated foods of plant origin. The term does not include foods which have a pH level of 4.6 or below or a water activity (Aw) value of 0.85 or less.
 - (15) "Primitive Experience Base Camp" means that portion of the primitive experience camp at a fixed location which contains structures, water supplies, toilets and other facilities necessary for the operation of the camp under the control or ownership of the primitive experience camp permittee.
 - (16) "Primitive Base Experience Camp Permit" means the permit is issued for the base camp facilities and appurtenances upon determination that the base camp is in compliance with the Rules of this Section.
 - (17) "Primitive Experience Camp" means a camp not served by any public electrical service providers and provides overnight outdoor primitive camping. Primitive Experience Camps include those camp establishments that provide food and overnight lodging accommodations for 72 consecutive hours or

- more per week at or from a permanent base camp for groups of children or adults engaged in overnight organized recreational or educational programs. Programs are operated and staffed by the camp and supervision of individual campers is a camp responsibility. This definition does not include campgrounds or other facilities that only rent property or camp sites for camping.
- (18) "Responsible person" means the administrator, operator, owner, or other person in charge of the operation at the time of the inspection. If no individual is the apparent supervisor, then any employee may be the responsible person.
- (19) Sanitize means the approved bactericidal treatment by a process which meets the temperature and chemical concentration levels in accordance with Rule .3507 of this Section.
- (20) "Sewage" means the liquid and solid human body waste and liquid waste generated by water-using fixtures and appliances, including those associated with foodhandling. The term does not include industrial process wastewater or sewage that is combined with industrial process wastewater.
- (21) "Threat to the Public Health" means circumstances which create a significant risk of serious physical injury or serious adverse health effect.

History Note: Authority G.S. 130A-248; Eff. May 1, 2004.

15A NCAC 18A .3502 PRIMITIVE EXPERIENCE BASE CAMP PERMIT APPROVAL OF PLANS

Plans, drawn to scale, and specifications for primitive experience camps or facilities in existing primitive camps shall include a topographic map of the base camp, buildings, water supply system, waste water disposal system and other appurtenances necessary to maintain base camp operation and compliance with the rules of this Section. Plans shall also include those sites used on a recurring (at least once each season) basis that are not part of the established base camp but are under the control of the ownership of the camp. Plans and specifications shall be submitted to the health department of the county in which the site is located. Plans, drawn to scale, and specifications shall also be submitted to the local health department for any additions or renovations to existing buildings or any new buildings or facilities in primitive experience camps. The local health department shall require a topographic map upon determination that the proposed changes will impact camp sanitation or drinking water supplies. Construction shall not be started until the plans and specifications have been approved by the local health department.

History Note: Authority G.S. 130A-248; Eff. May 1, 2004.

15A NCAC 18A .3503 PERMIT TO OPERATE

(a) No person shall operate a primitive experience camp within the State of North Carolina who does not possess a valid primitive experience base camp permit and a permit to operate issued by the Department. No permit to operate shall be issued until an evaluation by an environmental health specialist shows that the establishment complies with the Rules of this Section.

(b) The local health department shall review the operations plan and the facilities to determine compliance with the Rules of this Section. Once approved the local health department shall issue a permit to operate for the camp.

(c) Upon transfer of ownership or change of operation upon which the original permit was issued the responsible person shall notify the local health department within 72 hours.

(d) At least 30 days prior to permitting the responsible person shall submit a plan of operation to the local health department to determine compliance with the Rules of this Section. The plan shall include the following:

- (1) Scheduled dates of operation.
- (2) Number of campers and staff expected each session.
- (3) Description of general activities and programs the primitive experience camp will be offering each session.
- (4) Description of how food will be stored, prepared, transported and protected.
- (5) Proof of approved food service training required in Rule .3515(a) of this Section.
- (6) Description of how potable water will be made available, protected, treated and transported at base camp and in the field.
- (7) Description of how solid waste will be contained and disposed.
- (8) Methods of all sewage waste disposal.

(e) Any modifications or changes to the approved plan of operation shall be submitted in writing for approval to the local health department at least 30 days prior to change.

(f) Primitive experience camps that operate six months or less per calendar year and do not offer activities, programs, services or food to the public for pay during the remainder of the year shall also be required to obtain a seasonal permit for each operating season. No primitive experience camp required to pay a fee in accordance with G.S. 130A-248 (d) shall pay more than one annual fee unless the permit has been revoked.

(1) Primitive experience camps shall submit a seasonal permit application at least 45 days prior to the opening session. The seasonal permit shall include the dates of operation and shall expire six months from the first date of operation. Primitive experience camp management shall provide written documentation to the local health department that the following items have been complied with prior to opening:

- (A) All equipment necessary for food temperature maintenance is operational and clean.
- (B) Utensils and equipment have been cleaned and sanitized.

(C) The cooking and lodging areas shall be clean and free of vermin harborages.

(D) All camp facilities are in good repair and clean.

(E) The operating plans for the season specified in Paragraph (d) of this Rule have been submitted.

(2) The local health department shall conduct an evaluation at least 30 days prior to the scheduled opening day of camp to verify the water system is in compliance with Rule .3508 Water Supply, of this Section. If the local health department is unable to meet the water sampling requirement, then the camp shall submit a water sample to a certified lab. Results shall be submitted to the local health department.

(g) Transitional permits shall not be issued to Primitive experience camps.

(h) The Department may impose conditions on the issuance of a permit to operate. Conditions may be specified for one or more of the following areas:

- (1) The number of persons served per session.
- (2) The categories of food served.
- (3) Modification or maintenance of water supplies, water use fixtures and sanitary sewage systems.
- (4) Use of facilities for more than one purpose.
- (5) Continuation of contractual arrangements upon which basis the permit was issued.
- (6) Submission and approval of plans for renovation.
- (7) Any other conditions necessary for the primitive experience camps to remain in compliance with the Rules of this Section.

(i) A permit may be suspended or revoked in accordance with G.S. 130A-23. A permit to operate shall not be issued after revocation or suspension until the camp has been reinspected and determined to be in compliance with the Rules of this Section. A reinspection shall be conducted within 30 days, after the request is made by the operator, administrator or other responsible party.

History Note: Authority G.S. 130A-248; Eff. May 1, 2004.

15A NCAC 18A .3504 INSPECTIONS AND RE-INSPECTIONS

(a) For primitive experience camps that operate six months or less per calendar year, an unannounced inspection shall be conducted at least once during the operating season. For primitive experience camps that operate more than six months of each calendar year, an unannounced inspection shall be conducted at least once each six month operating period.

(b) Upon arrival at a primitive experience camp, Environmental Health Specialists shall identify themselves and their purpose in visiting that establishment. Environmental Health Specialists shall inquire as to the identity of the responsible person and invite the responsible person to accompany them during the

inspection. Following the inspection, the Environmental Health Specialist shall offer to review the results of the inspection with the responsible person.

(c) Inspections of primitive experience camps shall be done on a form furnished by the Department to local health departments. The form shall provide for at least the following information:

- (1) the name and mailing address of the facility;
- (2) the name of the person to whom the permit is issued;
- (3) the permit and status of approval given;
- (4) standards of construction and operation as listed in Rules .3505 through .3517 of this Section;
- (5) a short explanation for all deficiencies;
- (6) the signature of the Environmental Health Specialist;
- (7) the date.

(d) If it is determined that the camp is not operating according to the approved plan of operation, the permit may be suspended or revoked until discrepancies are corrected.

(e) Grade cards shall not be posted.

*History Note: Authority G.S. 130A-248;
Eff. May 1, 2004.*

15A NCAC 18A .3505 SPECIFIC REQUIREMENTS FOR PRIMITIVE BASE CAMPS

Primitive experience camps base of operations shall comply with the following:

- (1) Any camp buildings such as shelters, storage facilities, food storage facilities, permanent sleeping quarters and sheds, shall be kept clean and in good repair,
- (2) Where bedding including sleeping bags or bed linens is provided by the primitive experience camp, such items shall be washed or laundered between users and kept in good repair.
- (3) All garbage and other solid wastes shall be stored and disposed of in a manner consistent with local, state and federal ordinances, rules and laws.
- (4) Toilet facilities shall be provided at convenient and accessible locations distributed throughout the base of operations at a rate of not more than 20 campers and staff per toilet seat.
- (5) All sewage shall be disposed of in an approved manner.
- (6) Base camps shall comply with Rule .3506 Sanitation of this Section.

*History Note: Authority G.S. 130A-248;
Eff. May 1, 2004.*

15A NCAC 18A .3507 SANITIZING PROCEDURES

Where required in these Rules, eating and drinking utensils shall be sanitized by one of the following methods:

- (1) Immersion for at least one minute in clean hot water of at least 170° F (77°C). A thermometer accurate to 3° F (5°C) shall be available.

(2) Immersion for at least two minutes in a chemical bactericide of strength approved by the Department:

- (a) for chlorine products, a solution containing at least 50 ppm of available chlorine at a temperature of at least 75°F (24°C);
- (b) for iodophor products, a solution containing at least 12.5 ppm of available iodine and having a pH not higher than 5.0 and having a temperature of at least 75°F (24°C);
- (c) For quaternary ammonium products, a solution containing at least 200 ppm of QAC and having a temperature of at least 75°F (24°C), provided that the product is labeled to show that it is effective in water having a hardness value at least equal to that of the water being used.
- (d) Other equivalent products and procedures approved in 21 CFR 178.1010. 21 CFR 178.1010 is incorporated by reference including any subsequent amendments and additions. A copy of applicable provisions may be downloaded from <http://www.gpoaccess.gov/cfr/index.html>.

(3) A testing method or equipment shall be available, convenient and regularly used to test chemical sanitizers to insure minimum prescribed strengths.

*History Note: Authority G.S. 130A-248;
Eff. May 1, 2004.*

15A NCAC 18A .3510 DRINKING WATER FACILITIES

Drinking water facilities shall be provided. Drinking fountains, if provided, shall be of a sanitary angle-jet design, shall be kept clean and shall be regulated such that water flow is at least two inches above the mouth piece. This Rule shall not be interpreted as prohibiting the pitcher service of water or the service of bottled water.

*History Note: Authority G.S. 130A-248;
Eff. May 1, 2004.*

15A NCAC 18A .3513 SHELLFISH

(a) All shellfish and crustacea meat shall be obtained from sources in compliance with the Department's rules on shellfish and crustacea. Copies of 15A NCAC 18A .0300 through .0900 may be obtained from the Department. If the source of clams, oysters, or mussels is outside the state, the shipper's name shall be on the list of Interstate Certified Shellfish Shippers as published monthly by the Shellfish Sanitation Branch, Food and Drug Administration. If the source of cooked crustacea meat is outside the state it shall be certified by the regulatory authority of the state or territory of origin, and attested by the presence of an official permit number on the container.

(b) All shucked shellfish and all cooked crustacea meat shall be obtained and stored in the clean single-service shipping containers in which packed at the source. Each original container shall be clearly identified with the name and address of the packer, re-packer, and the abbreviated name of the state. Shucked shellfish unit containers shall be dated in accordance with 15A NCAC 18A .0600.

(c) All shucked shellfish and all cooked crustacea meat shall be stored in the original container. Each original container shall be clearly identified with the name and address of the packer, repacker and the abbreviated name of the state or territory.

(d) All shellstock shall be stored in the containers in which packed at the source. Each original container shall be clearly identified with a uniform tag or label bearing the name and address of the shipper, the certificate number issued by the state or territory regulatory authority, the abbreviated name of the state, the name of the waters from which the shellfish were taken, the kind and quantity of the shells tock in the container, and the name and address of the consignee.

(e) Shellstock shall be stored under refrigeration and in a manner to prevent cross-contamination to or from the shellstock. The re-use of single-service shipping containers and the storage of shucked shellfish in other containers are not allowed.

(f) After each container of shellstock has been emptied, the management shall remove the stub of the tag and retain it for a period of at least 90 days.

(g) With the exception of opening shellfish for immediate consumption on the premises, no shellfish shucking shall be performed unless the establishment holds a valid shellfish shucking permit.

(h) Shellstock washing facilities shall consist of an approved mechanical shellfish washer, or a sink or slab with catch basin, indirectly drained into an approved sewage collection, treatment, and disposal system. The washing shall be done in a clean area, protected from contamination. A can wash facility shall not be used for the washing of shellstock or other foods.

(i) The cooking of shellfish shall be accomplished in an area meeting the requirements of the rules of this Section.

(j) Re-use of shells for the serving of food is prohibited. It shall not be considered reuse to remove a shellfish from its shell and return it to that same shell for service to the public. Shells shall be stored in a manner to prevent flies, insects, rodents, and odors.

(k) All establishments that prepare, serve, or sell raw shellfish shall make available in camp literature to individual parents or guardians of campers or shall post in a conspicuous place where it may be readily observed by the public prior to consumption of shellfish, the following consumer advisory:

"Consumer Advisory

Eating raw oysters, clams, or mussels may cause severe illness. People with the following conditions are at especially high risk: liver disease, alcoholism, diabetes, cancer, stomach or blood disorder, or weakened immune system. Ask your doctor if you are unsure of your risk. If you eat shellfish and become sick, see a doctor immediately."

History Note: Authority G.S. 130A-248;

Eff. May 1, 2004.

15A NCAC 18A .3514 ICE HANDLING

(a) Ice which is to be used in drinks, ice water, tea, and coffee, or in connection with the chilling or serving of food shall be manufactured from an approved water supply and shall be stored and handled in a sanitary manner.

(b) Storage boxes shall be covered, located away from sources of contamination, maintained in good repair, and kept clean. Storage bins or boxes shall be provided with rims and covers designed to exclude spillage and drip.

(c) Ice grinders, pans, and buckets used in preparing chipped or crushed ice shall be protected from contamination, cleaned between usages, and kept in good repair; buckets and other containers used in the transportation of ice shall be stored above the floor in a clean place.

(d) Ice shall be dispensed or transferred with a scoop, spoon, or other sanitary method. When not in use, an ice scoop or spoon may be stored in the ice with the handle protruding or on a clean surface. Ice scoops shall not be stored in water. Ice compartments, bowls, buckets, or other containers shall be in good repair; washed and kept free of scum, rust, or other forms of contamination or adulteration and shall be protected from drip, dust, splash, and other means of contamination. Ice shall not be received, used, or accepted when there is evidence that it is not being handled and transported in a sanitary manner.

(e) Ice machines shall be kept clean.

History Note: Authority G.S. 130A-248;

Eff. May 1, 2004.

15A NCAC 18A .3515 FOOD SERVICE EMPLOYEES

(a) In order to operate a primitive experience camp the owner, operator, manager or responsible person of the camp who is employed full time in that particular camp must have successfully completed in the past three years a food service sanitation program as described in 15A NCAC 18A .2600. Evidence that a person has completed such a program shall be maintained at the base camp and provided to the Environmental Heath Specialist upon request.

(b) No food service employee shall use tobacco in any form while engaged in the preparation, handling or serving of food or washing utensils.

(c) All food service employees shall wash their hands with soap and potable water prior to preparing food or handling of utensils, after each visit to the toilet, and as often as may be necessary to remove soil and contamination.

(d) No person who has a communicable or infectious disease that can be transmitted by foods, or who is a carrier of organisms that cause such a disease, or who has a boil, infected wound, or a disease with sudden onset and severe symptoms including cough and nasal discharge, shall work in food service in any capacity in which there is a likelihood of such person contaminating food or food contact surfaces with disease-causing organisms or transmitting the illness to other persons.

History Note: Authority G.S. 130A-248;

Eff. May 1, 2004.

15A NCAC 18A .3519 INFORMAL REVIEW PROCESS

AND APPEALS PROCEDURE

(a) If a permit holder disagrees with a decision of an Environmental Health Specialist on the interpretation, application or enforcement of the Rules of this Section the permit holder may:

- (1) Request an informal review pursuant to Paragraphs (d) and (e) of this Rule; or
- (2) Initiate an appeal in accordance with G.S. 150B.

(b) The permit holder is not required to complete the alternative dispute resolution prior to initiating an appeal in accordance with G.S. 150B.

(c) When a petition for a contested case is filed, the informal review process shall terminate.

(d) If the permit holder requests an informal review, the request shall be in writing and shall be postmarked or hand-delivered to the local health department within seven days of notice of the decision giving rise to the review. The request shall briefly state the issues in dispute. In the event the inspection giving rise to the informal review was conducted by the Environmental Health Supervisor in the county or area where the primitive experience camp is located, or when the county or area has only one Environmental Health Specialist assigned to inspect primitive experience camps, the Regional Environmental Health Specialist assigned to that county or area shall conduct the local informal review. As soon as possible but at least within 30 days of receipt of the request, the person conducting the review shall contact the permit holder, provide that permit holder an opportunity to be heard on the issues in dispute and issue a written decision addressing the issues raised in the appeal. Copies of the decision shall be mailed to the permit holder and to the State Health Director. That decision shall be binding for the purposes of future inspections of the establishment in question unless modified pursuant to Paragraph (e) of this Rule or by the State Health Director.

(e) Following receipt of the written decision of the Environmental Health Supervisor or his or her representative issued pursuant to Paragraph (d) of this Rule, the permit holder who initiated the informal review may appeal the resulting decision to an Informal Review Officer designated by the Department to be responsible for final decisions on appeals from throughout the state. Notice of such appeal shall be in writing, shall include a copy of the Environmental Health Supervisor's or his or her representative's decision and shall be postmarked or hand-delivered to the Local Health Department and to the Department within seven days of receipt of the written decision issued pursuant to Paragraph (a) of this Rule. Within 35 days of receipt of this appeal, the designated Informal Review Officer shall hold a conference in Wake County. Notice of the time and place of this conference shall be provided to the permit holder and the Environmental Health Supervisor for the county or area where the issue arose. Within 10 days following the date of the conference, the Informal Review Officer shall issue a written decision addressing the issues raised in the appeal and that decision shall be binding for purposes of future inspections of the establishment in question unless modified pursuant to Paragraph (f) of this Rule or by the State Health Director.

(f) Appeals of the decision of the designated Informal Review Officer shall be in accordance with G.S. 150B.

(g) Nothing in this Rule shall impact the right of a permit holder to a reinspection pursuant to Rule .3503 of this Section.

History Note: Authority G.S. 130A-248; Eff. May 1, 2004.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 10 - BOARD OF CHIROPRACTIC EXAMINERS

21 NCAC 10.0209 NUTRITIONAL SUPPLEMENTS

For the purpose of enforcing G.S. 90-151.1, the term Anutritional supplements@ includes vitamins, minerals, enzymes, dietary supplements, herbs, homeopathic and naturopathic preparations, glandular extracts, food concentrates and other natural agents. The term Anutritional supplements@ does not include controlled substances.

History Note: Authority G.S. 90-142; 90-151; 90-151.1; 90-154; Eff. May 1, 2004.

CHAPTER 14 – BOARD OF COSMETIC ARTS

21 NCAC 14A .0101 DEFINITIONS

The following definitions apply in this Chapter:

- (1) "Beauty Establishment" refers to both cosmetic art schools and cosmetic art shops.
- (2) "Cosmetology School" is any cosmetic art school that teaches cosmetic art as defined by, G.S. 88B-2(5), but is not a manicurist or an esthetics school.
- (3) "Cosmetology Student" is a student in any cosmetic art school whose study is the full curriculum.
- (4) "Manicurist School" is a cosmetic art school that teaches only the cosmetic arts of manicuring.
- (5) "Manicurist Student" is a student in any cosmetic art school whose study is limited to the manicurist curriculum set forth in 21 NCAC 14K .0102.
- (6) "Successful Completion" is the completion of an approved cosmetic art curriculum with a minimum grade of "C" or 70%, whichever is deemed as passing by the cosmetic art school.
- (7) "Esthetician School" is any cosmetic art school that teaches only the cosmetic arts of skin care.
- (8) "Esthetician Student" is a student in any cosmetic art school whose study is limited to the esthetician curriculum set forth in 21 NCAC 14O. 0102.
- (9) "Esthetics" refers to any of the following practices: giving facials, applying makeup, performing skin care, removing superfluous hair from the body of any person by the use of depilatories, tweezers or waxing, or applying eyelashes to any person (this is to include

- brow and lash color), beautifying the face, neck, arms or upper part of the human body, by use of cosmetic preparations, antiseptics, tonic, lotions or creams, massaging, cleaning, or stimulating the face, neck, ears, arms, hands, bust, torso, legs or feet, by means of the hands, devices, apparatus, or appliances, with the use of cosmetic preparations, antiseptics, tonics, lotions or creams.
- (10) "Natural hair braiding" is a service that results in extension on hair strands or roots by twisting, wrapping, weaving, extending, locking, or braiding by hand or mechanical device, provided that the service does not include hair cutting or the application of dyes, reactive chemicals, or other preparations to alter the color of the hair or to straighten, curl, or alter the structure of the hair.
- (11) "Natural hair styling" is the provision of natural hair braiding services together with any of the services or procedures defined within the regulated practice of cosmetic art, and is subject to regulation pursuant to G.S. 88B, and those persons practicing natural hair styling shall obtain and maintain a cosmetologist license as applicable to the services offered or performed. Establishments offering natural hair styling services shall be licensed as cosmetic art shops.
- (12) "Biennial licensing period" is the two-year period beginning on the first day of October of an even-numbered year and ending on the 30th day of September of an even-numbered year.
- (13) "Provider" is a nonprofit professional cosmetic art association, community college, high school, vocational school, postsecondary proprietary school of cosmetic art licensed by the Board, manufacturer of supplies or equipment used in the practice of cosmetic art, the State Board or an agent of the State Board, or any individual or entity that owns and operates five or more licensed salons or that employs at least 50 licensees.

History Note: Authority G.S. 88B-2; 88B-4; Eff. February 1, 1976; Amended Eff. June 1, 1993; October 1, 1991; May 1, 1991; January 1, 1989; Temporary Amendment Eff. January 1, 1999; Amended Eff. May 1, 2004; February 1, 2004; April 1, 2001; August 1, 2000.

21 NCAC 14J .0501 APPROVAL OF CREDIT FOR COSMETOLOGY INSTRUCTION/ANOTHER STATE

- (a) An applicant shall receive credit for instruction taken in another state if the conditions set forth in this Rule are met.
- (b) The applicant's record shall be certified by the state agency or department that issues licenses to practice in the cosmetic arts. If this agency or department does not maintain any student records or if the state does not give license to practice in the

cosmetic arts, then the records may be certified by any state department or state agency that does maintain such records and is willing to certify their accuracy. If no state department or board will certify the accuracy of the student's records, then the Board shall review the student's records on a case-by-case basis.

(c) If the requirements of Paragraph (b) of this Rule are met, then the Board shall give credit for hours of course work and for mannequin and live model performances to the extent certified, up to the amount of credit that the student would receive for instruction in a school licensed by the Board. If the certification includes only total hours and does not specify what performances have been completed, this Board shall not give any credit for performances completed as part of the out-of-state instruction.

History Note: Authority G.S. 88B-16; Eff. March 2, 1992; Amended Eff. May 1, 2004; August 1, 2000; August 1, 1998; June 1, 1994.

21 NCAC 14R .0101 CONTINUING EDUCATION REQUIREMENTS

- (a) The continuing education requirement for all teacher licensees is eight hours per year. No licensee shall receive credit for course duplication completed during the biennial licensing period. Course instructors shall not receive credit for any course taught by them.
- (b) Courses completed prior to an individual being licensed by the Board shall not qualify for continuing education credit. A licensee shall not receive continuing education credit for any course given in North Carolina that does not have the prior approval of the Board.
- (c) Esthetician and manicurist teachers must complete courses in their subject area.
- (d) All providers shall allow any official representative or employee of the Board entrance into any Board approved continuing education requirement course at no cost to the Board.
- (e) The Board shall keep a current roster of approved continuing education courses. Copies of the roster shall be mailed to all teacher licensees on a quarterly basis. Additional copies of the roster shall be available to teacher licensees and the public upon request to the Board.
- (f) Out-of-state continuing education hours shall be submitted for approval to the Board within 30 days of completing the course in order to be acceptable in meeting the annual requirements.

History Note: Authority G. S. 88B-4; 88B-21 (e); Eff. May 1, 2004.

21 NCAC 14R .0102 APPLICATION CRITERIA AND CONTINUING EDUCATION COURSE APPROVAL

- (a) Application for course approval shall be completed on forms provided by the Board and shall demonstrate that the applicant is:
- (1) A provider as defined in 21 NCAC 14A .0101;
 - (2) Submitting the form to the Board's office at least 30 days prior to the proposed initial date of the course offering.

- (3) Proposing a course offering that must include at least 50% of subject matter in the cosmetic arts or cosmetic art teacher training techniques;
 - (4) Providing a short resume of all course instructors.
- (b) The following offerings shall not be approved by the Board for continuing education credit:
- (1) That portion of any offering devoted to any breaks including: breakfast, lunch and dinner or other refreshments;
 - (2) Any application, that fails to meet the standards of this Rule.
- (c) A continuing education number shall be assigned to each approved course.
- (d) Applications for course approval must be in the Board's office at least 10 days prior to a Board meeting to allow time for review and Board approval.
- (e) Approved courses may be conducted as often as desired during the calendar year.

History Note: Authority G.S. 88-B 4; 88B-21(e); Eff. May 1, 2004.

21 NCAC 14R .0103 CRITERIA FOR CONTINUING EDUCATION COURSES

- (a) Programs shall not be approved by the Board in segments of less than one hour.
- (b) Providers must use an attendance sign-in sheet provided by the Board, listing the licensee's name and teacher's license number, to verify attendance. Forms may be copied.
- (c) No provider shall certify the attendance of a person who was not physically present during at least ninety per cent of the course time.
- (d) A provider shall maintain for four years a record of attendance of each person attending a course including the following information:
 - (1) Board approved continuing education number;
 - (2) Name and license number of attendee;
 - (3) Course title and description
 - (4) Hours of attendance;
 - (5) Date of course;
 - (6) Name and signature of instructor/monitor in employ of provider;

The provider shall certify the items above and furnish a copy to the attendee within 30 days after completion of the course.
- (e) Courses by individuals or entities whose principal residence or place of business is not located in North Carolina shall be approved if they comply with the requirements in this Rule .
- (f) Course attendance may be restricted to teacher licensees due to valid course prerequisites for admission or by the maximum number of participants allowable as determined by the provider and fully disclosed during the application criteria and procedures for continuing education approval.
- (g) Passage of an examination by a licensee shall not be a requirement for successful completion of a continuing education course. Correspondence and Internet continuing education courses are not authorized.

- (h) Minimum attendance of a course for credit purposes is four attendees.
- (i) Each provider shall notify the Board; at least one day in advance, of any additional course dates, or any changes including locations, times, and changes of course instructors.
- (j) Each provider shall submit to the Board, within ten days after completion of each course, an attendance list of licensees who completed the course. The list shall include for each licensee:
 - (1) Course title;
 - (2) Date conducted;
 - (3) Address location where the course was conducted;
 - (4) Licensee name;
 - (5) Licensee's license number;
 - (6) Course continuing education number;
 - (7) Continuing education hours earned.
- (k) The Board may suspend, revoke, or deny the approval of an instructor or provider, who fails to comply with any provision of the rules in this Subchapter. Written justification of the suspension, denial, or revocation shall be given.

History Note: Authority G.S. 88B-4; 88B-21 (e); Eff. May 1, 2004

21 NCAC 14R .0104 LICENSE RENEWAL PROCEDURES

After completion of the continuing education requirements for any biennial licensing period, the licensee shall provide copies of completion certificates and forward them to the Board with the licensee's license renewal application, the license renewal fee.

History Note: Authority G.S. 88B-4; 88B-21 (e); Eff. May 1, 2004.

CHAPTER 17 - BOARD OF DIETETICS/NUTRITION

21 NCAC 17 .0114 CODE OF ETHICS FOR PROFESSIONAL PRACTICE AND CONDUCT

- (a) Licensees, under the Act, shall comply with the following Code of Ethics in their professional practice and conduct. The Code reflects the ethical principles of the dietetic/nutrition professional and outlines obligations of the licensee to self, client, society and the profession and sets forth mandatory standards of conduct for all licensees.
 - (1) The licensee shall provide professional services with objectivity and with respect for the unique needs and values of individuals as determined through the nutritional assessment.
 - (2) The licensee shall conduct all practices of dietetics/nutrition with honesty and integrity.
 - (3) The licensee shall present substantiated information and interpret controversial information without personal bias, recognizing that legitimate differences of opinion exist.
 - (4) The licensee shall practice dietetics/nutrition based on scientific principles and current information.

- (5) The licensee shall assume responsibility and accountability for personal competence in practice.
 - (6) The licensee shall inform the public of his/her services by using factual information and shall not advertise in a false or misleading manner.
 - (7) The licensee shall not exercise undue influence on a client, including the promotion or the sale of services or products. The licensee shall be alert to any conflicts of interest and shall provide full disclosure when a real or potential conflict of interest arises.
 - (8) The licensee shall not reveal information about a client obtained in a professional capacity, without prior consent of the client, except as authorized or required by law and shall make full disclosure about any limitations on his/her ability to guarantee this.
 - (9) The licensee shall recognize and exercise professional judgment within the limits of the licensee's qualifications and shall not accept or perform professional responsibilities which the licensee knows or has reason to know that he or she is not qualified to perform.
 - (10) The licensee shall take action, with prior consent of the client, to inform a client's physician or other health care practitioner in writing in cases where a client's nutritional status indicates a change in health status.
 - (11) The licensee shall give sufficient information based on the client's ability to process information such that the client can make his or her own informed decisions. The licensee shall not guarantee that nutrition care services will cause any certain outcome or particular result for the client.
 - (12) 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.
 - (13) The licensee shall notify the Board in writing within 30 days of the occurrence of any of the following:
 - (A) The Licensee seeks any medical care or professional treatment for the chronic or persistent use of intoxicants, drugs or narcotics.
 - (B) The Licensee is adjudicated to be mentally incompetent.
 - (C) The Licensee has been convicted or entered into a plea of guilty or nolo contendere to any crime involving moral turpitude.
 - (D) The licensee has been disciplined by an agency of another state that regulates the practice of dietetics or nutrition.
 - (14) The licensee shall comply with all laws and rules concerning the profession.
 - (15) The licensee shall uphold the Code of Ethics for professional practice and conduct by reporting suspected violations of the Code and the Act to the Board.
 - (16) The licensee shall not interfere with an investigation or disciplinary proceeding by willful misrepresentation of facts to the Board or its representative or by the use of threats or harassment against any person.
 - (17) The licensee shall not engage in kissing, fondling, touching or in any activities, advances, or comments of a sexual nature with any client or, while under the licensee's supervision, with any student, trainee, provisional licensee or person aiding the practice of dietetics/nutrition.
- (b) Conduct and circumstances which may result in disciplinary action by the Board include the following:
- (1) The licensee is a chronic or persistent user of intoxicants, drugs or narcotics to the extent that the same impairs his/her ability to practice dietetics/nutrition.
 - (2) The licensee is mentally, emotionally, or physically unfit to practice dietetics/nutrition and is afflicted with such a mental, emotional or physical disability as to be dangerous to the health and welfare of a client.
 - (3) The licensee has been disciplined by an agency of another state that regulates the practice of dietetics or nutrition and at least one of the grounds for the discipline is the same or substantially equivalent to the grounds for discipline in this state.
 - (4) The licensee has violated any provisions of the Act or any of the rules in this Chapter.

History Note: Authority G.S. 90-356(3); Temporary Adoption Eff. March 19, 1992 for a Period of 180 Days to Expire on September 13, 1992; Eff. July 1, 1992; Recodified from 21 NCAC 17.0014 Eff. February 1, 1995; Amended Eff. July 1, 2004; July 18, 2002; March 1, 1996.

CHAPTER 29 - LOCKSMITH LICENSING BOARD

21 NCAC 29 .0602 DECLARATORY RULINGS

- (a) A person seeking a declaratory ruling from the Board under G.S. 150B-4 shall file a petition for a declaratory ruling that meets the requirements of this Rule.
- (b) All petitions for declaratory rulings shall be in writing and shall be sent to the Chair at the Board=s address. Each petition shall be entitled APetition for Declaratory Ruling@ and shall include the following information:
 - (1) the name and address of the petitioner;
 - (2) the statute or rule to which the petition relates;
 - (3) a statement of the manner in which the petitioner has been or may be aggrieved by the statute or rule; and
 - (4) if the petitioner wishes to make an oral presentation to the Board on the petition, a

statement requesting an opportunity to appear and be heard.

- (c) The Board may refuse to issue a declaratory ruling when:
- (1) the petition does not comply with this Rule;
 - (2) the petitioner is not a *Aperson@* or a *Aperson aggrieved@* as defined in G.S. 150B-2;
 - (3) the Board has previously issued a declaratory ruling on similar facts;
 - (4) the Board has previously issued a final agency decision in a contested case on similar facts;
 - (5) the subject matter of the petition is involved in pending litigation; or

History Note: Authority G.S. 74F-6; 150B-4; Temporary Adoption Eff. March 26, 2003; Eff. March 1, 2004.

21 NCAC 29 .0613 SUBPOENAS

- (a) Requests for subpoenas for the attendance and testimony of witnesses or for the production of documents, either at a hearing or for the purposes of discovery, shall be made in writing to the Board and shall identify any document sought with specificity, and shall include the full name and home or business address of all persons to be subpoenaed and, if known, the date, time, and place for responding to the subpoena. The Board shall issue the requested subpoenas within three days of receipt of the request.
- (b) Subpoenas shall contain: the caption of the case; the name and address of the person subpoenaed; the date, hour and location of the hearing in which the witness is commanded to appear; a particularized description of the books, papers, records or objects the witness is directed to bring with him to the hearing, if any; the identity of the party on whose application the subpoena was issued; the date of issue; the signature of the presiding officer or his designee; and a "return of service." The "return of service" form as filled out, shall show the name and capacity of the person serving the subpoena, the date on which the subpoena was delivered to the person directed to make service, the date on which service was made, the person on whom service was made, the manner in which service was made, and the signature of the person making service.
- (c) Any person receiving a subpoena from the Board may object thereto by filing a written objection to the subpoena with the Board's office.
- (d) The objection shall include a concise, but complete, statement of reasons why the subpoena should be revoked or modified. These reasons may include lack of relevancy of the evidence sought, or any other reason sufficient in law for holding the subpoena invalid, such as that the evidence is privileged, that appearance or production would be so disruptive as to be unreasonable in light of the significance of the evidence sought, or other undue hardship.
- (e) Any such objection to a subpoena must be served on the party who requested the subpoena simultaneously with the filing of the objection with the Board.
- (f) The party who requested the subpoena may file a written response to the objection within five working days. The written response shall be served by the requesting party on the objecting witness simultaneously with filing the response with the Board.
- (g) After receipt of the objection and response thereto, if any, the Board shall issue a notice to the party who requested the

subpoena and the party challenging the subpoena, and may notify any other party or parties of an open hearing, to be scheduled as soon as practicable, at which time evidence and testimony may be presented, limited to the narrow questions raised by the objection and response.

(h) Promptly after the close of such hearing, a majority of the Board members with voting authority, or an administrative law judge assigned to the case pursuant to G.S. 150B-40(e), shall rule on the challenge and issue a written decision. A copy of the decision shall be issued to all parties and made a part of the record.

History Note: Authority G.S.74F-6; 150B-38; 150B-40; Temporary Adoption Eff. May 28, 2003; Eff. May 1, 2004.

CHAPTER 32 – NORTH CAROLINA MEDICAL BOARD

21 NCAC 32S .0109 PRESCRIPTIVE AUTHORITY

A physician assistant is authorized to prescribe, order, procure, dispense and administer drugs and medical devices subject to the following conditions:

- (1) The physician assistant and the supervising physician(s) shall acknowledge that each is familiar with the laws and rules regarding prescribing and shall agree to comply with these laws and rules by incorporating the laws and rules into the written prescribing instructions required for each approved practice site; and
- (2) The physician assistant has received from the supervising physician written instructions for prescribing, ordering, and administering drugs and medical devices and a written policy for periodic review by the physician of these instructions and policy; and
- (3) In order to compound and dispense drugs, the physician assistant must obtain approval from the Board of Pharmacy and must carry out the functions of compounding and dispensing by current Board of Pharmacy rules and any applicable federal guidelines; and
- (4) In order to prescribe controlled substances, both the physician assistant and the supervising physician must have a valid DEA registration and the physician assistant shall prescribe in accordance with information provided by the Medical Board and the DEA. All prescriptions for substances falling within schedules II, IIN, III, and IIIN, as defined in the federal Controlled Substances Act, shall not exceed a legitimate 30 day supply; and
- (5) Each prescription issued by the physician assistant shall contain, in addition to other information required by law, the following:
 - (a) the physician assistant's name, practice address, telephone number; and
 - (b) the physician's assistant's license number and, if applicable, the physician assistant's DEA number for

- controlled substances prescription; and
- (c) the responsible supervising physician's (primary or back-up) name and telephone number; and
- (6) Documentation of prescriptions must be noted on the patient's record and must include the medication name and dosage, amount prescribed, directions for use, and number of refills.
- (7) Physician Assistants who request, receive, and dispense professional medication samples to patients must comply with all applicable state and federal regulations.

History Note: Authority G.S. 90-18(c)(13); 90-18.1; 90-171.23(14); 58 Fed. Reg. 31,171(1993) (to be codified at 21 C.F.R. 301); Eff. May 1, 1999; Amended Eff. May 1, 2004.

21 NCAC 32S .0110 SUPERVISION OF PHYSICIAN ASSISTANTS

- (a) A physician assistant may perform medical acts, tasks, or functions only under the supervision of a physician. Supervision shall be continuous but, except as otherwise provided in these Rules, shall not be construed as requiring the physical presence of the supervising physician at the time and place that the services are rendered.
- (b) It is the obligation of each team of physician(s) and physician assistant(s) to ensure that the physician assistant's scope of practice is identified; that delegation of medical tasks is appropriate to the skills of the supervising physician(s) as well as the physician assistant's level of competence; that the relationship of, and access to, each supervising physician is defined; and that a process for evaluation of the physician assistant's performance is established. A primary supervising physician and a physician assistant in a new practice arrangement will meet monthly for the first six months to discuss practice relevant clinical problems and quality improvement measures. Thereafter, regular meetings between the primary supervising physician and the physician assistant shall occur no less than every six months. A record of these meetings shall be signed and dated by both the supervising physician and the physician assistant, and shall be available for inspection upon request by the Board's representative. A statement describing these supervisory arrangements in all settings must be signed by each supervising physician and the physician assistant and shall be kept on file at all practice sites. This statement describing supervisory arrangements and instructions for prescriptive authority shall be available upon request by the Board or its representatives.
- (c) Entries by a physician assistant into patient charts of inpatients (hospital, long term care institutions) must comply with the rules and regulations of the institution.

History Note: Authority G.S. 90-18(c)(13); 90-18.1; Eff. May 1, 1999; Amended Eff. May 1, 2004.

TITLE 23 - DEPARTMENT OF COMMUNITY COLLEGES

23 NCAC 02C .0107 ESTABLISHING SERVICE AREAS FOR COLLEGES

- (a) The State Board shall assign service areas to colleges for providing education and training services. The initial assignment of service areas to colleges shall take into account the past and present patterns of providing services, including existing agreements between colleges. The State Board may reassign a service area upon the recommendation of the System President. The recommendation shall be based upon an analysis of the service areas involved, including consultation with the presidents of the colleges and the county commissioners of the county(ies) that are affected.
- (b) A college may offer education and training in an area assigned to another college using criteria set forth in 23 NCAC 02E .0604.

History Note: Authority G.S. 115D-5; Eff. March 1, 1985; Amended Eff. August 1, 2004; September 1, 1993.

23 NCAC 02D .0201 AUTHORITY TO ESTABLISH TUITION AND FEES

- (a) Authority to Charge. All tuition and registration fees charged to students for applying to or attending any college of the system shall be approved by the State Board. No tuition rate or fee schedule shall be charged without resolution of the State Board specifying the purpose for which the fee is charged.
- (b) Time Due and Deferred Payment. Tuition, registration fees and required academic fees are due and payable at the time of the student's registration. The college shall, with approval of the board of trustees, prescribe written procedures to permit short-term deferred payment or payment in installments; provided, however, that no student shall be permitted to graduate or to register for a new semester unless payment of such outstanding balance has been guaranteed in writing by a financially responsible person or organization. Colleges are authorized to withhold transcripts of grades pending resolution of the outstanding obligations. This statement shall not be construed to prohibit a college's local governing board from adding more stringent provisions.
- (c) Establishing Optional Fees. Optional fees are fees charged to curriculum and continuing education students for items not covered by tuition and registration fees. Funds derived from optional fees shall be deposited in the institutional account and shall be used to directly benefit students. The president shall report any optional fee established by the board of trustees to the System Office's Business and Finance Division on an annual basis. Boards of trustees may establish on an annual basis the following optional fees:
- (1) Specific Fees. Fees charged to students for items required for individual courses that are considered to be in addition to normal supplies and material the college provides for students such as tools, uniforms, insurance, and certification fees;

- (2) Student Activity Fee. A fee charged to students to support student activities. The student activity fee shall not exceed the maximum established by the State Board;
 - (3) Computer Use and Technology Fee. A fee charged to students to support the procurement, operations operation, and repair of computers and other instructional technology including supplies and materials that accompany use of the technology. This fee shall not exceed the maximum established by the State Board; and
 - (4) Parking Fee. A fee charged to a student for use of the college's parking facilities.
- (d) Any optional fee established by a college is considered a separate charge to students and shall not be credited as part payment of tuition or registration fees.
- (e) Receipts collected from any optional student fee shall be deposited as State Board regulation shall direct, consistent with state law.
- (f) Nothing in any rule shall be construed to condone or to authorize any practice of depositing receipts from any student tuition or other student fees in a special fund account at a college, except optional fee receipts.
- (g) Optional fee receipts shall not be used for any purpose other than that for which the fee was approved, e.g., computer equipment could not be purchased for staff members using optional fee receipts.
- (h) All fees funds derived from optional fees shall be deposited into a proper college account and all disbursements shall be made by the college business office in accordance with policies adopted by the board of trustees.
- (i) Specific Fees shall be approved by the college board of trustees. Such fees shall reflect the actual cost of items received by the student.
- (j) Students shall be informed of all approximate fees for a course at the time they enroll. Such fees shall be kept to a minimum consistent with the State Board philosophy to keep student costs as low as possible.
- (k) Family Relocation Tuition. Community Colleges may charge in-state tuition to certain out-of-state students who are members of families that were transferred to this state by businesses, industries, or civilian families transferred by the military, for employment. Prior to enrollment, the student shall fulfill the following conditions:
- (1) Demonstrate that his or her family moved to this state within the preceding 12 months;
 - (2) Present a letter to the institution from the employer on corporate letterhead stating that the employee, through whom the student claims this benefit, relocated to this state for employment with that business, industry, or military establishment;
 - (3) Present proof of his or her familial relationship with the employee unless the student is the employee;
 - (4) Live in the same house with the employee unless the student is the employee;
 - (5) Present evidence that he or she is financially dependent on the employee through which he

- or she claims this benefit unless the student is the employee; and
- (6) Comply with the requirements of the Selective Service System, if applicable.

The number of students eligible for in-state tuition under this rule at a college shall not exceed one percent of the average number of out-of-state students, rounded up to the next whole number, at the college in the academic year immediately preceding enrollment. Eligible students shall be granted this benefit on a first-come, first-serve basis.

History Note: Authority G.S. 115D-5; 115D-39; 116-143.1; S.L. 1995, c. 625; Eff. February 1, 1976; Amended Eff. September 1, 1993; September 1, 1982; August 17, 1981; January 14, 1980; Temporary Amendment Eff. June 1, 1997; Amended Eff. August 1, 2004; July 1, 1998.

23 NCAC 02D .0323 REPORTING OF STUDENT HOURS IN MEMBERSHIP FOR CURRICULUM CLASSES

(a) Academic Semester. The academic semester for all credit courses shall be designed so that all classes may be scheduled to include the number of instructional hours shown in the college catalog and the approved curriculum program of study compliance document and reported for FTE purposes (see 23 NCAC 02E .0201(a) and 23 NCAC 02D .0301(a)(3)). Instructional hours include scheduled class and laboratory sessions as well as examination sessions. Length of semesters or courses may vary as long as credit hours are assigned consistent with 23 NCAC 01A .0101 and as long as membership hours are reported consistent with the other provisions of this Rule. Also, note 23 NCAC 02D .0327 which identifies the reporting periods for submission of Institution Class Reports.

(b) Regularly-Scheduled Classes.

- (1) A class is regularly scheduled if it meets all of the following criteria:
 - (A) assigned definite beginning and ending time;
 - (B) specific days the class meets is predetermined;
 - (C) specific schedule is included on the Institution Master Schedule or other official college documents;
 - (D) class hours are assigned consistent with college catalog and curriculum standard requirements; and
 - (E) identified class time and dates are the same for all students registered for the class excluding clinical or cooperative work experience;
 - (i) Classes which have a regularly scheduled lecture section and a non-regularly scheduled laboratory section shall satisfy this criteria. The census date (10% point) shall be determined from the regularly scheduled portion

- of the class. Verification of student participation in the laboratory section of the class shall be available for review.
- (ii) A student shall be considered absent if that student did not attend during the specified times or days the class was scheduled to meet.
- (2) A student shall be considered to be in class membership when the student meets all of the following criteria:
 - (A) enrolled as evidenced by payment of the applicable tuition and fees, or obtained a waiver as defined in G.S. 115D-5(b);
 - (B) attended one or more classes prior to or on the 10 percent point in the class;
 - (C) has not withdrawn or dropped the class prior to or on the 10 percent point.
 - (3) Definition of a Student Membership Hour. A student membership hour is one hour of scheduled class or laboratory for which the student is enrolled. A college shall provide a minimum of 50 minutes of instruction for each scheduled class hour. A college shall provide sufficient time between classes to accommodate students changing classes. A college shall not report more hours per student than the number of class hours scheduled in the approved curriculum program of study compliance document.
 - (4) Calculation of Student Membership Hours for Regularly Scheduled Classes. Student membership hours are obtained by multiplying the number of students in membership at the 10 percent point in the class by the total number of hours the class is scheduled to meet for the semester as stated in the college catalog and the approved curriculum program of study compliance document (see 23 NCAC 02E .0204(4)).
 - (5) Maintenance of Records of Student Membership Hours. Accurate attendance records shall be maintained for each class through the 10 percent point of the class. Attendance records shall be signed by the instructor or lead instructor, verifying their accuracy, and shall be maintained by the college until released from all audits (see the Public Records Retention & Disposition Schedule for Institutions in the Community College System). Student membership hours shall be summarized in the Institution's Class Report and certified by the president or designee. For classes identified as non-traditional delivery (see Subparagraph (e)(1) of this Rule), documentation of student contact prior to the 10 percent point shall be maintained in the same manner as the attendance records mentioned in this Rule.
- (c) Non-Regularly Scheduled Classes.
 - (1) A non-regularly scheduled class may include any or all of the following:
 - (A) a class where a definitive beginning and ending time is not determined;
 - (B) a class offered in a learning laboratory type setting (see 23 NCAC 02D .0324(b)(6) for definition of learning laboratory);
 - (C) a class self-paced in that the student progresses through the instructional materials at the student's own pace, and can complete the class as soon as the student has successfully met the educational objectives. Classes offered as independent study are generally offered in this manner;
 - (D) a class in which a student may enroll during the initial college registration period or in which the student may be permitted to enroll at any time during the semester; or
 - (E) any class not meeting all criteria for a regularly scheduled class, as shown in Subparagraph (b)(1) of this Rule, is considered to be a non-regularly scheduled class for reporting purposes. Classes defined as non-traditional (see Paragraph (e) of this Rule) which are identified as a separate student hour reporting category are not subject to the above provisions in Paragraph (c).
 - (2) Definition of Student Membership. A student is considered to be in class membership when the student meets the following criteria:
 - (A) enrolled as evidenced by payment of the applicable tuition and fees, or obtained a waiver as defined in 23 NCAC 02D .0202(a); and
 - (B) attended one or more classes.
 - (3) Definition of a Student Contact Hour. For non-regularly scheduled classes, student contact hour is defined as actual time of student attendance in a class or lab. 60 minutes shall constitute an hour. A college shall not report more hours per student than the number of class hours scheduled in the approved curriculum program of study compliance document.
 - (4) Calculation of Student Contact Hours for Non-Regularly Scheduled Classes. For these classes, actual time of class attendance for each student determined to be in membership shall be reported. Student contact hours for these classes are the sum of all the hours of

actual student attendance in a class in a given semester, and shall not exceed the hours in the approved curriculum program of study compliance document. (see 23 NCAC 02E .0204(4)).

- (5) Maintenance of Records of Student Contact Hours. Accurate attendance records shall be maintained for each class of the nature described in this Rule through the entire semester. Attendance records shall be signed by the instructor or lead instructor, verifying their accuracy, and shall be maintained by the college until released from all audits (see the Public Records Retention & Disposition Schedule for Institutions in the Community College System). Student contact hours shall be summarized in the Institution's Class Report and certified by the president or designee.

(d) Skills Laboratory or Computer Tutorial Laboratory. Individualized instructional laboratories are similar to learning laboratories (see 23 NCAC 02D .0324(b)(6)) except the participants are curriculum students. Skills labs or computer tutorial labs are remedial or developmental in nature and intended for students who are experiencing academic difficulty in a particular curriculum course. A skills laboratory instructor shall be qualified in the single-subject area of the skills laboratory. A computer tutorial laboratory coordinator need not be qualified in any of the subject area(s) provided in a computer tutorial laboratory. Student contact hours may be reported for budget/FTE when students are required by their instructor to attend either of the laboratories for remedial or developmental work and when the skills laboratory instructors or computer tutorial coordinators are paid with curriculum instructional funds.

- (1) Documentation of instructor referral shall be maintained for auditing purposes. Maintain documentation until released by audit.
- (2) Homework assignments shall not be reported for budget/FTE. (See 23 NCAC 02D .0325(a)).
- (3) Calculation of Student Contact Hours for Skills Laboratory or Computer Tutorial Laboratory. For these classes, actual time of class attendance shall be reported; 60 minutes shall constitute an hour. Student hours generated for these types of classes are the sum of all the hours of actual student attendance in a class in a given semester.

(e) Classes Identified as Curriculum Non-Traditional Delivery.

- (1) Definition. Due to the methodology by which instruction is delivered, non-traditional delivery classes are not consistent with the definitions of regularly scheduled or non-regularly scheduled classes described in this Rule. Non-traditional delivery classes are defined as those classes which are offered through media such as internet, telecourses, videocassette and other electronic media excluding classes offered via the North Carolina Information Highway.

- (2) For those classes identified as non-traditional delivery, student attendance in class or in an orientation session, submission of a written assignment or submission of an examination, is the basis for the determination of class membership at the 10 percent point of the class. Student membership hours earned in non-traditional delivery classes shall be calculated by multiplying the number of students in membership, as defined in the prior sentence, times the number of hours assigned to the class in official college documents. For these classes, the number of hours assigned shall be consistent with the credit hours assigned according to 23 NCAC 01A .0101, as well as the curriculum standard.

- (3) Non-traditional instruction delivered is pre-structured into identifiable units. Non-traditional delivery classes do not include classes identified as independent study which are not media based.

(f) Curriculum Student Work Experience and Clinical Practice. The following criteria apply to the reporting guidelines for students enrolled in curriculum work experience and clinical practice courses, exclusive of work station based training as specified in 23 NCAC 02E .0402. Examples of student work experience include cooperative education, practicums, and internships. Clinical practice refers to work experience in health occupation programs.

- (1) Student membership hours for student work experience and clinical practice shall not generate budget/FTE without prior approval by the system office System Office for such activities through the appropriate curriculum standard.

- (2) Work Experience. Work experience for curriculum courses shall earn budget/FTE at the 100 percent rate of assigned work experience hours and shall not exceed a maximum of 320 membership hours per student per semester.

- (A) These classes shall be coordinated by college personnel paid with college instructional funds and may be located in one or more sites.

- (B) These classes shall be specified in the approved curriculum of the college consistent with the applicable curriculum standard (see 23 NCAC 02E .0204 (3)(a)(ii)(D) (

- (C) The college shall maintain documentation of all student work experience hours.

- (3) Clinical Practice. Curriculum clinical practice, as defined in 23 NCAC 01A .0101, refers to clinical experience in health occupation programs which shall earn budget/FTE at the 100 percent rate for student membership hours. These classes shall be consistent with the curriculum standards set forth in 23 NCAC

02E .0204. The maximum membership hours in a clinical experience which may be reported per student in a given semester is 640. These classes shall be supervised by college instructors who are qualified to teach in the particular program and are paid with college instructional funds. These classes may be located in one or more sites.

History Note: Authority G.S. 115D-5; S.L. 1995, c. 625; Eff. September 30, 1977; Amended Eff. July 24, 1978; Emergency Amendment Eff. August 10, 1978 for a period of 120 days to expire on December 8, 1978; Emergency Amendment Made Permanent With Change Eff. December 8, 1978; Amended Eff. September 1, 1993; September 1, 1988; September 1, 1985; November 1, 1983; Temporary Amendment Eff. June 1, 1997; Amended Eff. August 1, 2004; August 1, 2000; July 1, 1998.

23 NCAC 02D .0324 REPORTING OF STUDENT HOURS IN MEMBERSHIP FOR CONTINUING EDUCATION CLASSES

(a) Regularly Scheduled Classes.

- (1) Definition of Regularly Scheduled Class. A class is considered to be regularly scheduled if it meets all of the following criteria:
 - (A) Assigned definite beginning and ending time;
 - (B) Specific predetermined days and time the class meets;
 - (C) Specific schedule is included on the Institution Master Schedule or other official college documents;
 - (D) Class hours are assigned consistent with State Board approval and official college documents; and
 - (E) Identified class time and dates are the same for all students registered for the class excluding clinical or work experience:
 - (i) Classes which have a regularly scheduled lecture section and a non-regularly scheduled laboratory section will satisfy the criteria. The census date (10% point) shall be determined from the regularly scheduled portion of the class. Verification of student participation in the laboratory section of the class shall be available for review; or
 - (ii) A student is considered absent if that student did not attend during the specified times or days the class was scheduled to meet.

- (2) Definition of Student Membership. A student is considered to be in class membership when the student meets all of the following criteria:
 - (A) Enrolled as evidenced by payment of the applicable registration fees, or obtained a waiver as defined in Paragraph (a) of Rule .0203 of this Subchapter;
 - (B) Attended one or more classes held prior to or on the 10 percent point in the class; and
 - (C) Has not withdrawn or dropped the class prior to or on the 10 percent point of the class.
 - (3) Student Membership Hour. A student membership hour is one hour of scheduled class or laboratory for which the student is enrolled. A college shall provide a minimum of 50 minutes of instruction for each scheduled class hour. A college shall not report more hours per student than the number of class hours scheduled in official college documents. Colleges shall not report more hours per student than the number of hours specified in the instructor's contract.
 - (4) Calculation of Student Membership Hours for Regularly Scheduled Classes. Student membership hours are obtained by multiplying the number of students in membership at the 10 percent point in the class by the total number of hours the class is scheduled to meet as stated in official college documents.
 - (5) Maintenance of Records of Student Membership Hours. Accurate attendance records shall be maintained for each class. Attendance records shall be signed by the instructor or lead instructor, verifying their accuracy, and shall be maintained by the college until released from all audits as provided in the Public Records Retention & Disposition Schedule for Institutions in the Community College System. Student membership hours shall be summarized in the Institution's Class Report and certified by the president or designee.
- (b) Non-Regularly Scheduled Classes.
- (1) Definition of Non-Regularly Scheduled Class. A non-regularly scheduled class may include any or all of the following:
 - (A) A class where a definitive beginning and ending time is not determined;
 - (B) A class offered in a learning laboratory type setting (see Subparagraph (b)(6) of this Rule for definition of learning laboratory);
 - (C) A self-paced class where the student progresses through the instructional materials at the student's own pace, and can complete the courses as soon as the student has successfully met

- the educational objectives. Classes offered as independent study are generally offered in this manner;
- (D) A class in which a student may enroll during the initial college registration period or in which a student may be permitted to enroll at any time during the semester; or
 - (E) Any class not meeting all criteria for a regularly scheduled class as shown in Subparagraph (a)(1) of this Rule, is considered to be a non-regularly scheduled class for reporting purposes. Note classes defined as non-traditional (see Paragraph (c) of this Rule) which are identified as a separate student hour reporting category are not subject to the provisions in Paragraph (b) of this Rule.
- (2) **Definition of Student Membership.** A student is considered to be in class membership when the student meets the following criteria:
 - (A) Enrolled as evidenced by payment of the applicable registration fees, or obtained a waiver as defined in Paragraph (a) of Rule .0203 of this Subchapter; and
 - (B) Attended one or more classes.
 - (3) **Definition of Student Contact Hour.** A student contact hour is one hour of student attendance in a class for which the student is in membership as defined in Subparagraph (b)(2) of this Rule. Sixty minutes shall constitute an hour.
 - (4) **Calculation of Student Contact Hours for Non-Regularly Scheduled Classes.** For these classes, actual time of class attendance for each student determined to be in membership shall be reported. Sixty minutes shall constitute an hour. Student contact hours for these classes are the sum of all the hours of actual student attendance in a class in a given semester.
 - (5) **Maintenance of Records of Student Contact Hours.** Accurate attendance records shall be maintained for each class. Attendance records shall be signed by the instructor or lead instructor, verifying their accuracy, and shall be maintained by the college until released from all audits as provided in the Public Records Retention and Disposition Schedule for Institutions in the Community College System. Student membership hours shall be summarized in the Institution Class Report and certified by the president or designee.
 - (6) **Learning Laboratory.** Learning laboratory programs consist of self-instruction using programmed text, audio-visual equipment, and other self-instructional materials. A learning laboratory coordinator has the function of bringing the instructional media and the student together on the basis of objective and subjective evaluation and of counseling, supervising, and encouraging persons working in the laboratory. Contact hours shall be calculated as noted in Subparagraph (b)(4) of this Rule.
- (c) **Classes Identified as Extension Non-Traditional Delivery.**
 - (1) **Definition.** Due to the methodology by which instruction is delivered, non-traditional delivery classes are not consistent with the definitions of regularly scheduled or non-regularly scheduled classes described in this Rule. Non-traditional delivery classes are defined as those classes which are offered through media such as internet, telecourses, videocassette, and other electronic media excluding classes offered via the North Carolina Information Highway.
 - (2) For those classes identified as non-traditional delivery, student attendance in class or in an orientation session, submission of a written assignment or a submission of examination is the basis for the determination of class membership at the 10 percent point of the class. Student membership hours in such classes shall be calculated by multiplying the number of students in membership, as defined in the prior sentence, times the number of instructional hours delivered which are determined as follows:
 - (A) Determine the number of hours of instruction delivered via non-traditional delivery; and
 - (B) Add the number of hours of class meetings.
 - (d) **Extension Student Work Experience and Clinical Practice.** The following criteria apply to the reporting guidelines for students enrolled in extension work experience and clinical practice courses, exclusive of work station based training as specified in 23 NCAC 02E .0402. To be eligible for approval, these work experience or clinical practice courses shall be required by a licensing agency or accrediting body. Examples of student work experience include cooperative education, practicums, and internships.
 - (1) Student membership hours for student work experience and clinical practice shall not generate budget FTE without prior approval of such activities by the System Office. When the number of approved student work experience membership hours increases by more than 30 percent per course, a new request for approval shall be submitted.
 - (2) **Work Experience.** Work experience for extension courses shall earn budget/FTE at the 100 percent rate for student membership hours, as required by a licensing agency or accrediting body. These classes shall be coordinated by college personnel paid with

- (3) college instructional funds and may be located in one or more sites.
- (3) Clinical Practice. Clinical practice, as defined in 23 NCAC 01A .0101, refers to clinical experience in health occupation courses which shall earn budget/FTE at the 100 percent rate for student membership hours, as defined in Subparagraph (a)(3) of this Rule, and shall not exceed a licensing agency or accrediting body requirements. These classes shall be supervised by college instructors who are qualified to teach in the particular program and who are paid with college instructional funds. These classes may be located in one or more sites.

(e) The Adult High School Diploma work experience shall not exceed 160 hours per student.

History Note: Authority G.S. 115D-5; S.L. 1995, c. 625; Eff. September 1, 1988; Amended Eff. September 1, 1993; Temporary Amendment Eff. June 1, 1997; Amended Eff. August 1, 2004; August 1, 2000; July 1, 1998.

23 NCAC 02E .0204 COURSES AND STANDARDS FOR CURRICULUM PROGRAMS

A common course library and curriculum standards for associate degree, diploma, and certificate programs shall be as follows:

- (1) Common Course Library.
- (a) The Common Course Library shall contain the following elements for all curriculum program credit and developmental courses approved for the North Carolina Community College System.
- (i) Course prefix;
 - (ii) Course number;
 - (iii) Course title;
 - (iv) Classroom hours and laboratory, clinical, and work experience contact hours, if applicable;
 - (v) Credit hours;
 - (vi) Prerequisites and corequisites, if applicable; and
 - (vii) Course description consisting of three sentences.
- (b) A numbering system for the Common Course Library is as follows:
- (i) The numbers 050-099 shall be assigned to developmental courses.
 - (ii) The numbers 100-109 and 200-209 shall be assigned to courses approved only at the certificate and diploma level. These courses shall not be

- (iii) included in associate degree programs.
- (iii) The numbers 110-199 and 210-299 shall be used for courses approved at the associate degree level. These courses may also be included in certificate and diploma programs.
- (c) The college shall use the course information (prefix, number, title, and classroom, laboratory, clinical, work experience, and credit hours; prerequisites and corequisites; and course description) as listed in the Common Course Library.
 - (i) The college may add a fourth sentence to the course description to clarify content or instructional methodology.
 - (ii) A college may divide courses into incremental units for greater flexibility in providing instruction to part-time students or to provide shorter units of study for abbreviated calendars. The following criteria shall apply to courses divided into incremental units:
 - (A) A curriculum program course may be divided into two or three units, which are designated with an additional suffix following the course prefix and number.
 - (B) The units shall equal the entire course of instruction, without omitting any competencies.
 - (C) The combined contact and credit hours for the units shall equal the contact and credit hours for the course.
 - (D) If the course is a prerequisite to another course, the student shall complete all component parts

- before enrolling in the next course.
- (E) The components of a split curriculum program course shall not be used to supplant training for occupational extension.
- (d) The Community College System Office shall revise and maintain courses in the Common Course Library.
- (2) Development of Curriculum Standards. The standards for each curriculum program title shall be established jointly by the Community College System Office and the institution(s) proposing to offer the curriculum program based on criteria established by the State Board of Community Colleges. Changes in curriculum standards shall be approved by the State Board of Community Colleges. Requests for changes in the standards shall be made to the State Board of Community Colleges under the following conditions:
- (a) A request is made to the Community College System Office to change the standards for a curriculum program title; and
- (b) A two-thirds majority of institutions approved to offer the curriculum program title concur with the request.
- (3) Criteria for Curriculum Standards. The standards for each curriculum program title shall be based on the following criteria established by the State Board of Community Colleges for the awarding of degrees, diplomas, and certificates.
- (a) Associate in Applied Science Degree. The Associate in Applied Science Degree shall be granted for a planned program of study consisting of a minimum of 64 and a maximum of 76 semester hours of credit from courses at the 110-199 and 210-299 levels. Within the degree program, the institution shall include opportunities for the achievement of competence in reading, writing, oral communication, fundamental mathematical skills, and the basic use of computers.
- (i) The associate in applied science degree curriculum program shall include a minimum of 15 semester hours of credit from general education courses selected from the Common Course Library, including six hours in communications, three hours in humanities or fine arts, three hours in social or behavioral sciences, and three hours in natural sciences or mathematics.
- (ii) The associate in applied science degree curriculum program shall include a minimum of 49 semester hours of credit from major courses selected from the Common Course Library. Major courses are those which offer specific job knowledge or skills.
- (A) The major hours category shall be comprised of identified core courses or subject areas or both which are required for each curriculum program. Subject areas or core courses shall be based on curriculum competencies and shall teach essential skills and knowledge necessary for employment. The number of credit hours required for the core shall not be less than 12 semester hours of credit.
- (B) The major hours category may also include hours required for a concentration of study. A concentration of study is a group of courses required beyond the core for a specific related employment field. A concentration shall include a minimum of 12 semester hours, and the majority of the course credit hours shall be unique to the concentration.

- (C) Other major hours shall be selected from prefixes identified on the curriculum standard. A maximum of nine semester hours of credit may be selected from any prefix listed, with the exception of prefixes listed in the core or concentration.
- (D) Work experience, including cooperative education, practicums, and internships, may be included in an associate in applied science degree curriculum program up to a maximum of eight semester hours of credit. Under a curriculum standard specifically designed for select associate degree programs, work experience shall be included in a curriculum up to a maximum of 16 semester hours of credit. The select associate degree programs shall be based on a program of studies registered under the North Carolina Department of Labor Apprenticeship programs. Only eight semester hours of credit of work experience shall earn budget FTE. The Department of Community Colleges shall implement the Pilot Work Experience Project and shall submit to the State Board of Community Colleges a report, including the number of students involved and associated costs, one year after this Rule as revised is effective.
- (iii) An associate in applied science degree curriculum program may include a maximum of seven other required hours to complete college graduation requirements. These courses shall be selected from the Common Course Library.
- (iv) Selected topics or seminar courses may be included in an associate in applied science degree program up to a maximum of three semester hours of credit. Selected topics or seminar courses shall not substitute for required general education or major core courses.
- (b) Associate in Arts and Associate in Science Degrees. The Associate in Arts and Associate in Science Degrees shall be granted for planned programs of study consisting of a minimum of 64 and a maximum of 65 semester hours of credit from approved college transfer courses at the 110-199 and 210-299 levels. Within the degree program, the institution shall include opportunities for the achievement of competence in reading, writing, oral communication, fundamental mathematical skills, and the basic use of computers.
- (i) The associate in arts and associate in science degree programs shall include a minimum of 44 semester hours of general education core courses selected from the Common Course Library and approved for transfer to the University of North Carolina constituent institutions. The general education core shall include:

- (A) six semester hours of English composition.
 - (B) 12 semester hours of humanities or fine arts, with four courses to be selected from at least three of the following disciplines: music, art, drama, dance, foreign languages, interdisciplinary humanities, literature, philosophy, and religion. At least one course shall be a literature course. Three semester hours credit in speech or communication may be substituted for three semester hours credit in humanities or fine arts.
 - (C) 12 semester hours of social or behavioral sciences, with four courses to be selected from at least three of the following disciplines: anthropology, economics, geography, history, political science, psychology, and sociology. At least one course shall be a history course.
 - (D) 14 semester hours of natural sciences or mathematics; six hours shall be mathematics courses; eight hours shall be natural sciences courses, including accompanying laboratory work, selected from among the biological and physical science disciplines.
- (ii) The associate in arts and associate in science degree programs shall include a minimum of 20 and a maximum of 21 additional semester hours of credit selected from courses in the Common Course Library which have been approved for transfer to the University of North Carolina constituent institutions. Courses in health, physical education, college orientation, or study skills may be included. Selected topics or seminar courses up to a maximum of three semester hours credit may be included. Work experience, including cooperative education, practicums, and internships, may be included up to a maximum of one semester hour of credit for career exploration.
 - (A) The associate in arts degree curriculum program shall include a minimum of 20 semester hours of credit from general education and pre-major courses which have been approved for transfer.
 - (B) The associate in science degree curriculum program shall include a minimum of 14 semester hours in mathematics or science and professional courses which have been approved for transfer.
 - (c) Associate in Fine Arts Degree. The Associate in Fine Arts Degree shall be granted for planned programs of study consisting of a minimum of 64 and a maximum of 65 semester hours of credit from approved college transfer courses at the 110-199 and 210-299 levels. Within the degree

program, the institution shall include opportunities for the achievement of competence in reading, writing, oral communication, fundamental mathematical skills, and the basic use of computers.

(i) The associate in fine arts degree programs shall include a minimum of 28 semester hours of general education core courses selected from the Common Course Library and approved for transfer to the University of North Carolina constituent institutions. The general education core shall include:

(A) six semester hours of English composition.

(B) six semester hours of humanities or fine arts, with two courses to be selected from two of the following disciplines: music, art, drama, dance, foreign languages, interdisciplinary humanities, literature, philosophy, and religion. At least one course shall be a literature course. Three semester hours credit in speech or communication may be substituted for three semester hours credit in humanities or fine arts.

(C) nine semester hours of social or behavioral sciences, with three courses to be selected from three of the following disciplines: anthropology, economics, geography, history, political science, psychology, and sociology. At least

one course shall be a history course.

(D) three semester hours of introductory mathematics.

(E) four semester hours from the natural sciences, including accompanying laboratory work.

(ii) The associate in fine arts degree programs shall include a minimum of 36 and a maximum of 37 additional semester hours of credit from courses in the Common Course Library which have been approved for transfer to the University of North Carolina constituent institutions. Courses in health, physical education, college orientation, or study skills may be included. Selected topics or seminar courses up to a maximum of three semester hours credit may be included. Work experience, including cooperative education, practicums, and internships, may be included up to a maximum of one semester hour of credit for career exploration.

(d) Associate in Engineering Degree. The associate in engineering degree shall be granted for a planned program of study consisting of a minimum of 64 and a maximum of 65 semester hours of credit from approved college transfer courses at the 110-199 and 210-299 levels. Diplomas and certificates are not allowed under this degree program. Within the degree program, the college shall include opportunities for the achievement of competence in reading, writing, oral communication, fundamental mathematical skills, and the basic use of computers.

(i) The associate in engineering degree program shall include a minimum of 45 semester hours of general education core courses selected from the Common Course Library and which have been approved for transfer to the

- University of North Carolina constituent institutions. The general education cores shall include:
 - (A) six semester hours of English composition;
 - (B) six semester hours of humanities or fine arts;
 - (C) six semester hours of social or behavioral sciences; and
 - (D) 27 semester hours of mathematics and natural sciences.
 - (ii) The associate in engineering degree program shall include a minimum of 19 and a maximum of 20 additional semester hours of credit from courses in the Common Course Library which have been approved for transfer to the University of North Carolina constituent institutions. Courses in college orientation, study skills, and work experience, may be included up to one semester hour credit, but may not transfer to the receiving institution.
- (e) Associate in General Education. The Associate in General Education shall be granted for a planned program of study consisting of a minimum of 64 and a maximum of 65 semester hours of credit from courses at the 110-199 and 210-299 levels. Within the degree program, the institution shall include opportunities for the achievement of competence in reading, writing, oral communication, fundamental mathematical skills, and the basic use of computers.
 - (i) The associate in general education degree curriculum program shall include a minimum of 15 semester hours of credit from general education courses selected from the Common Course Library, including six hours in communications, three hours in humanities or fine arts, three hours in social or behavioral sciences, and
 - three hours in natural sciences or mathematics.
 - (ii) The remaining hours in the associate in general education degree curriculum program shall consist of additional general education courses selected from the Common Course Library. A maximum of seven semester hours of credit in health, physical education, and college orientation or study skills courses may be included. Selected topics or seminar courses may be included in a program of study up to a maximum of three semester hours credit.
- (f) Diploma. The Diploma shall be granted for a planned program of study consisting of a minimum of 36 and a maximum of 48 semester hours of credit from courses at the 100-299 level.
 - (i) Diploma curricula shall include a minimum of six semester hours of general education courses selected from the Common Course Library. A minimum of three semester hours of credit shall be in communications, and a minimum of three semester hours of credit shall be selected from courses in humanities and fine arts, social and behavioral sciences, or natural sciences and mathematics.
 - (ii) Diploma curricula shall include a minimum of 30 semester hours of major courses selected from the Common Course Library.
 - (A) A diploma curriculum program which is a stand-alone curriculum program title shall include identified core courses or subject areas or both within the major hours category.
 - (B) Courses for other major hours in a stand-alone

- diploma curriculum program title shall be selected from prefixes identified on the curriculum standard. A maximum of nine semester hours of credit may be selected from any prefix listed, with the exception of prefixes listed in the core or concentration.
- (C) Work experience, including cooperative education, practicums, and internships, may be included in a diploma curriculum program up to a maximum of eight semester hours of credit.
 - (iii) A diploma curriculum program may include a maximum of four other required hours to complete college graduation requirements. These courses shall be selected from the Common Course Library.
 - (iv) An institution may award a diploma under an approved associate in applied science degree curriculum program for a series of courses taken from the approved associate degree curriculum program of study.
 - (A) A diploma curriculum program offered under an approved associate degree curriculum program shall meet the standard general education and major course requirements for the diploma credential.
 - (B) A college may substitute general education courses at the 100-109 level for the associate-
- degree level general education courses in a diploma curriculum program offered under an approved degree program.
- (C) The diploma curriculum program offered under an approved associate degree curriculum program shall require a minimum of 12 semester hours of credit from courses extracted from the required core courses and/or subject areas of the respective associate in applied science degree curriculum program.
 - (v) Selected topics or seminar courses may be included in a diploma program up to a maximum of three semester hours of credit. Selected topics and seminar courses shall not substitute for required general education or major core courses.
 - (g) Certificate Programs. The Certificate shall be granted for a planned program of study consisting of a minimum of 12 and a maximum of 18 semester hours of credit from courses at the 100-299 level.
 - (i) General education is optional in certificate curricula.
 - (ii) Certificate curricula shall include a minimum of 12 semester hours of major courses selected from the Common Course Library.
 - (A) A certificate curriculum program which is a stand-alone curriculum program title or which is the highest credential level awarded under an approved associate in applied science degree or diploma program shall include 12 semester

- hours of credit from core courses or subject areas or both within the major hours category.
- (B) Courses for other major hours in a stand-alone certificate curriculum program shall be selected from prefixes identified on the curriculum standard. A maximum of nine semester hours of credit may be selected from any prefix listed, with the exception of prefixes listed in the core or concentration.
- (C) Work experience, including cooperative education, practicums, and internships, may be included in a certificate program up to a maximum of two semester hours of credit.
- (iii) A certificate curriculum program may include a maximum of one other required hour of credit to complete college graduation requirements. This course shall be selected from the Common Course Library.
- (iv) An institution may award a certificate under an approved degree or diploma curriculum program for a series of courses totaling a minimum of 12 semester hours of credit and a maximum of 18 semester hours of credit taken from the approved associate degree or diploma curriculum program of study.
- (v) Selected topics or seminar courses may be included in a certificate program up to a maximum of three semester hours of credit.
- (4) Curriculum Standards Compliance. Each institution shall select curriculum program courses from the Common Course Library to comply with the standards for each curriculum program title the institution is approved to offer. The selected courses shall comprise the college's program of study for that curriculum program.
- (a) Each institution shall maintain on file with Community College System Office a copy of the official program of study approved by the institution's board of trustees.
- (b) When requesting approval to offer a curriculum program title, an institution shall submit a program of study for that curriculum program title.
- (c) A copy of each revised program of study shall be filed with and approved by the Community College System Office prior to implementation at the institution.

History Note: Authority G.S. 115D-5; S.L. 1995, c. 625; Temporary Adoption Eff. June 1, 1997; Eff. July 1, 1998; Amended Eff. August 1, 2004.

23 NCAC 02E .0405 TRAINING FOR PUBLIC SAFETY AGENCIES

- (a) Training for Public Law Enforcement Agencies.
- (1) When a college is an accredited and designated direct delivery agency for initial certification training for public law enforcement agencies and funds 50% or greater of the instructional cost and the school director's salary, the college shall report the hours generated from the instruction for full budget FTE when the training is delivered in accordance with all other budget FTE and program requirements.
- (2) When a public law enforcement agency external to a college is the accredited and designated direct delivery agency for initial certification training, the college may deliver a maximum of 25% of the total program hours and shall receive full budget FTE for the hours generated. A college shall not receive any state funds for hours generated above 25% of the total program hours.
- (A) A college shall provide initial certification law enforcement training for an accredited and designated direct delivery public law enforcement agency under a written agreement. The agreement shall:

- (i) confirm that the public law enforcement agency does not have the funds to provide the training;
 - (ii) designate the source of funds for the training;
 - (iii) list the courses to be taught;
 - (iv) state the total hours of instruction to be delivered; and
 - (v) be signed by the president or the president's designee, and the senior official of the public law enforcement agency.
- (B) The college shall receive full budget FTE for hours generated when the training is delivered in accordance with this agreement and all other budget FTE and program requirements. The college shall maintain a copy of the agreement on file until released from audit.
- (3) A college may deliver in-service training for designated direct delivery public law enforcement agencies beyond the initial certification training and receive full budget FTE for hours generated when the training is delivered in accordance with all other budget FTE and program requirements. A college providing in-service training for public law enforcement agencies is not subject to Subparagraphs (a)(1) or (a)(2) of this Rule.
- (b) Training for Public Fire and Rescue Agencies.
- (1) When a college is a designated direct delivery agency for initial certification training for public fire and rescue services agencies and funds 50% or greater of the instructional cost, the college shall report hours generated from instruction for full budget FTE when the training is offered in accordance with all other budget FTE and program requirements.
 - (2) When a public fire and rescue agency external to a college is the designated direct delivery agency for initial certification training, the college may deliver a maximum of 25% of the total program hours and shall receive full budget FTE for the hours generated. A college shall not receive any state funds for hours generated above 25% of the total program hours.
 - (A) A college shall provide initial fire and rescue training for a designated direct delivery public fire and rescue agency under a written agreement. The agreement shall:
 - (i) confirm that the public fire and rescue agency does not have the funds to provide the training;
 - (ii) designate the source of funds for the training;
 - (iii) list the courses to be taught;
- (ii) designate the source of funds for the training;
- (iii) list the courses to be taught;
- (iv) state the total hours of instruction to be delivered; and
- (v) be signed by the president or the president's designee, and the senior official of the public fire and rescue agency.
- (B) The college shall receive full budget FTE for hours generated when the training is delivered in accordance with this agreement and all other budget FTE and program requirements. The college shall maintain a copy of the agreement on file until released from audit.
- (3) A college may deliver in-service training for public designated direct delivery fire and rescue agencies beyond the initial certification training and receive full budget FTE for hours generated when the training is delivered in accordance with all other budgetary FTE and program requirements. A college providing in-service training for public fire and rescue agencies is not subject to Subparagraphs (b)(1) or (b)(2) of this Rule.
- (c) Training for Emergency Medical Services Agencies.
- (1) When a college is a designated direct delivery agency for initial certification training for public emergency medical services training and funds 50% or greater of the instructional costs, the college shall report hours generated from instruction for full budget FTE when the training is offered in accordance with all other budget FTE and program requirements.
 - (2) When a public emergency medical services agency external to a college is the designated direct delivery agency for initial certification training, the college may deliver a maximum of 25% of the total program hours and shall receive full budget FTE for the hours generated. A college shall not receive any state funds for hours generated above 25% of the total program hours.
 - (A) A college shall provide initial emergency medical services training for a direct delivery public emergency medical services agency under a written agreement. The agreement shall:
 - (i) confirm that the public emergency medical services agency does not have the funds to provide the training;
 - (ii) designate the source of funds for the training;
 - (iii) list the courses to be taught;

- (iv) state the total hours of instruction to be delivered; and
- (v) be signed by the president or the president's designee, and the senior official of the emergency medical services agencies.
- (B) The college shall receive full budget FTE for hours generated when the training is delivered in accordance with this agreement and all other budget FTE and program requirements. The college shall maintain a copy of the agreement on file until released from audit.
- (3) A college may deliver in-service training for designated direct delivery public emergency medical services agencies beyond the initial certification training and receive full budget FTE for hours generated when the training is delivered in accordance with all other budgetary FTE and program requirements. A college providing in-service training for public emergency medical services agencies is not subject to Subparagraphs (c)(1) or (c)(2) of this Rule.
 - (E) Specify the conditions and time frame for termination of the agreement; and
 - (F) Be maintained on file at all colleges involved for audit purposes.
- (b) Level Two Instructional Service Agreement.
 - (1) Two or more colleges may jointly offer curriculum courses or continuing education courses by providing a written, level two instructional service agreement under the following conditions:
 - (A) Resources are shared between the participating colleges;
 - (B) FTE may be shared between the participating colleges;
 - (C) One or more of the participating colleges is approved to offer the curriculum course(s) in an approved program of study or offer a continuing education course approved by the State Board of Community Colleges; and
 - (D) A curriculum certificate, diploma or degree is not awarded.
 - (2) The level two instructional service agreement shall:
 - (A) Be approved by each local board of trustees unless the board has delegated authority to the president to enter into level two instructional service agreements;
 - (B) Be signed by the president of each participating college;
 - (C) Specify the course(s) to be delivered to the other college's service area;
 - (D) Specify the plan for delivery of the instruction;
 - (E) Specify the proration of resources and FTE allocated for each college;
 - (F) Specify the conditions and time frame for termination of the agreement;
 - (G) Be filed with the System Office President prior to implementation of the course(s); and
 - (H) Be maintained on file at all colleges involved for audit purposes.

History Note: Authority G.S. 115D-5; Eff. August 1, 2004.

23 NCAC 02E .0604 INSTRUCTIONAL SERVICE AGREEMENTS

- (a) Level One Instructional Service Agreement.
 - (1) A college may offer curriculum or continuing education courses in an area assigned to another college by providing a written, level one instructional service agreement under the following conditions:
 - (A) Resources are solely provided by the college requesting permission to enter into another college's service area; and
 - (B) The requesting college does not share the FTE with the other college(s).
 - (2) The level one instructional service agreement shall:
 - (A) Be approved by each local board of trustees unless the board has delegated authority to the president to enter into level one instructional service agreements;
 - (B) Be signed by the presidents of each participating college;
 - (C) Specify the course(s) or program(s) to be delivered into the other college's service area;
 - (D) Specify the plan for delivery of the instruction;
- (c) Level Three Instructional Service Agreement.
 - (1) Two or more colleges may jointly offer a curriculum program by providing a written, level three instructional service agreement under the following conditions:
 - (A) Resources are shared between the participating colleges;
 - (B) FTE may be shared between the participating colleges;
 - (C) One or more of the colleges participating is approved by the State Board of Community Colleges to offer the curriculum program; and
 - (D) A curriculum certificate, diploma or associate degree is awarded.

- (2) The level three instructional service agreement shall:
- (A) Be approved by each participating board of trustees;
 - (B) Be signed by the board of trustees chair of each participating college;
 - (C) Be signed by the president of each participating college;
 - (D) Specify the program to be shared;
 - (E) Specify the plan for delivery of the program;
 - (F) Specify the proration of resources and/or FTE allocated for each college;
 - (G) Specify the conditions and time frame for termination of the agreement;
 - (H) Certify that appropriate and adequate resources are available between participating colleges. Where feasible, joint utilization of physical facilities, equipment, materials, and instructional faculty shall be considered;
 - (I) Certify that the curriculum program meets the standards of the appropriate accrediting agency or licensing authority;
 - (J) Specify which college will grant the award;
 - (K) Specify that only the college providing the instruction will record the letter grade on the student transcript;
 - (L) Be approved by the System Office President prior to implementation of the program; and
 - (M) Be maintained on file at each participating college for audit purposes.
- (3) Notification of termination of a level three agreement shall be sent to the System Office President by the college which grants the award, prior to the effective termination date.
- (d) The delivery of curriculum courses, continuing education courses or programs delivered into another college's service area via non-traditional delivery as defined in Rule 23 NCAC 02D .0323(e)(1) does not require an instructional service agreement.
- (e) A college may not delegate curriculum program approval to another college. Program approval is granted by the State Board of Community Colleges using criteria set forth in Rule 23 NCAC 02E .0201.

History Note: Authority G.S. 115D-5; S.L. 1993, 2nd session, c. 769, p. 18, s. 18; S.L. 1995, c. 625; Temporary Adoption Eff. October 31, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. May 1, 1995; Temporary Amendment Eff. June 1, 1997; Amended Eff. August 1, 2004; July 1, 1998.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday, May 20, 2004, 10:00 a.m. at 1307 Glenwood Avenue, Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments by Friday, May 14, 2004 to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Jim R. Funderburke - 1st Vice Chair
David Twiddy - 2nd Vice Chair
Thomas Hilliard, III
Robert Saunders
Jeffrey P. Gray

Appointed by House

Jennie J. Hayman - Chairman
Graham Bell
Dana E. Simpson
Dr. John Tart

RULES REVIEW COMMISSION MEETING DATES

May 20, 2004
June 17, 2004 July 15, 2004
August 19, 2004 September 16, 2004
October 21, 2004 November 18, 2004
December 16, 2004

**RULES REVIEW COMMISSION
APRIL 15, 2004
MINUTES**

The Rules Review Commission met on Thursday, April 15, 2004, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present were: Jennie Hayman, Jeffrey Gray, Thomas Hilliard, Robert Saunders, Dana Simpson, John Tart and David Twiddy.

Staff members present were: Joseph DeLuca, Staff Director; Bobby Bryan, Rules Review Specialist; and Lisa Johnson, Administrative Assistant.

The following people attended:

Steve Steinbeck	DENR/DEH
Torrey McLean	DHHS
Tom Taaffe	Medical Care Commission
William Arent	CRMCA
Janice Fain	DHHS/DCD
Jerry Cooper	NCALA
Kevin Kelly	DHHS/DSS
Jane Smith	DHHS/DSS
Joe King	DHHS/DSS
Andy Ellen	NC Retail Merchants Assoc.
Joan Troy	Wildlife Resources Commission
Fred Harris	Wildlife Resources Commission
Denise Shin	DENR
Francis Crawley	Attorney General's Office
Tom West	Poyner & Spruill LLP
Ellie Sprengel	Department of Insurance
Theresa Shackelford	Department of Insurance
Louis Belo	Department of Insurance
Frank Folger	Department of Insurance

Jim Upchurch	DHHS/DFS
Doug Barrick	DFS
Kim Dove	NC Board of Dietetics Nutrition
Lou Wilson	NCALTCF
Scott Perry	Criminal Justice Education & Training Standards
Teresa Marrella	Criminal Justice Education & Training Standards
Thomas Allen	DENR/DAQ
Dee Williams	State Board of Cosmetic Art Examiners
Souk Rios	State Board of Cosmetic Art Examiners
Denise Stanford	Pharmacy Board/Bailey & Dixon
Carson Carmichael	Pharmacy Board/Bailey & Dixon
Sharon Wilder	DHHS/Division of Aging & Adult Services
Roger Manus	Attorney/Governor's Advocacy Council for Persons with Disabilities
June Brotherton	Friends of Residents in Long Term Care
Molly Masich	OAH
Dana Sholes	OAH
Julie Brincefield	OAH
Grady McCallie	NC Conservation Network
Fred Allen	NC Aggregates Assoc.
Debi Lee	DHHS/Ombudsman Program
Cindy Kincaid	DHHS/Ombudsman Program
Susan Grayson	DENR

APPROVAL OF MINUTES

The meeting was called to order at 10:13 a.m. with Commissioner Hayman presiding. Chairman Hayman asked for any discussion, comments, or corrections concerning the minutes of the March 18, 2004, meeting. The minutes were approved as written.

A motion was made that the Commission go into executive session. The motion passed and commissioners went into executive session at 10: 15 a.m.

The Commission came out of executive session at 11:08 a.m. and the meeting was reconvened at 11:15 a.m.

The Chairman reminded the Commissioners of their obligations as set out in Governor Easley's Executive Order No. 1.

Commissioner Hilliard made a motion as follows: Due to pending litigation and on legal advice from Perry Newson from the Board of Ethics, I move for a thirty day delay in Commission action on rules pending from the EMC and from the Board of Pharmacy so that we may obtain a legal opinion from the Board of Ethics regarding conflict of interest issues. The motion passed unanimously.

FOLLOW-UP MATTERS

10A NCAC 9 .0705; .1705: NC Child Care Commission – The Commission approved the rewritten rules submitted by the agency.

15A NCAC 2D .0538: Environmental Management Commission – No action was taken based on Commissioner Hilliard's motion.

21 NCAC 14A .0101: State Board of Cosmetic Art Examiners – The Commission approved the rewritten rule submitted by the agency.

21 NCAC 14J .0501: State Board of Cosmetic Art Examiners – This rewritten rule was approved conditioned upon receiving technical change. The technical change was subsequently received.

21 NCAC 14R .0101-.0104: State Board of Cosmetic Art Examiners – The Commission approved the rewritten rules submitted by the agency.

21 NCAC 17 .0114: NC Board of Dietetics Nutrition – The Commission approved the rewritten rule submitted by the agency.

21 NCAC 29 .0602; .0613: Locksmith Licensing Board – The Commission approved the rewritten rules submitted by the agency.

21 NCAC 29 .0603; .0607; .0612: Locksmith Licensing Board – These rules were withdrawn by the agency.

21 NCAC 46 .1604; .1806; .2504; .2510: Pharmacy Board – No action was taken based on Commissioner Hilliard's motion.

21 NCAC 46 .2508: Pharmacy Board – This rule was sent to OSBM last month. No response has been received from OSBM and no action was taken.

LOG OF FILINGS

Chairman Hayman presided over the review of the log and all rules were approved unanimously with the following exceptions:

Commissioner Hilliard recused himself from the Medical Care Commission rules.

10A NCAC 13F .0213: Medical Care Commission – The Commission objected to the rule due to lack of statutory authority, ambiguity and lack of necessity. Paragraphs (a) through (c) basically just repeat provisions of the Administrative Procedure Act and are thus unnecessary. In paragraph (d), it is not clear what standards the Director of the Division of Facilities Services will use in setting terms for the administrator of a facility with a revoked license to operate another facility. This amounts to a waiver provision without specific guidelines in violation of G.S. 150B-19(6).

10A NCAC 13F .0504: Medical Care Commission – The Commission objected to the rule due to lack of statutory authority and ambiguity. In (c), it is not clear what is meant by competency validation being limited exclusively to tasks specified in .0903(a). It is not clear if this would prohibit an adult care home from temporarily providing care allowed by G.S. 131D-2(a1). To the degree that it does, there is no authority for the paragraph.

10A NCAC 13F .0507: Medical Care Commission – The Commission objected to the rule due to ambiguity. It is not clear how to determine if a course or program is “nationally recognized”.

10A NCAC 13F .0702: Medical Care Commission – The Commission objected to the rule due to lack of statutory authority and lack of necessity. G.S. 131D-21(17) gives the resident of a facility the right “[t]o not be transferred or discharged from a facility except for medical reasons, the residents’ own or other residents’ welfare, nonpayment for the stay, or when the stay is mandated by State or Federal law.” The resident is to be given at least 30 days advance notice “except in the case of jeopardy to the health or safety to the resident or others in the home.” The resident has the right to appeal the discharge decision pursuant to rules adopted by the Medical Care Commissions, and remain in the facility until resolution of the appeal “unless otherwise provided by law.” In adopting paragraphs (c) and (g) that limit the notice and stay during appeal rights to situations where the resident has failed to pay for the costs of services, the agency seems to have gone beyond its authority. Specifically there is a problem with limiting the notice and appeal rights when a discharge is mandated pursuant to G.S. 131D-2(a1). While there clearly would be grounds for a discharge, they would not automatically trigger the loss of notice and appeal rights. There has to be a showing of jeopardy to the health or safety to the resident or others. The rules are also required to offer at least the same protection to residents as State and Federal rules and regulations governing the transfer or discharge of residents from nursing homes. 42 CFR 483.12(a)(7) requires a facility to provide sufficient preparation and orientation to residents to ensure safe and orderly transfers or discharges. The rule does not require this. 42 CFR 483.12(a)(5)(ii)(D) authorizes an immediate transfer or discharge when required by the resident’s “urgent medical needs”. The comparable provision in the rule allows the transfer immediately when necessary for the resident’s welfare and the resident’s needs cannot be met in the facility. This does not appear to be as stringent a standard as “urgent medical needs”. Because of this, both paragraphs (c) and (g) seem to be beyond the agency’s authority. It is difficult to conceive of any purpose to be served by allowing a facility, by house rule, to prohibit a resident from leaving a facility without giving a 14-day notice as Paragraph (h) does. The paragraph does not appear to be necessary if there is authority for what amounts to imprisonment.

10A NCAC 13F .0905: Medical Care Commission – The Commission objected to the rule due to lack of statutory authority. There is no authority cited for setting requirements in an “Activities Coordinator’s Guide”, rather than by rule as paragraph (a) implies is done.

10A NCAC 13F .0906: Medical Care Commission – The Commission objected to the rule due to ambiguity. In (d)(1), it is not clear what is meant by “a reasonable number of calls” or “a reasonable length”.

10A NCAC 13F .1206: Medical Care Commission – The Commission objected to the rule due to ambiguity. It is not clear what are acceptable methods of advertizing.

10A NCAC 13G .0204: Medical Care Commission – The Commission objected to the rule due to ambiguity. In (b)(2), it is not clear what other details will be requested.

10A NCAC 13G .0504: Medical Care Commission – The Commission objected to the rule due to lack of statutory authority and ambiguity. In (c), it is not clear what is meant by competency validation being limited exclusively to tasks specified in .0903(a). It is not clear if this would prohibit an adult care home from temporarily providing care allowed by G.S. 131D-2(a1). To the degree that it does, there is no authority for the paragraph.

10A NCAC 13G .0507: Medical Care Commission – The Commission objected to the rule due to ambiguity. It is not clear how to determine if a course or program is “nationally recognized”.

10A NCAC 13G .0705: Medical Care Commission – The Commission objected to rule .0705 due to lack of statutory authority and lack of necessity. G.S. 131D-21(17) gives the resident of a facility the right “[t]o not be transferred or discharged from a facility except for medical reasons, the residents’ own or other residents’ welfare, nonpayment for the stay, or when the stay is mandated by State or Federal law.” The resident is to be given at least 30 days advance notice “except in the case of jeopardy to the health or safety to the resident or others in the home.” The resident has the right to appeal the discharge decision pursuant to rules adopted by the Medical Care Commissions, and remain in the facility until resolution of the appeal “unless otherwise provided by law.” In adopting paragraphs (c) and (g) that limit the notice and stay during appeal rights to situations where the resident has failed to pay for the costs of services, the agency seems to have gone beyond its authority. Specifically there is a problem with limiting the notice and appeal rights when a discharge is mandated pursuant to G.S. 131D-2(a1). While there clearly would be grounds for a discharge, they would not automatically trigger the loss of notice and appeal rights. There has to be a showing of jeopardy to the health or safety to the resident or others. The rules are also required to offer at least the same protection to residents as State and Federal rules and regulations governing the transfer or discharge of residents from nursing homes. 42 CFR 483.12(a)(7) requires a facility to provide sufficient preparation and orientation to residents to ensure safe and orderly transfers or discharges. The rule does not require this. 42 CFR 483.12(a)(5)(ii)(D) authorizes an immediate transfer or discharge when required by the resident’s “urgent medical needs”. The comparable provision in the rule allows the transfer immediately when necessary for the resident’s welfare and the resident’s needs cannot be met in the facility. This does not appear to be as stringent a standard as “urgent medical needs”. Because of this, both paragraphs (c) and (g) seem to be beyond the agency’s authority. It is difficult to conceive of any purpose to be served by allowing a facility, by house rule, to prohibit a resident from leaving a facility without giving a 14-day notice as Paragraph (h) does. The paragraph does not appear to be necessary if there is authority for what amounts to imprisonment.

Commissioner Twiddy did not participate in the discussion nor vote on the Department of Insurance rules.

Commissioner Gray did not participate in the discussion nor vote on the NC Private Protective Services Board rules.

12 NCAC 7D .0707: NC Private Protective Services Board – The Commission objected to the rule due to ambiguity and failure to comply with the Administrative Procedure Act. In (c), it is not clear what standards the Board will use in approving other media training materials. The deletion of paragraph (d) is a substantial change from the rule that was published in the Register. Pursuant to G.S. 150B-21.2(g)(1) a rule differs substantially if it “[a]ffects the interests of persons who, based on the proposed text of the rule published in the North Carolina Register, could not reasonably have determined that the rule would affect their interest.” The paragraph which is being deleted without notice exempted certain unarmed security guards from the requirements of the rule. These guards had no reason to suspect that the rule would now apply to them. An agency may not adopt a rule that differs substantially from the proposed published text unless it publishes the proposed different text in the Register and accepts comments on it. Because the Board did not republish the different text, this rule was not adopted in accordance with Part 2 of Article 2A of the Administrative Procedures Act.

15A NCAC 2D .0543: Environmental Management Commission – A request was received from the Carolina Ready Mixed Concrete Association and this rule was sent to the Office of State Budget and Management to determine if the rule has a substantial economic impact and a fiscal note is required. Also, at least ten letters requesting legis lative review were received by the Rules Review Commission prior to the meeting.

All other rules: Environmental Management Commission - No action taken based on Commissioner Hilliard’s motion.

15A NCAC 10B .0409: Wildlife Resources Commission – The Commission objected to this rule because it is ambiguous. In (2), line 16, reference is made to keeping foxes alive “as set forth in Subparagraph (1) of this Rule.” Paragraph (1) appears to be a provision exempting trappers from certain requirements. It is unclear how complying with this exemption has anything to do with the requirement that “foxes are kept alive” in a certain manner.

15A NCAC 10F .0333: Wildlife Resources Commission – The Commission objected to this rule because it is beyond the agency’s statutory authority. There is no authority cited to set speed limits in private boat-launching or swimming areas as set out in (b) and (c) of this rule. (Although it is not specifically stated that this rule applies to private swimming areas as well as boat ramps that is at least implied.) The authority cited, G.S. 75A-15, in the second paragraph of (b), refers to adopting rules covering public swimming and boat launching areas.

15A NCAC 18A .1942: Commission for Health Services – The Commission objected to the rule due to lack of statutory authority. There is no authority cited for the provision in (e)(1), page 2 lines 32 – 35, requiring only certain licensed persons to do certain monitoring operations. Even if the occupational licensing acts require that those operations be done only by one of the listed licensees, that still does not confer authority on the CHS to impose the requirement or enforce the licensing act. The rule could require the applicant to specify the name and qualifications of the person who will perform the monitoring. It could even provide that the cited general statutes appear to require one of the listed licenses, and that the agency will refer any unlicensed named monitor to the agencies. But without their own authority, they cannot impose the requirement. The same problem and analysis applies in (f)(2)(E), page 5 lines 29 – 31. The Commission then approved the rewritten rule submitted by the agency. It accepted the rewritten rule because it appears that the agency intended the rule to read as set out in the rewritten rule and to make the temporary rule with the objectionable language comply with the permanent rule.

15A NCAC 18A .3501: Commission for Health Services – This rule was approved conditioned upon receiving a technical change. The technical change was subsequently received.

15A NCAC 18A .3506: Commission for Health Services – The Commission objected to the rule based on ambiguity. The rule is unclear as to the exact methods of bactericidal treatment of off-site drinking water that are allowed or required. The rule as written appears to allow someone to treat water by either (a) or (d) without using any other additional treatment. But if (b) or (c) is used as a treatment method, then (a) or (d) must also be used with either of those. If that is the rule, then the rule is clear. However, if the rule is actually that you have to use (a) or (d) and then use (b) or (c) in conjunction with the first treatment, that is not clear. One other possibility is that the rule requires at least two of these methods to be used: i.e., either (a) and (d); or (a) and either (b) or (c); or (d) and either (b) or (c); but not (b) or (c) either alone or only with each other. This rule appears to need some revision or rearranging to make clear what is the actual intent.

15A NCAC 18A .3508: Commission for Health Services – The Commission objected to the rule based on ambiguity. In (c) it is unclear who has to list the non-community water supplies. It is unclear whether it is the obligation of the Department, the Division, the Section, or the camp/applicant.

15A NCAC 18A .3519: Commission for Health Services – The Commission objected to the rule based on lack of authority or necessity. This rule is unnecessary. Generally the law will allow all the other rules to remain in effect if one is invalidated, so this rule would have no effect. This rule, if it is a rule, is a legal conclusion, judgment, or statement. If it has any applicability or effect that would not automatically happen without the rule being in place, then it is outside the agency’s authority to make rules concerning what the law is, rather than the sanitation requirements they are authorized to impose.

23 NCAC 2D .0202: NC State Board of Community Colleges – The Commission objected to this rule based on ambiguity and lack of authority. In (b), page 2, the rule states that a prospective student may be required to pay a non-refundable advance deposit against tuition. There are two problems with this provision. The first is that the standards when the deposit shall be required from an individual student are unspecified or unclear. If they are set outside rulemaking there is no authority for doing that. The second is that this paragraph appears to conflict with (d)(1)(A), page 3, that specifies that a 100 percent refund of tuition “shall be made if the student officially withdraws prior to the first day of classes.” If the student paid a non-refundable advance deposit against tuition and then withdrew, (b) provides that the deposit is not refunded while (d) provides that it is refunded. It is unclear which provision applies. In (d)(3), page 3, the same ambiguity or authority problem is presented concerning refund of tuition for a deceased student and the standards under which it “may be refunded to the estate of the deceased.”

25 NCAC 1D .0518: State Personnel Commission – The Commission objected to the rule based on ambiguity and lack of authority. This rule has been amended. In the course of the amendment the mandatory separation of an employee absent for three days, as long as certain conditions were met, has been changed to a discretionary one on the part of the employer. However there are no standards set to determine the range of discretion. The lack of standards for the employer to use in deciding whether to terminate the employment makes the rule unclear. If the standards are set by OSP outside rulemaking,

and used by the State Personnel Commission at any hearings that may arise, then they are acting outside their authority in enacting those standards without engaging in the statutory rulemaking process.

25 NCAC 1D .1402: State Personnel Commission – The Commission objected to the rule based on lack of authority, ambiguity, and lack of necessity. It is unclear whether the rule means that the State Personnel Commission may engage in formal rulemaking concerning the three listed items or intends to simply define or determine the listed items without engaging in the statutory rulemaking process. If this rule means that the SPC may make rules concerning the three listed items, then it is simply repeating the statute and unnecessary. If the rule means that the SPC may specify or define those items listed without rulemaking, and those items meet the definition of rules, then there is no authority for doing this outside rulemaking. If they do not meet the definitions of rules, then there is no need for a rule. Staff does believe that the statute cited does require that the agency engage in rulemaking in order to set or change any of the items listed.

25 NCAC 1I .2005: State Personnel Commission – The Commission objected to this rule based on ambiguity and lack of authority. This rule has been amended in paragraph (4). In the course of the amendment the mandatory separation of an employee absent for three days, as long as certain conditions were met, has been changed to a discretionary one on the part of the employer. However there are no standards set to determine the range of discretion. The lack of standards for the employer to use in deciding whether to terminate the employment makes the rule unclear. If the standards are set by OSP outside rulemaking, and used by the State Personnel Commission at any hearings that may arise, then they are acting outside their authority in enacting those standards without engaging in the statutory rulemaking process.

COMMISSION PROCEDURES AND OTHER BUSINESS

Mr. DeLuca requested that the RRC or its staff be allowed to stay in the NASS-ACR Summer and Winter Conference headquarters hotel at the conference rate even though that rate may exceed the NC per diem for the following reasons: First, to insure the safety of the participants as well as possible. The conference is often at a downtown location where persons are discouraged from venturing out individually, as would be necessary for a single staff member staying in another location. Also reducing travel between the headquarters and remote location would reduce the associated travel risks. Other hotel locations in the immediate vicinity are often as expensive or even more expensive than the conference headquarter hotel, since the conference negotiates a favorable conference rate for its attendees. Hotel locations at a distance from the conference headquarters would likely require the participant to rent a car or travel by taxicab, depending on the availability. The additional rental, parking, or fare costs would partially or completely offset any savings by staying at another location. Finally, the conference events start early and usually extend well into the evening hours. The extra travel time to and from a remote hotel would place an additional burden on the conference participant. The Commission approved this request.

The meeting adjourned at 12:47 p.m. and went into executive session at 12:49 p.m.

The Commission came out of executive session at 1:03 p.m.

The next meeting of the Commission is Thursday, May 20, 2004, at 10:00 a.m.

Respectfully submitted,
Lisa Johnson

Commission Review/Administrative Rules

*Log of Filings (Log #209)
March 23, 2004 through April 20, 2004*

DEPARTMENT OF AGRICULTURE

Adoptions by Reference 02 NCAC 09B .0116 Amend

NC STRUCTURAL PEST CONTROL COMMITTEE

Definitions 02 NCAC 34 .0102 Amend

Subterranean Termite Prevention/Res Bldgs Under 02 NCAC 34 .0505 Amend

Wood Destroying Organisms Records 02 NCAC 34 .0604 Amend

Contractual Agreements for Wood-Destroying Organ 02 NCAC 34 .0605 Amend

DEPARTMENT OF AGRICULTURE

Gate Fee 02 NCAC 43L .0104 Repeal

Period for Shed Lease 02 NCAC 43L .0105 Repeal

Temporary or Seasonal Rental Basis 02 NCAC 43L .0106 Repeal

Length of Agreement	02 NCAC 43L .0107	Repeal
Commercial Truckers	02 NCAC 43L .0108	Repeal
Gate Fee	02 NCAC 43L .0113	Repeal
Adjustment of Rentals	02 NCAC 43L .0114	Repeal
Assessment of Truckers Etc.	02 NCAC 43L .0115	Repeal
Exemptions	02 NCAC 43L .0116	Repeal
Base Prices	02 NCAC 43L .0201	Repeal
Gate Fees	02 NCAC 43L .0202	Repeal
Miscellaneous Fees	02 NCAC 43L .0203	Repeal
Space Availability	02 NCAC 43L .0204	Repeal
Space Limitations	02 NCAC 43L .0205	Repeal
Truck Rent Basis	02 NCAC 43L .0206	Repeal
Retail Buildings	02 NCAC 43L .0401	Repeal
Gate Fees	02 NCAC 43L .0402	Repeal
Farmers and Truckers Sheds	02 NCAC 43L .0403	Repeal
Miscellaneous Fees	02 NCAC 43L .0404	Repeal
Yearly Delivery Permit	02 NCAC 43L .0405	Repeal
Space Availability	02 NCAC 43L .0406	Repeal
Space Limitations	02 NCAC 43L .0407	Repeal
Truck Rent Basis	02 NCAC 43L .0408	Repeal
Fees for Special Events	02 NCAC 43L .0409	Repeal
Payment of Fees	02 NCAC 43L .0701	Repeal
Gate Fees	02 NCAC 43L .0702	Repeal
Nursery Dealer Certificate	02 NCAC 48A .1208	Amend
STATE BANKING COMMISSION		
Fees, Copies and Publication Costs	04NCAC 03C .1601	Amend
NC CEMETERY COMMISSION		
Fees	04NCAC 05A .0106	Adopt
DHHS/MH/DD/SAS		
Summary Suspension & Revocation Scope	10A NCAC 26C .0501	Adopt
Summary Suspension & Revocation Definitions	10A NCAC 26C .0502	Adopt
Summary Suspension & Revocation-Summary	10A NCAC 26C .0503	Adopt
Summary Suspension & Revocation-Revocation	10A NCAC 26C .0504	Adopt
License Issuance	10A NCAC 27G .0402	Amend
Operations During Licensed Period	10A NCAC 27G .0404	Amend
Communication Procedures for Out of Home Community	10A NCAC 27G .0506	Adopt
Scope	10A NCAC 27G .0601	Adopt
Definitions	10A NCAC 27G .0602	Adopt
Incident Response Requirements for Categories	10A NCAC 27G .0603	Adopt
Incident Reporting Requirements for Categories A &	10A NCAC 27G .0604	Adopt
Area Authority or County Program Management of Inc	10A NCAC 27G .0605	Adopt
Area Authority Requirements Concerning Complaints	10A NCAC 27G .0606	Adopt
Complaints Pertaining to Category A or Category B	10A NCAC 27G .0607	Adopt
Local Monitoring	10A NCAC 27G .0608	Adopt
Area Authority or County Program Reporting Require	10A NCAC 27G .0609	Adopt
Requirements Concerning the Need for Protective	10A NCAC 27G .0610	Adopt
COMMISSION FOR HEALTH SERVICES		
Definitions	10A NCAC 39A .0102	Amend
Migrant Health Program Services	10A NCAC 39A .0103	Amend
Co-Payments	10A NCAC 39A .0104	Amend
Reimbursement	10A NCAC 39A .0105	Amend
Eligible Migrants	10A NCAC 39A .0106	Amend
Eligible Providers	10A NCAC 39A .0107	Amend
Covered Services	10A NCAC 39A .0109	Amend
Payment Limitations	10A NCAC 39A .0111	Amend
Payment Limitations	10A NCAC 45A .0303	Amend
DENR/ENVIRONMENTAL MANAGEMENT COMMISSION		
Outstanding Resource Waters	15A NCAC 02B .0225	Amend
Tar-Pamlico River Basin	15A NCAC 02B .0316	Amend
Toxic Air Pollutant Guidelines	15A NCAC 02D .1104	Amend

RULES REVIEW COMMISSION

Purpose Scope and Permissible Open Burning	15A NCAC 02D .1901	Amend
Definitions	15A NCAC 02D .1902	Amend
Permissible Open Burning Without An Air Quality	15A NCAC 02D .1903	Amend
Air Curtain Burners	15A NCAC 02D .1904	Amend
Delegation to County Governments	15A NCAC 02D .1906	Amend
Exemptions	15A NCAC 02Q .0702	Amend
Modifications	15A NCAC 02Q .0706	Amend
Emission Rates Requiring a Permit	15A NCAC 02Q .0711	Amend
Wastewater Treatment Systems at Pulp and Paper Mill	15A NCAC 02Q .0714	Adopt
DENR/DIVISION OF PARKS AND RECREATION AUTHORITY		
Eligible Applicants	15A NCAC 12K .0102	Amend
Evaluation of Applications	15A NCAC 12K .0105	Amend
DEPARTMENT OF TRANSPORTATION/DIVISION OF MOTOR VEHICLES		
Renewal of Certification	19A NCAC 03G .0207	Amend
Cancellation of Certification	19A NCAC 03G .0209	Amend
NC REAL ESTATE COMMISSION		
Agency Agreements and Disclosure	21 NCAC 58A .0104	Amend
Advertising	21 NCAC 58A .0105	Amend
Handling and Accounting of Funds	21 NCAC 58A .0107	Amend
Retention of Records	21 NCAC 58A .0108	Amend
Broker-in-Charge	21 NCAC 58A .0110	Amend
Filing and Fees	21 NCAC 58A .0302	Amend
License Renewal Penalty for Operating While License	21 NCAC 58A .0503	Amend
Active and Inactive License Status	21 NCAC 58A .0504	Amend
Salesperson to be Supervised by Broker	21 NCAC 58A .0506	Amend
General Provisions	21 NCAC 58A .1801	Adopt
Definitions	21 NCAC 58A .1802	Adopt
Requirements for Licensure	21 NCAC 58A .1803	Adopt
Active Status	21 NCAC 58A .1804	Adopt
Renewal	21 NCAC 58A .1805	Adopt
Limitations	21 NCAC 58A .1806	Adopt
Affiliation with Resident Broker	21 NCAC 58A .1807	Adopt
Trust Monies	21 NCAC 58A .1808	Adopt
Advertising	21 NCAC 58A .1809	Adopt
Payment of Fees	21 NCAC 58A .1810	Adopt
Designation of Project Broker	21 NCAC 58B .0601	Adopt

AGENDA
RULES REVIEW COMMISSION
May 20, 2004

- I. Call to Order and Opening Remarks
- II. Review of minutes of last meeting
- III. Follow Up Matters
 - A. Medical Care Commission – 10A NCAC 13F .0213; .0504; .0507; .0702; .0905; .0906; .1206 (Bryan)
 - B. Medical Care Commission 10A NCAC 13G .0204; .0504; .0507; .0705 (Bryan)
 - C. NC Private Protective Services Board – 12 NCAC 7D .0707 (Bryan)
 - D. Environmental Management Commission – 15A NCAC 2D .0101; .0521; .0902; .0933; .1404; .1409; .1416; .1417; .1418; .1419; .1422 (DeLuca)
 - E. Environmental Management Commission - 15A NCAC 2D .0538; .0543 (DeLuca)
 - F. Environmental Management Commission – 15A NCAC 2Q .0806; .0809 (DeLuca)
 - G. Wildlife Resources Commission – 15A NCAC 10B .0409 (DeLuca)
 - H. Wildlife Resources Commission – 15A NCAC 10F .0333 (DeLuca)
 - I. Commission for Health Services – 15A NCAC 18A .3506; .3508; .3519 (DeLuca)
 - J. Pharmacy Board – 21 NCAC 46 .1604; .1806; .2504; .2510 (DeLuca)
 - K. Pharmacy Board – 21 NCAC 46 .2508 (DeLuca)
 - L. Examiners for Speech and Language Pathologists & Audiologists – 21 NCAC 64 .0212; .0213 (DeLuca)
 - M. NC State Board of Community Colleges – 23 NCAC 2D .0202 (DeLuca)
 - N. State Personnel Commission – 25 NCAC 1D .0518; .1402 (DeLuca)

- O. State Personnel Commission – 25 NCAC 11 .2005 (DeLuca)
- IV. Review of Rules (Log Report #209)
- V. Commission Business
- VI. Next meeting: June 17, 2004

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases 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 by contacting the Office of Administrative Hearings, (919) 733-2698. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

*Chief Administrative Law Judge
JULIAN MANN, III*

*Senior Administrative Law Judge
FRED G. MORRISON JR.*

ADMINISTRATIVE LAW JUDGES

*Sammie Chess Jr.
Beecher R. Gray
Melissa Owens Lassiter*

*James L. Conner, II
Beryl E. Wade
A. B. Elkins II*

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u>				
Ice 2 K t/a Sports Dimensions, Inc. v. ABC Commission	02 ABC 0683	Gray	11/25/03	
Carolina Sports Arena LLC T/A NC Sports Arena v ABC Comm.	02 ABC 1491	Conner	09/11/03	
ABC v. Fast Fare Inc, T/A Fast Fare NC 576	02 ABC 1882	Gray	09/22/03	
Ki Young Kim v. Ann H. Johnson, ABC Commission in Raleigh	03 ABC 0177	Mann	06/17/03	
ABC Commission v. Pantana Bob's, Inc. T/A Pantana Bob's	03 ABC 0233	Mann	10/03/03	
C&C Entertainment, Inc. d/b/a Carolina Live	03 ABC 1037	Lassiter	09/30/03	
ABC v. Lake Point Restaurant, Inc. T/A Larkins on the Lake Bay Front Bar and Grill	03 ABC 1246	Hunter	01/01/04	18:17 NCR 1540
ABC Commission v LLLPH Inc T/A Tsunami Sportsbar & Grill, 947 Carter Dr, Suite 4, Calabash, NC 28467	03 ABC 1530	Conner	02/05/04	
ABC Commission v. Erick Salgado,T/A Confety's 123 2613 Lee Avenue Sanford, NC 27330	03 ABC 2342	Mann	04/13/04	
ABC Commission v. Chelsie Paul Grose, Brown Mountain Grocery And Service Station	04 ABC 0064	Chess	03/03/04	
ABC Commission v. Jose-Martin Ortega Ramirez T/A Dona Ole Rest.	04 ABC 0094	Gray	03/02/04	
ABC Commission v. Taqueria El Azteca Inc T/A Taqueria El Azteca	04 ABC 0095	Gray	03/02/04	
ABC Commission v. Jus Imagine, LLC, T/A Imagine	04 ABC 0173	Gray	03/31/04	
ABC Commission v. Raleigh Bryce Olive T/A Olives Cash Svc Ctr	04 ABC 0174	Gray	03/22/04	
<u>MEDICAL BOARD</u>				
NC Medical Board v. Miles James Jones	03 BME 1338	Elkins	03/26/04	18:22 NCR 2063
<u>AGRICULTURE</u>				
Phoenix Ski Corp. v. Dept. of Ag. & Cons. Svcs. & Dept. of Admin. & Carolina Cable Lift, LLC.	02 DAG 0560	Lewis	06/30/03	18:03 NCR 217
<u>CRIME CONTROL AND PUBLIC SAFETY</u>				
Myrtle J. Price v. Crime Victims Comp. Comm, Dept. of Crime Control & Public Safety, Victims Compensation Services Division	03 CPS 0173	Wade	06/27/03	
Dolores Chavis v. NC Crime Victim Compensation Commission	03 CPS 0359	Conner	03/18/04	18:22 NCR 2067
Regis A Urlik v DOCCPS, Div. of Victim Comp. Services	03 CPS 0707	Gray	10/21/03	
Fredrica Wood-Jones v DOCC&PS, Div of Victim Comp. & Svcs.	03 CPS 0804	Gray	10/06/03	
Michael L Pompey v. Crime Control & Public Safety, Div. of Victim Compensation Services	03 CPS 0828	Gray	09/03/03	
Frances H Abegg v Bryan E Beatty, Sec DCCPS	03 CPS 1359	Gray	01/23/04	
Tricia Diane Gerke v. Victim's Compensation Commission	03 CPS 1413	Gray	10/06/03	
Deborah D. Barnes-Miller v. NC Victim and Justices Services	03 CPS 1800	Wade	03/11/04	
Shirley Simmons v. Crime Control & Public Safety	03 CPS 2062	Gray	03/18/04	
Ruth Graham v. Crime Control & Public Safety	03 CPS 2123	Elkins	03/23/04	
Joseph Reid v. NC Victim and Justice Services	04 CPS 0016	Lassiter	04/01/04	

HEALTH AND HUMAN SERVICES

A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions.

CONTESTED CASE DECISIONS

Yelton's Healthcare v DHHS, Div of Fac. Svcs, Group Care Lic Sec	00 DHR 0249	Gray	01/16/04	
Guilford Co Comm Action Program Inc v. DHHS	00 DHR 0984	Gray	09/08/03	
Mary Edge v DHHR, Div of Child Development	01 DHR 0720	Gray	09/23/03	
Richard Hart & Jeannette Hart, Little People Day Car, ID 3355048 v. Div of Child Dev Health & Human Services	01 DHR 1464	Wade	11/14/03	
	01 DHR 1464	Wade	11/14/03	
Sunshine Schools, Inc. ID No. 9255424 v. DHHS, Div. of Child Dev.	02 DHR 0708	Wade	11/24/03	18:14 NCR 1209
Robbie Cummings v. DHHS	02 DHR 0815	Conner	06/09/03	
Lee Co. Dept of Social Services v. DHHS	02 DHR 1021	Elkins	12/01/03	18:14 NCR 1212
Linda Ann Tyson v. Div. of Facility Services, Health Care Personnel Registry Section	02 DHR 1103	Lassiter	05/12/03	
Ricky Roberts for Angela Roberts v. DHHS, Div. of Med. Assistance	02 DHR 1138	Lassiter	04/25/03	18:01 NCR 52
Wanda J. Vanhook v. DHHS, Div. of Med. Assistance	02 DHR 1459	Gray	04/24/03	
Elaine B Shelton v. DHHS, Div. of Facility Services	02 DHR 1489	Conner	05/28/03	
Juli A Murphy, Murphy's Munchkin Land Daycare ID 54000197 v. Div. of Child Development	02 DHR 1555	Lassiter	09/05/03	
Jones Hill Day Care, Ola M Jones v. (CACPP) Child & Adult Care Food Program	02 DHR 1601	Lassiter	05/16/03	
Michelle's Lullaby Day Care, Jerri Howell v. Div. of Child Development June Locklear	02 DHR 1672	Wade	06/10/03	
Bibby's Group Home, Billy McEachern v. Mental Health Licensure and Joanne F Ranta v. DHHS, Div. of Facility Services	02 DHR 1749	Gray	12/08/03	
	02 DHR 1752	Mann	05/15/03	
Gregory Tabron v. DHHS, Div. of Facility Services	02 DHR 1789	Elkins	05/16/03	
Oncology Svcs Corp & Mountainside Holdings LLC v. DHHS, Div of Fac Svcs, Cert of Need Section & Scotland Mem Hospital, Inc.	02 DHR 1983	Wade	08/13/03	18:06 NCR 439
Doretha Leonard v. DHHS, Div. of Medical Assistance	02 DHR 2183	Lassiter	06/13/03	
Jonathan Louis Jefferson, a minor by & through his parents, Cynthia & Louie Jefferson v. DHHS< Div. of Medical Assistance	02 DHR 2186	Lassiter	10/08/03	
Orlando Stephen Murphy v. DHHS, Div. of Fac Svcs, Health Care Personnel Registry Section	02 DHR 2206	Wade	11/04/03	
Tanile Woodberry, By & Through Her Attorney-in-Fact, Linda Monroe v. DHHS, Division of Medical Assistance	02 DHR 2212	Chess	11/06/03	18:15 NCR 1353
Veronica Walker, Ph.D v. DHHS, Div. of Facility Services	02 DHR 2246	Chess	06/20/03	
Gloria Howard v. DHHS	02 DHR 2256	Gray	09/04/03	
Latrese Sherell Harris v. Nurse Aide Registry	02 DHR 2290	Chess	06/16/03	
Wanda S Hudson v. Wake County Public School System	02 DHR 2305	Wade	09/22/03	
Lawyers Glen Retirement Living Ctr, Charlotte Elliotte v DHHS, Div of Facility Svcs, Mecklenburg Co Dept of Social Services	02 DHR 2319	Chess	10/22/03	
Deloris Johnson, Cogic Cathedral Day Care Center v. Div. of Child Development	02 DHR 2326	Conner	03/30/04	
James E Hill v. DHHS, Div. of Facility Services	03 DHR 0028	Wade	05/30/03	
Duffie G Hunt v. Medicaid	03 DHR 0085	Conner	06/06/03	
Valencia L Brown v Division of Medical Assistance (DMA)	03 DHR 0099	Chess	11/17/03	
Sidney Elkins, Debra Elkins v. Columbus Co Dept of Social Services	03 DHR 0105	Gray	03/10/04	
Sarah P Jordan v. DHHS, Div. of Facility Services	03 DHR 0155	Gray	06/18/03	
Martha Banks (ID #72000027) v. Div. of Child Dev., Child Abuse/Neglect Dept., Perquimans Co. DSS	03 DHR 0168	Wade	06/12/03	
Southeastern Reg Med Ctr & Lumberton Radiological Assoc P.A. v DHHS, Div. of Facility Services	03 DHR 0226	Wade	10/31/03	18:12 NCR 1011
Little Angels Child Care Center v Arnette Cowan, Sup of Spec Nut. Prog.	03 DHR 0229	Lassiter	11/24/03	
Aaron Atwater v. DHHS, Div. of Medical Assistance	03 DHR 0262	Chess	08/18/03	
Grace Browning, Gorge D Browning Jr v John Umstead Hospital	03 DHR 0285	Mann	10/03/03	
Vivian P Bailey v. DHHS, Div. of Child Development	03 DHR 0296	Gray	12/18/03	
Nakeisha Shawon Leak v. DHHS, Office of Legal Affairs	03 DHR 0308	Wade	06/25/03	
Krystal Hyatt v. Broughton Hospital	03 DHR 0316	Chess	07/07/03	
Cahterine Williams v. DHHS	03 DHR 0320	Mann	07/17/03	
Rachel Peek,Yancey Co. DSS v. DHHS	03 DHR 0330	Chess	07/24/03	
Penny Yvette McCullers v DHHS, Div. of Facility Services	03 DHR 0336 ⁰	Mann	01/08/04	18:17 NCR 1543
Lisa Mendez v. Health Care Personnel Registry	03 DHR 0351	Gary	06/27/03	
Twan Fields v. DHHS, Div. of Facility Services	03 DHR 0355	Morrison	09/10/03	
Kevin Douglas Heglar v. DHHS, Dorothea Dix Hospital	03 DHR 0357	Gray	09/17/03	
Yolanda Covington v. RHA Health Svcs, DHS	03 DHR 0360	Lassiter	07/17/03	
Constance Basnight v. Pasquotank County DSS	03 DHR 0385	Lassiter	05/29/03	
Waddell B Taylor v DHHS, John Umstead Hospital	03 DHR 0394	Gray	09/23/03	
Dorothy Ann Bell v. DHHS, Div. of Facility Services	03 DHR 0437	Morrison	06/30/03	
Edmund Bond Small v. DHHS, Walter B Jones, ADATC	03 DHR 0445	Lassiter	07/21/03	
Janitta Brown v. DHHS, Dorothea Dix Hospital	03 DHR 0461	Lassiter	09/15/03	
Gerry Dwayne Cashwell v. DHHS	03 DHR 0469	Gray	07/28/03	
Total Renal Care of NC, LLC v DHHS, Div. of Facility Services, CON Section & Bio-Medical Applications of NC	03 DHR 0499	Conner	12/09/03	18:17 NCR 1548
Charlotte Orthopedic Specialists, P.A. v DHHS, Div. of Facility Svcs CON Section & Orion Imaging LLC Mercy Hospital Inc d/b/a Carolinas Medical Center-Pineville	03 DHR 0505	Gray	12/23/03	18:19 NCR 1746
Gregory Lewis Berry v. Burke Co. Dept of Social Services	03 DHR 0514	Wade	08/19/03	
Robert L Scott v DHHS	03 DHR 0527	Conner	12/02/03	
Donna Kay Kirkland v. DHHS, Broughton Hospital	03 DHR 0547	Wade	08/29/03	
Penny Yvette McCullers v DHHS, Div. of Facility Services	03 DHR 0558 ⁰	Mann	01/08/04	18:17 NCR 1543
The Presbyterian Hospital v. DHHS, Division of Facility Services and Mooresville Hosp Mgmt Assoc Inc d/b/a Lake Norman Reg Med Ctr	03 DHR 0567	Wade	12/19/03	18:15 NCR 1362
Grace Browning v. John Umstead Hospital	03 DHR 0571	Mann	10/03/03	
Becky Wood, Guardian Rep The Arc/NCLifeguardianship on behalf of	03 DHR 0575	Chess	12/22/03	

CONTESTED CASE DECISIONS

Mary Short (Ward) v. Richard Visingardi, Dir, Div of MH, DD, SAS				
Sabrina Regina Betts v. DHHS, Div. of Facility Services	03 DHR 0595	Gray	09/12/03	
Andrea Ford v DHHS, Div. of Facility Services	03 DHR 0609	Morrison	06/04/03	
Wallace C Levi v. Div. of Medical Assistance	03 DHR 0633	Wade	08/12/03	
Timothy Batts v. DHHS, Div. of Facility Services	03 DHR 0640	Gray	09/12/03	
Jenny Cooley v. DHHS, Dorothea Dix Hospital	03 DHR 0657	Conner	04/07/04	
Bestway Food's, Osama M Dari v. DOH WIC, Cory Menees, Unit Super.	03 DHR 0662	Morrison	07/28/03	
Charles Wakild & Susan Wakild v DENR, Div of Coastal Management	03 DHR 0663	Morrison	12/09/03	
Denise A Worthington v. DHHS, Office of the Controller	03 DHR 0672	Gray	10/06/03	
Wake Radiology Services, LLC, Wake Radiology Consultants, P.A., Raleigh MR Imaging Center Ltd Partnership & Wake Radiology Diagnostic Imaging, Inc. v. DHHS, Div. of Facility Svcs., CON Sec., Robert J. Fitzgerald, Dir, Lee B Hoffman, Chief of CON Sec. & Mobile Imaging of North Carolina, LLC	03 DHR 0676	Gray	07/07/03	
Nedall H Hassan d/b/a GNS Express Mart v. DHHS	03 DHR 0695	Lassiter	10/14/03	
Samantha Jacobs v. DHHS, Div. of Facility Services	03 DHR 0697	Lassiter	06/19/03	
Jane McMillan v. DHHS, Div. of Facility Services	03 DHR 0698	Lassiter	06/19/03	
Veronica Williams v. Div. of Med. Assistance, Dana Harris, Super.	03 DHR 0737	Mann	08/28/03	
Patti L Cain Small Fries by Patti v. Nutrition Services	03 DHR 0768	Morrison	07/31/03	
Humans United Giving Greater Services "Huggs" v DHHS	03 DHR 0767	Lassiter	01/15/04	
Essie Mae Crawley Davis v. DHHS, Division of Facility Services	03 DHR 0773	Elkins	03/02/04	
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Gregory M Lewis v. DMV, Enforcement Section	02 OSP 1695 ³	Gray	07/23/03	
Patricia A Mabry v. Department of Corrections	02 OSP 1774	Chess	06/27/03	
Chester Michael Martin v. Cumberland Co. Dept. of Social Services	02 OSP 1797	Conner	05/09/03	
Linda H Boyle v. Wayne Co. Mental Health Area Board	02 OSP 1951	Wade	08/13/03	
Patricia Doggett v. Trend Mental Health	02 OSP 2128	Conner	07/08/03	
Sharon F Greene v. Weldon Freeman, Crime Control & Public Safety	02 OSP 2144	Chess	08/29/03	

CONTESTED CASE DECISIONS

C.W. McAdams v. Division of Motor Vehicles	02 OSP 2265	Conner	11/14/03
Michael J Stolarik Sr v. Piedmont Behavioral Health Care	02 OSP 2293	Chess	12/22/03
William Michael McDuffie v. Wake Co Juvenile Detention Center	03 OSP 0013	Wade	08/11/03
Steven Wayne McCartney v. Lumberton Correctional Institution	03 OSP 0026	Conner	05/29/03
Eric M Petree v. Department of Corrections	03 OSP 0116	Lassiter	06/24/03
Monica Lynn Johnson v. NC School of the Arts	03 OSP 0180	Conner	07/29/03
Dennis D Nielsen v DOC, Div of Community Correction	03 OSP 0195	Wade	02/06/04
Jeffrey W Byrd v. Fayetteville State University	03 OSP 0204	Chess	06/04/03
Tamara V McNeill v DPI	03 OSP 0212	Conner	10/29/03
Elmer Jack Smith v Employment Security Commission of NC	03 OSP 0295	Elkins	01/29/04
Tina Marie Walker v. Buncombe Co Dept of Social Services	03 OSP 0429	Chess	08/18/03
Lisa C Banks v. Craven Co Child Support Enforcement Office	03 OSP 0268	Conner	07/31/03
Beverly M Jennings v. Juv Justice, Swannanoa Valley Youth Dev Center	03 OSP 0408	Chess	08/11/03
Maranda Sharpe v. Department of Transportation	03 OSP 0412	Chess	06/03/03
James E. Sharpe v Department of Transportation, Div. 14 (Graham Co.)	03 OSP 0413	Chess	06/03/03
Larry S Height v. NC Utilities Commission	03 OSP 0507	Conner	07/17/03
Gary Melvin Moore v. Western Piedmont Community College	03 OSP 0548	Wade	07/29/03
Joan Milligan, Patricia Flanigan, Pauletta Highsmith, Edna Cummings v. Fayetteville State University	03 OSP 0562	Conner	06/06/03
Ty Atkinson v M S C Center	03 OSP 0577	Conner	10/28/03
Lisa D Barrett v. East Carolina University	03 OSP 0597	Mann	08/05/03
Stanley L Ingram & Clifford Wayne Brown v. Dept of Correction	03 OSP 0599 ⁸	Chess	10/20/03
Wrenete Oladoye v Whitaker School	03 OSP 0620	Conner	08/15/03
Stanley L Ingram & Clifford Wayne Brown v. Dept of Correction	03 OSP 0629 ⁸	Chess	10/20/03
Melinda O Wiggins v. Moore Co Health Department	03 OSP 0632	Morrison	09/17/03
William Harold Maready Jr v. DOC, Pasquotank Correctional Inst.	03 OSP 0644	Conner	08/01/03
Henry Earl Stewart v Department of Transportation	03 OSP 0645	Lassiter	08/26/03
Derwin D Johnson v. Department of Correction	03 OSP 0660	Lassiter	06/24/03
Wanda Steward-Medley v. Department of Corrections, Div. of Prisons	03 OSP 0656	Conner	06/20/03
Sharon D Barnes v Satana Deberry, DHHS	03 OSP 0669	Gray	01/16/04
Priscilla Sledge v. Department of Correction	03 OSP 0675	Conner	08/13/03
Jerry B Davis v. Dorothea Dix Hospital/DHHS	03 OSP 0678	Gray	07/14/03
Leslie AllenWhittington v. Swannanoa Youth Dev. Center	03 OSP 0696	Lassiter	09/24/03
Cathy S Carson v. NC School for the Deaf	03 OSP 0715	Wade	07/22/03
Edwin E Kirton III v. DOC, Warren Correctional	03 OSP 0769 ¹¹	Conner	12/22/03
Edwin E Kirton III v. DOC, Warren Correctional	03 OSP 0770 ¹¹	Conner	12/22/03
Edwin E Kirton III v. DOC, Warren Correctional	03 OSP 0771 ¹¹	Conner	12/22/03
David L McMurray Jr. v. Highway Patrol	03 OSP 0801	Lassiter	06/19/03
Harold Lorenzo Person v. E. Reg. Off. DOC, Div. of Prisons	03 OSP 0805	Conner	08/21/03
LaWanda J Abeguunrin v. Franklin Correctional Center	03 OSP 0825	Gray	06/18/03
Sheryl P Morton & Cassandra McDowell v. DHHS, Dis. Det. Section	03 OSP 0840 ¹³	Gray	03/01/04
Sheryl P Morton & Cassandra McDowell v. DHHS, Dis. Det. Section	03 OSP 0841 ¹³	Gray	03/01/04
Joseph Nichols v UNC at Chapel Hill	03 OSP 0857	Gray	12/04/03
Lazona Gale Spears v. Employment Security Commission	03 OSP 0859	Lassiter	06/26/03
Martin Hernandez v. Dobbs Youth Dev Ctr, DOJJ&DP	03 OSP 0862 ⁵	Morrison	09/29/03
Gail Hernandez v. Dobbs Youth Dev Ctr, DOJJ&DP	03 OSP 0863 ⁵	Morrison	09/29/03
Wanda Steward-Medley v Dept of Corrections, Div of Prisons	03 OSP 0873	Morrison	08/12/03
Michael L Hillis v DHHS/Office of the Controller	03 OSP 0874 ⁷	Lassiter	11/10/03
Jeffrey J Medley v. Department of Correction	03 OSP 0879	Gray	06/30/03
Everette C Body v Department of Correction	03 OSP 0885	Conner	11/12/03
Comatha B Johnson v. DHHS, Chery Hospital	03 OSP 0942	Chess	08/19/03
Dawn H Nelson v Department of Correction	03 OSP 0980	Chess	02/11/04
Ayesha Neal-Harry v Department of Correction	03 OSP 0974	Gray	01/20/04
Edith C Fisher v. Cabarrus Health Alliance	03 OSP 1010	Conner	12/22/03
Monica Dockery v. DOC, Div. of Prisons	03 OSP 1016	Mann	07/18/03
Walter D Giese v. George O'Daniel Onslow Co Health Dept.	03 OSP 1017	Morrison	09/08/03
Theresa R Rogers v. Off of the Secretary of State of NC	03 OSP 1044	Morrison	09/25/03
David Upchurch v. DOC	03 OSP 1076	Connor	09/23/03
Roberta Lane v DOC	03 OSP 1077	Conner	10/29/03
Mable Lynn Kelly v. SEAA	03 OSP 1129	Chess	10/20/03
Leon C Rogers v. John Umstead Hospital	03 OSP 1152	Morrison	09/11/03
Mable Lynn Kelly v SEAA	03 OSP 1184	Chess	10/20/03
Marcella Thome v Department of Correction	03 OSP 1225	Elkins	11/14/03
Sharon D Wallace v. Department of Corrections	03 OSP 1231	Wade	09/17/03
Michael L Hillis v DHHS/ENCSD	03 OSP 1239 ⁷	Lassiter	11/10/03
Michael L Hillis v DHHS/Eastern NC School for the Deaf	03 OSP 1240 ⁷	Lassiter	11/10/03
Michael L Hillis v DHHS/Eastern NC School for the Deaf	03 OSP 1241 ⁷	Lassiter	11/10/03
Luvae J Wall v. DHHS, Payroll Office	03 OSP 1259	Morrison	12/02/03
Russell M Haas v Edgecombe Co Health Department	03 OSP 1261	Elkins	11/06/03
Sergeant Tracy Millington v. Department of Correction	03 OSP 1262	Conner	10/21/03
David Dotson v. NC State University Zoology Department	03 OSP 1317	Wade	10/27/03
Walter Eugene Agers v. Winston-Salem State University	03 OSP 1321	Lassiter	09/24/03
Sheryl P Morton & Cassandra McDowell v. DHHS, Dis. Det. Section	03 OSP 1339 ¹³	Gray	03/01/04
Sheryl P Morton & Cassandra McDowell v. DHHS, Dis. Det. Section	03 OSP 1433 ¹³	Gray	03/01/04
Dennis D Foster v. Durham Co Sheriff's Department	03 OSP 1353	Morrison	09/12/03
Victor Marc Sain v. Catawba Valley Community College	03 OSP 1380	Conner	11/19/03
Kimberly Ann Summers v. Bobby White Co Mgr, Caldwell	03 OSP 1393	Conner	11/04/03
Willie Allen v Swannanoa Youth Dev Ctr (DJJDP)	03 OSP 1412	Conner	01/05/04
Gloria Bennett v Dept of Correction DART Cherry Program	03 OSP 1428	Morrison	12/04/03
Richard Todd McLean v. John Umstead Hospital	03 OSP 1448	Wade	11/26/03

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Charles G Horne Jr v. DOC	03 OSP 1479	Lassiter	10/28/03	
Charles G Horne Jr v. DOC	03 OSP 1480	Lassiter	10/29/03	
Patricia Ann Palmer v NC State University	03 OSP 1481	Wade	02/11/04	
Yolanda Lopez v DOC Harnett Correctional Inst	03 OSP 1501	Elkins	12/22/03	
Mable Lynn Kelly v State Educ. Assistance Authority	03 OSP 1502	Chess	12/03/03	
Stephen Wyatt Edwards v. Crime Control & Public Safety, St Hwy Patrol	03 OSP 1554	Gray	03/03/04	18:20 NCR 1838
Manuel C Fleming v Department of Revenue	03 OSP 1576	Morrison	11/12/03	
Jesse C Whitaker v. Facilities Mgmt Operations of NCSU	03 OSP 1645	Lassiter	11/26/03	
Peter A Fillare v. NCSU Dining	03 OSP 1646	Lassiter	12/02/03	
A Louise Nilsen Mankes v. Dr. Gatewood, UNC Gen Admin Dept NCSEAA	03 OSP 1660	Lassiter	12/16/03	
A Louise Nilsen Mankes v. Mr. Anthony Bordeaux, UNC Gen Admin Dept NCSEAA	03 OSP 1661	Lassiter	12/16/03	
Sheerlene Artis v. Correction Enterprises, Manpower Services	03 OSP 1670	Lassiter	03/11/04	
John N Leak v Dept. of Public Instruction	03 OSP 1711	Lassiter	12/31/03	
Hamid Mozafaripour v Nursing Dept at Dorothea Dix Hospital	03 OSP 1745	Lassiter	02/10/04	
Carolyn A Little v Eastern Area Treatment Program	03 OSP 1810	Lassiter	01/12/04	
Terry T Pigford v Eastern Area Treatment Program	03 OSP 1811	Lassiter	01/12/04	
Sandra J Dills v Smokey Mtn Healthcare Assoc	03 OSP 1962	Chess	01/12/04	
Richard Jones v. NC Department of Revenue	03 OSP 1963	Mann	03/31/04	
William Russell Robinson v School of Science & Math et. Al.	03 OSP 1977	Lassiter	02/16/04	
Elizabeth A Gregory, Correction Officer v Pasquotank Corr Inst #3740	03 OSP 2209	Lassiter	02/23/04	
Patricia Stoddard v Elizabeth City State University	03 OSP 2228	Lassiter	02/18/04	
Christopher Paul Davis v DHHS and Caswell Center	03 OSP 2275	Conner	01/14/03	
Lonnie E. Williams v. NCCU	03 OSP 2301	Mann	03/24/04	
Deborah Ann Bozsan v Henderson Co Board of Public Education	03 OSP 2303	Wade	02/11/04	
Bernie C Thomas v Fayetteville State University	03 OSP 2306	Morrison	03/03/04	
Leonard Gibson v Brown Creek Correctional Institution	03 OSP 2317	Gray	03/08/04	
Andora Taylor Hailey v Roslyn G Powell (Div Chief) Dept of Comm Corr.	03 OSP 2318	Gray	03/05/04	
Milton Blackwell v. Elizabeth City State University	03 OSP 2365	Mann	04/20/04	
Shelia Whitehurst v. East Carolina University	03 OSP 2406	Mann	04/16/04	
Miracle L Smith v. State Highway Patrol	04 OSP 0039	Gray	03/10/04	
Carol Caudle Lawrence v. UNC Charlotte	04 OSP 0159	Conner	04/21/04	
Shirley Faith Crudup v. Murdoch Center	04 OSP 0160	Gray	03/31/04	
Derone Brown, Jr v. DOC, Eastern Correctional Institution	04 OSP 0236	Gray	03/31/04	

UNIVERSITY OF NORTH CAROLINA HOSPITALS

Donald R. Smith v. UNC Hospitals	02 UNC 1361	Conner	06/05/03	
Martin B Strickland v. UNC Hospitals, Patient Accounts Services	02 UNC 1620	Wade	08/29/03	
Mary Dieudone Frantz v. UNC Hospitals	03 UNC 0409	Mann	08/07/03	
Susan Kay Fryar v. UNC Hospitals	03 UNC 0410	Mann	08/07/03	
Kendall Adams v. UNC Hospitals	03 UNC 0536	Gray	08/11/03	
Janice Block v. UNC Hospitals	03 UNC 0720	Gray	09/04/03	
Alfred Tilden Ward, Jr. v. UNC Hospitals & UNC Physicians & Assoc.	03 UNC 0723	Gray	06/23/03	
Ieshia Marlina Baskett v. UNC Hospitals, Patient Account Services	03 UNC 0894	Gray	09/04/03	
Michael Gray Simmons v. UNC Hospitals	03 UNC 0977	Wade	11/25/03	
Keith Bagby Sr & Patricia Bagby v UNC Hospitals	03 UNC 1011	Elkins	11/07/03	
Mary P Kearney v. UNC Hospitals	03 UNC 1035	Elkins	02/25/04	
D. Parker Lynch v. UNC Hospitals	03 UNC 1124	Wade	11/19/03	
Steven R. Wilkerson v. UNC Hospitals	03 UNC 1177	Chess	09/18/03	
Yvonne Schreiner v. UNC Hospitals	03 UNC 1512	Morrison	10/31/03	
Michael J Cassidy v. UNC Hospitals	03 UNC 2428	Conner	03/10/04	

- 1 Combined Cases
- 2 Combined Cases
- 3 Combined Cases
- 4 Combined Cases
- 5 Combined Cases
- 6 Combined Cases
- 7 Combined Cases
- 8 Combined Cases
- 9 Combined Cases
- 10 Combined Cases
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3. Dr. Jones serves as the medical director for an internet prescription drug distribution site called Net-Dr.com. Net-Dr.com makes available to the public certain prescription medications, including Xenical® (orlistat), Cipro® (ciprofloxacin), and Viagra® (sildenafil citrate). The vast majority of prescription drugs distributed by Net-Dr.com involve Viagra®.

4. Generally speaking, an individual may access Net-Dr.com, complete an on-line "consultation form," receive a prescription for his/her requested prescription medication, and then have the prescription medication dispensed to him/her through a pharmacy by way of overnight shipping. Dr. Jones, as the medical director for Net-Dr.com, reviews the consultation form, and then, if certain parameters are satisfied, authorizes a prescription to the person completing the on-line form. The prescriptions are then filled by a pharmacy associated with Net-Dr.com and shipped directly to the patient.

5. Prior to issuing prescriptions, Dr. Jones does not see his patients personally, and therefore, does not perform a physical examination of the patient. Dr. Jones makes a decision to issue a prescription based solely on the responses provided by the individuals who complete the on-line consultation form and are basically seeking a particular drug. Dr. Jones testified that he has authorized over 32,000 prescriptions through the internet. Dr. Jones further testified that he has never met his internet patients, has no physical, face to face interaction with his internet patients before authorizing a prescription, and wouldn't be able to recognize any of his internet patients if he were in a room with them.

6. Dr. Jones's internet prescribing practices have drawn the attention of several state medical boards. As a result of his internet prescribing practices, Dr. Jones has been disciplined by several state medical boards. The following is a list entered as evidence in this hearing of some of the states that have disciplined Dr. Jones for his internet prescribing:

<u>State</u>	<u>Date</u>	<u>Sanction</u>
Alabama	3-12-2003	Revoked
Alaska	4-3-2003	Suspended, pending hearing
Missouri	2-5-2003	Revoked
New York	3-6-2003	Revoked
North Dakota	9-12-2003	Revoked
Tennessee	3-24-2003	Revoked
Virginia	9-16-02	Suspended
Wisconsin	1-8-2003	Revoked

7. On May 30, 2003, the United States Department of Health & Human Services excluded Dr. Jones from participation in the Medicare and Medicaid programs based on the actions taken by the North Dakota State Board of Medical Examiners and the Wisconsin Medical Examining Board.

8. In July 2001, Patient A entered Net-Dr.com, completed a "Xenical® Consultation Form," and requested a prescription for Xenical®.

9. Thereafter, Dr. Jones authorized a prescription in Patient A's name for 90 tablets (120 milligrams) of Xenical®. Dr. Jones authorized this prescription without performing a physical examination of Patient A, and Patient A did receive Xenical® through the mail as a result of Dr. Jones' prescription.

10. No prior physician-patient relationship existed between Dr. Jones and Patient A that might have permitted, depending on good medical practice, issuing a new prescription without a physical examination.

11. In December 2001, Patient B entered Net-Dr.com and completed a "Cipro® Consultation Form," and requested a prescription for Cipro®.

12. Thereafter, Dr. Jones authorized a prescription in Patient B's name for 30 tablets (500 milligrams) of Cipro®. Dr. Jones authorized this prescription without performing a physical examination of Patient B, and Patient B did receive Cipro® through the mail as a result of Dr. Jones' prescription. Patient B was seeking a specific drug prescription as opposed to presenting a set of symptoms in which a doctor would determine the source of the problem and the need for a particular drug. Dr. Jones only prescribes drugs from an extremely limited selection.

13. No prior physician-patient relationship existed between Dr. Jones and Patient B that might have permitted, depending on good medical practice, issuing a new prescription without a physical examination.

14. Jesse Roberts, M.D., a licensed North Carolina physician with over thirty years of experience and the present Medical Director for the North Carolina Medical Board, testified that he was familiar with the standard of practice in North Carolina regarding the writing of prescriptions for patients and the need for a physical examination.

15. Dr. Roberts further testified that, in his opinion, Dr. Jones's authorizations of prescriptions for Patient A and Patient B were not within the standard of practice in North Carolina. Dr. Roberts explained that prescriptions filled over the internet based on answers to a questionnaire do not involve physical examinations, laboratory studies or other examinations. Therefore, a diagnosis is made on the basis of answers to the questionnaire, which, according to Dr. Roberts, is "flimsy evidence" that the physician has made the correct diagnosis and has prescribed the correct medication for that diagnosis. Another concern of Dr. Roberts' is that you have little local immediately available resource to cope with whatever reaction the patient may have to the medication. If a patient were to have a reaction to any medication he received via the internet that would create a local problem because the patient's local physician would have no prior knowledge regarding why the medication was issued. In addition, Dr. Roberts expressed concern that more and more young people have been seeking Viagra® to enhance sexual performance and/or use recreationally, and therefore, he would be concerned about access to the drug over the internet where individuals, including minors, could obtain the drug without encountering the main line medical community.

16. Dr. Roberts testified that the authorization of prescriptions over the internet simply by submitting a questionnaire is not within the standard of practice within North Carolina.

17. Dr. Jones did not present any expert testimony from a licensed North Carolina physician to rebut Dr. Roberts' testimony that Dr. Jones's methods and practices were not within North Carolina standards of practice.

18. Dr. Jones testified in his own defense. Dr. Jones' defense consisted primarily of a prepared computer power-point presentation that explained his methods and the operation of the internet site Net-Dr.com.

19. On cross-examination, Dr. Jones could not deny that he probably prescribed Viagra® to a 14 year old minor. The North Dakota State Board of Medical Examiners made the following finding of fact, "One of the allegations of the subsequent Complaint filed by the State of Wisconsin against Jones was that a 14 year old under FBI supervision was able to obtain, with the use of a credit card, a prescription for Viagra from 'Net-Dr,' prescribed by Jones as the reviewing physician." At the second hearing Jones did not deny that he prescribed Viagra to a 14 year old but attempted to justify it rather than stating that this instance was an aberration of his own established protocol."

20. At the hearing on this matter, Dr. Jones attempted to justify possibly prescribing Viagra® to a 14 year old instead of simply stating that such an instance would be a violation of his own established protocol when he testified, "And the fact stands that a 14 year old could suffer from erectile dysfunction. And there is no medical evidence to show that if a 14 year old took Viagra that it would harm them. But I did not knowingly or willingly prescribe Viagra to a 14 year old."

21. After his testimony and slide-show presentation, Dr. Jones recalled Dr. Roberts to the stand and asked him if he, Dr. Roberts, had changed his opinion based on the information that Dr. Jones had just finished presenting. Dr. Roberts answered, "My opinion remains the same, that the practice of medicine involves a physician-patient encounter, as I have described them before, and that the best medicine is practiced that way."

BASED UPON the foregoing Findings of Fact and upon the preponderance or greater weight of the evidence in the whole record, the Undersigned makes the following:

CONCLUSIONS OF LAW

1. The North Carolina Medical Board is a body duly organized under the laws of North Carolina and has jurisdiction over Respondent and the subject matter.
2. The Office of Administrative Hearings has jurisdiction of this contested case pursuant to 150B of the North Carolina General Statutes and other applicable statutes and rules.
3. The actions of the above referenced states and the United States Government suspending and/or revoking Dr. Jones' medical license and excluding Dr. Jones from participating in the Medicare and Medicaid programs constitute having a license to practice medicine or the authority to practice medicine revoked, suspended, restricted, or acted against by the licensing authority of any jurisdiction within the meaning of N.C. Gen. Stat. § 90-14(a)(13), and grounds exist under that section of the General Statutes for the Board to annul, suspend, revoke, condition, or limit his license to practice medicine and surgery issued to him by the North Carolina Medical Board
4. By prescribing medicine to Patients A and B in the manner described in the above findings of fact, Respondent, Dr. Miles James Jones engaged in unprofessional conduct, including, but not limited to, departure from, or the failure to conform to, the

standards of acceptable and prevailing medical practice, or the ethics of the medical profession, irrespective of whether or not a patient was injured.

5. Grounds exist under North Carolina General Statute § 90-14(a)(6) for the North Carolina Medical Board to annul, suspend, revoke, or limit Dr. Jones' license to practice medicine and surgery issued to him by the Board or to deny any application he might in the future make for a license to practice medicine.

BASED UPON the foregoing Stipulations, Findings of Fact and Conclusions of Law the undersigned makes the following:

PROPOSAL FOR DECISION

It is recommended that the North Carolina medical license of Miles James Jones, M.D. be **REVOKED**. Further, it is recommended that Dr. Jones not be allowed to make application for reinstatement of his medical license for a period of **TWO YEARS** from the date of the final decision of revocation.

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this Proposal for Decision, to submit proposed findings of fact and to present oral and written arguments to the agency before making its final decision. N.C.G.S. § 150B-40(e).

The agency that will make the final decision in this contested case is the North Carolina Medical Board.

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addresses to the party at the latest address given by the party to the agency and a copy shall be furnished to his attorney of record. N.C.G.S. § 150B-42(a). It is requested that the agency furnish a copy to the Office of Administrative Hearings.

IT IS SO ORDERED.

This the ____ day of _____, 2004.

Augustus B. Elkins II
Administrative Law Judge

by law or rule, and otherwise substantially prejudiced her rights. Again, Petitioner noted on her Petition that she was in Bankruptcy and added that there was a \$2,700 balance left on the funeral expense.

6. On or about 21 July 2003, Petitioner faxed the OAH and requested a continuance until after August 2003. In Petitioner's letter she again repeated that she had filed for bankruptcy but noted that she had done so in December and not October. Again, Petitioner stated that only approximately \$2,700 was owed for the funeral expenses.

7. On 29 July 2003, Judge Mann filed an Order of Continuance and Order of Reassignment. The hearing was rescheduled to the week of 25 August 2003 and Administrative Law Judge James L. Conner, II was assigned to preside over the matter.

8. On 1 August 2003, Judge Conner filed a Notice of Hearing for a hearing on the matter on 25 August 2003 in Charlotte. On 5 August 2003, Judge Mann filed an Amended Notice of Hearing changing the location to Raleigh.

9. On 14 August 2003, Judge Conner filed an Order denying Respondent's 11 April 2003 Motion to Dismiss.

10. The undersigned gave counsel for Respondent an opportunity to support his theory that the bankruptcy proceeding is a "collateral source" by identifying the status of the bankruptcy and the claim made by Locklear and Sons Funeral Home. Additionally, counsel for Respondent was asked to assess the availability and procedure for possible payment from the Respondent to the funeral home through the bankruptcy proceedings. I then stayed the proceedings pending an assessment from Petitioner and Respondent about the bankruptcy case. At the hearing, Petitioner provided Respondent the name and address of her bankruptcy attorney and trustee.

11. On 28 August 2003, counsel for Respondent sent a letter to John T. Orcutt, attorney for Petitioner, and Trawick H. Stubbs, Jr., bankruptcy trustee, inquiring about the status of Petitioner's case and specifically inquiring: 1) "What is the status of the claim made by Locklear and Sons Funeral Home? How much is currently owed?; 2) If there is a balance owed to Locklear and Sons Funeral Home, have they agreed to partial or percentage payment of some sort? In other words, what is Ms. Chavis' payment breakdown?; and 3) If the Commission or the Administrative Law Judge determines that Ms. Chavis' claim is eligible for award, who would the Commission pay with regard to the funeral expenses? What would be the correct procedure for this?"

12. Counsel for Respondent never received a reply from either Mr. Orcutt or Mr. Stubbs.

13. On or about 15 December 2003, Petitioner submitted a status report. The status report did not provide any additional information from that already obtained at the 27 August 2003 hearing.

14. On or about 20 January 2003 and again on 29 January 2003, counsel for Respondent visited www.nceb.uscourts.gov to check the status of the bankruptcy claim, given that neither Petitioner nor her attorney or trustee had provided additional information. Counsel for Respondent was able to learn that Petitioner's bankruptcy claim (02-09147-ATS [for Judge A. Thomas Small]) (case lookup Wilson) was filed on 1 November 2002 and appears **pending** as an existing case. Furthermore, counsel for Respondent was able to identify that Trawick H. Stubbs is the trustee of record and that John T. Orcutt is the attorney of record.

Based upon the foregoing Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. Respondent concedes that Petitioner meets the requirements for an award pursuant to N.C. Gen. Stat. § 15B-4. This court also specifically concludes that she meets said requirements.

2. The only question is whether Petitioner has lost her eligibility for an award because of payment of the funeral expenses by a "collateral source."

3. "Collateral source" is defined as "a source of benefits or advantages for economic loss otherwise compensable that the victim or claimant has received or that is readily available to him from any of the following sources: . . ." N.C. Gen. Stat. § 15B-2(3). Eight specific sources are listed. Discharge in bankruptcy is not among those sources. All of the eight listed sources have the common theme that they are sources of cash payment to the claimant in reimbursement for the same expenses for which reimbursement is being requested from the Commission.

4. The bankruptcy system does not provide any cash payment to a claimant. That system can provide, if all requirements are met, a "discharge" of debts, meaning that the debts are erased. In Chapter Seven bankruptcy cases, this can

completely erase many debts: essentially, the debtor turns over all of her assets, minus certain exemptions, to the trustee, who pays such of the debtor's debts as he can, in priority order. Any remaining debts are discharged. Petitioner, however, is undergoing a Chapter Thirteen proceeding, which requires the debtor to make ongoing payments to the trustee over a period of years. Only after all payments are made are any remaining debts discharged.

5. In summary, Petitioner will be paying some or all of the funeral home debt through the bankruptcy trustee.

6. In any event, neither participation in a bankruptcy proceeding nor discharge of a debt in bankruptcy is included in the definition of "collateral source" in the statute. Therefore, the Director erred in denying Petitioner's claim on that ground.

7. Even were this not the case, the statute clearly provides that the "existence of a collateral source that would pay expenses directly related to a funeral, cremation, and burial, including transportation of a body, shall not constitute grounds for the denial or reduction of an award of compensation." N.C. Gen. Stat. § 15B-11(d). The Director also erred in her denial on this ground.

8. The statute limits reimbursement for funeral expenses to \$3,500. N.C. Gen. Stat. § 15B-2(1). The funeral expenses for Petitioner's son appear to be \$3,975.73, one thousand dollars of which she has already paid, and \$2,975.73 of which is a debt in bankruptcy.

Based upon the foregoing Conclusions of Law, the undersigned makes the following:

DECISION

The North Carolina Crime Victims Compensation Commission shall award Petitioner the total amount of \$3,500 for her son's funeral expenses and shall disburse such award to her forthwith.

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this decision issued by the undersigned, and to present written arguments to those in the agency who will make the final decision. N.C. Gen. Stat. § 150B-36(a). In accordance with N.C. Gen. Stat. § 150B-36 the agency shall adopt each finding of fact contained in the Administrative Law Judge's decision unless the finding is clearly contrary to the preponderance of the admissible evidence. For each finding of fact not adopted by the agency, the agency shall set forth separately and in detail the reasons for not adopting the findings of fact and the evidence in the record relied upon by the agency in making the finding of fact. The agency shall adopt the decision of the Administrative Law Judge unless the agency demonstrates that the decision of the Administrative Law judge is clearly contrary to the preponderance of admissible evidence in the official record. The agency that will make the final decision in this case is the North Carolina Crime Victims Compensation Commission.

ORDER

It is hereby ordered that the agency making the final decision in this matter serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, North Carolina 27699-6714, in accordance with N.C. Gen. Stat. § 150B-36.

IT IS SO ORDERED.

This the 16th day of March, 2004.

James L. Conner, II
Administrative Law Judge

STATE OF NORTH CAROLINA

IN THE OFFICE OF

COUNTY OF WAKE

ADMINISTRATIVE HEARINGS
03 DST 1715

Burton L Russell)
Petitioner)

vs.)

Department of State Treasurer)
Retirement Systems Division)
Respondent)

DECISION

On February 26, 2004, Administrative Law Judge Melissa Owens Lassiter conducted an administrative hearing in this contested case. The undersigned left the official record open for 10 days for Petitioner to submit an additional letter that Petitioner claimed he received from Respondent in 2003. On March 8, 2003, Petitioner submitted another letter for the record. On March 18, 2003, the undersigned closed the official record in this case.

FINDINGS OF FACT

1. On June 8, 2001, Petitioner was an associate professor at N.C. State University. On that date, with assistance of N.C. State University's Benefits Department, Petitioner completed an application to retire from state employment effective July 1, 2001. (Resp Exh 1) On July 16, 2001, N.C. State University mailed Petitioner's retirement application to Respondent.
2. On July 17, 2001, Respondent received Petitioner's retirement application.
3. By letter dated July 19, 2001, Respondent notified Petitioner that it had received his retirement application on July 17, 2001. Respondent informed Petitioner that once it determined that Petitioner was entitled to retirement benefits, Respondent would mail Petitioner an "Estimated Report of Retirement Benefits" indicating the estimated amounts payable under the various payment plans available, and a Form 6E, "Election of Benefits" form. Respondent advised Petitioner that he "must complete the Form 6E" and return it to Respondent. Respondent's letter further advised Petitioner that if they received Form 6E by the 10th day of the month in which his retirement becomes effective, Petitioner's first retirement payment should be mailed on schedule. Thereafter, Petitioner's retirement payment will be deposited directly into the bank account Petitioner noted with his retirement application. (Resp Exh 3)
4. Respondent mailed its July 19, 2001 letter to Petitioner at Petitioner's home address of 3724 Randell Rd, Garner, NC 27528, the address Petitioner listed on his retirement application.
5. In this case, according to Director Barnes, on July 26, 2001, the computer generated an Estimated Benefits report for Petitioner. Based upon Respondent's normal practice, Director Barnes assumed that Respondent's staff then mailed Petitioner's Estimated Benefits report, Election of Benefits (Form 6E), and Income Tax Withholding Election forms to Petitioner at Petitioner's home address.
6. Respondent did not receive Petitioner's completed Election of Benefits form, or Income Tax Withholding Election form within 90 days after Respondent claimed it mailed such documents to Petitioner. Therefore, Respondent considered Petitioner's July 2001 retirement application null and void, took no action on Petitioner's application, and Petitioner did not receive any benefits from this application.
7. From July 2001 until early 2003, there was no communication between Petitioner and Respondent regarding Petitioner's first retirement application.
8. In early 2003, Petitioner received notice by letter from the Department of State Treasurer that his retirement funds were still on hold. In February 2003, Petitioner, through NC State University's Benefits Department, submitted a second retirement application to Respondent.
9. On February 11, 2003, Respondent received Petitioner's second application and processed that application with the effective retirement date of February 1, 2003. Respondent mailed Petitioner an Estimated Benefits report, and an Election of Benefits form, Form 6E. Petitioner returned those forms to Respondent, and began receiving retirement benefits from Respondent effective February 1, 2003.

10. On March 5, 2003, Petitioner sent a letter to Retirement Systems Director Michael Williamson, inquiring about his 2001 retirement application. In this letter, Petitioner informed Williamson that:

Earlier this year, I received a letter from the Department of State Treasurer indicating that my retirement funds were still on hold. I contacted the University Benefits Department and filled out papers to put the pension process into operation, which I believed had been done in 2001. I was told that I should have received a form from the Treasurer in 2001 to be returned to start the pension payments. I know of no such form, nor did I receive any notice concerning the ninety-day deadline on filing this paper. In fact, I received no correspondence until twenty months after my retirement.

At this time[,] I would like to learn how I should go about recovering the pension funds that have not been paid me since July of 2001.

(Pet Exh 2)

11. On August 13, 2003, Petitioner wrote Director Williamson a second letter inquiring about his 2001 retirement application. Petitioner wrote, "Since there has been no response from you, I can assume only that this matter is still under consideration." (Pet Exh 1)

12. By letter dated September 15, 2003, Director Williamson responded to Petitioner's March 2003 and August 2003 letters. Williamson denied Petitioner's request for retroactive retirement benefits, because Petitioner had failed to comply with 20 NCAC 2B .0508 by failing to submit his completed Election of Benefits form to Respondent within ninety days after Respondent allegedly mailed Petitioner the preliminary option figures and Election of Benefits form, Form 6E. (Document Constituting Agency Action)

13. At the administrative hearing, Petitioner claimed that he never received the Estimated Benefits report, Election of Benefits form, or Income Tax Withholding Election form from Respondent on Petitioner's 2001 retirement application. In fact, Petitioner indicated that, the day of this administrative hearing, was the first time he had ever seen the 2001 Estimated Benefits report, Election of Benefits form, and Income Tax Withholding form (Resp Exh 4), or Respondent's July 19, 2001 letter (Resp Exh 3).

14. At the administrative hearing, Deputy Director John Marshall Barnes III, explained that after Respondent's staff receives a retirement application, the staff logs the application information into its computer's main frame. The computer then calculates the retirement payment for that applicant. Based upon his knowledge, once the computer generates the applicant's Estimated Benefits report, Respondent's staff mails the Estimated Benefits report, the Form 6E Election of Benefits, and an Income Tax Withholding Election form to the applicant. Once those forms are mailed to an applicant, the Respondent remains in a "holding mode" until it receives the applicant's Election of Benefits form.

If Respondent receives the completed Election of Benefits form from the applicant, it verifies that it has received the form, and schedules the beginning of retirement payments to the applicant. However, if Respondent does not receive the applicant's Election of Benefits form within 90 days after the Estimated Benefits report (of the preliminary options figures), and Election of Benefits forms are mailed, then under 20 NCAC 2B .0508, the Respondent considers the applicant's retirement application null and void.

15. Barnes explained that based upon his general knowledge of the process, Respondent's staff mails the subject forms to a retirement applicant's home address via regular mail. It does not mail these forms to applicants via certified mail, and therefore, can not verify when and/or if an applicant receives the subject forms.

16. However, Deputy Director Barnes does not personally participate in the mailing of the Estimated Benefits reports or Election of Benefits form. Therefore, Barnes has no personal knowledge, and can not prove with any degree of reasonable certainty whether and/or when Respondent's staff actually mailed the Estimated Benefits report and Election of Benefits form to Petitioner. No other staff of Respondent who was involved in the processing and/or mailing of Petitioner's 2001 application appeared as witness in this case.

In addition, because Respondent's "practice" was to mail the subject forms to an applicant at his/her home address via regular mail, Respondent could not verify when or if Petitioner actually received his 2001 Estimated Benefits report, Election of Benefits form, or Income Tax Withholding Election form. Deputy Director Barnes acknowledged that he could only assume that once Respondent's computer generated the Estimated Benefits report (preliminary options figures), Respondent's staff mailed such information, including the Elections of Benefits form to Petitioner.

17. Deputy Director Barnes indicated that Respondent's computer generates monthly reports showing retirement applications on which Respondent has not received a completed Election of Benefits from the applicant. Based upon his knowledge, Barnes opined

that, as a normal practice, Respondent's staff tries to send letters to those applicants that Respondent has not yet received the applicant's completed Election of Benefits form. However, Deputy Director Barnes did not know if Respondent's staff mailed such a letter to Petitioner since he was not involved in that process. No such correspondence from Respondent was included in Respondent's file on Petitioner's 2001 retirement application.

18. In its July 19, 2001 letter to Petitioner, Respondent did not advise Petitioner that if he failed to respond to Respondent in any way, such as returning the completed Election of Benefits form, within 90 days after the preliminary option figures (Estimated Benefits report), and Election of Benefits form were mailed to the Petitioner, then Petitioner's retirement application would be "null and void," and not further processed by Respondent.

19. Although the evidence showed that Respondent's Exhibit 3 advised Petitioner that he had to return the completed forms to initiate his retirement payments, there was no evidence that Petitioner ever received that notice. Further, and most importantly, there was no evidence proving that Respondent ever notified Petitioner, through letter or otherwise, that he had ninety days to return the completed Election of Benefits form to Respondent, or his retirement application would be considered "null and void."

20. Lastly, Deputy Director Barnes explained that payment of a retired state employee's health insurance was dependant on the Respondent paying the retired employee's retirement benefits. In most cases, an applicant will call Respondent if he/she either does not receive his/her first retirement check, or he/she discovers that he/she does not have the state health insurance.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction to hear this contested case.
2. Respondent relied upon 20 NCAC 2B .0508 in denying Petitioner's request for retroactive benefits. 20 NCAC 2B .0508 states:

If a member fails to respond in any way within 90 days after preliminary option figures and Form 6-E, Election of Benefits, are mailed, the Form 6, Application for Service, Early or Disability Retirement, will be null and void; the retirement system will not be liable for any benefits due on account of the voided application and a new application must be filed establishing a subsequent effective date of retirement. If an applicant for disability retirement fails to furnish requested additional medical information within 90 days following such request, the application will be declared null and void under the same conditions outlined above, unless the applicant is eligible for early or service retirement in which case the application will be processed accordingly, using the same effective date as would have been used had the application for disability retirement been approved.

3. 20 NCAC 2B .0508 cites N.C. Gen. Stat. § 135-6(f), and 135-5(a)(1) as the statutory authority for this rule.
4. N.C. Gen. Stat. § 135-6, entitled "Administration" states in part:

(f) Rules and Regulations. - Subject to the limitations of this Chapter, the Board of Trustees shall, from time to time, establish rules and regulations for the administration of the funds created by this Chapter and for the transaction of its business. The Board of Trustees shall also, from time to time, in its discretion, adopt rules and regulations to prevent injustices and inequalities which might otherwise arise in the administration of this Chapter.

5. N.C. Gen. Stat. § 135-5, entitled "Benefits", states that:

(a) Service Retirement Benefits. –

(1) Any member may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution of and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 60 years and have at least five years of membership service or shall have completed 30 years of creditable service.

6. N.C. Gen. Stat. § 135-1(13) defines the term "member" as "any teacher or State employee included in the membership of the System as provided in G.S. 135-3 and 135-4."

7. N.C. Gen. Stat. § 135-1(11a) defines the term "filing" as "when used in reference to an application for retirement, shall mean the receipt of an acceptable application on a form provided by the Retirement System."

8. N.C. Gen. Stat. § 150B-33, entitled “Powers of Administrative Law Judge,” authorizes an Administrative Law Judge to:

(b)(9) Determine that a rule as applied in a particular case is void because (1) it is not within the statutory authority of the agency, (2) is not clear and unambiguous to persons it is intended to direct, guide, or assist, or (3) is not reasonably necessary to enable the agency to fulfill a duty delegated to it by the General Assembly.

9. A comparison of N.C. Gen. Stat. § 136-5 with 20 NCAC 2B .0508 clearly shows that N.C. Gen. Stat. § 136-5 does not provide statutory authority for 20 NCAC 2B .0508. N.C. Gen. Stat. § 136-5 states that a member may retire by submitting a written application to the Board of Trustees, setting forth his/her desired retirement date. In such application, the member must list a retirement date that is between one and 90 days after the member executes and files his/her retirement application.

N.C. Gen. Stat. § 135-5 does not state that a member’s application, or Election of Benefits (Form 6E) will be “null and void” if the member “fails to respond in any way within 90 days” after Respondent mails the member, the preliminary option figures (Estimated Benefits report) and the Election of Benefits, Form 6E. As a result, 20 NCAC 2B .0508 is void as applied in this contested case, because the statement in 20 NCAC 2B .0508 is not within the statutory authority given the Respondent agency in N.C. Gen. Stat. § 135-5.

10. Because 20 NCAC 2B .0508 is void as applied, Respondent erred when it relied upon 20 NCAC 2B .0508 to deny Petitioner’s request for retirement benefits, retroactive to July 1, 2001.

11. Based upon the foregoing reason, Petitioner is entitled, and Respondent should award Petitioner retirement benefits, retroactive to July 1, 2001.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby determines that 20 NCAC 2B .0508 is void as applied because the statement in 20 NCAC 2B .0508 is not within the statutory authority given the Respondent agency in N.C. Gen. Stat. § 135-5. As such, Respondent erred when it relied upon 20 NCAC 2B .0508 to deny Petitioner’s request for retirement benefits, retroactive to July 1, 2001. Petitioner is entitled, and Respondent should award, Petitioner retirement benefits, retroactive to July 1, 2001.

NOTICE

The Board of Trustees of the Local Governmental Employees Retirement System will make the Final Decision in this contested case. N.C. Gen. Stat. § 150B-36(b), (b1), (b2), and (b3) enumerate the standard of review and procedures the agency must follow in making its Final Decision, and adopting and/or not adopting the Findings of Fact and Decision of the Administrative Law Judge.

Pursuant to N.C. Gen. Stat. § 150B-36(a), before the agency makes a Final Decision in this case, it is required to give each party an opportunity to file exceptions to this decision, and to present written arguments to those in the agency who will make the Final Decision. N.C. Gen. Stat. 150B-36(b)(3) requires the agency to serve a copy of its Final Decision on each party, and furnish a copy of its Final Decision to each party’s attorney of record and to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714.

This the 5th day of April, 2004.

Melissa Owens Lassiter
Administrative Law Judge