

# NORTH CAROLINA

## IN THIS ISSUE



## REGISTER

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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.*

<b>NCAC TITLES</b>		<b>TITLE 21 LICENSING BOARDS</b>	<b>TITLE 24 INDEPENDENT AGENCIES</b>
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/Transliterator (Reserved)	
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**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 <sup>th</sup> 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
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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
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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
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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
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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. 60**  
**SERVICE CONTRACTS SHALL BE AWARDED IN THE BEST**  
**INTEREST OF THE STATE**

WHEREAS, the government of the State of North Carolina annually purchases over three billion dollars worth of goods and services; and,

WHEREAS, the Secretary of Administration and the State Chief Information Officer are responsible for oversight of purchasing of, respectively, goods and services and information technology-specific goods and services for the State of North Carolina; and,

WHEREAS, the Secretary of Administration is required by law to award contracts based on competitive bidding which includes evaluation of price and may include other factors such as quality, vendor performance, and any other factors deemed to be in the best interest of the State; and,

WHEREAS, the State Chief Information Officer is required by law to award information technology contracts based on the Best Value procurement law which requires the best trade-off between price and vendor performance, considering multiple factors such as quality, total cost of ownership, technical merit, vendor's past performance, timeliness, and compliance with industry standards, information technology security, and any other factors deemed to be in the best interest of the State; and,

WHEREAS, the citizens of the State of North Carolina are entitled to know how and where their tax dollars are being spent and whether tax dollars are being spent on services provided by workers located in countries outside of the United States; and,

WHEREAS, the citizens of the State of North Carolina are also entitled to know the economic effect of contracts under which the State's work would be performed outside the jurisdiction of the United States, known as "offshore"; and,

WHEREAS, offshore contractual performance presents a myriad of unique challenges that the Secretary of Administration and the State Chief Information Officer should consider;

THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, it is Ordered:

1. The Secretary of Administration and the State Chief Information Officer (SCIO) shall adopt policies and procedures consistent with their oversight authority to address the use of state contracts that will be performed totally or partially offshore, in consideration of the purpose of this Order, the requirements of North Carolina laws and regulations regarding contracting and procurement and the best interests of the citizens of the State of North Carolina, as well as federal and international laws.
2. To the extent allowable by law these policies and procedures shall include the following:
  - a. That all requests for proposals (RFP's) issued by the division of Purchase and Contract of the Department of Administration and by the Statewide IT Procurement Office contain the following provision: *The vendor must detail the manner in which it intends to utilize resources or workers located outside of the United States, and the State of North Carolina will evaluate the additional risks, costs and other factors associated with such utilization to make the award for this proposal as deemed by the awarding authority to be in the best interest of the State.*
  - b. The factors for evaluation should include the total cost to the State, level of quality provided by vendor, process capability across multiple jurisdictions, protection of the State's information and intellectual property, availability of pertinent skills, ability to understand the State's business requirements and internal operational culture, risk factors such as the security of the State's information technology, relations with citizens and employees, and contract enforcement jurisdictional issues.
  - c. If, after award of a contract, the contractor wishes to outsource any portion of the work to a location outside the United States, prior written approval must be obtained from the state agency responsible for that contract.
3. The Department of Administration (DOA) and the Office of Information Technology Services (ITS) shall require of vendors and shall collect, evaluate and maintain information necessary to comply with the requirements of this Order, as determined by the DOA and ITS, and may include any of the following:
  - a. Information relating to the location of work performed under a state contract by the vendor, any subcontractors, employees, or other persons performing the contract.
  - b. Information regarding the corporate structure and location of corporate employees and activities of the vendor, its affiliates, or any subcontractors.
  - c. Notice of the relocation of the vendor, employees of the vendor, subcontractors of the vendor, or other persons performing services under a state contract outside of the United States.

- d. A requirement that any vendor or subcontractor providing call or contact center services to the State of North Carolina disclose to inbound callers the location from which the call or contact center services are being provided.
4. DOA and ITS may initiate proceedings to debar a vendor from participation in the bid process and from contract award as authorized by North Carolina law, if it is determined that the vendor has refused to disclose or falsified any information collected consistent with this Order.
5. All departments and agencies subject to this Executive Order shall assist the Department of Administration and the Office of Information Technology Services as necessary in implementing this Order.

This Order is effective immediately and shall remain in effect until rescinded. Done in the Capital City of Raleigh, North Carolina, this the 1<sup>st</sup> day of June, 2004.

\_\_\_\_\_  
Michael F. Easley  
Governor

ATTEST:

\_\_\_\_\_  
Elaine F. Marshall  
Secretary of State

*Note from the Codifier: 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.*

**Notice of Application for Innovative Approval of a Wastewater System for On-site Subsurface Use**

Pursuant to NCGS 130A-343(g), the North Carolina Department of Environment and Natural Resources (DENR) shall publish a Notice in the NC Register that a manufacturer has submitted a request for approval of a wastewater system, component, or device for on-site subsurface use. The following application has been submitted to DENR:

Application by: Carl Thompson  
Infiltrator Systems, Inc.  
P.O. Box 768  
Old Saybrook, CT 06475  
1-800-221-4436  
Fax 860-577-7001

For: Modification to "Infiltrator" chambered sewage effluent disposal system Innovative Approval

DENR Contact: Dr. Robert Uebler  
1-252-946-6481  
FAX 252-975-3716  
[bob.uebler@ncmail.net](mailto:bob.uebler@ncmail.net)

The application may be reviewed by contacting the applicant or at 2728 Capital Blvd., Raleigh, NC, On-Site Wastewater Section, Division of Environmental Health. Draft proposed innovative approvals and proposed final action on the application by DENR can be viewed on the On-Site Wastewater Section web site: [www.deh.enr.state.nc/oww/](http://www.deh.enr.state.nc/oww/).

Written public comments may be submitted to DENR within 30 days of the date of the Notice publication in the North Carolina Register. All written comments should be submitted to Mr. Bill Jeter, Chief, On-site Wastewater Section, 1642 Mail Service Center, Raleigh, NC 27699-1642, or [bill.jeter@ncmail.net](mailto:bill.jeter@ncmail.net), or Fax 919.715.3227. Written comments received by DENR in accordance with this Notice will be taken into consideration before a final agency decision is made on the innovative subsurface wastewater system application.

**U.S. Department of Justice**

Civil Rights Division

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JDR:MSR:ALF:par  
DJ 166-012-3  
2003-2138

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

June 29, 2004

George A. Weaver, Esq.  
113 East Nash St., Suite 404  
Wilson, NC 27893

Dear Mr. Weaver:

This refers to the procedures for conducting the July 20, 2004 special bond election for the Town of Lucama in Wilson 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 May 7, 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 the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Joseph D. Rich  
Chief, Voting Section



**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 13 – DEPARTMENT OF LABOR**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Labor Occupational Safety & Health Division intends to adopt the rules cited as 13 NCAC 07F .0601-.0609.*

**Proposed Effective Date:** December 1, 2004

**Public Hearing:**

**Date:** August 19, 2004

**Time:** 10:00 a.m.

**Location:** NC Museum of Art, 2110 Blue Ridge Rd., Raleigh, NC

**Public Hearing:**

**Date:** August 26, 2004

**Time:** 10:00 a.m.

**Location:** Adams Mark Hotel, 555 S. McDowell, Charlotte, NC

**Reason for Proposed Action:**

*13 NCAC 07F .0601-.0603, .0605-.0609 – The North Carolina Department of Labor proposes to adopt rules to protect employees performing work on communication towers. With recent technological advances, North Carolina has experienced a rapid increase in the number of communication towers erected each year – during 2003, the total number of towers in operation reached 20,798. The perilous hazards associated with this industry result in injuries, accidents and falls which are serious, and often fatal, to employees. The North Carolina Department of Labor seeks to address these hazards by implementing a set of standards to apply to this unique industry in order to make the workplace safer for employers and employees.*

*13 NCAC 07F .0604 – The North Carolina Department of Labor proposes to adopt rules to protect workers during the construction, erection, installation, operation, maintenance, and disassembly of communication towers. With technological advances, North Carolina has experienced a rapid increase in the number of communication towers erected each year. During 2003, the total number of towers in operation reached 20,798. Injuries, accidents and falls resulting from work in the communication tower industry are serious, and often fatal. The North Carolina Department of Labor proposes to address the unique hazards within this field of work including, but not limited to, fall protection, non-ionizing radiation, and employee training and to clarify employer responsibilities regarding the use of personal protective equipment (PPE) by their workers during construction, maintenance and demolition of communication towers.*

**Procedure by which a person can object to the agency on a proposed rule:** All interested parties are encouraged to make

*their views known by submitting written comments or objections to John Hoomani, Assistant Deputy General Counsel for the Department of Labor, 1101 Mail Service Center, Raleigh, NC 27699-1101, email jhoomani@mail.dol.state.nc.us or fax (919) 733-4235. Requests to pre-register to speak at either of the public hearings may be submitted to Lynette D. Johnson, Assistant Rule-making Coordinator, via US mail and fax as noted above or by email ljohnson@mail.dol.state.nc.us.*

**Written comments may be submitted to:** John Hoomani, Assistant Deputy General Counsel, 1101 Mail Service Center, Raleigh, NC 27699-1101, fax (919) 733-4235, or email jhoomani@mail.dol.state.nc.us.

**Comment period ends:** October 1, 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 6<sup>th</sup> 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 07 - OFFICE OF OCCUPATIONAL SAFETY AND HEALTH**

**SUBCHAPTER 07F – STANDARDS**

**SECTION .0600 – COMMUNICATION TOWER STANDARDS**

**13 NCAC 07F .0601 SCOPE AND APPLICATION**

(a) The rules in this Section contain requirements for policies, procedures, and safe work practices to protect employees throughout North Carolina from the hazards of working on communication towers during construction, operation, inspection, and maintenance activities.

(b) A communication tower is defined as any structure over six feet in height that is used primarily as an antenna or to host one or more antennas. Where the communication tower is affixed to another structure, such as an electrical transmission tower, church steeple, building rooftop, or water tower, the applicable part of any controlling regulation for protection of employees (e.g., 29 CFR 1910.268, 29 CFR 1910.269 and 29 CFR 1926 Subpart V for transmission towers) shall apply up to the point of access to the communication tower. Thereafter, the provisions of 13 NCAC 07F .0601 - 0609 shall apply.

Authority G.S. 95-131.

**13 NCAC 07F .0602 DEFINITIONS**

In addition to the definitions set forth in 29 CFR Part 1910 and 29 CFR Part 1926, the following definitions apply throughout the rules in this Section:

- (1) Acceptable Conditions for Access mean the conditions that must exist before the employer grants permission for construction, repair or maintenance work to be performed on a communication tower. These conditions include the following:
  - (a) Work under the control of a work safety program meeting the requirements of the rules in this Section; and
  - (b) Work under the following conditions:
    - (i) Work where snow, ice or other slippery material is not present, except as necessary for removal of such material;
    - (ii) Work where sustained winds do not exceed 25 miles per hour (40.2 km/hr);
    - (iii) Notwithstanding the prohibitions outlined in Sub-items (1)(b)(i) and (1)(b)(ii) of this Rule, if tower emergency maintenance work must be performed, the employer shall implement safe work practices (equipment, practices and procedures) that address the hazards known to be associated with tower work to minimize the associated risk to employees while working on the tower structure and the support structure to which it is affixed, where applicable.
- (2) Climbing Facility means a component specifically designed or provided to permit access to the tower structure, such as a fixed ladder, step bolt, or other structural member.
- (3) Competent Person means a person who is trained to identify existing and predictable hazards in the surroundings or working

- conditions that are hazardous or dangerous to employees, and who has authorization from his employer to take prompt corrective measures to eliminate them, including halting the work as required by the Rules in this Section.
- (4) Elevated (High Angle) Rescue means the process by which certain methods and equipment are utilized in order to gain access to and egress from the location of an injured employee(s) on the tower structure, and lower both the injured employee(s) and the rescuer(s) to the ground safely.
- (5) Fall Protection Equipment means the personal equipment that employees utilize in conjunction with 100% fall protection systems, including connectors, body belts or body harnesses, lanyards and deceleration devices.
- (6) Ladder Safety System means an assembly of components whose function is to arrest the fall of a user, including the carrier and its associated attachment elements (e.g., brackets, fasteners), the safety sleeve, and the body support and connectors, wherein the carrier is permanently attached to the climbing face of the ladder or immediately adjacent to the structure.
- (7) One-Hundred Percent (100%) Fall Protection means each employee exposed to fall hazards above six feet while ascending, descending, or moving point to point, must be protected by fall protection, as described in 13 NCAC 07F .0606(c), at all times.
- (8) Qualified Climber means a person who has, by virtue of knowledge, training, and experiences, been deemed qualified in writing by his employer to perform tower work.
- (9) Qualified Person means a person possessing a degree, certificate, professional standing, or extensive knowledge, training, and experience in the field of communication tower work, and who has demonstrated to his employer his ability to resolve problems relating to the subject matter, the work, or the project.
- (10) Step Bolt means a rated bolt or rung attached at intervals along a structural member and used for foot placement during climbing or standing.
- (11) Tower Construction means the building of a new tower or structure, or the installation of new equipment on an existing tower or structure.
- (12) Tower Emergency Maintenance Work means the repair or replacement of any pre-existing device installed on the tower in the interest of public safety, such as, aviation signaling devices.
- (13) Tower Inspection means the procedure in which an employee(s) climb(s) to visually inspect the tower for potential problems, and

test for tower plumbness and guy cable tension.

- (14) Tower Maintenance Work means the replacement in kind of any device on an existing tower, the repair of existing equipment, and painting.

Authority G.S. 95-131.

**13 NCAC 07F .0603 EMPLOYER RESPONSIBILITIES**

(a) The employer shall require employees to adhere to acceptable conditions for access, as defined by 13 NCAC 07F .0602(1), prior to climbing the tower at heights above six feet.

(b) The employer shall ensure that at least two employees, including at least one competent person, are on site at all times when employees are exposed to fall hazards above six feet.

(c) A competent person shall visually inspect the tower base for damage, deterioration, structural deficiencies and functionality of safety features and anchorages before employees are allowed to climb the tower at heights above six feet. Additionally, the tower shall be inspected for these items, as it is ascended, to the elevation point where work is being performed.

Authority G.S. 95-131.

**13 NCAC 07F .0604 HAZARD IDENTIFICATION AND ASSESSMENT**

(a) Hazard Assessment.

- (1) The employer shall identify, assess, and control employee exposure to hazards as required by the rules in this Section and any other applicable state or federal statutes, rules or regulations.
- (2) The employer shall:
  - (A) Conduct inspections of the areas where employees will be working prior to the commencement of work;
  - (B) Appoint a competent person to assess hazards and supervise the work to be performed;
  - (C) Evaluate new equipment, materials, and processes for hazards before they are introduced into the workplace;
  - (D) Train employees as required by 13 NCAC 07F .0609; and
  - (E) Assess the severity of identified hazards, and implement means to control hazards.
- (3) The employer shall establish general guidelines for assessing hazardous situations.
- (4) The employer shall provide employees with personal protective equipment (PPE) in order to control the identified hazards.

(b) Hazard Analysis. The employer shall perform and maintain documented hazard analyses:

- (1) Initially and daily for each work site prior to permitting employees to climb the structure; and

- (2) When safety and health information or change in workplace conditions indicates that a new or increased hazard may be present.

Authority G.S. 95-131.

**13 NCAC 70F .0605 FALL PROTECTION**

(a) General.

- (1) Employers shall comply with all requirements of this Rule before any employee begins work requiring fall protection.
- (2) One-Hundred Percent (100%) fall protection systems compatible with the tasks assigned shall be provided, used, and maintained when employees are exposed to fall hazards above six feet while performing work on communication towers.
- (3) Employers shall not permit employees to utilize fall protection systems that do not meet the requirements of Paragraph (c) of this Rule unless an alternative means of fall protection is utilized that is at least as effective as the means of fall protection described in Paragraph (c) of this Rule.

(b) Pre-Climb Planning and Inspection. In addition to the criteria for pre-climb planning and inspection included in Paragraph (g) of this Rule, the employer shall ensure that the following items occur prior to employees climbing the tower at heights above six feet:

- (1) All climbing jobs shall be planned by a competent person.
- (2) All climbing facilities shall be inspected by a competent person for rust, corrosion, deterioration, or other hazards prior to climbing the structure. If any such hazard is identified during this inspection, employees shall not use the climbing facility until such hazards are abated.
- (3) A competent person shall ensure that all fall protection equipment is inspected prior to each use for wear, damage, defect or other deterioration by employees who have been trained in accordance with 13 NCAC 07F .0609. Defective equipment shall be clearly identified as defective and immediately removed from service. Inspections shall be conducted according to the manufacturer's recommendations.
- (4) Components of a fall protection system and the fall protection equipment utilized by employees shall be compatible with one another.
- (5) The employer shall ensure that the planning and inspections are performed and documented. The documentation shall be maintained on site while work is being performed, and thereafter by the employer at its place of business. The documentation shall include the date of the planning and inspection, the name of the competent person

performing the planning and inspection, and the site location.

(c) Fall Protection Systems. The 100% fall-protection systems required by Paragraph (a) of this Rule shall be compatible with the tasks assigned to the employee(s), and may include items listed in Paragraphs (d) – (g) of this Rule.

(d) Guardrail Systems. Guardrail systems and their components shall conform to the criteria in 29 CFR 1926.502(b).

(e) Personal Fall Arrest Systems (PFAS). Personal fall arrest systems and their components shall conform to the criteria in 29 CFR 1926.502(d). As part of a PFAS, the employer shall utilize a system that ensures 100% fall protection and that the PFAS is utilized according to the manufacturer's recommendations.

(f) Positioning Device System. Positioning device systems and their components shall conform to the criteria in 29 CFR 1926.502(e).

(g) Ladder Safety Systems. In addition to the criteria in 29 CFR 1926.1053(a)(22), ladder safety systems and related support systems for fixed ladders shall conform to the following criteria:

- (1) Prior to climbing the structure, the employer shall ensure that the employee(s) have tested the ladder safety system and that all components utilized with the ladder safety system are compatible.
- (2) The employer shall utilize the procedures described in Subparagraphs (g)(3) – (g)(8) of this Rule to test the ladder safety system.
- (3) The employer shall approach the ladder at the base and connect to the functional safety climb system.
- (4) The employer shall check for proper operation.
- (5) The employer shall climb to a height less than six feet.
- (6) The employer shall forcibly engage the device without letting go of the ladder.
- (7) If the device functions as intended, the employer shall begin the ascension.
- (8) If the device does not function properly, the employer shall immediately descend the structure.
- (9) If a ladder is obstructed, inhibiting the effective use of the ladder safety system, an alternative means of 100% fall protection shall be utilized that is at least as effective as the types of fall protection described by this Rule.
- (10) The ladder safety system shall allow at least two employees averaging 250 pounds each (including equipment), to ascend or descend simultaneously; however, only one employee at a time (except in rescue operations) shall use the same portion of carrier between intermediate mountings for rigid carriers or cable guides for flexible carriers.
- (11) Flexible carriers shall have a safety factor at least 10 times the designed static load. Systems designed for two employees shall support an anchorage at a minimum of 5,000 pounds. Systems designed for more than two employees shall support an anchorage at a minimum of 2,500 pounds per employee.

(12) The maximum length of movement of the ladder safety system in an accidental fall shall not be more than six inches.

(13) In addition to the criteria in 29 CFR 1926.1053(a)(23), intermediate mountings for rigid carriers shall be installed within one foot below each splice on the carrier.

(14) A ladder safety system shall not be replaced as a positioning device and shall not be utilized as a workstation.

(h) Climbing Facilities.

(1) Fixed Ladders. Where fixed ladders are installed as the climbing facility, the fixed ladders and their components shall conform to the criteria in 29 CFR 1926.1053.

(2) Step Bolts.

(A) Where step bolts are installed as the climbing facility, they shall conform to the criteria in 29 CFR 1910.268(h)(2), be uniformly spaced throughout the climbing length and shall be no more than 18 inches alternately spaced.

(B) Where utilized as an anchorage as part of a PFAS, step bolts and the attachment point to the structure shall be designed to meet the requirements of an approved anchorage per 29 CFR 1926.502(d) and shall be designed to ensure the connector will not slip off the end of the step bolt.

(i) Fall Protection Plan. This Paragraph applies when employees are working on a structure where no adequate tie-off anchorage point(s) exist and the fall protection systems described in Paragraph (c) of this Rule are not feasible. In addition to the criteria in 29 CFR 1926.502(k), the employer who can demonstrate that it is infeasible or it creates a greater hazard to use any of the types of fall protection systems described in Paragraph (c) of this Rule shall conform to the following provisions:

(1) The employer shall ensure that each employee under the fall protection plan has been trained as a qualified climber.

(2) The fall protection plan shall be made available and communicated to exposed employee(s) prior to the employee(s) beginning work, and such communication shall be documented.

(3) The fall protection plan shall identify each location on the tower structure where fall protection methods as described in Paragraph (c) of this Rule cannot be used. As soon as adequate tie-off anchorage points or other fall protection systems can be established, the employer shall utilize any of the fall protection systems described in Paragraph (c) of this Rule.

(j) Emergency and Rescue Procedures.

(1) The employer shall establish procedures for prompt rescue of employees in the event of an

emergency, which shall include whether the employer will designate its own employees to perform the rescue procedures or whether the employer will designate a third-party to perform the rescue procedures. The procedures shall be documented and maintained on site.

(2) Employer to Perform Rescue Procedures. An employer whose employees have been designated to provide elevated (high angle) rescue and emergency services shall take the following measures:

(A) Ensure at least two trained and designated rescue employees are on site when employees are working at heights over six feet on the tower;

(B) Ensure that personal protective equipment (PPE) and high angle rescue equipment needed to conduct elevated rescues are provided, used and maintained by the designated rescue employees;

(C) Train designated rescue employees so they are proficient in the use and maintenance of PPE and high angle rescue equipment needed to conduct elevated rescues; and

(D) Train designated rescue employees to perform assigned rescue duties to ensure that they become competent to perform such duties, including but not limited to conducting simulated rescue operations at least once every 12 months.

(3) Third-Party to Perform Rescue Procedures. An employer who designates a third-party rescue and emergency service to provide elevated (high angle) rescue and emergency services shall take the following measures:

(A) Evaluate a prospective rescuer's ability to respond to a rescue summons in a timely manner, considering the hazard(s) identified;

(B) Evaluate a prospective rescue service's ability, in terms of proficiency with rescue-related tasks and equipment, to function appropriately while rescuing climbers from elevated heights on communication structures;

(C) Select a rescue team or service from those evaluated that has the capability to reach the victim(s) and is equipped for and capable of performing the needed rescue services;

(D) Provide the rescue team or service selected with access to all towers/structures from which rescue may be necessary so that the rescue service can develop appropriate

rescue plans and practice rescue operations;

(E) Inform each rescue team or service of the identified hazard(s) on the site. In addition, the information described in Parts (j)(3)(E) – (J) of this Rule shall also be provided;

(F) Site and location of tower/structures(s) to be climbed;

(G) Number of employees that will climb structure;

(H) Height(s) at which employee(s) will be working;

(I) Employer contacts and telephone numbers;

(J) Any other information that is requested.

(k) First Aid/CPR Training and Supplies. In addition to the requirements of 29 CFR 1910.151 and 29 CFR 1926.50, the employer shall ensure that at least two employees on site are trained and hold current certifications in basic first aid and cardiopulmonary resuscitation (CPR) issued by the American Red Cross or any other organization whose standards are equivalent to the American Red Cross.

*Authority G.S. 95-131.*

**13 NCAC 07F .0606 NON-IONIZING RADIATION**

(a) General. Employers shall ensure that employees performing work on communication towers are not exposed to Radio Frequency (RF) Electromagnetic Fields in excess of the Federal Communications Commission (FCC) maximum permissible exposure (MPE) limits for exposure as prescribed in 47 CFR 1.1310.

(b) Protection from Radiation Exposure.

(1) Employees shall not enter areas where RF exposure levels are above the general population/uncontrolled MPE's described in 47 CFR 1.1310 unless they fully understand the potential for exposure and can exercise control over the exposure. Awareness of exposure can be accomplished by specific training or education through appropriate means, such as an RF Safety Program.

(2) Control Procedures. Prior to employees performing work on a communication tower which contains areas where RF exposure levels exceed the occupational/controlled MPE values stated in 47 CFR 1.1310, the employer shall enact and enforce written control procedures which:

(A) Ensure that the transmitter power is reduced, if necessary, to a level that ensures RF exposure levels in areas where employees are working do not exceed the occupational/controlled MPE values stated in 47 CFR 1.1310, and that the transmitter power level is not increased until all employees have ceased working in those areas.

The transmitter power shall be locked out and tagged out at the reduced level by a competent person in accordance with 29 CFR 1910.147. Prior to removing lock out/tag out devices and restoring the original transmitter power level, all employees shall be notified and the work area shall be checked to ensure that all employees have been safety positioned and removed;

- (B) If the transmitter power level in areas where employees are working cannot be reduced and maintained at a level that ensures RF exposure levels do not exceed the occupational/controlled MPE values stated in 47 CFR 1.1310, the transmitter power shall be locked out and tagged out by a competent person in accordance with 29 CFR 1910.147. Prior to removing lock out/tag out devices and restoring the transmitter power level, all employees shall be notified and the work area shall be checked to ensure that all employees have been safety positioned and removed; or
- (C) If an employer cannot ensure that the conditions in Part (b)(2)(A) or (B) of this Rule, are met, employees shall not be permitted to access areas where RF exposure levels exceed the occupational/controlled MPE values stated in 47 CFR 1.1310.

(c) Use of Controls. Prior to commencing work on a communication tower, a competent person shall assess potential RF hazards of areas which may be accessed by employees in the course of their work, and post temporary signage to indicate areas where the RF hazard exceeds the general population/uncontrolled MPE limits for exposure set forth in 47 CFR 1.1310. Temporary signage shall remain in place while work is performed and the hazard exists.

(d) RF Safety Program. When employees are exposed to RF fields in excess of the general population/controlled MPE limits established in 47 CFR 1.1310 as a consequence of their employment, the employer shall develop, implement, and maintain a written safety and health program with worksite specific procedures and elements based on the electromagnetic radiation hazards present, in accordance with 13 NCAC 07F .0609(g).

*Authority G.S. 95-131.*

**13 NCAC 07F .0607 HOISTS AND GIN POLES**

(a) Hoists. Hoists used during the construction, maintenance, renovation, or demolition of communication towers shall meet the following requirements:

- (1) All hoists shall meet the requirements set forth in this Rule, 29 CFR 1910.179, and 29 CFR 1926, Subpart N, where applicable.
- (2) All hoists shall meet applicable requirements for design, construction, installation, testing, inspection, maintenance, and operation as prescribed by the manufacturer, or a licensed professional engineer.
- (3) Employers shall maintain documentation for required operation procedures, rigging information, inspection, testing, and operator training certification at the work site.
- (4) An employer shall not operate or permit to be operated a hoist that the employer knows, or reasonably should know, will expose his employee(s) to an unsafe condition which is likely to result in personal injury or property damage.

(b) Gin Poles.

(1) Rigging Equipment.

- (A) Wire rope, slings, chains, shackles, turnbuckles, links, hooks, sheaves, rotating rooster heads, blocks, and hoists, used in a gin pole lifting arrangement shall meet the manufacturer's safe working load limits. In addition, each component shall have a nominal breaking strength of no less than five times the static load applied. Consideration for end fitting losses and actual positioning of connecting parts shall be given;
- (B) Lugs or other devices for lifting or attaching the gin pole in position shall be designed with load and resistance factors appropriate for their intended use;
- (C) Only alloy chains marked by the manufacturer with an 8, T, or an A, rated for lifting, shall be used;
- (D) Only quenched and tempered hooks and shackles shall be used. The manufacturer's load rating shall be stamped on the product; and
- (E) The breaking strength of the sheave shall equal or exceed the breaking strength of the wire rope intended for the sheave.

(2) Gin Pole Use.

- (A) A user's gin pole load chart shall be provided for each pole;
- (B) Any special engineered pick, which is outside of the load chart, shall only be allowed at the direction of a licensed professional engineer. Monitoring and measuring conditions, as specified by a licensed professional engineer, shall be provided and used during all special engineered picks;

- (C) Modifications or repairs of a gin pole shall be made with like or similar materials to meet or exceed the original specifications. Modifications or repairs shall be recertified by a licensed professional engineer; and
- (D) There shall be a mechanism in place to prevent the gin pole from tipping during the jumping process.
- (3) Wire Rope. Wire rope used for rigging shall be as follows:
  - (A) Compatible with the sheaves of the rooster head and hoisting blocks;
  - (B) Lubricated in accordance to manufacturer specifications to prevent corrosion and wear;
  - (C) End connections shall be terminated per industry and manufacturer's specifications;
  - (D) Wedge sockets shall have a minimum tail length of one rope lay with a properly torqued clip attached to prevent accidental disengagement; and
  - (E) Flemish eyes shall contain appropriate heavy duty thimbles and have a minimum tail length of one rope lay secured with a properly torqued clip at its end.
- (4) Inspections.
  - (A) Gin poles shall have a documented inspection annually by a qualified person;
  - (B) The employer shall designate a competent person who shall visually inspect the gin pole and rigging prior to each use, and during use, to make sure it is in safe operating condition. Any deficiencies shall be repaired before use continues;
  - (C) The steps described in Parts (b)(4)(D) – (L) of this Rule shall be completed and documented in the inspection;
  - (D) Legs and bracing members shall be checked for bends or distortion;
  - (E) Straightness tolerances shall be checked for the overall assembly (including leg and bracing members);
  - (F) Welds shall be visually inspected for quality, deformation, cracks, rust, or pitting or loss of cross sectional area;
  - (G) Members shall be checked for excessive rust or pitting or loss of cross sectional area;
  - (H) Sling attachment points shall be checked for distortion, wear, cracks, and rust;
  - (I) Ensure that proper bolts are utilized and all associated hardware is in good condition;

- (J) Side plates on rooster heads shall be checked for distortion or other damage;
- (K) All attachment hardware, including rigging and parts such as cables, slings, and sling attachment points, shackles, hooks, and sockets shall be inspected for wear, distortion, cracks, and rust; and
- (L) Problems identified during the inspection shall be corrected before placing the gin pole into service.

*Authority G.S. 95-131.*

**13 NCAC 07F .0608 RECORD KEEPING**

In order to fulfill responsibilities under the provisions of the Rules in this Section, the employer shall, upon request, provide the Deputy Commissioner of Labor for Occupational Safety & Health or his designee access to the following records:

- (1) Training Records. All material related to the employer's training and education program, pursuant to 13 NCAC 07F .0609.
- (2) Medical Records and Non-Ionizing Radiation Exposure Records. All medical records (in accordance to 29 CFR 1910.1020(d)(1)(i)) and material related to each analysis using exposure or medical records (in accordance with 29 CFR 1910.1020(d)(1)(iii).
- (3) Equipment Inspections and Testing Records. All material related to the modification, repair, test, calibration or maintenance service of all equipment.

*Authority G.S. 95-131.*

**13 NCAC 07F .0609 TRAINING**

(a) In order for employees to work at heights above six feet on a communication tower, they must be approved for such work by a qualified person.

(b) Competency of the Trainer. Training of employees in communication tower work shall be done by a qualified person.

(c) Written Work Procedures.

- (1) The employer's written work procedures shall be provided to employees as part of their training.
- (2) Pictures and symbols may be used as a means of instruction if employee understanding is improved using this method.
- (3) Manufacturers' operating manuals for personnel hoisting systems satisfy the requirement for operating procedures for the respective equipment, or can serve as the basis for these procedures.

(d) Hazardous Materials Training. Employees required to handle or use flammable liquids, gases, or toxic materials shall be instructed in the safe handling and use of these materials and made aware of the specific requirements contained in 29 CFR 1926.55 and 29 CFR 1910.1200, as applicable.

(e) Fall Protection Training.

- (1) The employer shall provide a training program for each employee who might be exposed to fall hazards.
- (2) The program shall enable each employee to recognize the hazards of falling and shall train each employee in the procedures to be followed in order to minimize these hazards.
- (3) The employer shall ensure that each employee has been trained by a qualified person in the following areas:
  - (A) The nature of fall hazards in the work area;
  - (B) The correct procedures for erecting, maintaining, disassembling, and inspecting the fall protection systems to be used;
  - (C) The correct procedures for inspecting fall protection equipment for wear, damage, defect or deterioration;
  - (D) Climbing safety procedures;
  - (E) The use and operation of the fall protection systems utilized by the employer, as described in 13 NCAC 07F .0605(c);
  - (F) The role of each employee in any safety monitoring system being used;
  - (G) The correct procedures for the handling and storage of equipment and materials and the erection of overhead protection;
  - (H) The role of employees in fall protection plans; and,
  - (I) The compatibility of fall protection equipment and fall protection systems.

(f) Hoist Operator Training. The employer shall maintain documentation that the hoist operator has practical training on the hoist he is operating. Training of hoist operators shall meet the requirements of 29 CFR 1910.179 and 29 CFR 1926, Subpart N.

(g) RF Training.

- (1) All employees exposed in excess of the general population/controlled MPE limits stated in Table 1, CFR 47 1.1310 shall, at a minimum, receive RF hazard awareness training by a competent person qualified in the following areas:
  - (A) MPE Limits for occupational/controlled Exposure;
  - (B) Recognition of RF exposure sources in communication tower work;
  - (C) Proper use and interpretation of RF exposure;
  - (D) Work procedures to avoid excessive RF exposure;
  - (E) Proper use of RF-related PPE;
  - (F) Symptoms and health issues related to RF exposure; and
  - (G) RF exposure first-aid procedures.

- (2) Employers shall ensure that each affected employee who works in an electromagnetic energy environment with potential RF exposure in excess of the general population/controlled MPE limits stated in Table 1, CFR 47 1.1310 has access to and fully understands the specific site information related to the RF energy and RF fields present at each individual work site.

(h) Retraining. Unless stated otherwise in this Rule, when the employer or qualified person has reason to believe that any employee who has already been trained does not have the understanding and skill required to safely perform the work assigned, the employer shall retrain each such employee. Circumstances where retraining is required include situations where:

- (1) Changes in the workplace render previous training obsolete;
- (2) Changes in the types of fall protection systems or equipment to be used render previous training obsolete; or
- (3) Inadequacies in an employee's knowledge or use of fall protection systems or equipment indicate that the employee has not retained the requisite understanding or skill.

(i) Training Records.

- (1) The employer shall certify that each employee has been trained by preparing a certification record which includes:
  - (A) The identity of the person trained;
  - (B) The signature of the employer or the qualified person who conducted the training; and
  - (C) The date that training was completed.
- (2) A copy of the training lesson plan for each topic of instruction shall be maintained by the employer.
- (3) The certification record shall be prepared at the completion of the training required by this rule and shall be maintained for the duration of the employee's employment.
- (4) The most current certification record shall be kept available for review by the Deputy Commissioner of Labor for Occupational Safety & Health or his designee, upon request.
- (5) An employer may accept training records or certificates for previous training if the employer verifies that all training and knowledge is current and applicable to the new employee's job duties.

*Authority G.S. 95-131.*

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*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Labor intends to adopt the rule cited as 13 NCAC 15 .0207 and amend the rules cited as 13 NCAC 15 .0101, .0103, .0201-.0206, .0307, .0402, .0410, .0429.*



Proposed Effective Date: December 1, 2004

Public Hearing:

Date: August 17, 2004

Time: 10:00 a.m.

Location: Room 249, Labor Building, 4 West Edenton St., Raleigh, NC

Reason for Proposed Action: The NC Department of Labor proposes changes to these Rules in order to make certain technical changes, and to bring them in conformance with the current operating procedures of the Elevator and Amusement Device Division.

Procedure by which a person can object to the agency on a proposed rule: Objections to the proposed rules may be submitted in writing to Lynette Johnson, Assistant Rulemaking Coordinator, 1101 Mail Service Center, Raleigh, NC 27699-1101, or fax (919) 733-4235. Objections may also be submitted during the public hearings conducted on these Rules. Objections shall include the specific rule citation(s) for the objectionable rule(s), the nature of the objection(s), and the complete name(s) and contact information for the individual(s) submitting the objecting. Objections must be received by 5:00 p.m. on October 1, 2004.

Written comments may be submitted to: Lynette Johnson, 1101 Mail Service Center, Raleigh, NC 27699-1101, phone (919) 733-0368, fax (919) 733-4235, or ljohnson@mail.dol.state.nc.us.

Comment period ends: October 1, 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 15 - ELEVATOR AND AMUSEMENT DEVICE DIVISION

SECTION .0100 - GENERAL PROVISIONS

13 NCAC 15 .0101 ELEVATOR AND AMUSEMENT DEVICE DIVISION

The main office of the Elevator and Amusement Device Division, which administers the provisions of Article 14, Article 14A, Article 14B and Article 15 of Chapter 95 of the North Carolina General Statutes, is located in the Raleigh office of the North Carolina Department of Labor at the corner of Edenton and Salisbury Streets. The mailing address and telephone number are:

Elevator and Amusement Device Division
North Carolina Department of Labor
1101 Mail Service Center 4 West Edenton Street
Raleigh, North Carolina 27699-1101 27604
(919) 807-2770 733-7394

Authority G.S. 95-110.4; 95-110.5; 95-111.4; 95-120.

13 NCAC 15 .0103 DEFINITIONS

(a) The definitions found in G.S. 95-110.3, 95-111.3 and 95-117 are applicable throughout this Chapter unless a different meaning is plainly required by the context.
(b) The following definitions also apply throughout this Chapter.

- (1) The term "alteration" means any change made to an existing device or piece of equipment other than the repair or replacement of damaged, worn or other parts necessary for operation.
(2) The term "division" means the Elevator and Amusement Device Division of the North Carolina Department of Labor.
(3) The term "elevator safety code" means the edition of the American National Standard Safety Code for Elevators and Escalators, currently in effect with addenda and modifications as provided in Rule .0201 of this Chapter.
(3)(4) The term "existing installation" means any device or equipment, the application for the installation of which was filed with the department or the installation of which was completed before the effective date of the rules and regulations which are currently in effect.
(4)(5) The term "new installation" means any device or equipment, the application for the installation or relocation of which is filed with the department on or after the effective date of these Rules and regulations.

Authority G.S. 95-110.3; 95-110.5; 95-111.3; 95-111.4; 95-117; 95-120.

SECTION .0200 - CODES AND STANDARDS

13 NCAC 15 .0201 NEW INSTALLATIONS OF ELEVATORS, ESCALATORS, DUMBWAITERS AND MOVING WALKS

(a) The design, construction, installation, ~~alteration, repair, replacement, inspection, maintenance~~ and operation of all new installations of:

- (1) ~~Elevators, elevators, dumbwaiters, escalators, and moving walks, shall conform to these Rules and the A17.1 - American National Standard Safety Code for Elevators and Escalators, A17.1-2000 which is incorporated by reference subject to the modifications provided in Paragraph (b) of this Rule. This incorporation includes subsequent amendments and editions of the Code.~~
- (2) ~~The design, construction, installation, alteration, repair, replacement, inspection, maintenance and operation of all new installations of inclined stairway chairlifts, and inclined and vertical wheelchair lifts shall conform to these Rules and the American National Standard Safety Code for Platform Lifts and Stairway Chairlifts, A18.1-1999 which is incorporated by reference subject to the modifications provided in Paragraph (b) of this Rule. This incorporation includes subsequent amendments and editions of this Code.~~

(b) The provisions of the A17.1 - American National Standard Safety Code for Elevators and Escalators, A17.1-Escalators shall be subject to the following modifications:

- (1) Rule 2.1.2.1 – Observations Elevators Not Fully Enclosed. Change the rule to read as follows: For observation elevators which are not fully enclosed, protection at landings shall be provided as follows:
  - (A) An enclosure shall be provided which shall extend a minimum of 10 feet above the floor.
  - (B) The enclosure shall be constructed of unperforated material.
  - (C) Enclosures shall be located in the general line of the hoistway. Horizontal clearance shall be the same as stated in Section 2.5.
- (2) Rule 3.18.3.4 – Safety Bulkhead. Change the rule to read as follows:
  - (A) For new installations only, cylinders buried in the ground shall be provided with a safety bulkhead having an orifice of a size that would permit the car to descend at a speed not greater than 0.075 m/s (14 ft/min), nor less than 0.025 m/s (5 ft/min). A space of not less than 25 mm (1 in.) shall be left between the welds of the safety bulkhead and the other cylinder head. Safety bulkheads shall conform to 3.18.3.6.
  - (B) For existing installations only, cylinders buried in the ground do not have to be provided with a safety bulkhead of the type referred to in

Part (A) of this Paragraph, provided that the following conditions are met:

- (i) The relief valve setting and system pressure test prescribed by 8.11.3.2.1, and the cylinder test prescribed by 8.11.3.2.2, are each performed two times per year; and
  - (ii) After each of the tests referred to Subpart (i) of this Paragraph, have been performed successfully, the test tag prescribed by 8.11.1.6 shall be installed in the machine room.
- (C) A safety bulkhead shall not be required where a double cylinder is used and where both inner and outer cylinders conform to 3.18.3.

(c) The rules of this Chapter shall control when any conflict between these Rules and the A17.1 - American National Standard Safety Code for Elevators and Escalators ANSI Code exists.

(d) Copies of the A17.1 - American National Standard Safety Code for Elevators and Escalators are available for public inspection in the office of the Division, and may be obtained from the American Society of Mechanical Engineers (ASME), via U.S. Mail at United Engineering Center, 345 East 47th Street, New York, New York 10017, via telephone at (800) 843-2763, or via the internet at www.asme.org. ~~United Engineering Center, 345 East 47th Street, New York, New York 10017. The cost is ninety-six dollars (\$96.00) per copy.~~

Authority G.S. 95-110.5.

**13 NCAC 15 .0202 EXISTING INSTALLATIONS OF ELEVATORS, ESCALATORS, DUMBWAITERS AND MOVING WALKS, ALTERATIONS, REPAIRS AND EXCEPTIONS**

(a) Existing Installations. Existing installations of elevators, escalators, dumbwaiters, and moving walks shall be maintained under the departmental standards (if any) in effect at the time of their installation. Existing installations shall also meet the following ~~standards, standards~~ whether or not there were departmental standards in effect at the time of their installation:

- (1) Electrically-powered elevator driving machines shall be equipped with a friction brake applied by a spring or springs or by gravity and released electrically.
- (2) The car of every elevator suspended by wire ropes shall be provided with one or more safety devices. The safeties shall be attached to the car frame and one safety shall be located within or below the lowest members of the car frame (safety ~~plate~~ plank). All safeties shall be designed and installed in accordance with Section ~~2052.17~~ of the A17.1 - American National Standard Safety Code for Elevators

~~and Escalators Elevator Safety Code~~, unless otherwise approved by the Director.

- (3) Operating devices for electrically-powered or electrically-controlled elevators shall be of the enclosed electric type. Rope or rod operating devices activated directly by hand, or rope operating devices activated by wheels, levers or cranks shall not be used.
- (4) Elevator hoistways shall be enclosed throughout their height and all hoistway landing openings shall be protected with doors or gates. Hoistway enclosures shall be constructed to have a fire resistive rating of not less than one hour.
- (5) Hoistway enclosure doors or gates shall be equipped with electric interlocks.
- (6) Each elevator car shall be permanently enclosed on all sides and the top, except the sides for entrance and exit. Car side enclosures shall be of such strength and so designed and installed that when subjected to a pressure of 75 pounds applied horizontally at any point on the walls of the enclosure, the deflection will not exceed one inch.
- (7) Car top enclosures shall be so designed and installed as to be capable of sustaining a load of not less than 100 pounds at any one point.
- (8) An emergency exit with a cover shall be provided in the top of all elevator cars. The exit opening shall have an area of not less than 400 square inches and shall not measure less than 16 inches on any side. The exit shall be so located as to provide a clear unobstructed passage through it. The exit cover shall open outward and be hinged or otherwise attached to the car top and arranged to be opened from the top of the car only.
- (9) A door or gate shall be provided at each entrance to the car.
- (10) Doors shall be of the horizontally or vertically sliding type. Gates shall be of the vertically sliding or horizontally sliding collapsible type located not more than 1-3/4 inches from the car sill. Gates shall extend from a point not less than one inch above the car floor to not less than six feet above the car floor.
- (11) Vertically sliding gates when in the fully opened position shall provide an entrance of not less than six feet in height. Such gates shall be provided with pull straps to facilitate closing of the gate.
- (12) Each car door shall be equipped with a car door or gate electric contact so located as to be inaccessible from inside the car door and shall stop the car when the gate is opened a maximum of two inches.

The completion of any of the items in Subparagraphs (a)(1) through (12) of this Rule that increases the gross load of the elevator shall not reduce the safety factor of the driving machine below that required by ~~rule 208.3 of A17.1, the American~~

~~National Standard Safety Code for Elevators and Escalators. Rule 2.24.3 of the A17.1 - American National Standard Safety Code for Elevators and Escalators.~~

(b) Exceptions. Existing elevators in warehouses of not more than two floors that are not accessible to the general public are exempt from Subparagraphs (a)(4) through (12) of this Rule providing that all of the following conditions are met:

- (1) The warehouse shall be used solely for the purpose of storing materials and products.
- (2) Hoistways shall be provided with adequate guards as approved by the Director.
- (3) All capabilities of operating the elevator from the car or platform shall be removed.
- (4) Riders shall not be permitted to ride the car or platform.
- (5) A sign stating "Absolutely No Riders Permitted" in letters no less than one inch high on a contrasting background shall be posted at each entrance to the elevator.

(c) If an existing installation meets the requirements of Paragraph (a) of this Rule, it shall be issued a regular certificate of operation pursuant to Rule .0306 of this Chapter. If an existing installation is maintained under the departmental standards (if any) in effect at the time of its installation and is not exposing the public to an unsafe condition likely to result in serious personal injury or property damage, but does not meet the 12 standards specifically set out in Paragraph (a) of this Rule, it shall be issued a certificate of operation containing the following statement:

"Warning: This elevator has been inspected and found to be in a reasonably safe condition; however, it is not equipped with some of the safety features now required by the Department of Labor." If the existing installation is not in compliance with the requirements of Paragraph (a) of this ~~Rule~~ Rule by January 1, 1994, the following sign in letters no less than one inch high on a contrasting background shall be posted within and at each entrance to the elevator:

"Riders prohibited -- only a trained operator may ride this elevator."

(d) Units of existing installations which are out-of-service and not continuously maintained for a period exceeding one year shall be properly landed by complying with the following:

- (1) Land both car and counterweight (if any) at the bottom of the hoistway. Elevators of the roped type shall have their hoist ropes disconnected at both ends.
- (2) All electric power shall be removed by disconnecting and removing the power feeders.
- (3) All hoistway entrances shall be permanently secured to prevent accidental or inadvertent entry into the hoistway.

Any elevator, dumbwaiter, escalator or moving walk that has been properly landed or otherwise removed from service for a period exceeding one year shall comply with the requirements of the A17.3 - American National Standard Safety Code for Existing Elevators and Escalator~~elevator safety code~~ in effect at the time they are returned to ~~service~~ service, which is hereby incorporated by reference. This incorporation includes subsequent amendments and editions of this Code. Copies of the

A17.3 - American National Standard Safety Code for Existing Elevators and Escalators are available for public inspection in the office of the Division, and may be obtained from the American Society of Mechanical Engineers (ASME), via U.S. Mail at United Engineering Center, 345 East 47<sup>th</sup> Street, New York, New York 10017, via telephone at (800) 843-2763, or via the internet at [www.asme.org](http://www.asme.org).

(e) Alterations, repairs, replacement, maintenance, inspections and operation of existing installations of elevators, escalators, dumbwaiters or moving walks shall conform to the requirements of Sections 8.6 and 8.7 of the A17.1 - American National Standard Safety Code for Elevators and Escalators, altered in accordance with Part XII of ANSI/ASME A17.1 1990 after May 1, 1992, shall conform to the American National Standard Safety Code for Existing Elevators and Escalators, ANSI/ASME A17.3 1990 which is hereby incorporated by reference. This incorporation includes subsequent amendments and editions of this Code. Copies of the American National Standard Safety Code for Existing Elevators and Escalators may be obtained from the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, New York 10017. The cost is forty seven dollars (\$47.00) per copy. Part XII of the American National Standard Safety Code for Elevators and Escalators, ANSI/ASME A17.1 1990 is incorporated by reference and includes subsequent amendments and editions. Copies may be obtained from the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, New York 10017, for ninety six dollars (\$96.00) per copy.

*Authority G.S. 95-110.5.*

**13 NCAC 15 .0203 SAFETY STANDARD FOR MANLIFTS**

(a) The design, construction, installation, alteration, repair, replacement, inspection, maintenance and operation of all manlifts shall conform to these Rules and the A90.1 - American National Standard Safety Standard for Manlifts, A90.1 1985 which is hereby incorporated by reference. This incorporation includes subsequent amendments and editions of this Code.

(b) The rules of this Chapter shall control when any conflict between these rules and the A90.1 - American National Standard Safety Standard for Manlifts ANSI Code exists.

(c) Copies of the A90.1 - American National Standard Safety Standard for Manlifts are available for inspection at the offices of the Division and may be obtained from the American Society of Mechanical Engineers (ASME), via U.S. Mail at United Engineering Center, 345 East 47th Street, New York, New York 10017, via telephone at (800) 843-2763, or via the internet at [www.asme.org](http://www.asme.org) and may be obtained from the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, New York 10017 at a cost of thirty dollars (\$30.00) per copy.

*Authority G.S. 95-110.5.*

**13 NCAC 15 .0204 PERSONNEL HOISTS CODE**

(a) The design, construction, installation, alteration, repair, replacement, inspection and operation of all personnel hoists shall conform to these Rules and the A10.4 - American National

Standard Safety Requirements for Personnel Hoists, A10.4 1984 which is hereby incorporated by reference. This incorporation includes subsequent amendments and editions of this Code.

(b) The rules of this Chapter shall control when any conflict between these rules and the A10.4 - American National Standard Safety Requirements for Personnel Hoists ANSI Code exists.

(c) Copies of the A10.4 - American National Standard Safety Requirements for Personnel Hoists are available for inspection at the offices of the Division and may be obtained from the American National Standards Institute (ANSI), via U.S. Mail at 11 West 42nd Street, New York, New York 10036, via telephone at (212) 642-4980, or via the internet at [www.ansi.org](http://www.ansi.org) may be obtained from the American National Standard Institute, Inc., 1430 Broadway, New York, New York 10018 at a cost of eighteen dollars (\$18.00) per copy.

*Authority G.S. 95-110.5.*

**13 NCAC 15 .0205 TRAMWAY REQUIREMENTS**

~~The construction, operation and maintenance of passenger tramways shall conform to the American National Standards Safety Requirements for Aerial Passenger Tramways, B77.1 1982 as supplemented by B77.1a 1986 which is hereby incorporated by reference. Copies of the requirements are available for inspection at the office of the Division and may be obtained from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018 at a price of thirty five dollars (\$35.00) per copy. This incorporation includes subsequent amendments and editions of this Code.~~

(a) The construction, operation and maintenance of all passenger tramways shall conform to these Rules and the B77.1 - American National Standards Safety Requirements for Aerial Passenger Tramways, which is hereby incorporated by reference. This incorporation includes subsequent amendments and editions of this Code.

(b) The rules of this Chapter shall control when any conflict between these Rules and the B77.1 - American National Standards Safety Requirements for Aerial Passenger Tramways exists.

(c) Copies of the B77.1 - American National Standards Safety Requirements for Aerial Passenger Tramways are available for inspection at the offices of the Division and may be obtained from the American National Standards Institute (ANSI), via U.S. Mail at 11 West 42nd Street, New York, New York 10036, via telephone at (212) 642-4980, or via the internet at [www.ansi.org](http://www.ansi.org).

*Authority G.S. 95-120.*

**13 NCAC 15 .0206 NATIONAL ELECTRICAL CODE**

(a) All devices and equipment subject to this Chapter shall be designed, constructed, installed, maintained and operated in accordance with these Rules and the requirements of the ~~1990 edition of the NFPA 70 - National Electrical Code, NFPA 70 1990~~ which is hereby incorporated by reference. This incorporation includes subsequent amendments and editions of this Code.

(b) The rules of this Chapter shall control when any conflict between these Rules and the NFPA 70 - National Electrical Code exists.

(c) Copies of the NFPA 70 - National Electrical Code are available for inspection in the offices of the Division and may be obtained from the North Carolina State Board of Examiners of Electrical Contractors, via U.S. Mail at 1200 Front Street, Suite 405, P. O. Box 18727, Raleigh, North Carolina NC 27619-8727, via telephone at (919) 733-4092, or via the internet at www.ncbeec.org. 27619 at a cost of fourteen dollars (\$14.00) per copy at the office or fifteen dollars (\$15.00) per copy if mailed.

*Authority G.S. 95-110.5; 95-111.4; 95-120.*

**13 NCAC 15 .0207 SAFETY STANDARDS FOR STAIRWAY CHAIRLIFTS, AND INCLINED AND VERTICAL WHEELCHAIR LIFTS**

(a) The design, construction, installation, alteration, repair, replacement, inspection, maintenance and operation of all installations of inclined stairway chairlifts, and inclined and vertical wheelchair lifts shall conform to these Rules and the A18.1 - American National Standard Safety Code for Platform Lifts and Stairway Chairlifts, which is hereby incorporated by reference. This incorporation includes subsequent amendments and editions of this Code.

(b) The rules of this Chapter shall control when any conflict between these rules and the A18.1 - American National Standard Safety Code for Platform Lifts and Stairway Chairlifts exists.

(c) Copies of the A18.1 - American National Standard Safety Code for Platform Lifts and Stairway Chairlifts are available for inspection at the offices of the Division, and may be obtained from the American National Standards Institute (ANSI), via U.S. Mail at 11 West 42nd Street, New York, New York 10036, via telephone at (212) 642-4980, or via the internet at www.ansi.org.

*Authority G.S. 95-110.5.*

**SECTION .0300 - ELEVATORS AND RELATED EQUIPMENT**

**13 NCAC 15 .0307 MAINTENANCE AND PERIODIC INSPECTIONS AND TESTS**

(a) Inspections and Tests. Devices and equipment shall be subject to maintenance and periodic inspections and tests in accordance with the requirements of the applicable code as adopted in Section ~~200.2.23~~ of the A17.1 - American National Standard Safety Code for Elevators and Escalators. Special equipment shall be subject to periodic and to maintenance inspections and tests as may be required by the Director in accordance with standard accepted safety practices to ensure safe operation.

(b) Inspections.

- (1) Advance Notice. Inspections shall be accomplished without advance notice, except where the Director determines that advance notice of an inspection is necessary to complete the inspection.
- (2) Inspection Report Forms. The inspector will note findings of his inspection and tests on the appropriate inspection report form.

(c) Certificate of Operation Issuance.

- (1) Closing Conference. After the inspections and tests of the equipment prescribed in this Rule,

the inspector shall, when possible, hold a closing conference with the owner or his representative.

- (2) Approval. When the inspector has determined that the equipment is in compliance with the regulations of this Chapter and all applicable law, the inspector may reissue the certificate of operation.
- (3) Denial. When the inspector has determined the equipment is not in compliance with the regulations of this Chapter and all applicable law, the inspector will provide the owner or his representative with a description of all violations and necessary repairs.
- (4) Abatement. In the event of a reissuance denial, the inspector may issue an abatement permit which will be valid for a period not exceeding 60 days.
- (5) Notice. When the equipment is brought into compliance, the owner or his representative shall notify the Division in writing.
- (6) Reinspection. After a certificate reissuance denial, an inspector shall always reinspect to determine if the equipment is in compliance.

(d) Tests. Periodic tests required by the A17.1 - American National Standard Safety Code for Elevators and Escalator~~selevator safety code~~ will be performed in the presence of an elevator inspector whenever possible. In the absence of an inspector, a signed copy of the test report shall be sent to the Director of the Division without delay. The report shall be signed by the person conducting such tests.

*Authority G.S. 95-110.5.*

**SECTION .0400 - AMUSEMENT DEVICES**

**13 NCAC 15 .0402 RESPONSIBILITY FOR COMPLIANCE**

(a) Every owner or operator of an amusement device shall comply with all provisions of the rules of this Section, and every employer and employee shall comply with all provisions which concern or affect his conduct.

(b) Designers and manufacturers of amusement devices shall follow the procedures of the ASTM F1159 – Standard Practice for Design and Manufacture of Patron Directed, Artificial Climbing Walls, Dry Slide, Coin Operated and Purposeful Water Immersion Amusement Rides and Devices and Air-Supported Structures~~Standard Practice for The Design and Manufacture of Amusement Rides and Devices~~ ASTM F 1159 in the manufacture of all rides. The Standard Practice for The Design and Manufacture of Amusement Rides and Devices, ASTM F 1159 88, which is hereby is incorporated by reference~~reference~~ and includes subsequent amendments and editions. This incorporation includes subsequent amendments and editions of this Code. ~~Copies may be obtained from the American Society of Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103, at a cost of twelve dollars (\$12.00) per copy. An engineering analysis of each ride or device shall be submitted to the North Carolina Department of Labor, Elevator~~

and Amusement Device Division, before it is operated in North Carolina.

(c) Copies of the ASTM F1159 – Standard Practice for Design and Manufacture of Patron Directed, Artificial Climbing Walls, Dry Slide, Coin Operated and Purposeful Water Immersion Amusement Rides and Devices and Air-Supported Structures may be obtained from the American Society of Testing and Materials (ASTM), via U.S. Mail at 100 Barr Harbor Drive West, Conshohocken, Pennsylvania 19428-2959, via telephone at (610) 832-9585, or via the internet at [www.astm.org](http://www.astm.org).

(d) An engineering analysis of each ride or device shall be submitted to the North Carolina Department of Labor, Elevator and Amusement Device Division, before it is operated in North Carolina.

*Authority G.S. 95-111.4.*

**13 NCAC 15 .0410 DAILY INSPECTION AND TEST**

An amusement device shall be inspected and tested each day when it is intended to be used. The inspection and test shall be made by a person experienced and instructed in the proper assembly and operation of the device and shall be performed before the device is put into normal operation. The inspection and test shall include the operation of control devices, speed-limiting devices, brakes and other equipment provided for safety. A record of each inspection and test shall be made at once upon completion of the test on a form provided by the Director and shall be kept with the device and available to the Director for at least the previous 12 months, ~~30 days~~.

*Authority G.S. 95-111.4; 95-111.5.*

**13 NCAC 15 .0429 GO KARTS**

(a) Kart Design. All karts shall comply with the following minimum standards.

- (1) Numbering of Karts. Each shall be provided an identifying number that can be easily seen by the operator. A corresponding number shall be stamped or attached to the frame of the kart.
- (2) Speed. Kart speed shall not exceed the maximum speed for which the track is designed. The speed of adult karts shall be set not to exceed 28 miles per hour unless approved by the Department. Kiddie karts shall not exceed 10 miles per hour. When a kart is designed to permit the readjustment of its maximum speed, the means of adjustment shall not be accessible to the driver of the kart.
- (3) Seats, Seat Belts and Shoulder Straps. All karts shall meet one of the following requirements:
  - (A) The seat, back rest, and leg area shall be designed to retain the driver/occupants inside the kart in the event of a rollover or a collision at the front, rear, or side of the kart; or
  - (B) The kart shall be equipped with seat belts and shoulder straps mounted in a manner that will restrain the

occupant(s) in the vehicle in case of a collision or rollover. Properly mounted safety harnesses as effective as seat belts and shoulder straps may be substituted for seat belts and shoulder straps.

- (4) Occupancy. Go karts shall be occupied by only one person at a time unless the kart is designed and equipped with a seat and safety belt system that is intended for and is suitable for two persons.
  - (5) Guarding of Parts. Rotating, moving, hot engine or muffler parts shall be guarded to prevent contact or entanglement of the occupant's hair, clothing, or other body parts.
  - (6) Brakes. Karts shall have a braking system designed and adjusted to permit them to be brought to a complete stop within 40 feet from maximum speed with their maximum weight on board.
  - (7) Brake and Throttle Controls. Karts shall have brake and throttle controls that are readily recognizable as to their function. The operator shall also instruct each driver on the operation of the brake and throttle controls before each operation. The controls shall return automatically to their non-operational position when released.
  - (8) Padding of Exposed Protruding Components. Karts shall have their steering wheel hub and all other protruding exposed parts within the driving compartment padded to minimize the risk of injury to an occupant in the event of a collision or overturn.
  - (9) Roll Bars and Head Rests. All adult karts must be provided with a roll bar of sufficient height and strength to provide the occupant with protection in the event of a roll over. Seats of all karts must be provided with a padded head rest. The head rest may substitute as a roll bar if it is of sufficient height and strength.
  - (10) Bumpers. Go karts shall be provided with bumpers or energy absorption body parts.
  - (11) Wheel Guards. The wheels of every kart shall be enclosed or guarded in such a manner that the wheels of another kart cannot interlock with or ride over them.
  - (12) Fuel Tanks. Kart fuel tanks shall be designed and mounted so that the tank cannot be ruptured in the event of a collision or a roll over.
  - (13) Noise Level. Karts shall be provided with muffler systems capable of limiting sound from the engine to 75 dBA when measured at a distance of 50 feet from the outer edge of the kart track.
- (b) Track Design. Plans for proposed construction of go kart tracks in the State of North Carolina shall be submitted to the North Carolina Department of Labor, Elevator and Amusement

Device Division, 1101 Mail Service Center, 4 West Edenton Street, Raleigh, North Carolina 27601, NC 27601, before construction begins. Buildings on the track site must be submitted to the local building inspection agency for approval. The design of the track shall be consistent with kart manufacturer's recommendations for the speed of the kart and be approved by the department. The following minimum requirements shall be complied with before certificates of operation will be issued.

- (1) Track Layout. Go kart tracks may be oval shaped or of road course configurations. They may not be constructed in the shape of a figure eight or have any cross connected points. Straight portions of the track shall be essentially flat except that 2 degrees of banking may be provided for drainage. The width of all tracks shall be a minimum of 16 feet wide. Road courses may continue the same width for their entire length. Oval tracks shall have turns at least five feet wider than the straight portions and the minimum radius of the turns shall be 15 feet. Turns of oval tracks may be banked to a maximum of one inch for each one foot of track width. Any variation from the minimum track width shall be approved in advance, in accordance with 13 NCAC 15 .0107.
  - (2) Track Surface. A kart track shall have a hard smooth surface. It shall provide sufficient road grip to be driven throughout the course at maximum speed. It shall be free of obstacles such as holes or bumps, or water or oil.
  - (3) Track Materials. Materials used in the surfacing of kart tracks shall be asphalt, concrete, or other solid and binding materials. Proposals to use dirt track surfaces shall be submitted for special consideration and evaluation, in accordance with 13 NCAC 15 .0107.
- (c) Track Safety and Guarding.
- (1) Barriers. Every kart track shall provide properly constructed barriers along the entire course on both inside and outside of the track. Barriers shall be so constructed that a kart colliding with a barrier at maximum speed will come to a safe stop or be guided back to the track. Earthen berms may be used as a barrier provided they will stop a kart safely. Bales of hay, straw, or other materials capable of being ignited may not be used as a barrier.
  - (2) Track Lanes. White or yellow lines, at least four inches wide, shall mark all inside and outside edges of the track.
  - (3) Fencing. The outside perimeter of a go kart track shall be protected by a fence at least 48 inches in height. The fence shall be set back at least 36 inches from the inside face of the track barrier. Gates shall be located for easy supervision by track attendants when the facility is open and they shall be kept locked

when it is closed. The fence may be omitted where natural barriers provide the same degree of protection as the fence. Where two separate tracks are operated inside a single perimeter fence all karts on both tracks shall start and stop at the same time.

- (4) Fire Extinguishers. Every go kart track shall be equipped with ABC Dry Chemical Fire Extinguishers. The extinguishers shall have a minimum capacity of five ~~pounds~~ pounds, in accordance with NFPA 10 - Standard for Portable Fire Extinguishers. (Ref. NFPA 10). At least one extinguisher shall be located in the following locations:
  - (A) Within 70 feet of every track section;
  - (B) In each pit area;
  - (C) In each refueling stop;
  - (D) In each kart storage area; and
  - (E) In the maintenance shop.

Each fire extinguisher location shall be prominently marked and the extinguisher shall be easily accessible.

- (5) Refueling Area. Refueling of karts shall be carried out at a designated area remote from any area accessible to the public. Refueling areas shall comply with the requirements of the NFPA 70 - National Electrical Code (NFPA 70), Sections 510, 511, and 514.
- (6) Track Lighting. Kart tracks equipped for night operation shall have sufficient illumination at all sections of the track for drivers to be able to negotiate the entire course safely. It shall also be sufficient for operators to monitor the karts on each section of the course. Lighting shall comply with the NFPA 70 - National Electrical Code (NFPA 70) and all other state and local requirements.
- (7) Pits or Pit Areas. Where provided, pits must be fenced or provided with a sufficient barrier to prohibit the entry of spectators. Pits shall have separate entrance and exit lanes.
- (8) Spectator Areas. Spectator areas shall be separated from the track and pit areas by a fence or barrier sufficient to withstand the impact of a kart traveling at full speed. It shall be approximately level and free of holes or debris.

(d) Track Operation. The following standards of operation shall apply to electric or fuel powered go karts, dune buggies, auto racers, and all terrain vehicles.

- (1) All karts must start and stop operation at the same time or a separate pit area shall be provided for loading and unloading purposes.
- (2) Drivers of adult karts must be at least 48 inches (4 feet) tall and have a leg length sufficient to reach the brake and throttle controls when seated.
- (3) Drivers of kiddie karts shall not exceed 54 inches (4 feet 6 inches) tall and must have a leg length sufficient to reach the brake and throttle controls when seated.

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| <p>(4) Adult karts and kiddie karts shall not be operated simultaneously on the same track.</p> <p>(5) No kart may be operated when weather conditions are such that it may affect the safe operation of the kart or when visibility on the track is less than 150 feet.</p> <p>(6) Each section of a kart track shall be monitored during the time that any kart is in operation. Monitoring shall be by direct visual contact by the operator or track attendants or by electronic visual surveillance.</p> <p>(7) A kart that is losing oil or fuel shall be immediately removed from the track.</p> <p>(8) When the noise level of any kart exceeds the requirements of Subparagraph (a)(14) of this Rule, it shall be immediately removed from the track until it has been repaired.</p> <p>(9) Safety equipment such as helmets (when used) and seat restraints shall be approved for the type of use or operation and be of correct size for the person using it.</p> <p>(10) Persons with hair longer than shoulder length or wearing loose clothing that could obstruct the vision of the driver or become entangled in any moving part shall not be permitted to drive or ride a go kart. Long hair may be tied up to reduce its length.</p> <p>(11) Persons whose behavior appears to be impaired by such as the use of drugs or alcohol shall not be permitted to drive a go kart.</p> <p>(12) Smoking shall not be permitted within 30 feet of a go kart.</p> <p>(13) Track regulations shall not permit persons to leave their karts while any kart is in operation on the track.</p> <p>(14) Signs containing the following information and other track regulations shall be posted at the track entrance or ticket window and conspicuously in the pit area.</p> <p style="margin-left: 20px;">(A) To drive or ride an adult kart you must be at least 48 inches tall.</p> <p style="margin-left: 20px;">(B) To drive a kiddie kart you may not be taller than 54 inches.</p> <p style="margin-left: 20px;">(C) Keep both hands on the wheel at all times.</p> <p style="margin-left: 20px;">(D) Keep both feet inside the kart.</p> <p style="margin-left: 20px;">(E) Hair longer than shoulder length must be tied up.</p> <p style="margin-left: 20px;">(F) All loose clothing must be tucked in.</p> <p style="margin-left: 20px;">(G) No smoking within 30 feet of a kart.</p> <p style="margin-left: 20px;">(H) Do not leave the kart while on the track.</p> <p>(15) Signs that indicate the direction of travel for karts shall be posted at various locations around the track perimeter.</p> | <p>(1) The track shall be inspected daily for potholes, bumps or loose material. Necessary repairs shall be made before opening the track.</p> <p>(2) Daily inspections shall be made on each kart prior to operation. The inspection shall include but not be limited to:</p> <p style="margin-left: 20px;">(A) Wheel and tires;</p> <p style="margin-left: 20px;">(B) Steering mechanism;</p> <p style="margin-left: 20px;">(C) Frame welds;</p> <p style="margin-left: 20px;">(D) Axles and spindles;</p> <p style="margin-left: 20px;">(E) Safety belts, roll bars, and seat padding;</p> <p style="margin-left: 20px;">(F) Gasoline tank, lines and valves;</p> <p style="margin-left: 20px;">(G) Brake and throttle operation; and</p> <p style="margin-left: 20px;">(H) Exhaust systems.</p> <p>(3) Go kart maintenance shall be performed as recommended by the kart manufacturer or as approved by the North Carolina Department of Labor.</p> |
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*Authority G.S. 95-111.4.*

**TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the DENR-Environmental Management Commission intends to adopt the rule cited as 15A NCAC 02D .1009.*

**Proposed Effective Date:** *December 1, 2004*

**Public Hearing:**

**Date:** *August 18, 2004*

**Time:** *7:00 p.m.*

**Location:** *Air Quality Training Room AQ526, Parker Lincoln Building, 2728 Capital Blvd., Raleigh, NC*

**Reason for Proposed Action:** *This Rule is proposed to be adopted to require model year 2008 and later model year heavy-duty diesel vehicles be California Air Resources Board certified in order to be sold, leased, or registered in North Carolina.*

**Procedure by which a person can object to the agency on a proposed rule:** *If you have any objections to the proposed rule, please mail a letter including your specific reasons to Mr. Thomas C. Allen, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641.*

**Written comments may be submitted to:** *Thomas C. Allen, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641, phone (919) 733-1489, fax (919) 715-7476, and email thom.allen@ncmail.net.*

**Comment period ends:** *October 1, 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 6<sup>th</sup> 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 02 - ENVIRONMENTAL MANAGEMENT**

**SUBCHAPTER 02D - AIR POLLUTION CONTROL REQUIREMENTS**

**SECTION .1000 - MOTOR VEHICLE EMISSION CONTROL STANDARD**

**15A NCAC 02D .1009 MODEL YEAR 2008 AND SUBSEQUENT MODEL YEAR HEAVY-DUTY AND MEDIUM-DUTY DIESEL VEHICLE REQUIREMENTS**

(a) Applicability. This Rule applies to model year 2008 and subsequent model year heavy-duty diesel vehicles and medium-duty diesel vehicles having a manufacturer's gross vehicle weight rating of 8501 pounds or greater as specified in Title 13 of the California Code of Regulations, Section 1956.8.

(b) Requirement. No model year 2008 or subsequent model year heavy-duty or medium-duty diesel vehicle may be sold, leased, or registered within North Carolina unless the vehicle or its engine has been certified by the California Air Resources Board as meeting the applicable model year requirements of Title 13 of the California Code of Regulations, Section 1956.8, California Exhaust Emission Standards and Test Procedures for 1985 and Subsequent Model Heavy-Duty Diesel Engines and Vehicles.

(c) Referenced Regulation. The California Code of Regulations incorporated by reference in this Rule shall automatically include any later amendments thereto. A copy of Title 13 of the California Code of Regulations, Section 1956.8, may be obtained free of charge via the internet from the Office of Administrative Law California Code of Regulations website at <http://ccr.oal.ca.gov/>, or a hard copy may be obtained at a cost of five dollars (\$5.00) from the Public Information Office, California Air Resources Board, P.O. Box 2815, Sacramento, CA, 95812.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(6)-(7).

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rule cited as 15A NCAC 02L .0202.*

**Proposed Effective Date:** December 1, 2004

**Public Hearing:**

**Date:** August 19, 2004

**Time:** 7:00 p.m. to 8:00 p.m. (Two Radiums); 8:00 p.m. to 10:30 p.m. (The 31 remaining substances)

**Location:** Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury St., Raleigh, NC

*Note that the public hearing will be conducted in two parts. From 7:00 PM to 8:00 PM, the hearing officer will entertain comments concerning the proposed revision to the Radium-226 and Radium-228 Groundwater Quality Standards. On February 10, 2000, the Environmental Management Commission received objections from the Division of Environmental Health, Radiation Protection Section on the proposed revisions to the current standards for these substances under a 60-Day Notice of Rulemaking Proceedings that was published prior to new APA Procedures that was recently enacted in 2004. The Radiation Protection Section believes that the concentrations proposed in the amendment are too restrictive and do not reflect the most appropriate health effects data available. Based on these discussions, the Commission requested that the hearing for these two substances be conducted separate from the remaining substances in the amendment on the same evening. The hearing for the remaining thirty-one substances will be from 8:00 PM to 10:30 PM that evening.*

**Reason for Proposed Action:** *This rulemaking proposes revising thirty-three Groundwater Quality Standards that are incorporated into an amendment to 15A NCAC 02L .0202. These substances are Acrylamide, Bromoform, Boron, Cadmium, Carbofuran, Carbon Tetrachloride, Chlordane, Chloroform, 2-Chlorophenol, Cyanide, 1,2-Dichlorobenzene, 1,3-Dichlorobenzene, 1,4-Dichlorobenzene, 1,1-Dichloroethane, 1,2-Dichloroethylene, 1,2-Dichloropropane, Di(2-ethylhexyl)phthalate, 1,4-Dioxane, Ethylbenzene, Ethylene Glycol, Fluoride, Heptachlor, Heptachlor Epoxide, Heptane, Mercury, Methylene Chloride, Methyl Ethyl Ketone, Pentachlorophenol, Radium-228, Radium-226, Silver, Trans-1,2-Dichloroethylene, and Zinc. The Division of Public Health has recommended revision of the current Groundwater Quality Standards for all thirty-three of these substances pursuant to the triennial review requirements of 15A NCAC 02L .0202. The concentrations for these substances listed in the proposed rule are based on the most recent information and references specified under 15A NCAC 02L .0202(c-d) and are protective of human health. The Environmental Management Commission has approved Rulemaking for these thirty-three substances to proceed to public hearing.*

*The Division of Public Health completed a triennial review as required under 15A NCAC 02L .0202(f) on June 19, 2000. In addition, the Division was also requested to respond to comments to the Groundwater Quality Standard for 1,1-Dichloroethylene on October 2, 2002. Except for Chlordane, 2-Chlorophenol, 1,3-Dichlorobenzene, 1,4-Dichlorobenzene, 1,1-*

Dichloroethylene, and Ethylbenzene the concentrations shown in the proposed amendment to title 15A NCAC 02L .0202 are the recommended Groundwater Quality Standards for these substances. Based on more recent toxicological and health

information, it is proposed that the final standards for these six substances be changed from in accordance with the following listing:

<u>Substance</u>	<u>Current Proposed Standard in the Rule</u>	<u>Change Recommended</u>
Chlordane	2.69 x 10 <sup>-5</sup> milligrams per liter	1.0 x 10 <sup>-4</sup> milligrams per liter
2-Chlorophenol	0.035 milligrams per liter	0.00036 milligrams per liter
1,3-Dichlorobenzene	0.63 milligrams per liter	0.170 milligrams per liter
1,4-Dichlorobenzene	0.011 milligrams per liter	0.0014 milligrams per liter
1,1-Dichloroethylene	0.000058 milligrams per liter	0.007 milligrams per liter
Ethylbenzene	0.70 milligrams per liter	0.550 milligrams per liter

It is important to note that of the six changes proposed by the Division of Public Health in the June 19, 2000 recommendation, only Chlordane and 1, 1-Dichloroethylene are recommended at concentration levels that is higher (i.e. less restrictive) than the proposed Groundwater Quality Standard that appears in the rule. Note that the proposed new concentration for 1, 1-Dichloroethylene is the same as the current standard in 15A NCAC 02L .0202. These changes were suggested after the Environmental Management Commission gave approval to proceed to public notice and hearing on the proposed rules. In addition, the Division of Public Health has recommended that the descriptive narrative for Cyanide be changed to read as "Cyanide (Free Cyanide or Hydrogen Cyanide)" based on toxicological information for this substance. These recommended changes have been deemed important enough by DWQ - Planning Section staff to discuss at the public hearings.

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 6<sup>th</sup> 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.

**Procedure by which a person can object to the agency on a proposed rule:** A person may submit written objections concerning this Rule change to the NCDENR - Division of Water Quality – Planning Section. Such correspondence should be to the attention of David A. Hance, NCDENR/DWQ-Planning Section, 1636 Mail Service Center, Raleigh NC 27699-1636, fax (919) 715-0588, email David.Hance@ncmail.net.

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

**Written comments may be submitted to:** David A. Hance, NCDENR/DWQ-Planning Section, 1636 Mail Service Center, Raleigh, NC 27699-1636, phone (919) 715-6189, fax (919) 715-0588, and email [David.Hance@ncmail.net](mailto:David.Hance@ncmail.net). Oral comments may be made during the hearings. Written copies of oral statements exceeding three minutes are requested. All written comments must be submitted by October 1, 2004. An objection made at the public hearing to any of the proposed revisions to Groundwater Quality Standards must be submitted in writing.

**Comment period ends:** October 1, 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

**CHAPTER 02 - ENVIRONMENTAL MANAGEMENT**

**SUBCHAPTER 02L - GROUNDWATER CLASSIFICATION AND STANDARDS**

**SECTION .0200 - CLASSIFICATIONS AND GROUNDWATER QUALITY STANDARDS**

**15A NCAC 02L .0202 GROUNDWATER QUALITY STANDARDS**

(a) The groundwater quality standards for the protection of the groundwaters of the state are those specified in this Rule. They are the maximum allowable concentrations resulting from any discharge of contaminants to the land or waters of the state, which may be tolerated without creating a threat to human health or which would otherwise render the groundwater unsuitable for its intended best usage.

(b) The groundwater quality standards for contaminants specified in Paragraphs (g) and (h) of this Rule shall be as listed, except that:

- (1) Where the standard for a substance is less than the practical quantitation limit, the detection of that substance at or above the practical quantitation limit shall constitute a violation of the standard.
- (2) Where two or more substances exist in combination, the Director shall consider the effects of chemical interactions as determined by the Division of Epidemiology and may establish maximum concentrations at values less than those established in accordance with Paragraphs (c) and (g) of this Rule. In the absence of information to the contrary, the carcinogenic risks associated with carcinogens present shall be considered additive and the toxic effects associated with non-carcinogens present shall also be considered additive.
- (3) Where naturally occurring substances exceed the established standard, the standard will be the naturally occurring concentration as determined by the Director.
- (c) Except for tracers used in concentrations which have been determined by the Division of Epidemiology to be protective of human health, and the use of which has been permitted by the Division, substances which are not naturally occurring and for which no standard is specified shall not be permitted in detectable concentrations in Class GA or Class GSA groundwaters. Any person may petition the Director to establish an interim maximum allowable concentration for an unspecified substance, however, the burden of demonstrating those concentrations of the substance which correspond to the levels described in Paragraph (d) of this Rule rests with the petitioner. The petitioner shall submit relevant toxicological and epidemiological data, study results, and calculations necessary to establish a standard in accordance with the procedure prescribed in Paragraph (d) of this Rule. Within three months after the establishment of an interim maximum allowable concentration for a substance by the Director, the Director shall initiate action to consider adoption of a standard for that substance.
- (d) Groundwater quality standards for substances in Class GA and Class GSA groundwaters are established as the lesser of:
- (1) Systemic threshold concentration calculated as follows:  $[\text{Reference Dose (mg/kg/day)} \times 70 \text{ kg (adult body weight)} \times \text{Relative Source Contribution (.10 for inorganics; .20 for organics)}] / [2 \text{ liters/day (avg. water consumption)}]$ ;
  - (2) Concentration which corresponds to an incremental lifetime cancer risk of  $1 \times 10^{-6}$ ;
  - (3) Taste threshold limit value;
  - (4) Odor threshold limit value;
  - (5) Maximum contaminant level; or
  - (6) National secondary drinking water standard.
- (e) The following references, in order of preference, shall be used in establishing concentrations of substances which correspond to levels described in Paragraph (d) of this Rule.
- (1) Integrated Risk Information System (U.S. EPA).
  - (2) Health Advisories (U.S. EPA Office of Drinking Water).
  - (3) Other health risk assessment data published by U.S. EPA.
  - (4) Other appropriate, published health risk assessment data, and scientifically valid peer-reviewed published toxicological data.
- (f) Groundwater quality standards specified in Paragraphs (g) and (h) of this Rule and interim maximum allowable concentrations established pursuant to Paragraph (c) of this Rule shall be reviewed on a triennial basis. Appropriate modifications to established standards will be made in accordance with the procedure prescribed in Paragraph (d) of this Rule where modifications are considered appropriate based on data published subsequent to the previous review.
- (g) Class GA Standards. Where not otherwise indicated, the standard refers to the total concentration in milligrams per liter of any constituent in a dissolved, colloidal or particulate form which is mobile in groundwater. This does not apply to sediment or other particulate matter which is preserved in a groundwater sample as a result of well construction or sampling procedures.
- (1) acetone: 0.7
  - (2) acenaphthene: 0.08
  - (3) acenaphthylene: 0.21
  - (4) acrylamide (propenamide): ~~0.00004~~ 0.000008
  - (5) anthracene: 2.1
  - (6) arsenic: 0.05
  - (7) atrazine and chlorotriazine metabolites: 0.0030
  - (8) barium: 2.0
  - (9) benzene: 0.001
  - (10) benzo(a)anthracene (benz(a)anthracene): 0.0000479
  - (11) benzo(b)fluoranthene:  $4.79 \times 10^{-5}$
  - (12) benzo(k)fluoranthene:  $4.79 \times 10^{-4}$
  - (13) benzo(g,h,i)perylene: 0.21
  - (14) benzo(a)pyrene:  $4.79 \times 10^{-6}$
  - (15) boron: ~~0.32~~ 0.315
  - (16) bromodichloromethane: 0.00056
  - (17) bromoform (tribromomethane): ~~0.00019~~ 0.00443
  - (18) n-butylbenzene: 0.07
  - (19) sec-butylbenzene: 0.07
  - (20) tert-butylbenzene: 0.07
  - (21) butylbenzyl phthalate: 0.10
  - (22) cadmium: ~~0.005~~ 0.00175
  - (23) caprolactam: 3.5
  - (24) carbofuran: ~~0.036~~ 0.035
  - (25) carbon disulfide: 0.7
  - (26) carbon tetrachloride: ~~0.0003~~ 0.000269
  - (27) chlordane:  ~~$2.7 \times 10^{-5}$~~   $2.69 \times 10^{-5}$
  - (28) chloride: 250.0
  - (29) chlorobenzene: 0.05
  - (30) chloroethane: 2.80
  - (31) chloroform (trichloromethane): ~~0.00019~~ 0.0057
  - (32) chloromethane (methyl chloride):  $2.6 \times 10^{-3}$
  - (33) 2-chlorophenol: ~~0.0001~~ 0.035
  - (34) 2-chlorotoluene: 0.14
  - (35) chromium: 0.05
  - (36) chrysene: 0.00479

**PROPOSED RULES**

(37)	cis-1,2-dichloroethene: 0.07	alpha,beta,delta,gamma, and epsilon isomers): 1.9 x 10 <sup>-5</sup>
(38)	coliform organisms (total): 1 per 100 milliliters	(82) n-hexane: 0.42
(39)	color: 15 color units	(83) indeno(1,2,3-cd)pyrene: 4.79 x 10 <sup>-5</sup>
(40)	copper: 1.0	(84) iron: 0.3
(41)	cyanide: <del>0.154</del> <u>0.07</u>	(85) isophorone: 0.0368
(42)	2, 4-D (2,4-dichlorophenoxy acetic acid): 0.07	(86) isopropylbenzene: 0.070
(43)	dibenz(a,h)anthracene: 4.7 x 10 <sup>-6</sup>	(87) isopropyl ether (diisopropyl ether): 0.070
(44)	1,2-dibromo-3-chloropropane: 2.5 x 10 <sup>-5</sup>	(88) lead: 0.015
(45)	dichlorodifluoromethane (Freon-12; Halon): 1.4	(89) lindane: 2.0 x 10 <sup>-4</sup>
(46)	p,p'-dichlorodiphenyl dichloroethane (DDD): 1.4 x 10 <sup>-4</sup>	(90) manganese: 0.05
(47)	p,p'-dichlorodiphenyltrichloroethane (DDT): 1.0 x 10 <sup>-4</sup>	(91) mercury: <del>0.0011</del> <u>0.00105</u>
(48)	1,1-dichloroethane: <del>0.7</del> <u>0.07</u>	(92) metadichlorobenzene (1,3-dichlorobenzene): <del>0.62</del> <u>0.63</u>
(49)	1,2-dichloroethane (ethylene dichloride): 0.00038	(93) methanol: 3.5
(50)	1,1-dichloroethylene (vinylidene chloride): <del>0.007</del> <u>0.000058</u>	(94) methoxychlor: 0.035
(51)	1,2-dichloropropane: <del>0.00056</del> <u>0.00051</u>	(95) methylene chloride (dichloromethane): <del>0.005</del> <u>0.0046</u>
(52)	1,3-dichloropropene (cis and trans isomers): 0.00019	(96) methyl ethyl ketone (MEK; 2-butanone): <del>0.17</del> <u>4.20</u>
(53)	dieldrin: 2.2 x 10 <sup>-6</sup>	(97) 2-methylnaphthalene: 0.0140
(54)	di-n-butyl (or dibutyl) phthalate (DBP): 0.7	(98) 3-methylphenol (m-cresol): 0.0350
(55)	diethylphthalate (DEP): 5.0	(99) 4-methylphenol (p-cresol): 3.5 x 10 <sup>-3</sup>
(56)	di(2-ethylhexyl) phthalate (DEHP): <del>0.003</del> <u>0.0025</u>	(100) methyl tert-butyl ether (MTBE): 0.2
(57)	2,4-dimethylphenol (m-xylene): 0.14	(101) naphthalene: 0.021
(58)	di-n-octyl phthalate: 0.14	(102) nickel: 0.1
(59)	p-dioxane (1,4-diethylene dioxide): <del>0.007</del> <u>0.00318</u>	(103) nitrate: (as N) 10.0
(60)	dioxin: 2.2 x 10 <sup>-10</sup>	(104) nitrite: (as N) 1.0
(61)	diphenyl (1,1- diphenyl): 0.35	(105) N-nitrosodimethylamine: 7.0 x 10 <sup>-7</sup>
(62)	dissolved solids (total): 500	(106) orthodichlorobenzene (1,2-dichlorobenzene): <del>0.62</del> <u>0.024</u>
(63)	disulfoton: 2.8 x 10 <sup>-4</sup>	(107) oxamyl: 0.175
(64)	diundecyl phthalate (Santicizer 711): 0.14	(108) paradichlorobenzene (1,4-dichlorobenzene): <del>0.075</del> <u>0.011</u>
(65)	endosulfan II (beta-endosulfan): 0.0420	(109) pentachlorophenol: <del>0.0003</del> <u>0.00029</u>
(66)	endrin: 0.002	(110) petroleum aliphatic carbon fraction class C5 - C8: 0.42
(67)	endrin (total endrin: includes endrin, endrin aldehyde, and endrin ketone): 2.1 x 10 <sup>-3</sup>	(111) petroleum aliphatic carbon fraction class C9 - C18: 4.20
(68)	epichlorohydrin (1-chloro-2,3-epoxypropane): 0.00354	(112) petroleum aliphatic carbon fraction class C19 - C36: 42.0
(69)	ethylbenzene: <del>0.029</del> <u>0.70</u>	(113) petroleum aromatics carbon fraction class C9 - C22: 0.210
(70)	ethylene dibromide (EDB; 1,2-dibromoethane): 4.0 x 10 <sup>-7</sup>	(114) pH: 6.5 - 8.5
(71)	ethylene glycol: <del>7.0</del> <u>14.0</u>	(115) phenanthrene: 0.21
(72)	fluoranthene: 0.28	(116) phenol: 0.30
(73)	fluorene: 0.28	(117) phorate: 1.4 x 10 <sup>-3</sup>
(74)	fluoride: <del>2.0</del> <u>1.0</u>	(118) n-propylbenzene: 0.070
(75)	foaming agents: 0.5	(119) pyrene: 0.21
(76)	gross alpha (adjusted)particle activity (excluding radium-226 and uranium): 15 pCi/l	(120) radium-226 and radium-228 (combined): 5 pCi/l <u>radium-226: 0.071 pCi/L</u>
(77)	heptachlor: <del>8.0 x 10<sup>-6</sup></del> <u>7.8 x 10<sup>-6</sup></u>	(121) <u>radium-228: 0.0023 pCi/L</u>
(78)	heptachlor epoxide: <del>4.0 x 10<sup>-6</sup></del> <u>3.8 x 10<sup>-6</sup></u>	(122) selenium: 0.05
(79)	heptane: <del>2.1</del> <u>0.42</u>	(123) silver: <del>0.018</del> <u>0.0175</u>
(80)	hexachlorobenzene (perchlorobenzene): 0.00002	(124) simazine: 0.004
(81)	hexachlorocyclohexane isomers (total hexachlorocyclohexane: includes	(125) styrene (ethenylbenzene): 0.1
		(126) sulfate: 250.0
		(127) tetrachloroethylene (perchloroethylene; PCE): 0.0007
		(128) 2,3,4,6-tetrachlorophenol: 0.210

- ~~(128)~~ ~~(129)~~ toluene (methylbenzene): 1.0
- ~~(129)~~ ~~(130)~~ toxaphene:  $3.1 \times 10^{-5}$
- ~~(130)~~ ~~(131)~~ 2, 4, 5,-TP (Silvex): 0.05
- ~~(131)~~ ~~(132)~~ trans-1,2-dichloroethene: ~~0.07~~ 0.10
- ~~(132)~~ ~~(133)~~ 1,1,1-trichloroethane (methyl chloroform): 0.2
- ~~(133)~~ ~~(134)~~ trichloroethylene (TCE): 0.0028
- ~~(134)~~ ~~(135)~~ trichlorofluoromethane: 2.1
- ~~(135)~~ ~~(136)~~ 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113): 210.0
- ~~(136)~~ ~~(137)~~ 1,2,3- trichloropropane:  $5.0 \times 10^{-6}$
- ~~(137)~~ ~~(138)~~ 1,2,4-trimethylbenzene: 0.350
- ~~(138)~~ ~~(139)~~ 1,3,5-trimethylbenzene: 0.350
- ~~(139)~~ ~~(140)~~ vinyl chloride (chloroethylene):  $1.5 \times 10^{-5}$
- ~~(140)~~ ~~(141)~~ xylenes (o-, m-, and p-): 0.53
- ~~(141)~~ ~~(142)~~ zinc: ~~2.1~~ 1.05

(h) Class GSA Standards. The standards for this class shall be the same as those for Class GA except as follows:

- (1) chloride: allowable increase not to exceed 100 percent of the natural quality concentration.
- (2) total dissolved solids: 1000 mg/l.

(i) Class GC Waters.

- (1) The concentrations of substances which, at the time of classification exceed the standards applicable to Class GA or GSA groundwaters shall not be caused to increase, nor shall the concentrations of other substances be caused to exceed the GA or GSA standards as a result of further disposal of contaminants to or beneath the surface of the land within the boundary of the area classified GC.
- (2) The concentrations of substances which, at the time of classification, exceed the standards applicable to GA or GSA groundwaters shall not be caused to migrate as a result of activities within the boundary of the GC classification, so as to violate the groundwater or surface water quality standards in adjoining waters of a different class.
- (3) Concentrations of specific substances, which exceed the established standard at the time of classification, shall be listed in Section .0300 of this Subchapter.

Authority G.S. 143-214.1; 143B-282(a)(2);

**TITLE 21- OCCUPATIONAL LICENSING BOARDS**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Nursing intends to amend the rules cited as 21 NCAC 36 .0211, .0221.*

**Proposed Effective Date:** December 1, 2004

**Public Hearing:**

**Date:** September 23, 2004

**Time:** 1:00 p.m.

**Location:** NCBON, 3724 National Drive, Ste. 201, Raleigh, NC 27612

**Reason for Proposed Action:**

**21 NCAC 36 .0211** – Revision to this rule will provide flexibility for the Board to use other evaluation processes as well as agencies for credentials review and testing English proficiency of foreign education applicants as a requirement for eligibility to take NCLEX for initial licensure.

**21 NCAC 36 .0221** - This rule change reflects adoption by the Board of Nursing of Pharmacy rules in accordance with G.S. 90-85(r) and 21 NCAC 46 .2507 which allows NC Pharmacists, with proper training to administer vaccines. The Board must adopt rules in order for the Pharmacy rules to be valid.

**Procedure by which a person can object to the agency on a proposed rule:**

Persons may submit objections to these Rules by contacting Jean H. Stanley, APA Coordinator, North Carolina Board of Nursing, P.O. Box 2129, Raleigh, NC 27602, voice mail (919)782-3211, ext. 252, fax (919)781-9461 and email: jeans@ncbon.com.

**Written comments may be submitted to:** Jean H. Stanley, APA Coordinator, North Carolina Board of Nursing, P.O. Box 2129, Raleigh, NC 27602, voice mail (919)782-3211, ext. 252, fax (919)781-9461 and email: jeans@ncbon.com.

**Comment period ends:** October 1, 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 6<sup>th</sup> 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 ( $\geq$ \$3,000,000)
- None

**CHAPTER 36 - BOARD OF NURSING**

**SECTION .0200 - LICENSURE**

**21 NCAC 36 .0211 LICENSURE BY EXAMINATION**

(a) An applicant shall meet the educational qualifications to take the examination for licensure to practice as a registered nurse by:

- (1) graduating from a Board approved nursing program (21 NCAC 36 .0300) designed to prepare a person for registered nurse licensure;
  - (2) graduating from a nursing program outside the United States that is designed to provide graduates with comparable education preparation for licensure as a registered nurse, and submitting a certificate issued by the Commission on Graduates of Foreign Nursing Schools (CGFNS) or evidence of education as required in 21 NCAC 36 .0321(b) through (d) for an applicant educated in Canada as evidence of the required educational qualifications, licensure as a registered nurse, and submitting evidence from an evaluation agency of the required educational qualifications and evidence of English proficiency. The evaluation agency(s) for educational qualifications shall be selected from a list of evaluation agencies published by the National Council of State Boards of Nursing Inc., which is hereby incorporated by Reference, including subsequent amendments of the referenced materials. The evidence of English proficiency shall be the Test of English as a Foreign Language or a test determined by the Board to be equivalent to the Test of English as a Foreign Language;
- (b) An applicant shall meet the educational qualifications to take the examination for licensure to practice as a licensed practical nurse by:
- (1) graduating from a Board approved nursing program (21 NCAC 36 .0300) designed to prepare a person for practical nurse licensure;
  - (2) graduating from a nursing program outside the United States that is designed to provide graduates with comparable preparation for licensure as a licensed practical nurse, and submitting evidence from an evaluation agency of the required educational qualifications and evidence of English proficiency. The evaluation agency(s) for educational qualifications shall be selected from a list of evaluation agencies published by the National Council of State Boards of Nursing, Inc., which is hereby incorporated by Reference, including subsequent amendments of the referenced materials. The list of such agencies is available, at no cost, from the North Carolina Board of Nursing. The evidence of English proficiency shall be passing the Test of English as a Foreign Language with a score of at least 213 or a test determined by the Board to be equivalent to the Test of English as a Foreign Language;
  - (3) graduating from a Board approved nursing program designed to prepare graduates for registered nurse licensure, and failing to pass the examination for registered nurse licensure; or
  - (4) graduating from a nursing program outside the United States that is designed to prepare graduates with comparable preparation for licensure as a registered nurse, and submitting ~~the certificate issued by the Commission on Graduates of Foreign Nursing Schools as evidence~~ evidence as described in Subparagraph (a)(2) of this Rule of the required educational qualifications, and failing to pass the examination for registered nurse licensure in any jurisdiction.
- (c) An application shall be submitted to the Board of Nursing and a registration form to the testing service. The applicant shall meet all requirements of the National Council of State Boards of Nursing, Inc.
- (d) The initial application shall be held active until the applicant passes the examination or one year, whichever occurs first. The time begins on the date the applicant is determined to be eligible for the licensure examination.
- (e) The examinations for licensure developed by the National Council of State Boards of Nursing, Inc. shall be the examinations for licensure as a registered nurse or as a licensed practical nurse in North Carolina.
- (1) These examinations shall be administered in accordance with the contract between the Board of Nursing and the National Council of State Boards of Nursing, Inc.
  - (2) The examinations for licensure shall be administered at least twice a year.
  - (3) Results for the examination shall be reported to the individual applicant and to the director of the program from which the applicant was graduated. Aggregate results from the examination(s) may be published by the Board.
  - (4) The passing standard score for each of the five tests comprising the examination for registered nurse licensure, up to and including the February 1982 examination was 350. For the examination offered in July 1982 and through July 1988, the passing score was 1600. Beginning February 1989, the results for registered nurse licensure is reported as "PASS" or "FAIL".
  - (5) The passing score for the examination for practical nurse licensure, up to and including the April 1988 was 350. Beginning October 1988, the results for practical nurse licensure is reported as "PASS" or "FAIL".
- (f) Applicants who meet the qualifications for licensure by examination shall be issued a certificate of registration and a license to practice nursing for the remainder of the biennial period. The qualifications include:
- (1) a "PASS" result on the licensure examination;
  - (2) evidence of unencumbered license in all jurisdictions in which a license is or has ever been held;
  - (3) evidence of completion of all court conditions resulting from any misdemeanor or felony convictions; and

(4) a written explanation and all related documents if the nurse has ever been listed as a Nurse Aide and if there have ever been any substantiated findings pursuant to G.S. 131E-255. The Board may take these findings into consideration when determining if a license should be denied pursuant to G.S. 90-171.37. In the event findings are pending, the Board may withhold taking any action until the investigation is completed.

(7) anticipating those effects which may rapidly endanger a client's life or well-being; and  
(8) making judgments and decisions concerning actions to take in the event such untoward effects occur.

(g) Applicants for a North Carolina license may take the examination for licensure developed by the National Council of State Boards of Nursing, Inc. in any National Council approved testing site.

(d) When health care needs of an individual are incidental to the personal care needs of the individual, nurses shall not be accountable for care performed by clients themselves, their families or significant others, or by caretakers who provide personal care to the individual.

(e) Pharmacists may administer drugs in accordance with 21 NCAC 46 .2507.

Authority G.S. 90-171.23(15); 90-171.29; 90-171.30; 90-171.37(1); 90-171.48.

Authority G.S. 90-85.3; 90-171.23(b); 90-171.43; 90-171.83.

**21 NCAC 36.0221 LICENSE REQUIRED**

(a) No cap, pin, uniform, insignia or title shall be used to represent to the public, that an unlicensed person is a registered nurse or a licensed practical nurse as defined in G.S. 90-171.43.

(b) The repetitive performance of a common task or procedure which does not require the professional judgment of a registered nurse or licensed practical nurse shall not be considered the practice of nursing for which a license is required. Tasks that may be delegated to the Nurse Aide I and Nurse Aide II shall be established by the Board of Nursing pursuant to 21 NCAC 36 .0403. Tasks may be delegated to an unlicensed person which:

**TITLE 25– STATE PERSONNEL**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to adopt the rules cited as 25 NCAC 01J .1201-.1208, .1301, .1401-.1412, amend the rules cited as 25 NCAC 01C .1004, 01D .2502, .2511, 01J .0615, 01K .0104-.0106, .0209-.0210, .0212, .0402, -.0404, .0701-.0703, .0705-.0706, .0708, 01O .0101, .0201-.0206 and repeal the rules cited as 25 NCAC 01J .0501-.0511, 01K .0211, .0214, 01O .0301-.0304.*

**Proposed Effective Date:** December 1, 2004

**Public Hearing:**

**Date:** September 15, 2004

**Time:** 10:00 a.m.

**Location:** 3<sup>rd</sup> Floor, Administration Building, 116 West Jones Street, Raleigh, NC

**Reason for Proposed Action:**

*25 NCAC 01C .1004 – Actions are proposed in order (1) to change the wording from reduction-in-force "plan" to reduction-in-force "policy" and (2) to add a paragraph emphasizing that the Office of State Budget and Management must give prior approval to severance salary continuation.*

*25 NCAC 01D .2502, .2511 – The current rules do not include provisions for Flat Rate salaries. In order to clarify this, we are proposing to change the rules to treat the increases the same as employees with salaries above the maximum. A maximum would be established which is nearest to, but exceeding, the flat rate salary.*

*25 NCAC 01J .1201-.1208, .1301, .1206-.1208, .1301, .1401-.1412 and 01J .0501-.0511 – To implement a new grievance procedure option that incorporates mediation as a mandatory first step. Agencies have the option to use the Employee Appeals and Grievance Process or the Employee Mediation and Grievance Process. In doing this the old rules have been repealed and new rules are being adopted that outline the provisions that apply to both processes in Section 1200. Section 1300 is renumbered but the provisions for the Employee Appeals and Grievance Process remain unchanged. Section 1400 outlines the policies and procedures for the Employee Mediation and Grievance Process.*

Client-care services which do not meet all of these criteria shall be performed by a licensed nurse

(c) The registered nurse or licensed practical nurse shall not delegate the professional judgment required to implement any treatment or pharmaceutical regimen which is likely to produce side effects, toxic effects, allergic reactions, or other unusual effects; or which may rapidly endanger a client's life or well-being and which is prescribed by a person authorized by state law to prescribe such a regimen. The nurse who assumes responsibility for implementing a treatment or pharmaceutical regimen shall be accountable for:

- (1) recognizing side effects;
- (2) recognizing toxic effects;
- (3) recognizing allergic reactions;
- (4) recognizing immediate desired effects;
- (5) recognizing unusual and unexpected effects;
- (6) recognizing changes in client's condition that contraindicates continued administration of the medication;

25 NCAC 01J .0615 – The Grandfather Provision in the Disciplinary Action Policy expired in 1997. It is recommended that the rule be amended to delete this provision.

25 NCAC 01K .0104-.0106, .0209-.0212, .0402-.0404, .0701-.0703, .0705-.0706, .0708 and 01K .0211, .0214 – Actions are proposed in order to clarify and update provisions for the Human Resources Development Program, previously called Personnel Training, and the North Carolina Certified Public Manager Program.

25 NCAC 01O .0101, .0201-.0206 and 01O .0301-.0304 – Actions are proposed in order to clarify and update provisions for the Performance Management System. The guidelines are being repealed since these are solely procedural and vary from one agency to the next.

**Procedure by which a person can object to the agency on a proposed rule:** Any person who objects to the adoption of a rule may submit written comments to Peggy Oliver, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331.

**Written comments may be submitted to:** Peggy Oliver, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331, Phone (919)733-7108, Fax (919)715-9750, E-Mail [peggy.oliver@ncmail.net](mailto:peggy.oliver@ncmail.net).

**Comment period ends:** October 1, 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 6<sup>th</sup> 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

**SUBCHAPTER 1C - PERSONNEL ADMINISTRATION**

**SECTION .1000 - SEPARATION**

**25 NCAC 1C .1004 REDUCTION IN FORCE**

(a) A State government agency may separate an employee whenever it is necessary due to shortage of funds or work, abolishment of a position or other material change in duties or organization. Retention of employees in classes affected shall,

as a minimum, be based on systematic consideration of all the following factors: type of appointment, relative efficiency, actual or potential adverse impact on the diversity of the workforce and length of service. However, neither temporary, probationary nor trainee employees in their initial six months of training shall be retained in classes where an employee with a permanent appointment must be separated in the same or related class.

(b) Agency Responsibility.

(1) Each agency shall develop a written ~~plan~~ policy for reduction-in-force which meets its particular needs and provides assurance to employees that potential reductions shall be considered on a fair and systematic basis in accordance with factors defined in the reduction-in-force ~~plan~~ policy. The ~~plan~~ policy of each department/agency/institution shall be filed with the Office of State Personnel as a public record.

(2) It is the employing agency's responsibility to inform the employee of separation as soon as possible and to inform the employee of the priority reemployment consideration available. The agency must provide employees with a minimum of 30 calendar days written notification of separation prior to the effective date of the reduction in force. ~~For persons desiring priority consideration, the releasing agency must submit an application to the Office of State Personnel requesting priority consideration. If the employee does not want assistance in finding another state job, the agency shall get a written statement to this effect and file a copy with the Office of State Personnel.~~

(c) Appeals. A career state employee who is separated due to reduction-in-force shall have the right to appeal to the State Personnel Commission for a review to assure that systematic procedures were applied. Provisions of the agency appeal procedure shall first be followed.

(d) Equal Employment Opportunity. In accordance with federal guidelines affecting equal employment opportunity, any application of the reduction-in-force plan must be analyzed to determine its impact in this area.

(e) Severance Salary Continuation. Severance salary continuation shall be administered in accordance with the rules contained at 25 NCAC 01D .2700. The Office of State Budget and Management is responsible for determining whether severance salary continuation is applicable. Prior approval shall be received from the Office of State Budget and Management before severance salary continuation is paid.

Authority G.S. 126-4(2).

**SUBCHAPTER 1D – COMPENSATION**

**SECTION .2000 - UNEMPLOYMENT INSURANCE**

**25 NCAC 01D .2502 AMOUNT OF CAREER GROWTH RECOGNITION AWARD**

The career growth recognition award shall represent a two percent increase. The increase shall be added to the employee's salary within the assigned pay grade but shall not exceed the maximum of the salary range. A partial increase may be given



to the maximum. Employees whose salaries are established as a Flat Rate shall not be eligible for a Career Growth Recognition Award.

Authority G.S. 126-7.

**25 NCAC 01D .2511 EMPLOYEES ELIGIBLE FOR PERFORMANCE BONUS**

(a) An employee having a permanent or time-limited full-time or part-time (half-time or more) appointment whose overall summary rating is at or above level four after completing a work cycle based on a work plan shall be eligible to receive a performance bonus unless the employee has an unresolved final disciplinary procedure. See Paragraph (f) and (g) of this Rule for employees with salaries above the maximum and Flat Rate salaries.

(b) An employee who has been denied a performance bonus because of an unresolved final disciplinary procedure shall not be eligible for a performance bonus during the current cycle. The employee shall be eligible for a bonus in the next cycle based on the overall summary rating.

(c) An employee having a probationary or trainee appointment on the date bonuses are effective is not eligible for a performance bonus. These employees shall become eligible when increases are effective for the next work cycle after:

- (1) receiving a permanent appointment,
- (2) completing a work cycle, and
- (3) receiving a summary rating at or above level four.

(d) An employee who is on leave without pay on the date performance bonuses are effective shall receive the bonus effective on the date of reinstatement if the work cycle has been completed and an overall summary rating given. If the work cycle and overall summary rating have not been completed, the employee shall receive the bonus at the time when both have been completed.

(e) An employee whose salary is at the maximum of the salary range is eligible for a performance bonus.

(f) An employee whose salary is above the maximum of the salary range is eligible for a performance bonus only to the extent that the base salary paid the employee plus the performance bonus allocated according to the employee's performance rating does not exceed the maximum salary paid on the adopted pay schedule for the applicable pay grade plus the allocated performance bonus calculated on the maximum salary on the pay schedule. ~~This performance bonus shall be calculated as follows:~~

<i>Line</i>	<i>Item</i>	<i>Calculation</i>
1	Maximum of salary range	
2	% bonus due according to performance rating	
3	Dollar amount of performance bonus [Line 1 x Line 2]	
4	Maximum annual salary allowed [Line 1 + Line 3]	
5	Salary of employee paid above maximum of range	
6	Maximum performance bonus for employee paid above the range [Line 4 - Line 5]	
<del>If Line 5 is greater than Line 4, the employee cannot receive a bonus.</del>		

(g) ~~An employee whose salary is on a Flat Rate is eligible for a performance bonus in accordance with the guidelines in Paragraph (f) of this Rule above. The maximum salary shall be established as the maximum of the range that has a rate nearest, but not exceeding, the flat rate salary of the eligible employee.~~

(h) This performance bonus for Paragraphs (f) and (g) of this Rule shall be calculated as follows:

<i>Line</i>	<i>Item</i>	<i>Calculation</i>
1	Maximum of salary range	
2	% bonus due according to performance rating	
3	Dollar amount of performance bonus [Line 1 x Line 2]	
4	Maximum annual salary allowed [Line 1 + Line 3]	
5	Salary of employee paid above maximum of range	
6	Maximum performance bonus for employee paid above the range [Line 4 - Line 5]	
<del>If Line 5 is greater than Line 4, the employee cannot receive a bonus.</del>		

~~(g)(i)~~ An employee who separates from State service prior to the effective date performance bonuses are effective is not eligible to receive the increase.

Authority G.S. 126-7.

**SUBCHAPTER 1J - EMPLOYEE RELATIONS**

**SECTION .0500 - EMPLOYEE GRIEVANCES**

**25 NCAC 01J .0501 GENERAL PROVISIONS**

(a) ~~For the purpose of this Section, the term "agencies" shall mean all departments, universities, offices, boards and commissions with employees subject to Article 8 of the State Personnel Act.~~

(b) ~~An employee who has access to the agency grievance procedure shall initiate the grievance proceeding no later than 15~~

calendar days after the last act which constitutes the basis of the grievance.

(c) For the purpose of Rules 1J .0502, .0503, and .0505 of this Section, except for appeals brought under G.S. 126-25, the term "career state employee" as used in this Section shall have the meaning assigned to it by the State Personnel Act. The employee must have attained career status at the time the act, grievance or employment practice that is the basis of the grievance occurs.

(d) For the purpose of this Section, the phrase "a reasonable period of time" shall mean:

(1) In cases involving the dismissal or demotion of a career state employee, 90 days from the date the grievance was filed unless the employee and agency mutually agree to additional time.

(2) In cases not involving the dismissal or demotion of a career state employee, 120 days from the date the grievance was filed unless the employee and agency mutually agree to additional time.

(e) Neither the agency nor the employee shall be represented by any outside parties during any internal grievance or alternative dispute resolution proceedings.

Authority G.S. 126-1A (until July 1, 1996) then 126-1.1; 126-4(17); 126-25; 126-34; 126-35; 126-39.

**25 NCAC 01J .0502 AGENCY RESPONSIBILITIES**

(a) The agency grievance procedure shall be implemented and continuously evaluated by the agency. Each agency shall, on or before January 1 of each even numbered year, submit to the Office of State Personnel either:

(1) the current agency grievance procedure for approval; or

(2) a statement that its grievance procedure has not changed since January 1 of the last prior even numbered year, including a certification that the current agency procedure is in compliance with current state law and rules and the effective date of the last change to the agency procedure.

(b) The Office of State Personnel shall review the reports of each agency as required by Rule .0509 of this Section and the grievance procedures of each agency for compliance with applicable law, rules and good employee relations practices. After such review and following resolution of any areas of disagreement, the Office of State Personnel shall forward the grievance procedure to the State Personnel Commission for reaffirmation of an unchanged agency grievance procedure previously approved or for approval of a new or modified agency grievance procedures. No agency grievance procedure is applicable to any employee until it has been approved by the State Personnel Commission.

Authority G.S. 126-4(9).

**25 NCAC 01J .0503 MINIMUM PROCEDURAL REQUIREMENTS**

The following provisions are the minimum requirements for approval by the State Personnel Commission:

(1) An employee with a grievance that does not allege unlawful discrimination as defined by G.S. 126-16 or G.S. 126-36, that does not allege a violation of G.S. 126-7.1(a) or (c), G.S. 126-82, or that does not allege a denial of employment or promotion in violation of G.S. 126-14.2 shall be required to first discuss the problem with the immediate supervisor. Where the grievance does not fall within the administrative or decision making authority of the immediate supervisor, the immediate supervisor, shall within 48 hours of receipt of the grievance, refer the grievance to the lowest level supervisor with administrative or decision making authority over the subject matter of the grievance and notify the employee of the fact of and the basis for the referral. The agency grievance procedure must outline those issues in addition to contested case issues under G.S. 126-34.1, if any, that are grievable under each agency's internal grievance procedure and whether and to what extent persons who have not attained career status under G.S. 126-1.1 may utilize the agency grievance procedure.

(2) The employee shall have the right to have the decision of the immediate supervisor reviewed. The step or steps after the immediate supervisor's step must include a step at which the employee has the right to orally present the grievance and where the reviewer is outside the employee's chain of command.

(3) Any decision rendered after the step of the supervisor's decision shall be issued in writing and the final agency decision shall be issued within a reasonable period of time as defined in this Section.

(4) At the step involving the reviewer (person or body) outside the employee's chain of command, the employee shall have the right to challenge whether the reviewer can render an unbiased decision. The agency grievance procedure shall establish a process for challenging the reviewer's impartiality and the process for the selection of a replacement when necessary.

(5) For matters that are contested case issues under G.S. 126-34.1, if the employee is not satisfied by the final decision of the agency head, the employee shall have the right to appeal to the State Personnel Commission within 30 days of receipt of the final agency decision. If the employee is unable within a reasonable period of time to obtain a final agency decision, the employee's right of appeal is governed by G.S. 150B-23(f).

- (6) ~~The agency shall state the methods of notifying current employees and newly appointed employees of any change to the agency grievance procedure no later than 30 days prior to the effective date of the change.~~
- (7) ~~The agency shall establish the time limit for the agency and employee to respond at each step in the grievance procedure. No time limit for an agency to respond or to act shall be more than twice the time limit for the employee.~~
- (8) ~~The grievance procedure shall include the effective date of the procedure and of any changes to the procedure.~~
- (9) ~~The grievance procedure shall comply with the requirements of 25 NCAC 1J .0615.~~

*Authority G.S. 126-4(9); 126-4(10); 126-4(17); 126-7.2; 126-16; 126-34; 126-34.1; 126-34.2; 126-35; 126-36; 126-37.*

**25 NCAC 01J .0504 ALTERNATIVE DISPUTE RESOLUTION**

- (a) ~~Each agency may create an alternative dispute resolution procedure. Any agency creating an alternative dispute resolution procedure shall include the procedure as a part of the grievance procedure.~~
- (b) ~~For matters that do not constitute a contested case issue as defined in G.S. 126-34.1, the employee may use the internal grievance procedure or the alternative dispute resolution procedure only to the extent allowed by the agency grievance procedure. A state employee or applicant who has the right to appeal to the State Personnel Commission is authorized to use the internal grievance procedure or the alternative dispute resolution procedure, if the agency provides an alternative dispute resolution procedure.~~
- (c) ~~Final resolution of a dispute through use of the alternative dispute resolution procedure must take place within a reasonable period of time, as defined in Rule .0501(d) of this Section.~~
- (d) ~~All agencies shall submit to the Office of State Personnel the names of agency employees who meet the eligibility requirements for conducting ADR procedures, as requested by the Office of State Personnel.~~

*Authority G.S. 126-4(17); 126-34.1; 126-34.2.*

**25 NCAC 01J .0505 MINIMUM PROCEDURAL REQUIREMENTS - ALTERNATIVE DISPUTE RESOLUTION (ADR)**

The following are the minimum requirements for approval of an alternative dispute resolution procedure:

- (1) ~~The alternative dispute resolution procedure shall state the point or points at which a participant may request to utilize alternative dispute resolution.~~
- (2) ~~The agency shall use an neutral party to conduct alternative dispute resolution options. In order to be eligible to conduct an alternative dispute resolution procedure a person shall:~~
  - (a) ~~Have no personal, financial, or business interest or relationship with~~

~~any participant in the dispute or with regards to the dispute. Status as an employee of the agency, alone, does not preclude an agency employee from being a neutral party for the purposes of this Rule.~~

- (b) ~~Have no prior knowledge of or have conducted no actual review of the evidence and facts regarding any participant or the merits of the dispute that would impact the decision.~~
- (c) ~~Complete 40 hours of training in basic mediation or other alternative dispute resolution medium.~~
- (d) ~~Have minimum of two years experience with the State Personnel Act or Administrative Procedures Act or with the administration of policies and procedures adopted under the North Carolina State Personnel System.~~
- (e) ~~Complete the Office of State Personnel training course on the State Personnel Commission discipline and dismissal and grievance rules.~~

(3) ~~The alternative dispute resolution procedure shall provide:~~

- (a) ~~That any employee may request to have a dispute addressed through the agency alternative dispute resolution procedure. The other parties to the dispute shall be notified in written form of the request.~~
- (b) ~~That there shall be written procedures outlining the alternative dispute resolution process to be used which includes the circumstances under which the procedure is binding or non-binding. The alternative dispute resolution procedure begins when the employee and the designated agency representative have agreed to use the procedure and both parties have signed the ADR consent form.~~
- (c) ~~That the employee and the representative designated by the agency shall agree on the person to conduct the alternative dispute resolution procedure. If the participants fail to agree on a person to conduct the alternative dispute resolution procedure within 10 days after signing the ADR consent form, the alternative dispute resolution procedure shall be considered to have been abandoned and the dispute shall revert to and be resolved at the appropriate level in the agency grievance procedure.~~

- ~~(d) That neither party shall be represented by legal counsel or other agent during any alternative dispute resolution proceedings.~~
- ~~(e) That at the conclusion of the alternative dispute resolution procedure, any resolution shall be documented in a written agreement which shall be signed by both parties. The resolution agreement shall be kept in a confidential agency file for not less than three years and shall not be transferred to any other agency. All other documents pertaining to the resolution of a dispute through the agency ADR that are not official personnel action forms or other required parts of the official personnel file shall be destroyed at the conclusion of the process.~~
- ~~(f) That each party shall receive a copy of the signed resolution agreement no later than five working days after the conclusion of the alternative dispute resolution procedure.~~
- ~~(g) That when alternative dispute resolution is utilized in connection with non-contested case issues or when the employee does not otherwise have a statutory basis for appeal to the State Personnel Commission, any resolution of the dispute through the agency ADR procedure shall be binding.~~
- ~~(h) That if resolution is not achieved, the person conducting the alternative dispute resolution procedure shall write a summary of the contentions of each of the participants, and shall submit the summaries to the agency head or designee along with notification of failure of ADR. Within five days of receipt of notification of failure of ADR, the agency head or designee shall issue a final agency decision (FAD). When the dispute involved contested case issues under G.S. 126-34.1 or when other statutory grounds for appeal exist, this FAD shall be appealable to the State Personnel Commission.~~
- ~~(i) That the request to utilize the alternative dispute resolution procedure; the failure of the alternative dispute resolution procedure; the elements or components of any of the discussions, sessions, hearings, investigations, or other activities in connection with the alternative dispute resolution~~

~~procedure; and any communications shared in connection with the alternative dispute resolution procedure, shall not be admissible as evidence in any proceeding subsequent to the conclusion of the alternative dispute resolution effort.~~

- ~~(j) That any costs associated with the use of an alternative dispute resolution procedure shall be borne by the agency.~~

- ~~(4) Any issues of noncompliance with resolution agreements or noncompliance with a decision reached through a binding resolution procedure shall be enforceable only as available in the general courts of justice of North Carolina.~~

*Authority G.S. 126-4(17); 126-34.1; 126-34.2.*

**25 NCAC 01J .0506 DISCRIMINATION**

~~(a) A state employee has the right of direct appeal to the State Personnel Commission or has the option of using the grievance procedure established within the employee's agency if the employee so desires. If an employee elects to utilize the agency grievance procedure, the employee must appeal an alleged act of discrimination within the time frames set by the agency grievance procedure. An employee who chooses to bypass the agency's internal grievance procedure and appeal directly to the Commission must do so within 30 calendar days of notice of the alleged discriminatory action.~~

~~(b) An employee who alleges unlawful workplace harassment shall have the right to bypass any step in the applicable agency procedure involving review of or decisions by the alleged harasser. An employee who has an unlawful workplace harassment complaint must submit an unlawful workplace harassment complaint in writing to the agency or department within 30 calendar days of the alleged harassing action. The agency or department has 60 calendar days to take appropriate action, if any, in response to the complaint. After the agency or department has had 60 calendar days in which to take appropriate action, if any, in response to the complaint of unlawful workplace harassment, the employee may file a complaint of unlawful workplace harassment with the State Personnel Commission within 30 calendar days of the 60th day of the period of time which the agency or department is given to consider the unlawful workplace harassment complaint and take appropriate action, if any.~~

*Authority G.S. 126-4(9); 126-4(17); 126-7.2; 126-16; 126-34.1; 126-34.2; 126-38.*

**25 NCAC 01J .0507 LEAVE IN CONNECTION WITH GRIEVANCES**

~~(a) An employee shall be allowed time off from regular duties as may be necessary and reasonable up to a maximum of eight hours for the preparation of an internal grievance under the procedures adopted within the agency without loss of pay, vacation leave or other time credits.~~

~~(b) Necessary and reasonable time for participation in contested case hearings and other administrative proceedings outside the agency in connection with employment, as a party, shall be granted upon request to the employee's supervisor or personnel officer without loss of pay, vacation leave or other time credits. Management may require prior official notice of the scheduling of and documentation by the presiding official or designee of the time the employee spent in attendance at these administrative proceedings.~~

*Authority G.S. 126-4(9).*

**25 NCAC 01J .0508 SPC APPROVAL OF ADR AGREEMENT**

~~Any resolution or agreement reached during the alternative dispute resolution procedure shall, to the extent that it involves a grievance or contested case issue, be treated as a settlement/consent agreement for the purposes of the required State Personnel Commission approval under 25 NCAC 1B .0436.~~

*Authority G.S. 126-4(9); 126-4(17); 126-34.2; 126-35; 150B-23.*

**25 NCAC 01J .0509 AGENCY GRIEVANCE REPORTS**

~~(a) Every agency shall, semi annually and as otherwise requested, compile information on employee grievances. These reports shall be due on the first business day of each of the following months: January and July.~~

~~(b) The Office of State Personnel shall make reports to the full State Personnel Commission at its February and August meetings based upon the information supplied in these semi-annual agency reports.~~

*Authority G.S. 126-4(9).*

**25 NCAC 01J .0510 FINAL AGENCY ACTION**

~~In every employee grievance in which the grievant has the right of appeal to the State Personnel Commission (SPC), the final decision of the agency head must inform the grievant in writing that any appeal from the final agency decision must be made to the SPC within 30 days after receipt of notice of the decision or action which triggers the right of appeal. Further, the grievant shall be informed in writing that an appeal to the SPC shall be made by filing a petition for contested case hearing with the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, North Carolina 27611 7447.~~

*Authority G.S. 126-4(9); 126-7.2; 126-35; 126-37; 126-38; 150B-23(a).*

**25 NCAC 01J .0511 GRANDFATHER CLAUSE**

~~Agencies may continue to use their existing approved grievance procedure, except to the extent that they are inconsistent with the law, until a procedure consistent with this Section is approved by the State Personnel Commission (SPC). All agency procedures shall be submitted to the State Personnel Commission beginning in January 1996 and approved by the State Personnel Commission by October 15, 1996. Any agency without an approved procedure that complies with these Rules after October~~

~~15, 1996 shall use the procedures adopted by the Office of State Personnel to administer grievances within that agency.~~

*Authority G.S. 126-4(9).*

**SECTION .0600 - DISCIPLINARY ACTION: SUSPENSION AND DISMISSAL**

**25 NCAC 01J .0615 SPECIAL PROVISIONS**

~~(a) GRANDFATHER PROVISIONS The following Grandfather provisions establish the force and effect of disciplinary actions in existence on October 1, 1995.~~

~~(1) Oral warnings any oral warning existing on October 1, 1995 is deemed void and has no further force or effect upon the disciplinary status of any state employee.~~

~~(2) All other disciplinary actions existing on October 1, 1995 shall remain in full force and effect as if the warnings or other disciplinary actions had been imposed under this Section. No written warning or other disciplinary action imposed prior to October 1, 1995 shall be deemed inactive by operation of the provisions of this Section until more than 18 months after October 1, 1995, or until the disciplinary action is deemed inactive in accordance with 25 NCAC 1J .0614(g), whichever occurs first.~~

~~(3) Extension of Disciplinary Actions any written warning or disciplinary action imposed prior to October 1, 1995 may be extended in accordance with the provisions of this Section as if the warning or disciplinary action had been imposed after October 1, 1995. No unresolved written warning or disciplinary action issued prior to October 1, 1995, shall become inactive if, within 18 months of October 1, 1995, another disciplinary action or warning is imposed on the employee. Notice of the extension of the active status of a disciplinary action may be given at any time within 18 months of the effective date of the disciplinary action.~~

~~(4) Resolution of disciplinary actions under prior agency/university procedure any warnings or disciplinary actions existing on October 1, 1995 shall be deemed inactive if it would have been resolved under the agency/university procedure existing prior to October 1, 1995.~~

~~(b)(a) PLACEMENT ON INVESTIGATION - Investigation status is used to temporarily remove an employee from work status. Placement on investigation with pay does not constitute a disciplinary action as defined in this Section or in G.S. 126-35. Management must notify an employee in writing of the reasons for investigatory placement not later than the second scheduled work day after the beginning of the placement. An investigatory placement with pay may last no longer than 30 calendar days without written approval of extension by the agency/university head and the State Personnel Director. When an extension beyond the 30-day period is required, the agency/university must advise the employee in writing of the extension, the length of the~~

extension, and the specific reasons for the extension. If no action has been taken by an agency/university by the end of the 30-day period and no further extension has been granted, the agency/university must either take appropriate disciplinary action on the basis of the findings upon investigation or return the employee to active work status. Under no circumstance is it permissible to use placement on investigation status for the purpose of delaying an administrative decision on an employee's work status pending the resolution of a civil or criminal court matter involving the employee.

It is permissible to place an employee in investigation status with pay only under the following circumstances:

- (1) To investigate allegations of performance or conduct deficiencies that would constitute just cause for disciplinary action;
- (2) To provide time within which to schedule and conduct a pre-disciplinary conference; or
- (3) To avoid disruption of the work place and/or to protect the safety of persons or property.

~~(e)~~(b) **CREDENTIALS** - By statute, or rule, some duties assigned to positions in the state service may be performed only by persons who are duly licensed, registered or certified as required by the relevant law, rule, or provision. All such requirements and restrictions are specified in the statement of essential qualifications or recruitment standards for classifications established by the State Personnel Commission.

- (1) Employees in such classifications shall obtain and maintain current, valid credentials as required by law. Failure to obtain or maintain the legally required credentials constitutes a basis for immediate dismissal without prior warning, consistent with dismissal for unacceptable personal conduct or grossly inefficient job performance. An employee who is dismissed for failure to obtain or maintain credentials shall be dismissed under the procedural requirements applicable to dismissals for unacceptable personal conduct or grossly inefficient job performance.
- (2) Falsification of employment credentials or other documentation in connection with securing employment constitutes just cause for disciplinary action. When credential or work history falsification is discovered after employment with a state agency/university, disciplinary action shall be administered as follows:

- (A) If an employee was determined to be qualified and was selected for a position based upon falsified work experience, education, registration, licensure or certification information that was a requirement for the position, the employee must be dismissed in accordance with 25 NCAC 1J .0608.
- (B) In all other cases of post-hiring discovery of false or misleading information, disciplinary action shall be taken, but the severity of the

disciplinary action shall be at the discretion of the agency head.

- (C) When credential or work history falsification is discovered before employment with a state agency/university, the applicant shall be disqualified from consideration for the position in question.

~~(d)~~(c) **OTHER SPECIAL PROVISIONS -**

- (1) Every disciplinary action shall include notification to the employee in writing of any applicable appeal rights.
- (2) Warnings, extensions of disciplinary actions and periods of placement on investigation, and placement on investigation with pay shall not be grievable unless an agency/university specifically provides for such a grievance in its agency/university grievance procedure. Absent an allegation of a violation of G.S. 126-25, warnings shall not be appealable to the State Personnel Commission.
- (3) An agency/university shall furnish to an employee as an attachment to the written documentation of any grievable disciplinary action, a copy of the agency/university grievance procedure.
- (4) Each state agency and university shall adopt and submit to the State Personnel Commission an internal grievance procedure that shall include as an attachment an agency/university employee relations policy which:
  - (A) Sets out the manner and mechanism with which employees are notified of changes in agency/university policy and State Personnel Commission rules;
  - (B) Sets out the policy on the use of disciplinary suspension and the procedure for the issuance of warnings.
  - (C) Sets out the policy on the retention of warnings and other disciplinary actions in employee personnel files; and
  - (D) Sets out the policy on how an employee may access the employee's personnel file.
- (5) Each state agency and university shall maintain records and provide the OSP information and statistics on the discipline and dismissal process commencing in January 1996 and every year thereafter.
- (6) Each state agency and university shall insure that designated personnel are trained in the administration of this Section.

*Authority G.S. 126-4; 126-25; 126-35.*

**SECTION .1200 – EMPLOYEE GRIEVANCE**

**25 NCAC 01J .1201 GENERAL PROVISIONS**

(a) This Section contains general provisions for two grievance procedure options: the Employee Appeals and Grievance Process, 25 NCAC 01J .1301 and the Employee Mediation and Grievance Process, 25 NCAC 01J .1401-1411.

(b) Agencies may choose to adopt the Employee Appeals and Grievance Process, which does not offer mediation, or choose to adopt the Employee Mediation and Grievance Process. The provisions of 25 NCAC 01J .1201-.1208 apply to both processes.

(c) An employee who has access to the agency grievance procedure shall initiate the grievance proceeding no later than 15 calendar days after the last act which constitutes the basis of the grievance.

(d) For the purpose of this Section, except for appeals brought under G.S. 126-25, the term "career state employee" as used in this Section shall have the meaning assigned to it by the State Personnel Act. The employee must have attained career status at the time the act, grievance or employment practice that is the basis of the grievance occurs.

(e) Neither the agency nor the employee shall be represented by any outside parties during any internal grievance or mediation proceedings.

*Authority G.S. 126-1.1; 126-4(17); 126-25; 126-34; 126-35; 126-39.*

**25 NCAC 01J .1202 AGENCY RESPONSIBILITIES**

(a) The agency grievance procedure shall be implemented and continuously evaluated by the agency. Each agency shall, on or before January 1 of each even-numbered year, submit to the Office of State Personnel either:

- (1) the current agency grievance procedure for approval; or
- (2) a statement that its grievance procedure has not changed since January 1 of the last prior even-numbered year, including a certification that the current agency procedure is in compliance with current state law and rules and the effective date of the last change to the agency procedure.

(b) The Office of State Personnel shall review the reports of each agency as required by Rule .1203 of this Section and the grievance procedures of each agency for compliance with applicable law, rules and good employee relations practices. After such review and following resolution of any areas of disagreement, the Office of State Personnel shall forward the grievance procedure to the State Personnel Commission for reaffirmation of an unchanged agency grievance procedure previously approved or for approval of a new or modified agency grievance procedures. No agency grievance procedure is applicable to any employee until it has been approved by the State Personnel Commission.

*Authority G.S. 126-4(9).*

**25 NCAC 01J .1203 AGENCY GRIEVANCE REPORTS**

(a) Every agency shall, semi-annually and as otherwise requested, compile information on employee grievances. These

reports shall be due on the first business day of each of the following months: January and July.

(b) The Office of State Personnel shall make reports to the full State Personnel Commission at its February and August meetings based upon the information supplied in these semi-annual agency reports.

*Authority G.S. 126-4(9).*

**25 NCAC 01J .1204 DISCRIMINATION AND RETALIATION / SPECIAL PROVISIONS**

Employees alleging illegal discrimination or retaliation shall be able to choose to follow the agency grievance procedure, including mediation, or choose to appeal directly to the State Personnel Commission. However, employees should be aware that the timeframes which allow the employee 30 days to file a grievance alleging discrimination must be adhered to whether they choose to follow the agency grievance procedure, including mediation, or whether they choose to appeal directly to the State Personnel Commission by filing a petition for a contested case hearing with the Office of Administrative Hearings. The 30 day timeframe is not applicable to discrimination complaints filed with the Equal Employment Opportunity Commission.

*Authority G.S. 126-4(9); 126-16; 126-17; 126-34.1(2)(a),(b); 126-34.1(3); 126-36(a).*

**25 NCAC 01J .1205 UNLAWFUL WORKPLACE HARASSMENT**

Employees alleging unlawful workplace harassment or retaliation concerning unlawful workplace harassment **must** follow the procedure established in the agency Unlawful Workplace Harassment Policy in order to bring a subsequent appeal to the State Personnel Commission. That policy includes the right to by-pass any step in the agency's grievance procedure involving discussions with or review by the alleged harasser. The agency is required to complete processing of an allegation of unlawful workplace harassment or retaliation within 60 days. Nothing in this policy extends the amount of time an agency has in which to complete a review of such an allegation, even if the employee chooses mediation as an option in the agency's Unlawful Workplace Harassment Policy.

*Authority G.S. 126-4(9); 126-4(11); 126-34.1(10); 126-36(b)(1),(2).*

**25 NCAC 01J .1206 TIME LIMITS**

(a) A final agency decision (FAD) must be issued within a reasonable period of time from the date the grievance is filed or the employee may, if eligible, appeal to the State Personnel Commission without receiving a FAD.

(b) For cases involving discharge or demotion of a career State employee for disciplinary reasons, the reasonable period of time is 90 days from the filing of the grievance to the issuance of the FAD. For all issues except demotion or dismissal, a reasonable period of time for an employee to receive a FAD is 120 days from the time the grievance was filed. The employee and the agency may mutually agree to extend the time in either case.

(c) If the employee cannot obtain the FAD within a reasonable period of time, the employee's right of appeal shall be governed by G.S. 126-34.1 and G.S.150B-23(f).

*Authority G.S. 126-4(9); 126-34.1.*

**25 NCAC 01J .1207 FINAL AGENCY ACTION**

In every employee grievance in which the grievant has the right of appeal to the State Personnel Commission (SPC), the final decision of the agency head must inform the grievant in writing that any appeal from the final agency decision must be made to the SPC within 30 days after receipt of notice of the decision or action which triggers the right of appeal. Further, the grievant shall be informed in writing that an appeal to the SPC shall be made by filing a petition for contested case hearing with the Office of Administrative Hearings, 424 North Blount Street, 6714 Mail Service Center, Raleigh, North Carolina 27699-6714.

*Authority G.S. 126-4(9); 126-7.2; 126-35; 126-37; 126-38; 150B-23(a).*

**25 NCAC 01J .1208 LEAVE IN CONNECTION WITH GRIEVANCES**

(a) An employee shall be allowed time off from regular duties as may be necessary and reasonable up to a maximum of eight hours for the preparation of an internal grievance under the procedures adopted within the agency without loss of pay, vacation leave or other time credits.

(b) Necessary and reasonable time for participation in contested case hearings and other administrative proceedings outside the agency in connection with employment, as a party, shall be granted upon request to the employee's supervisor or personnel officer without loss of pay, vacation leave or other time credits. Management may require prior official notice of the scheduling of and documentation by the presiding official or designee of the time the employee spent in attendance at these administrative proceedings.

*Authority G.S. 126-4(9).*

**SECTION .1300 – EMPLOYEE APPEALS AND GRIEVANCE PROCESS**

**25 NCAC 01J .1301 MINIMUM PROCEDURAL REQUIREMENTS**

The following provisions are the minimum requirements for approval by the State Personnel Commission.

- (1) An employee with a grievance that does not allege unlawful discrimination as defined by G.S. 126-16 or G.S. 126-36, that does not allege a violation of G.S. 126-7.1(a) or (c), G.S. 126-82, or that does not allege a denial of employment or promotion in violation of G.S. 126-14.2 shall be required to first discuss the problem with the immediate supervisor. Where the grievance does not fall within the administrative or decision-making authority of the immediate supervisor, the immediate supervisor, shall within 48 hours of receipt of the grievance, refer the grievance to the lowest

level supervisor with administrative or decision-making authority over the subject matter of the grievance and notify the employee of the fact of and the basis for the referral. The agency grievance procedure must outline those issues in addition to contested case issues under G.S. 126-34.1, if any, that are grievable under each agency's internal grievance procedure and whether and to what extent persons who have not attained career status under G.S. 126-1.1 may utilize the agency grievance procedure.

- (2) The employee shall have the right to have the decision of the immediate supervisor reviewed. The step or steps after the immediate supervisor's step must include a step at which the employee has the right to orally present the grievance and where the reviewer is outside the employee's chain of command.
- (3) Any decision rendered after the step of the supervisor's decision shall be issued in writing and the final agency decision shall be issued within a reasonable period of time as defined in this Section.
- (4) At the step involving the reviewer (person or body) outside the employee's chain of command, the employee shall have the right to challenge whether the reviewer can render an unbiased decision. The agency grievance procedure shall establish a process for challenging the reviewer's impartiality and the process for the selection of a replacement when necessary.
- (5) For matters that are contested case issues under G.S. 126-34.1, if the employee is not satisfied by the final decision of the agency head, the employee shall have the right to appeal to the State Personnel Commission within 30 days of receipt of the final agency decision. If the employee is unable within a reasonable period of time to obtain a final agency decision, the employee's right of appeal is governed by G.S. 150B-23(f).
- (6) The agency shall state the methods of notifying current employees and newly appointed employees of any change to the agency grievance procedure no later than 30 days prior to the effective date of the change.
- (7) The agency shall establish the time limit for the agency and employee to respond at each step in the grievance procedure. No time limit for an agency to respond or to act shall be more than twice the time limit for the employee.
- (8) The grievance procedure shall include the effective date of the procedure and of any changes to the procedure.
- (9) The grievance procedure shall comply with the requirements of 25 NCAC 01J .0615.



Authority G.S. 126-4(9); 126-4(10); 126-4(17); 126-7.2; 126-16; 126-34; 126-34.1; 126-34.2; 126-35; 126-36; 126-37; 126-38; 150B-23.

**SECTION .1400 – EMPLOYEE MEDIATION AND GRIEVANCE PROCESS**

**25 NCAC 01J .1401 MINIMUM PROCEDURAL REQUIREMENTS**

(a) Mediation is the first step in the grievance process and involves the services of a neutral third person that assists an employee and an agency representative in resolving an employee grievance in a mutually acceptable manner. If a grievance involves an issue that the agency has identified as not subject to mediation, the employee shall begin the grievance process at Step 2 of this policy.

(b) In situations where mediation does not produce agreement or if a grievance involves an issue that the agency has identified as not subject to mediation, employees may proceed to Step 2 by presenting the grievance to a Hearing Officer/Hearing Panel within the agency. The Hearing Officer/Hearing Panel will forward a recommendation to the Agency Head for a Final Agency Decision (FAD).

(c) Employees may appeal the FAD to the Office of Administrative Hearings (OAH) where an Administrative Law Judge will render a recommended decision to the State Personnel Commission. The State Personnel Commission will issue a Final Decision and Order.

(e) Allegations of illegal discrimination or unlawful workplace harassment are exceptions. Grievances alleging discrimination may, at the grievant's choice, proceed either through the agency procedure OR may proceed directly to the OAH. Complaints of unlawful workplace harassment must proceed through the agency's Unlawful Workplace Harassment procedure.

Authority G.S. 126-4(9); 126-4(1); 126-34; 126-34.1; 126-16; 126-34.2; 126-35; 126-36; 126-37; 126-38; 150B-23.

**25 NACA 01J .1402 FLEXIBILITY**

Agencies shall have the flexibility to decide which grievable issues will not be subject to mediation. In addition, agencies may choose to mediate nongrievable issues by developing internal agency policies and procedures outside the scope of this policy. Agencies may request to utilize approved mediators serving in the OSP Mediator Pool for mediating nongrievable issues. In such situations, OSP and the requesting agency shall work out a mutually acceptable process to access the mediator pool of resources.

Authority G.S. 126-4(9); 126-4(10).

**25 NCAC 01J .1403 INFORMAL MEETING WITH SUPERVISOR**

For all grievable issues, the employee is encouraged to first attempt to resolve a grievable issue with their immediate or other appropriate supervisor in the employee's chain of command.

Authority G.S. 126-4(9); 126-4(10).

**25 NCAC 01J .1404 MEDIATION PROCEDURE**

(a) Where an agency has designated an issue as subject to mediation, mediation is Step 1 in the Employee Mediation and Grievance Process. Mediation follows unsuccessful attempts by employees to resolve grievable issues with their immediate or other appropriate supervisor in the employee's chain of command. An employee must begin the grievance process by filing a grievance in accordance with the agency's grievance procedure. An employee filing a grievance shall do so not later than 15 calendar days after the last incident for which the employee is filing the grievance or after unsuccessfully attempting to resolve the grievance informally, whichever is longer.

(b) The Office of State Personnel (OSP) will establish a process to assign mediators to grievances within a timely manner. The mediation process shall be concluded within 45 calendar days from the filing of the grievance unless the parties agree in writing to a longer period of time.

(c) Mediations shall be conducted in a location approved by the mediator and shall be scheduled for an amount of time determined by the mediator to be sufficient. Mediations may be recessed by the mediator and reconvened at a later time.

(d) OSP will establish a procedure to qualify and assess mediators. Only OSP-approved mediators will mediate grievances presented by state agency employees.

(e) Mediation Attendees

(1) A designated agency representative with the authority to reach an agreement will attend on behalf of the agency will attend a mediation.

(2) Emergency substitution of a mediator must be approved by the OSP Mediation Administrator or designee.

(3) OSP Mediation Administrator and designees may attend as observers.

(4) Representatives, advisors and/or attorneys are not permitted to attend.

(5) Audiotape, videotape or other automated recordings are not permitted.

(f) Because mediation is Step 1 of the internal agency grievance process, attorneys are not permitted to participate directly in the process. However, because a mediation that resolves an employee's grievance will result in a Mediation Agreement, either party may ask for a recess at any time during the mediation in order to obtain legal advice regarding the terms of the Mediation Agreement.

Authority G.S. 126-4(9); 126-4(10); 126-4(17); 126-34; 126-35.

**25 NCAC 01J .1405 CONCLUSION OF MEDIATION**

(a) At the end of mediation, the mediator will prepare either a Mediation Agreement that is signed by the parties, or a statement that mediation did not result in resolution.

(b) When mediation resolves a grievance, the following shall occur:

(1) Employee and agency representative sign a Mediation Agreement.

(2) Each party receives a copy of the signed Mediation Agreement.

(3) Mediation agreements shall be maintained on file for not less than 3 years.

- (4) Mediation agreements do not transfer to another agency should the employee transfer.
- (5) Mediation agreements shall be binding on both parties.

(c) Mediation agreements are considered public documents under G.S. 132-1.3.

*Authority G.S. 126-4(9); 126-4(10); 126-4(17).*

**25 NCAC 01J .1406 LIMITATIONS ON A MEDIATION AGREEMENT**

(a) Parties to the mediation cannot enter into an agreement that would exceed the scope of their authority. The Mediation Agreement will:

- (1) Serve as a written record;
- (2) Not contain any provision contrary to OSP policies and rules, and applicable state and federal law; and
- (3) Not be transferable to another state agency.

(b) When mediation resolves a grievance but it is later determined that one or more provisions of the Mediation Agreement do not comply with OSP policies or rules, applicable state or federal law, the parties are encouraged to return to mediation to resolve those issues that can be resolved by the parties.

(c) Any resolution achieved through mediation, to the extent that it involves a grievance or a contested case issue, is to be treated as a settlement agreement and, as such, is subject to approval by the State Personnel Director and/or the State Personnel Commission as outlined in the section entitled "Settlements" at the end of this policy.

*Authority G.S. 126-4(9); 126-4(10).*

**25 NCAC 01J .1407 POST MEDIATION**

(a) Employees and supervisors who breach a mediated agreement may be subject to disciplinary action up to and including dismissal based on unacceptable personal conduct.

(b) Except for the Mediation Agreement itself, all other documents generated during the course of mediation and any communications shared in connection with mediation are intended to be confidential to the extent provided by law.

(c) When mediation does not result in agreement, the employee may proceed to Step 2 in the grievance process following written notice to the employee that mediation did not result in resolution of the grievance.

*Authority G.S. 126-4(6); 126-4(7); 126-4(10); 126-4(10); 126-34.*

**25 NCAC 01J .1408 EMPLOYEE RESPONSIBILITIES FOR MEDIATION**

(a) Each employee is responsible for:

- (1) Making a good faith effort to mediate disputes;
- (2) Attending mediations as scheduled by the agency; and
- (3) Notifying agency personnel in advance when circumstances prevent the employee from attending a scheduled mediation.

(b) An employee who has an unexcused failure to attend mediation as scheduled may not proceed with the grievance process.

*Authority G.S. 126-4(9).*

**25 NCAC 01J .1409 AGENCY RESPONSIBILITIES FOR MEDIATION**

(a) Each agency is responsible for:

- (1) Administration of the mediation program within the agency;
- (2) Appointing an agency intake coordinator who will be responsible for organizing the mediation process;
- (3) Determining suitable locations for conducting mediations;
- (4) Ensuring confidentiality of the mediation to the extent provided by law;
- (5) Scheduling only OSP-approved mediators for each mediation session;
- (6) Providing mediators for the OSP mediator pool as needed based on proportional requirements of the agency;
- (7) Reimbursing mediators for travel and other expenses at state approved rates and covering any administrative costs associated with mediation.
- (8) Designating management personnel, such as human resources personnel and legal counsel, to be available to answer questions that may arise during the mediation process;
- (9) Designating agency representatives who will mediate in good faith and who will have the authority to reach an agreement on behalf of the agency to resolve a grievance;
- (10) Submitting data to OSP for the purpose of evaluating the mediation process for cost containment and resolution of grievances efficiently and effectively; and
- (11) Submitting to OSP a copy of all Mediation Agreements executed by the agency.

(b) An agency employee designated to attend mediation on behalf of the agency who has an unexcused failure to attend mediation as scheduled may be subject to disciplinary action.

*Authority G.S. 126-4(6); 126-4(9); 126-4(10).*

**25 NCAC 01J .1410 OFFICE OF STATE PERSONNEL RESPONSIBILITIES**

The Office of State Personnel (OSP) shall be responsible for:

- (1) Appointment of the OSP Mediation Administrator as program manager;
- (2) Development of mediation program policies, procedures and forms;
- (3) Development of an OSP-approved mediator pool and identification of qualified mediators outside state government to augment the OSP-approved mediator pool as necessary;
- (4) Identifying mediator training requirements;

- (5) Development of the OSP Mediator Code of Conduct; and
- (6) Conducting on-going studies/analysis to evaluate program effectiveness.

*Authority G. S. 126-4(9); 126-4(10).*

**25 NCAC 01J .1411 AGENCY PROCEDURAL REQUIREMENTS FOR EMPLOYEE MEDIATION AND GRIEVANCE POLICY**

The following are minimum procedures for an agency grievance process:

- (1) The agency grievance procedure shall state the issues that, in addition to those listed in the State Personnel Act, may be grieved at the agency level.
- (2) The agency grievance procedure shall list clearly which issues are subject to mediation (Step 1) and which issues shall proceed directly to a grievance hearing (Step 2).
- (3) The agency grievance procedure shall encourage direct communication between employees and their immediate supervisor or other appropriate supervisor in the chain of command to attempt to resolve the grievance.
- (4) All decisions issued by the agency after the discussion between the employee and the immediate supervisor or other appropriate supervisor in the chain of command shall be in writing and a copy provided to the employee.
- (5) For those issues subject to mediation, the agency grievance process shall require both the employee and an agency representative to mediate a dispute by attending a scheduled mediation.
- (6) If mediation does not result in agreement, the employee is entitled to proceed to Step 2. The agency will notify the employee within 10 days of the unsuccessful mediation of the option to present the grievance orally to a reviewer or reviewers outside of the chain of command, e.g., Hearing Officer or Hearing Panel.
- (7) The employee shall have the right to challenge whether the person, or body of persons outside of the chain of command review level, can render an unbiased recommendation. The agency procedure shall establish a process for the challenge as well as the procedure for selection of a replacement reviewer, when necessary.
- (8) The agency shall set up time limits for appeal and for the employee and the agency to respond to each other during the grievance procedure. The agency may not set any time limit for itself that is more than twice the time limit established for employees.
- (9) An employee filing a grievance shall do so not later than 15 calendar days after the last incident for which the employee is filing the

grievance unless the internal agency procedure provides for a longer period.

- (10) Neither party to the grievance can be represented by attorneys or other persons during the internal agency grievance procedure or during any mediation procedure.

*Authority G. S. 126-4(9); 126-4(10); 126-34.1(a).*

**25 NCAC 01J .1412 OFFICE OF STATE PERSONNEL RESPONSIBILITIES FOR EMPLOYEE MEDIATION AND GRIEVANCE PROCESS**

The Office of State Personnel shall:

- (1) Review each proposed Employee Mediation and Grievance Process for conformity with OSP policies and rules, and applicable state and federal law;
- (2) Present the procedure to the State Personnel Commission for consideration and approval at its next available scheduled meeting; and
- (3) Provide consultation and technical assistance to agencies as needed.

*Authority G.S. 126-4(9); 126-4(10).*

**SUBCHAPTER 1K - HUMAN RESOURCE DEVELOPMENT**

**25 NCAC 01K .0104 STATE HUMAN RESOURCE DEVELOPMENT POLICY**

It is the policy of the State of North Carolina to provide training and development for its employees designed to:

- (1) improve productivity, effectiveness, and efficiency of government service by enhancement of employee performance; ~~development~~ and better utilization of talents, abilities, and potential of employees;
- (2) help employees develop ~~competencies~~ their knowledge, skills, and abilities so that they might become better qualified to perform the duties of their present jobs and advance to more responsible positions;
- (3) ~~provide for the development of~~ develop managers and supervisors capable of designing and implementing ~~organizing and developing~~ effective ~~management~~ systems for the accomplishment of each state agency's ~~goals~~ goals; and objectives;
- (4) accelerate the development of culturally disadvantaged employees whose abilities and aptitudes are under-utilized because of inadequate education and ~~training~~ training;
- (5) ~~alleviate labor market shortages and reduce personnel turnover;~~
- (6) ~~prepare employees to deal more effectively with growing social, scientific, and economic problems faced by government by making use of advances in professional and vocational knowledge and technology.~~

Authority G.S. 126-4.

**25 NCAC 01K .0105 CENTERS OF RESPONSIBILITY**

(a) ~~Providing adequate~~ Adequate training and development of state employees can best be accomplished through the combined efforts of employees, supervisors on the job, departmental management, and the Office of State Personnel in cooperation with the state's institutions of higher education.

(b) ~~Training and Human resource~~ development programs should recognize the following roles:

- (1) Employees. State employees at all levels ultimately retain an obligation ~~for to their own development and education and it is expected that employees will~~ advance their own careers by pursuing appropriate opportunities for development and education through appropriate self education and self improvement.
- (2) Managers and Supervisors. Managers and supervisors have the initial responsibility for ensuring access to job-related training and development for their employees. In fulfilling this responsibility, managers and supervisors should identify the individual training needs of their employees and work with employees to prepare and effect plans for their development, training and development of their employees. In fulfilling this responsibility, managers and supervisors should identify the individual training needs of their employees and work with employees to prepare and effect plans for their development. Such plans should make use of on the job training including individual and group instruction by supervisors, formal training and educational activities, and rotational assignments to provide greater depth and a wider base of experience. Management may also require employees to attend special workshops and seminars to keep abreast of changes in technology and to update competencies.
- (3) ~~Departments and~~ State Agencies. State ~~departments and~~ agencies are responsible for planning, budgeting, implementing and evaluating and establishing training for employees consistent with organizational needs and state policy. ~~They are also responsible for assuring that training programs are geared to specific agency needs and that their employees participate in these programs. In addition, each department agency shall work closely with other agencies and the Office of State Personnel to promote the use of interagency training programs and resources wherever possible.~~
- (4) Office of State Personnel. The Office of State Personnel shall be responsible for statewide planning, coordination the state's role in overall planning, coordinating, and review of

~~training and human resource development programs programs, and appropriate interagency training-training, as well as for direct delivery of some specified interagency training.~~

- (5) State Universities, the Community College System, and Public Instruction. The Office of State Personnel, ~~state departments,~~ and state agencies are responsible for utilizing the state's universities, Community College System, and public instruction to the fullest degree possible in securing professional, management, and vocational education to meet their ~~personnel~~ human resource development needs.

Authority G.S. 126-4.

**25 NCAC 01K .0106 COST OF TRAINING**

(a) If the training is specially required by the agency, full costs of salary, tuition, travel, and subsistence are borne by the agency.

~~(b) If training is initiated by or at the option of the employees, they retain an obligation for expenses incurred in self education or self development.~~

~~(c)~~(b) Education deemed beneficial to both the employee and the agency may be eligible for the state's Educational-Academic Assistance Program (25 NCAC 01K .0310).

Authority G.S. 126-4.

**SECTION .0200 - NORTH CAROLINA STATE PERSONNEL DEVELOPMENT CENTER**

**25 NCAC 01K .0209 OFFICE OF STATE PERSONNEL HUMAN RESOURCE DEVELOPMENT GROUP PURPOSE**

The purpose of the Office of State personnel Human Resource Development Group personnel development center is to provide policy direction, programs, and supportive services to assist state agencies in improving the performance of state agencies and employees, improve productivity and government services through the development and better utilization of employees.

Authority G.S. 126-4.

**25 NCAC 01K .0210 OFFICE OF STATE PERSONNEL HUMAN RESOURCE DEVELOPMENT GROUP OBJECTIVES**

The objectives of the Office of State Personnel Human Resource Development Group personnel development center are to:

- (1) ~~to~~ develop policy and procedures subject to approval of the State Personnel Commission concerning the state's system of ~~personnel training and human resource~~ development, educational leave, ~~tuition refund~~ academic assistance, and the use of non-state resources for training;
- (2) ~~to~~ determine training needs of state agencies and develop programs to meet needs in areas

not unique to one agency, but generally applicable to all;

- (3) ~~to provide managers and supervisors with skills needed to direct and improve activities of state government;~~
- (4) ~~to provide visual aids and educational media services to support training activities of state agencies;~~
- (5)(2) ~~to plan, coordinate, monitor and evaluate effectiveness of state government human resource training and development of state government in cooperation with departments, agencies, state universities, and the Community College System;~~
- (3) provide those programs and services that most cost-effectively enhance organizational and individual performance when operated at the central level in state government. These programs and services include, but are not limited to, organizational improvement consultation, management and supervisory development, and clerical office skills training as well as human resource management and professional development initiatives.

Authority G.S. 126-4.

**25 NCAC 01K .0211 PROGRAMS**

~~The state personnel development division provides programs and services that are most feasible and cost effective when operated at the central level in state government such as state wide organizational improvement programs, management development, supervisory development, clerical office skills, and personnel management.~~

Authority G.S. 126-4.

**25 NCAC 01K .0212 OFFICE OF STATE PERSONNEL HUMAN RESOURCE DEVELOPMENT FACILITIES**

- (a) ~~The North Carolina State Personnel Development Center's personnel development center's facilities at 101 West Peace Street in Raleigh are provided for use on a reservation basis by all state agencies from 8:00 a.m. to 5:00 p.m. Monday through Friday, excluding holidays. Reasonable room fees may be charged to defray facility operation costs.~~
- (b) ~~Room Scheduling. The personnel development division receives requests for rooms by telephone. It is center procedure to get the requestor's name, agency, telephone number, name of workshop, and date desired. If the requestor should need to cancel or make a change in the initial plan, notification should be made as soon as possible.~~
- (c) ~~Parking. Spaces marked "State Trainee" are available to authorized personnel on a first come, first serve basis. Persons wishing to park in these spaces should first report to the receptionist and obtain a parking permit.~~
- (d) ~~Learning Resource Center. The personnel division houses a relatively small library consisting of approximately 400 books. These books are concerned with management, training,~~

~~organization, and human behavior topics. Books may be checked out by state employees for a period of three weeks.~~

Authority G.S. 126-4.

**25 NCAC 01K .0214 LOCATION AND HOURS OF OPERATION**

- (a) ~~The North Carolina State Personnel Development Center is located at: 101 West Peace Street, Raleigh, North Carolina 27603.~~
- (b) ~~Its hours of operation are from 8:00 a.m. to 5:30 p.m. Monday through Friday excluding holidays.~~

Authority G.S. 126-4; 150A-10.

**25 NCAC 01K .0402 DETERMINATION OF NEED FOR TRAINING**

Before utilizing non-state sources for training and development activities, the agency must ~~have determine that:~~

- (1) ~~determined~~ agency employees currently lack the requisite competencies to meet the specified performance need, do not possess the knowledges and skills to meet that training or educational need.
- (2) ~~determined that~~ education and training is not available within North Carolina state government to meet the agency's need(s); Education and training is not available when:
  - (a) ~~Existing~~ existing programs in state government will not substantially meet the ~~need~~ need;
  - (b) ~~New~~ new programs cannot be cost-effectively established to meet the ~~need~~ need;
  - (c) reasonable inquiry ~~Inquiry~~ has failed to disclose availability ~~available~~, cost-effective ~~of~~ programs in other ~~departments~~ state agencies, the Office of State Personnel, state personnel, public education, higher education institutions, or elsewhere in state government.

Authority G.S. 126-4; 143, Article 3C; 1 NCAC 5C.

**25 NCAC 01K .0403 SELECTION OF NON-GOVERNMENT SOURCES**

When there is a choice between outside training sources, consideration will be given to the following factors:

- (1) demonstrated effectiveness in similar situations in delivering competency to provide the particular training; needed.
- (2) geographic accessibility of the training source due to geographic proximity and technological capability;
- (3) availability of training at the particular time or place it is needed; needed;
- (4) comparative cost as determined by the Division of Purchase and Contract division of

- ~~purchase and contract policies and procedures, procedure;~~
- (5) practicality of necessary administrative ~~arrangements, arrangements; involved,~~
- (6) ~~the~~ significance of the training source's accreditation, accreditation;
- (7) ~~the~~ unique advantages that might result from arrangements with one source ~~when several of several~~ equally acceptable are available, sources.
- (8) ~~the consequences of using limited state resources versus none at all.~~

Authority G.S. 126-4.

**25 NCAC 01K .0404 PROCEDURE FOR APPROVAL OF NON-STATE SOURCES**

Should any state agency have a ~~training and human resource~~ development need that cannot be met by resources within state government, a justification memorandum from the purchasing agency to the State Purchase and Contract must document; the following steps must be followed:

- (1) ~~The agency's training needs and training objectives must be defined. This should include an explanation of how the achievement of these the training identified human resource development objectives contribute to the agency's goals, goals;~~
- (2) that no state government institution or agency can cost-effectively meet the educational or training need in a timely manner. This memo should include a list of the agencies contacted and the responses of each agency. It must be documented in the justification memo that the educational or training need cannot reasonably be met by any state government institution or agency. This should include a list of the agencies contacted and the responses of each agency.
- (3) ~~The required training will then be acquired in accordance with state purchase and contract policies.~~

Authority G.S. 126-4; 143-64.20; 143-64.24.

**SECTION .0700 - NORTH CAROLINA CERTIFIED PUBLIC MANAGER PROGRAM**

**25 NCAC 01K .0701 NORTH CAROLINA CERTIFIED PUBLIC MANAGER PROGRAM ADMINISTRATION**

- (a) It is the intent of the State of North Carolina to provide ~~competency based competency-based~~ training for mid-level managers through the North Carolina Certified Public Manager Program.
- (b) The North Carolina Certified Public Manager Program is a joint effort of North Carolina State Government and The University of North Carolina System. The program shall be based in and administered by the Office of State Personnel.

Authority G.S. 126-4.

**25 NCAC 01K .0702 NORTH CAROLINA CERTIFIED PUBLIC MANAGER PROGRAM PURPOSE**

(a) The North Carolina Certified Public Manager Program is intended to provide ~~state government managers with participants~~ with practical training that will increase their managerial performance in public sector organizations ~~assist them in performing the increasingly difficult tasks they face as managers. The program seeks to increase the competence and broaden the managerial capacity of participants. With improvements in the performance of management performance, it is expected that the manager's work unit units will may function more productively and that the organization as a whole will tire organizations can be beneficially changed by the presence of trained managers in increasing numbers. The ultimate goal is to impact the quality, efficiency, efficiency, effectiveness and productivity of state government operations.~~

(b) ~~The focus of the program is upon middle managers employed in various state agencies. Most middle managers in North Carolina State Government have their training and experience in technical, specialty or professional fields. These managers excelled in their field before being promoted are promoted to management managerial roles; roles because they first excel in technical, specialty or professional fields; however, many lack the formal training or other developmental needed to manage modern government operations or lack opportunities to effectively manage modern government operations. for management development. Thus, the focus of the program is designed to improve the managerial competence of upon middle managers managers employed in various state agencies.~~

Authority G.S. 126-4.

**25 NCAC 01K .0703 NORTH CAROLINA CERTIFIED PUBLIC MANAGER PROGRAM ACCREDITATION**

The North Carolina Certified Public Manager Program shall be conducted in accordance with the curriculum requirements specified by the National Certified Public Manager Program Consortium and shall be in full compliance with the curriculum requirements and program accreditation standards specified of by the National Certified Public Manager Program Consortium.

Authority G.S. 126-4.

**25 NCAC 01K .0705 NORTH CAROLINA CERTIFIED PUBLIC MANAGER PROGRAM PARTICIPATION**

(a) The North Carolina Certified Public Manager Program Director will be responsible for designing and implementing a process that allows each agency an equitable opportunity to participate in the North Carolina Public Manager Program. Agency management will be responsible for initial selection and recommendation of applicants; the Office of State Personnel will approve participation for those applicants who meet prerequisite requirements. To allow agencies an opportunity to participate on an equitable basis, the program director shall allocate a maximum number of slots to each agency. The number of slots allocated shall be based on a consideration of such factors as percentage of total employment in each agency, percentage of managers to total employees, adjustments to ensure that smaller

~~agencies are represented, and adjustment caused by cancellations.~~

~~(b) The responsibility for selection of and recommendations of applicants shall rest with agency management. Final Approval of participants shall rest with the Office of State Personnel, based on a determination that the employee had sufficient training to benefit from the program and serves in a mid-level or program manager role.~~

~~(c) The employing agency and the director of the North Carolina Public Manager Program Director shall keep the following records of each participant: participant in the employee's personnel file; the completed application form, agency approval, and program accomplishments. Record of Program participation becomes part of the employee's personnel file.~~

Authority G.S. 126-4.

**25 NCAC 01K .0706 CERTIFICATE OF COMPLETION OF NORTH CAROLINA CERTIFIED PUBLIC MANAGER PROGRAM**

A certificate of completion ~~will~~ shall be awarded to participants of the North Carolina Certified Public Manager Program upon completion of established requirements.

Authority G.S. 126-4.

**25 NCAC 01K .0708 FUNDING FOR NORTH CAROLINA CERTIFIED PUBLIC MANAGER PROGRAM**

Unless fully funded by the General Assembly, funds for the operation of the North Carolina Certified Public Manager Program shall be derived from fees charged to agencies with approved participants. Fees shall be based on actual costs of development, instruction, materials and administration.

Authority G.S. 126-4.

**SUBCHAPTER 10 - PERFORMANCE MANAGEMENT SYSTEM**

**SECTION .0100 - GENERAL PROVISIONS**

**25 NCAC 01O .0101 POLICY**

(a) It is the policy of the State of North Carolina that top management within each ~~department, agency, and institution~~ initiate and maintain an operative Performance Management ~~System.~~System that maximizes the utilization of the knowledge, skills, abilities and behaviors of its employees through a clear understanding of the relationship between an employee's work assignments and the mission and goals of the agency. ~~This system is based on the importance of managing each individual's work and continuous communication between employees and their supervisors. It ensures that all employees:~~

(b) This system is based on the importance of two-way, continuous communication between supervisors and employees to determine job responsibilities, performance requirements, accomplishments, and areas for improvement in meeting job requirements. It ensures that all employees:

- (1) ~~are~~ are aware of what is expected of ~~them;~~them.

(2) ~~are~~ are provided with continuous feedback about their ~~performance;~~performance.

(3) ~~are~~ are provided with opportunities for education, training and ~~development;~~development.

(4) ~~are~~ are rewarded in a fair and equitable manner.

~~(b)(c) It is desirable that~~Each each-agency shall have a system for managing performance with a twofold ~~purpose~~purpose: of ~~establishing, monitoring, and evaluating organizational goals; and establishing individual expectations, monitoring progress, and appraising performance.~~ The first purpose is mandated under G.S. 143A 17 and G.S. 143B 10(h). The policy addresses the second purpose. These two processes should operate in tandem with each other. Once the organizational goals are established and communicated, individual expectations can be set based on these goals such that each employee understands and can related assigned duties to agency goals and missions.

(1) Establishing, monitoring, and evaluating organizational goals; and

(2) Establishing individual expectations.

(d) This policy addresses establishing individual expectations. Once organizational goals are established and communicated, individual expectations are set based on these goals so that each employee understands and can relate assigned duties to the agency's mission and goals.

Authority G.S. 126-4; 126-7.

**SECTION .0200 - THE PERFORMANCE MANAGEMENT SYSTEM**

**25 NCAC 01O .0201 PERFORMANCE MANAGEMENT PROCESS**

(a) The state's Performance Management System consists of a one-year work planning and performance evaluation cycle. The steps in the one-year review cycle are:

- (1) Work plan developed for an employee at the beginning of the review cycle.
- (2) Interim Review (assessment) of each employee's progress is completed by the supervisor and discussed with the employee six months into the cycle.
- (3) Improvement Plan that addresses any deficient performance.
- (4) Development plan that addresses career development needs.
- (5) Performance Appraisal at the end of each review period evaluates an employee's accomplishments against the goals, objectives and competency requirements that were established at the start of the cycle. Each employee receives an overall rating. Any employee who receives an Unsatisfactory or Below Good rating must have a developmental plan indicating where improvements are needed and specifies training and development activities to improve performance.

~~(a)(b)~~ The Performance Management Process is the sequence of actions that supervisors and managers take when interacting with employees about their performance. The three parts of this

Process are: ~~planning, managing and appraising.~~ These parts are accomplished by:

(1) ~~Planning-Planning~~

(a) ~~At the beginning of the work cycle, the supervisor and the employee shall meet to develop the employee's work plan. It is the supervisor's responsibility to explain the performance management process to the employee so that the employee understands the importance of his role in the organization. The purpose of this planning meeting is to discuss and record the employee's current responsibilities/results and behavior/skills, the expectations that describe successful completion of each one, and the tracking sources. Behavior/skills are the actions, proficiencies or abilities an employee needs to use to achieve specific results.~~

(b) ~~As soon as performance expectations are agreed upon, tracking sources must be identified which will provide an accurate picture of performance throughout the cycle.~~

(2) ~~Managing-Managing~~

(a) ~~This part of the Performance Management process includes the day-to-day tracking of the employee's progress toward achieving the performance expectations by by: The supervisor and the employee track performance using the sources and frequency of these in monitoring as agreed upon and recorded on the work plan. This information should provide the basis for specific feedback and discussion. It also includes the interim review and other feedback given to the employee through coaching and reinforcing discussions. These discussions should be held at the discretion of the supervisor any time throughout the work cycle when performance changes. Every supervisor shall meet with each employee at least at the midpoint of the work cycle for an interim review of performance. The purpose of this meeting is to discuss the employee's progress toward each of the established expectations and initiate action toward improvement, if needed. Although this interim review is intended to be informal in nature, the supervisor must document the actual results and behavior that falls~~

~~below the "Good" level and establish an improvement plan to overcome deficiencies. The overall rating must be discussed but does not have to be recorded. During the monitoring process, the work plan results, behavior/skills or expectations should be adjusted, when it is determined that they have changed or are beyond the employee's control to perform.~~

(b) ~~Throughout the work cycle, the supervisor continues to coach and reinforce employees because this is a vital part of the Performance Management Process.~~

(A) ~~Feedback through coaching and reinforcing discussions.~~

(B) ~~Interim review - Every supervisor must meet with each employee at least at the midpoint of the work cycle for an interim review of performance.~~

(3) ~~Appraising - At the end of the work cycle, the supervisor shall meet with each employee to discuss the employee's actual performance and record the actual results and behavior for each expectation as follows as follows: The supervisor must then rate each responsibility and record the rating on the work plan. If Dimensions are used by the agency, the supervisor must also record the actual behavior for each expectation and record the rating for each Dimension on the work plan (Dimensions are defined and explained in 25 NCAC 10 .0303). The overall rating shall also be discussed with the employee and recorded on the work plan. The overall summary statements supporting the rating shall be written.~~

(A) ~~Supervisor rates each responsibility and records the rating on the work plan.~~

(B) ~~Supervisor rates each competency and records the rating on the work plan.~~

(C) ~~The overall rating is discussed with the employee and recorded on the work plan.~~

(D) ~~The overall summary statements supporting the rating are written.~~

Authority G.S. 126-4; 126-7.

**25 NCAC 010 .0202 COMPONENTS OF AN OPERATIVE SYSTEM**

In addition to the three part process (see 25 NCAC 10 .0201) that supervisors must use when interacting with employees, there are certain components which each agency's system must have. An operative Performance Management System must have all of



the following components: Each agency is required to have the following:

- (1) Agency-Specific Policy. Top management within each agency shall develop, implement, and administer a Performance Management policy. This policy and procedures shall be tailored to meet the needs of the organization within the parameters of this policy. Each policy must reflect the conscious decisions that agency management makes in designing their performance management system. A department, agency or institution's policy must include:
  - (a) All of the components of an operative system;
  - (b) Instructions about how the system will operate using the three part Performance Management Process;
  - (c) A provision requiring that one of the responsibilities included in each supervisor's and manager's work plan is managing the performance of subordinate employees in accordance with the agency's Performance Management policies and procedures;
  - (d) Sanctions to be levied by the agency head if all provisions are not met;
  - (e) Relationships of Performance Management to other human resource systems;
  - (f) Responsibilities/roles of the employee, the supervisor, the supervisor's manager, top management and agency personnel.
- (2) Individual Work Plan. Each employee shall have a work plan established at the beginning of the cycle on an annual basis. A work plan must include the results to be accomplished and the behavior/skills needed to produce these results. It should also include a measure of the on going aspects of the job as well as any special one-time projects or goals. The work plan shall be based on each employee's position description or an equivalent document based on job analysis. If no position description exists, a job description or its equivalent shall be written using a job analysis approach. Each employee's work plan must also include expectations, tracking sources/frequency and actual performance.
  - (a) Performance expectations must be written at the "Good" level. To be considered substantive at "Good"; performance expectations must have one or more indicators for measuring (such as quality, quantity, timeliness or cost). In order to be as fair as possible to employees and to ensure that work plans are defensible, supervisors should also discuss

performance at the "Outstanding" and "Unsatisfactory" levels. The supervisor's manager is responsible for insuring that expectations for similar jobs across units reporting to them are consistent and equitable. Management should endeavor to establish standard work plans for employees performing the same work, except for the parts of the job which vary.

- (b) Unusual circumstances within certain jobs/classifications may require alternative practices to ensure reasonable requirements and equitable treatment. These situations should be discussed with the Office of State Personnel so that adjustments may be made.

- (3) N. C. Rating Scale. The State Personnel Director is responsible for establishing a uniform rating scale entitled the North Carolina Rating Scale, consisting of five levels, with two levels of exceeds. The N. C. Rating Scale shall be used by every agency to determine the employee's progress toward achieving performance expectations. The "Instructions for Completing the Work Plan"; as published by the Office of State Personnel, shall be used throughout the cycle by every agency. The N.C. Rating Scale is located in Section 12 of the N. C. State Personnel Policies Manual. Agencies may petition the Office of State Personnel to use a rating scale other than the N. C. Rating Scale. The agency must demonstrate that a number of levels other than the required five, with two levels of exceeds, would be appropriate for particular job classifications in a particular employing unit. All employees, supervisors and managers must be informed of the N. C. Rating Scale at the beginning of the cycle in which it is used. The following actions are required when an employee's overall summary rating falls below the "Good" level:

- (a) The "Below Good" rating level is transitional. Employees should not maintain an overall rating of "Below Good" for more than one half of the agency's rating cycle or for more than a period of time specified in the agency's policy. It is intended that this time be used by the supervisor to work with employees in an effort to correct deficient performance.
- (b) If an employee maintains an overall summary rating of "Unsatisfactory" for one half of the agency's work cycle or a period of time specified in the agency's policy the supervisor

- should begin corrective, progressive disciplinary action.
- (4) Performance Appraisal Summary.—An official Performance Appraisal Summary is required (on at least an annual basis) for all employees and shall be completed at the end of the work cycle, and treated confidentially.
- (a) —At the end of the work cycle, the supervisor shall indicate a rating for each responsibility/result as well as each Dimension or behavior/skill (when Dimensions are used) and record the actual results for each performance expectation. The overall summary rating is determined based on the N. C. Rating Scale and recorded. A summary statement(s) by the supervisor must be included supporting the overall rating. The employee shall also be provided space and the opportunity to comment on his rating(s). The Performance Appraisal Summary shall then be signed and dated by the employee, the supervisor, and the supervisor's manager. No changes shall be made or comments added to the Summary without the employee's knowledge. If additional information is needed, it must be initialed and dated by the employee, the supervisor, and the supervisor's manager. If an employee chooses not to sign the Summary, it is management's responsibility to determine an alternative method of documenting that the appraisal has been completely discussed with the employee.
- (b) —Each employee shall receive a copy of the signed and completed work plan document and shall be informed where this document is kept. The summary shall be kept for three years and disposed of according to G.S. 121.5(b & c). Agency management may choose to file work plans in either the employee's personnel file or in the agency's official performance appraisal file. Whatever the choice, the employee must be told where the work plan is kept.
- (c) —The same overall rating must be indicated on the form requesting an employee's performance increase.
- (5) Development or Performance Improvement Plan for each work plan
- (6) Each agency's work plan document must include space for a development or performance improvement plan to be used as

- appropriate to document each employee's needs, interests, and activities to enhance the work being done. The development or performance improvement plan provides a course of action to be taken to improve the employee's performance or to document any growth opportunities in which the employee is participating.
- Education/Training Program.
- (7) The State Personnel Commission recognizes the need for a comprehensive training within agencies to implement a fair and consistent performance management system. Having the skills to work with employees in managing their performance on an on going basis is the foundation of a performance management program. If managers and supervisors do not have the skills necessary to carry out the performance management process, the system cannot be applied fairly and consistently. Agency management shall establish an information and skills training program for employees, managers, and supervisors respectively. A training package is available through the Office of State Personnel. The learning units which comprise the package are specifically tailored to N. C. State Government. In order for an agency to use this program, trainers must be certified by OSP staff based on specific competencies. Consultation concerning implementation and other program issues is available.
- Performance Pay Dispute Resolution Procedure.
- (8) Each agency shall have a procedure for reviewing and resolving disputes of employees concerning performance ratings and/or performance pay decisions. Such a procedure may be incorporated as part of an existing grievance procedure, or it may be separately administered. For policy requirements and guidelines on such procedures, see 25 NCAC 1J .0901 .0903.
- Performance Management and Pay Advisory Committee. Each department, agency and institution shall establish a performance management and pay advisory committee as part of its performance management system.

Authority G.S. 121-5; 126-4; 126-7.

**25 NCAC 010 .0203 RELATIONSHIP/  
PERFORMANCE MGMT/OTHER HUMAN RESOURCES  
SYSTEMS**

- (a) Performance management is an integral part of the total management of an organization. Information obtained during the Performance Management Process about individual employees or from specific units of the organization shall be a consideration in making other personnel management decisions.

In fact, connections with other systems indicate how effective the performance management system is:

(1) The design of the job is the basis for job analysis, which determines the content of the performance appraisal. From an organizational perspective, information obtained from performance appraisals must influence selection, staffing, discipline, training, and development.

(2) Information obtained from performance appraisals must influence selection, staffing, discipline, training, and development.

(b) Performance appraisal information is one consideration in making other personnel decisions such as promotions, reductions in force, performance salary increases, and all performance-based disciplinary actions. Since the work plan may not represent all of the responsibilities/results and behavior/skills needed to do the job, disciplinary action taken shall be documented as it occurs and considered in the overall summary rating. Personnel policies dealing with these actions also require consideration of other information; therefore, performance appraisals alone cannot determine such decisions.

(1) Personnel policies dealing with these actions also require consideration of other information.

(2) Performance appraisal alone cannot determine such decision.

(c) In order to achieve internal consistency in personnel administration, agencies shall adopt procedures that meet the following requirements:

(1) A current (within the past 12 months) Performance Appraisal Summary shall be on file for an employee before any of the personnel actions listed in Paragraph (b) of this Rule can be affected.

(2) Any proposed personnel action as mentioned in this Rule shall be consistent with the overall rating of the employee's performance.

(3) In cases in which the recommended personnel action appears inconsistent with the current overall rating, a written justification shall accompany the recommendation.

(d) In order to ensure that all employees have the opportunity to qualify for performance increases, agencies shall adhere to the following:

(1) Probationary employees shall have a position description or its equivalent and work plan established within 60 to 90 calendar days from the date of employment and an appraisal completed at the end of the agency's work cycle. A review shall be completed before an employee can be moved into permanent status in accordance with 25 NCAC 1C .0404.

(2) Employees whose responsibilities and duties are changed either within their current position or by transfer (lateral, promotion, or demotion) shall have a new position description or its equivalent and work plan established within 60 to 90 days of the new assignment.

(3) A Performance Appraisal Summary Transfer Form shall be completed with employees who

transfer within state government, prior to their last day of work. The Work Plan and Summary Transfer Form must be placed in the employee's personnel file and sent to the receiving unit. The employee, supervisor, and the supervisor's manager shall date and sign the form.

(4) When the transferred employee arrives in the new unit, the supervisor may consider the level of documented performance in appraisal from the previous unit along with the current overall performance rating in determining the time and amount of a performance increase.

(5) Every employee in a trainee progression must have a work plan within 60 to 90 calendar days of employment. This plan helps to guide the employee in reaching requirements for the full classification. A review shall be completed before each salary increase is granted within the progression.

(e) To provide continuity and consistency in treatment when a supervisor changes, agencies shall assure that when a supervisor is leaving a unit, the next level manager and the supervisor agree on each employee's progress towards their work plans and document this.

Authority G.S. 126-4; 126-7.

**25 NCAC 010 .0204 RESPONSIBILITIES OF THE STATE PERSONNEL COMMISSION**

The State Personnel Commission, under the authority of G.S. 126-4 (8) and G.S. 126-7, shall adopt policy and rules for performance appraisal. The Commission shall submit a report on the Performance Management System annually in accordance with G.S. 126-7(c)(9). Such a report shall include, in addition to statutorily mandated information, recommendations for improving and correcting any inconsistencies in the total Performance Management System and in each department, agency, and institution.

Authority G.S. 126-4(8); 126-7.

**25 NCAC 010 .0205 RESPONSIBILITIES OF THE OFFICE OF STATE PERSONNEL**

(a) The Office of State Personnel, under the authority of G.S. 126-3, shall have the authority to administer and enforce all policy, regulations, and procedures for the performance management system throughout North Carolina State Government. It is required that each department, agency, or institution to submit whatever evidence and/or appropriate information annually for each cycle, it deems appropriate. This shall include submission of planning documents as well as participating in audits conducted by the Office of State Personnel. It shall be the responsibility of the Office of State Personnel to set the performance increases allowable for levels of performance which exceed performance requirements.

(b) The Office of State Personnel shall monitor the performance management systems in all departments, agencies, and institutions. This includes monitoring performance increase

distribution of each employing unit within each department, agency, or institution. The Office of State Personnel shall review the analyzed data from each department, agency, and institution to ensure that performance increases are distributed fairly and equitably. A summary report with conclusions drawn about the statewide system shall be prepared and submitted to the Personnel Commission. This report shall also include recommendations for improving the total performance management system and alleviating existing inconsistencies. If deficiencies exist within any department's, agency's, or institution's system, sanctions may be recommended.

(e) It shall also be the responsibility of the Office of State Personnel to advise departments, agencies, and institutions in planning, establishing, and administering their performance management systems. This includes consultation concerning training programs. If any department, agency, or institution requests, the Office of State Personnel shall also assist in establishing an internal performance review system or in using its existing grievance procedure to hear performance pay disputes.

Authority G.S. 126-4; 126-7.

**25 NCAC 010 .0206 RESPONSIBILITIES OF AGENCIES**

(a) Top management within each department, agency, and institution shall establish, monitor and evaluate their individually tailored performance management systems subject to approval by the State Personnel Director as being in full compliance with this Subchapter. Furthermore, the head of each department, agency, and institution shall be responsible for bringing all units within their purview into full compliance with this Subchapter by January 1, 1990, except for those provisions otherwise stipulated. Failure to adhere to this Subchapter may result in the loss or withholding of performance increase funds throughout an entire department, agency, or institution.

(b) It shall be the responsibility of each department, agency, or institution head to submit an annual report to the Office of State Personnel, which includes:

- (1) a complete description of the current performance management system.
- (2) Performance increase distribution of each employing unit.
- (3) Data on demographics of performance ratings.
- (4) Frequency of evaluations, performance pay increases awarded.
- (5) The implementation schedule for performance pay increases as well as all other information requested.

(c) Within 60 calendar days after receipt of feedback on this annual report from the Office of State Personnel, the head of each department, agency, or institution shall prepare a written plan alleviating inequities and systematic deficiencies and submit it to the Office of State Personnel for concurrence. The head of same department, agency, or institution shall also take sanctions against the managers of those units in which inequities or systematic deficiencies exist.

Authority G.S. 126-4; 126-7.

**25 NCAC 010 .0301 IN GENERAL**

(a) This Subchapter is general in nature because it must apply to all departments, agencies, and institutions. An effective performance management system must be tailored to meet the needs of the organization within the parameters of this Subchapter.

(b) In order to be in compliance with the Performance Management System policy (See 25 NCAC 10 .0101 .0102, .0201 .0206), all departments, agencies, and institutions shall adhere to the mandatory provisions that are the minimum requirements. These include the components of the "Performance Management Process", the "Components of a Operative System", and "Responsibilities".

(c) While adhering to mandatory provisions of this Subchapter, top management should plan a course of action by determining:

- (1) The current organizational climate and readiness for change;
- (2) The type and the level of involvement of top managers, middle managers, and supervisors in the performance management system;
- (3) The process to be used to design or redesign the features of the performance management system specifically for each agency;
- (4) The purpose(s) and benefits of the Agency's present performance management system and over a one to three year period;
- (5) The design of the performance appraisal system and how it fits into the organizational structure as a management system;
- (6) Implementation strategies spanning a one to three year period.

Authority G.S. 126-4; 126-7.

**25 NCAC 010 .0302 BENEFITS**

Complete implementation and maintenance of the Performance Management System may benefit each department, agency, and institution by providing a systematic way of:

- (1) clarifying the relationship between the employee's work assignment and the purpose and goals of the work unit and the Agency;
- (2) measuring all employees' performance by comparing the actual results to the expectations;
- (3) documenting the amount of improvement since the last appraisal;
- (4) comparing the employee's performance with others doing the same or similar jobs;
- (5) rewarding employees who exceed expectations;
- (6) motivating employees to achieve excellent performance;
- (7) making fair and equitable personnel management decisions;
- (8) enhancing communication between the employee and the supervisor as well as between the supervisor and the manager;
- (9) establishing, monitoring progress, and meeting organizational goals by top management.

The optimum system would produce all of these eventually.

Authority G.S. 126-4; 126-7.

**25 NCAC 010 .0303 THE PERFORMANCE MANAGEMENT PROCESS**

(a) ~~The Performance Management process is cyclical in nature because one step in the process continuously leads to the next. The three stages deemed critical in managing performance in the organizational context are:~~

- (1) ~~Establishing and Communicating Organizational Goals. Under G. S. 143A-17 and G. S. 143B-10(h), each department, agency, and institution is required to complete an annual plan of work. This plan should contain the organization's goals. After communicating them throughout the organization, these goals should set the direction of the organization and of the individual work plans for employees.~~
- (2) ~~Monitoring Progress toward these Goals. Throughout the work cycle, top management should continually monitor progress toward these goals through its employees' work performance. If sufficient progress has not been made or cannot be made, the goals may need to be revised and/or redirected based on the feedback received.~~
- (3) ~~Evaluating Organizational Goals. At the end of the work cycle, management must decide if the organizational goals were met based on whether or not employees performance met expectations. After outputs have been determined, management uses information obtained from throughout the organization to determine their accountability to the public, funding sources, and to the employees who did the work. After recognizing team effort, the cycle then begins again for the next year.~~

(b) ~~The Office of State Personnel is not responsible for implementing or monitoring this process.~~

(c) ~~Use of the three part process for managing the performance of all employees, supervisors, and managers is crucial for sound employee supervisor working relationships. The process of managing performance must be ongoing; supervisors should not wait until the interim or appraisal reviews to praise or correct deficiencies. There are three techniques which all supervisors and managers must use throughout the entire cycle. These techniques for managing performance are tracking, coaching and reinforcing.~~

- (1) ~~Tracking is the process of referring to sources that document an employee's performance throughout the cycle. The supervisor is responsible for monitoring the employee's performance at the agreed upon times using self reports, third party reports, observations and other sources that indicate how an employee is performing. Information on the achievement of expectations as well as on how the expectations were accomplished by the use~~

~~of Dimensions or behavior/skills is included in the supervisor's tracking. The information revealed through the tracking sources is used in applying coaching and reinforcing techniques.~~

- (2) ~~Coaching refers to the informal discussions in which the supervisor instructs, directs or prompts the employee to improve performance for an expectation. The supervisor provides the feedback and models the behavior /skills needed to improve performance when appropriate. Coaching is one of the logical ways that supervisors carry out their responsibility to develop employees.~~
- (3) ~~Reinforcing is another powerful management technique. The emphasis is on providing praise to maintain the "Good" level of performance or to improve performance. Because reinforcement fulfills a basic human need to be recognized positively, this technique becomes a critical tool to use in helping an employee continue behavior/skills that are successful.~~

(d) ~~Beginning with part one, "Planning", supervisors are responsible for assuring that expectations for all jobs within their purview are consistent and equitable.~~

(e) ~~The performance management process is a two way system. Vital information must flow back and forth between the supervisor and employee. Employees have an active role. They should be prepared for the three meetings with management. They should gather information related to their past performance including specific data on activities and accomplishments. It is the employee's responsibility to tell the supervisor if expectations seem inappropriate and the reasons why. After expectations are negotiated and the work plan is in place, employees must also keep supervisors informed as changes occur in case expectations can not be met as planned.~~

(f) ~~The interim review is a minimum requirement. To be most effective, supervisors and managers need to be tracking performance as well as coaching and reinforcing throughout the process. If an employee is not progressing as expected at the interim review, the supervisor should meet with that employee at least once more before the final appraisal to discuss progress toward improved performance to the "Good" level. This meeting fulfills one of the primary purposes of performance management, which is to help employees to be successful.~~

Authority G.S. 126-4; 126-7; 143A-17; 143B-10(h).

**25 NCAC 010 .0304 COMPONENTS OF AN OPERATIVE SYSTEM**

(a) ~~Agency Specific Policy. The State's policy spells out what agencies are to include in their policies. Additional management considerations in defining the policy are what they want to accomplish; how they will implement, monitor, and evaluate their system; the process and procedures that need be established to make the system effective for their organization; appropriate methods of appraisal to be used for various jobs; and the education/training needed by employees, supervisors, and managers to implement all of this Paragraph.~~

- (1) In keeping with the statutory requirement, the State Personnel Commission may recommend sanctions to the General Assembly to be levied against any agency with a deficient system. The policy requires that agency top management take sanctions against managers of units in which inequities or systemic deficiencies exist.
- (2) Performance management is a major responsibility for supervisors and managers. This shall be one of the responsibilities included on every supervisor's and every manager's work plan. The expectations for performance management at all levels of management should be defined in the department, agency, or institution's policy.
- (3) Examples of sanctions which could be levied are:
  - (A) Automatic denial of any performance salary increase if a supervisor receives a less than "Good" rating on performance management responsibility/result even if all other ratings are at or above the "Good" level;
  - (B) Issuance of appropriate disciplinary warnings, up to and including dismissal, for failure to carry out the performance management process in accordance with agency policy;
  - (C) Automatic transfer/demotion of a manager following a second warning for failure to carry out performance management policy or to see that subordinate supervisors carry out the responsibility in accordance with policy.

The intent behind these sanctions is that no employee should be penalized or excluded from consideration for a performance increase because a supervisor or manager has not done his job in managing the Performance Management Process.

(b) Individualized Work Plans. The policy (See 25 NCAC 10 .0101, .0201 .0206) requires a work plan for each employee which contains specific categories of information necessary to monitor performance accurately. These categories are responsibilities/results; behavior/skills needed to achieve results; performance expectations derived from responsibilities/results and behavior/skills; and, tracking sources and frequency for monitoring. It is recommended that the interim review documentation and the Development/Improvement Plan be included in one work plan document. At the end of the work cycle, the actual performance is recorded, responsibilities/results are rated, and a summary rated with supporting summary statements are recorded. An agency may design its own work plan form, but it must incorporate the information in this Subdivision.

- (1) Responsibilities/Results.
  - (A) A Dictionary of Dimensions has been developed based on the diversity of jobs in N. C. State Government.

Dimensions are a recommended part of the Performance Management System because they provide a consistent and simplified approach to identifying the behavior/skills required in a job. Use of the Dimensions is optional. Writing behavior expectations is a requirement. If agency management elects to use Dimensions, the Dimensions comprise only one part of the work plan. It cannot be used as the only means of measuring performance. Supervisors and managers must receive N. C. Performance Management Training before using the Dictionary.

- (B) Performance expectations must be established for each responsibility/result. To be considered substantive at the "Good" level, performance expectations must be measured by one or more indicators. Indicators used to clarify aspects of the responsibilities being measured are quality, quantity, timeliness, and cost. Performance expectations must measure behavioral aspects of the job as well as the product or result.
- (C) It is the immediate supervisor's responsibility to determine performance expectations with the next level manager's approval. The supervisor shall involve the employee in the process, but retains final authority, with the approval of the manager, for approving the expectations.

- (2) Determination of the performance expectations requires a mutual understanding of:
  - (A) responsibilities/results or projects;
  - (B) relationship of the responsibilities/results to the goals of the work unit and the agency;
  - (C) priority order of the employees responsibilities/results and behavior/skills;
  - (D) what the tracking sources for measuring performance at the "Good" level are as well as what and how information will be collected and used;
  - (E) how information will be reviewed throughout the cycle and formally appraised at the end of the cycle.
- (3) Performance expectations must be established or updated at least annually. Performance expectations for ongoing responsibilities may remain constant from year to year, but they

shall be reviewed to verify whether they have changed or remained the same.

~~(c) North Carolina Rating Scale. The N. C. Rating Scale has been established to provide consistency in the Performance Management Process throughout State Government.~~

~~(d) Performance Appraisal Summary. Management may choose to provide space on the Summary for employees to evaluate themselves or comment on the supervisor's evaluation. The policy also requires that a Summary statement be recorded on the work plan at the end of the cycle. The Summary statement supports the overall summary rating and reflects all ratings which are based on actual results. Specific examples that highlight outstanding accomplishments, distinguished performance and areas of development shall be included. The Summary statement should be written carefully so that it is a balanced, fair representation of the employee's performance for the cycle. Since performance appraisal is a sensitive situation for employees, top management should adopt procedures to ensure that appraisals are kept confidential. Employees deserve to know how the Summary is processed when completed, the safeguards taken to insure privacy, and location of the permanent file. Since the overall Summary rating must be consistent with other personnel actions, the agency's procedures should address who has access to this information and under what circumstances.~~

~~(e) Development or Performance Improvement Plan. The knowledge and skills addressed in the work plan are directed to strengthening these areas to either correct deficiencies or to help maintain and enhance the employee's performance. Therefore, an employee's first development plan should be included in his work plan while in probationary status. Supervisors assess the employee's development level in relation to assigned responsibilities when establishing work plans and continue to assess progress throughout the cycle. Development activities must be planned when the work plan is established and updated during the cycle as needed.~~

~~(1) The Development and Improvement Plan should also specify the steps an employee should take to gain the knowledge or skill~~

~~needed to perform certain tasks, and must clearly indicate what steps the supervisor will take to ensure that the employee acquires that knowledge and skills. The expected results have to be specified before the activity begins so that both the employee and supervisor understand and agree upon what is to be gained and how it is applied after training. Timeframes for completion and demonstrated improvement should also be set.~~

~~(2) Growth opportunities to enhance employee's performance in the current job and encourage them to meet their fullest potential shall be offered to each employee. Employees may elect not to participate in this type of development, but should be encouraged because of the benefits to the organization as well as the employee.~~

~~(f) Education/Training. To be successful, a performance management system has to include training. Employees need to understand the process, and what their roles are. Supervisors must be skilled in tracking, coaching, modeling, and reinforcing techniques. Finally, the characteristics of a performance management training program and the competencies for those providing information and training are very important in providing the skills required.~~

~~(g) Performance Pay Dispute Resolution Procedure. Each agency, institution or university shall have, either as a component of an existing internal grievance procedure or as a separate procedure, a process to address complaints of employees regarding performance based pay decisions. For more detailed requirements and guidelines for such procedures, see 25 NCAC 1J .0901-.0903.~~

~~(h) Each agency and university shall establish and continue in operation a performance management and pay advisory committee as required by G.S. 126-7(e)(7a).~~

*Authority G.S. 126-4; 126-7; 126-7(c)(7a).*

**APPROVED RULES**

*This Section includes the Register Notice citation to rules approved by the Rules Review Commission (RRC) at its meeting June 17, 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*

<b>APPROVED RULE CITATION</b>	<b>REGISTER CITATION TO THE NOTICE OF TEXT</b>
01 NCAC 41B .0102*	18:17 NCR
01 NCAC 41B .0104*	18:17 NCR
01 NCAC 41B .0302*	18:17 NCR
01 NCAC 41B .0303	18:17 NCR
01 NCAC 41B .0304*	18:17 NCR
01 NCAC 41B .0305	18:17 NCR
01 NCAC 41B .0307	18:17 NCR
01 NCAC 41B .0403*	18:17 NCR
01 NCAC 41B .0404-.0405	18:17 NCR
01 NCAC 41B .0501*	18:17 NCR
01 NCAC 41B .0503*	18:17 NCR
01 NCAC 41B .0505-.0508	18:17 NCR
01 NCAC 41B .0510*	18:17 NCR
01 NCAC 41B .0511	18:17 NCR
01 NCAC 41B .0701-.0702	18:17 NCR
01 NCAC 41B .0901*	18:17 NCR
10ANCAC 22N .0101	18:18 NCR
10ANCAC 22N .0102*	18:18 NCR
10ANCAC 22N .0201-.0203*	18:18 NCR
10ANCAC 22N .0301-.0303*	18:18 NCR
10ANCAC 26E .0102*	18:14 NCR
10ANCAC 26E .0104-.0105*	18:14 NCR
10ANCAC 26E .0108*	18:14 NCR
10ANCAC 26E .0111*	18:14 NCR
10ANCAC 27G .0405*	18:14 NCR
10ANCAC 43H .0111*	18:17 NCR
11 NCAC 11A .0102	18:17 NCR
11 NCAC 11A .0511*	18:17 NCR
11 NCAC 11B .0152	18:17 NCR
11 NCAC 11C .0407	18:17 NCR
11 NCAC 11H .0102*	18:17 NCR
11 NCAC 14 .0201*	18:17 NCR
11 NCAC 14 .0202	18:17 NCR
11 NCAC 14 .0416-.0417	18:17 NCR
11 NCAC 14 .0501	18:17 NCR
11 NCAC 14 .0503-.0504	18:17 NCR
11 NCAC 14 .0505*	18:17 NCR
11 NCAC 14 .0603*	18:17 NCR
11 NCAC 14 .0605*	18:17 NCR
11 NCAC 14 .0702*	18:17 NCR
11 NCAC 14 .0704	18:17 NCR
15ANCAC 06E .0102*	18:14 NCR
15ANCAC 06E .0105*	18:14 NCR
15ANCAC 06G .0101-.0105*	18:18 NCR
15ANCAC 18A .2532*	18:18 NCR
21 NCAC 10 .0203*	18:16 NCR
21 NCAC 10 .0210*	18:16 NCR



21	NCAC	32A	.0101	18:15	NCR
21	NCAC	32B	.0101-.0102*	18:15	NCR
21	NCAC	32B	.0204*	18:15	NCR
21	NCAC	32B	.0206-.0207*	18:15	NCR
21	NCAC	32B	.0209-.0213*	18:15	NCR
21	NCAC	32B	.0214-0215	18:15	NCR
21	NCAC	32B	.0301-.0302*	18:15	NCR
21	NCAC	32B	.0304-.0307*	18:15	NCR
21	NCAC	32B	.0309*	18:15	NCR
21	NCAC	32B	.0310	18:15	NCR
21	NCAC	32B	.0311-.0315*	18:15	NCR
21	NCAC	32B	.0316	18:15	NCR
21	NCAC	32B	.0608	18:15	NCR
21	NCAC	32B	.0705	18:15	NCR
21	NCAC	32B	.0808	18:15	NCR
21	NCAC	32M	.0101-.0112*	18:15	NCR
21	NCAC	32M	.0115-.0116*	18:15	NCR
21	NCAC	34A	.0101*	18:15	NCR
21	NCAC	34A	.0107-.0109*	18:15	NCR
21	NCAC	34A	.0124*	18:15	NCR
21	NCAC	34A	.0126*	18:15	NCR
21	NCAC	34C	.0101	18:15	NCR
21	NCAC	34C	.0102*	18:15	NCR
21	NCAC	34C	.0202-.0205	18:15	NCR
21	NCAC	34C	.0301	18:15	NCR
21	NCAC	34C	.0304-.0305	18:15	NCR
21	NCAC	34C	.0306*	18:15	NCR
21	NCAC	36	.0801-.0814*	18:15	NCR
21	NCAC	37D	.0303*	18:17	NCR
21	NCAC	37D	.0402*	18:17	NCR
21	NCAC	37D	.0404*	18:17	NCR
21	NCAC	37D	.0602	18:17	NCR (eff. date delayed until consultation pursuant to G.S. 12-3.1)
21	NCAC	37D	.0605*	18:17	NCR
21	NCAC	37D	.0703	18:17	NCR
21	NCAC	37E	.0101-.0102*	18:17	NCR
21	NCAC	37G	.0301-.0302*	18:17	NCR
21	NCAC	46	.2510*	18:07	NCR
25	NCAC	02	.0101*	18:16	NCR
25	NCAC	02	.0201*	18:16	NCR

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

21	NCAC	64	.0212*	17:21	NCR
21	NCAC	64	.0213*	17:21	NCR

**TITLE 1 - DEPARTMENT OF ADMINISTRATION**

- (1) Terms used herein that are defined in G.S. 143-64.17 shall have the same definitions as in G.S. 143-64.17.
- (2) "Agency." A North Carolina State governmental unit that is soliciting, through a Request for Proposals (RFP), to enter into a guaranteed energy savings contract.
- (3) "Annual reconciliation statement." A report disclosing shortfalls or surplus between guaranteed energy and operational savings specified in the guaranteed energy savings contract and actual energy and operational savings incurred during each 12 month term commencing from the time that the energy

**01 NCAC 41B .0102 SCOPE**

This Subchapter shall apply to State governmental units engaging in guaranteed energy savings contracts.

*History Note: Authority G.S. 143-64.17F; 143-64.17H; 143-64.17A (c1);  
Temporary Adoption Eff. August 1, 2003;  
Temporary Adoption Expired April 27, 2004;  
Eff. July 1, 2004.*

**01 NCAC 41B .0104 DEFINITIONS**

For the purposes of this Chapter, the following definitions apply:

- conservation measures became fully operational.
- (4) "Contract." A guaranteed energy savings contract.
  - (5) "Offer." The response to an RFP means the same as "bid" or "proposal."
  - (6) "Investment grade audit" or "investment grade analysis." A cost-benefit analysis of energy efficiency investments including a review of potential cost savings through operation and maintenance changes.
  - (7) "Life-cycle cost analysis." A method for estimating the total cost of an energy-using component or building over its useful life, including cost factors such as purchase price, or construction, renovation, or leasing costs, energy use, maintenance, interest, and inflation.
  - (8) "Measurement and verification review." An examination of energy measures installed under each contract, using methodology to measure the operation of energy-using systems before and after change, to verify the performance and savings of the installed equipment.
  - (9) "Qualified provider." A person, business, or organization experienced in the design, implementation, and installation of energy conservation measures and determined by the administering and contracting agencies to have the capability in all respects to fully perform the contract requirements.

*History Note: Authority G.S. 143-64.17F; 143-64.17H; 143-64.17A(c1); Temporary Adoption Eff. August 1, 2003; Temporary Adoption Expired April 27, 2004; Eff. July 1, 2004.*

**01 NCAC 41B .0302 SOLICITATION DOCUMENTS**

- (a) Agencies shall solicit for guaranteed energy savings contracts through a Request for Proposal (RFP).
- (b) Agencies may use the RFP template available from the State Energy Office at MSC 1340, Raleigh, NC 27699-1340.
- (c) Solicitation documents shall include a Treasurer's estimated cost of financing.
- (d) Solicitation documents may allow for qualified provider or third party financing.
- (e) Solicitation documents may include a copy of the Facilities Condition Assessment Program (FCAP) report covering part or all of the facilities subject to the solicitation.
- (f) Solicitation documents shall state the evaluation criteria specified by G.S. 143-64.17A (b) and (d) as well as those in this Chapter. The documents shall also state the criteria weighting defined by the agency for each particular project. Weighting may change from one RFP to another RFP from an agency based upon the particular needs of that agency.
- (g) Solicitation documents shall stipulate that employee or time savings cannot be included in the offer unless a position is eliminated as a result of contract implementation.

(h) Solicitation documents shall stipulate that the qualified provider is responsible for all costs incurred in preparing the initial proposal.

(i) Solicitation documents shall stipulate that the contractor cannot include costs or allowances for contingencies in the contract.

(j) Solicitation documents may include a three-year history of usage and billing for all utilities for the facilities subject to the proposal.

*History Note: Authority G.S. 143-64.17F; 143-64.17H; Temporary Adoption Eff. August 1, 2003; Temporary Adoption Expired April 27, 2004; Eff. July 1, 2004.*

**01 NCAC 41B .0304 GENERAL FUND PREFERENCE**

(a) The agency shall give preference to projects where the energy costs are paid through General Fund appropriations as compared to receipts, or federal funds, or other sources. This preference shall be stipulated in the solicitation documents.

(b) Solicitation documents shall include, when feasible, a breakdown of the source of funds for energy costs and shall direct the vendors to break down savings by source of funds if the aforementioned information is included in the solicitation document.

(c) The Council of State may give preference to projects where the energy costs are paid through General Fund appropriations as compared to receipts, or federal funds, or other sources.

*History Note: Authority G.S. 143-64.17F; 143-64.17H; Temporary Adoption Eff. August 1, 2003; Temporary Adoption Expired April 27, 2004; Eff. July 1, 2004.*

**01 NCAC 41B .0403 CONTESTING PRECERTIFICATION**

(a) If the State Energy Office denies an organization's request for precertification, a written appeal from the organization may be provided by the organization within 60 days after date of notification of the denial. A letter appealing the decision may be filed with:

Director, State Energy Office  
 North Carolina Department of Administration  
 1830A Tillery Place MSC 1340  
 Raleigh, North Carolina 27699-1340

(b) In the event that an organization wishes to contest the case further, contested case hearings are available as provided in G.S. 150B, and petitions for contested case hearings shall be filed in accordance with the provisions of that Chapter.

*History Note: Authority G.S. 143-64.17F; Temporary Adoption Eff. August 1, 2003; Temporary Adoption Expired April 27, 2004; Eff. July 1, 2004.*

**1 NCAC 41B .0501 LATE OFFERS, MODIFICATIONS, OR WITHDRAWALS**

No late offer, late modification, or late withdrawal shall be considered unless received before contract award, and the offer, modification, or withdrawal would have been timely but for the

action or inaction of agency personnel. The offeror shall have his offer delivered on time, regardless of the mode of delivery used, including the U.S. Postal Service or any other delivery services available.

*History Note: Authority G.S. 143-64.17F; Temporary Adoption Eff. August 1, 2003; Temporary Adoption Expired April 27, 2004; Eff. July 1, 2004.*

**01 NCAC 41B .0503 ERROR/CLARIFICATION**

When an offer contains an obvious error or otherwise where an error is suspected, the circumstances may be investigated and then may be considered and acted upon. Any action taken shall not prejudice the rights of the public or other offering companies. Where offers are submitted substantially in accordance with the request for response document but are not entirely clear as to intent or to some particular fact or where there are other ambiguities, clarification may be sought and accepted provided that, in doing so, no change is permitted in prices.

*History Note: Authority G.S. 143-64.17F; Temporary Adoption Eff. August 1, 2003; Temporary Adoption Expired April 27, 2004; Eff. July 1, 2004.*

**01 NCAC 41B .0510 MEASUREMENT AND VERIFICATION**

Any guaranteed energy and operational savings shall be determined by using one of the measurement and verification methodologies listed in the United States Department of Energy's "Measurement and Verification Guideline for Energy Savings Performance Contracting," the "International Performance Measurement and Verification Protocol," or "ASHRAE 14-2002." If due to existing data limitations or the nonconformance of specific project characteristics, none of the measurement and verification methodologies listed above is sufficient for measuring guaranteed savings, the qualified provider shall develop an alternate method that is compatible with one of the three and mutually agreeable with the agency.

*History Note: Authority G.S. 143-64.17F; 143-64.17H; Temporary Adoption Eff. August 1, 2003; Temporary Adoption Expired April 27, 2004; Eff. July 1, 2004.*

**01 NCAC 41B .0901 ANNUAL REPORTS AND INSPECTIONS**

(a) The State Energy Office may inspect any and all documentation and facilities it deems appropriate at the agency to determine the effectiveness of the guaranteed energy savings contract and to provide information to the Council of State and the General Assembly on the effectiveness of the contract.  
 (b) Agencies failing to provide documentation to the State Energy Office as requested, shall be reported to the Council of State and shall be prohibited from engaging in further energy savings contracts until the deficient documentation is provided to the State Energy Office.

(c) Requested information, by definition, includes timely submission of the "Annual Report of Savings Report" available from the State Energy Office at 1340 MSC, Raleigh, NC 27699-1340.

*History Note: Authority G.S. 143-64.17F; 143-64.17H; Temporary Adoption Eff. August 1, 2003; Temporary Adoption Expired April 27, 2004; Eff. July 1, 2004.*

**TITLE 10A - DEPARTMENT OF HEALTH & HUMAN SERVICES**

**10A NCAC 22N .0102 SIGNED AGREEMENTS**

Each provider shall sign a participation contract agreement with the Division of Medical Assistance and shall not be reimbursed for services rendered prior to the effective date of the participation agreement.

*History Note: Authority G.S. 108A-54; 143B-139.1; Eff. July 1, 2004.*

**10A NCAC 22N .0201 DEFINITIONS**

As used in this Section, the term "owner" means any entity or individual who is a sole or co-owner, partner or shareholder that holds an ownership or controlling interest of five percent or more of the provider entity.

*History Note: Authority G.S. 108A-54; 143B-139.1; Eff. July 1, 2004.*

**10A NCAC 22N .0202 DISCLOSURE OF OWNERSHIP**

Providers licensed under North Carolina G.S. 122C or G.S. 131D shall comply with the following disclosure conditions:

- (1) When applying to participate in the North Carolina Medicaid program, the provider shall supply the legal name and social security number of each individual who is an owner.
- (2) An enrolled provider shall notify the Division of Medical Assistance in writing of a change in the legal name of any owner. The notification must be received within 30 business days following the change.
- (3) An enrolled provider shall notify the Division of Medical Assistance in writing if a new owner joins the provider. The notification shall include the new owner's legal name and social security number. The notification must be received no later than 30 business days following the change.
- (4) An enrolled provider shall notify the Division of Medical Assistance in writing if an owner withdraws his ownership interest in the provider. The notification shall include the name of the departing owner and must be received no later than 30 business days following the change.

*History Note: Authority G.S. 108A-54; 143B-139.1;*

*Eff. July 1, 2004.*

**10A NCAC 22N .0203 ENROLLMENT RESTRICTIONS**

(a) The Department shall deny enrollment, including enrollment for new or additional services in accordance with G.S. 122C-23(e1) and G.S. 131D-10.3(h). They may be accessed online at [http://www.ncleg.net/statutes/generalstatutes/html/bysection/cha-pter\\_122c/g\\_s\\_122c-23.html](http://www.ncleg.net/statutes/generalstatutes/html/bysection/cha-pter_122c/g_s_122c-23.html) and [http://www.ncleg.net/statutes/generalstatutes/html/bysection/cha-pter\\_131d/g\\_s\\_131d-10.3.html](http://www.ncleg.net/statutes/generalstatutes/html/bysection/cha-pter_131d/g_s_131d-10.3.html).

(b) The Department may deny enrollment when an applicant meets any of the following conditions:

- (1) if 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 had an individual as part of their 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.

(c) When an application for enrollment of a new service is denied:

- (1) Pursuant to G.S. 150B-22, the applicant shall be given an opportunity to provide reasons why the enrollment should be granted or the matter otherwise settled;
- (2) DMA shall give the applicant written notice of the denial, the reasons for the denial and advise the applicant of the right to request a contested case hearing pursuant to G.S. 150B; and
- (3) The provider shall not provide the new service until a decision is made to enroll the provider, despite an appeal action.

(d) If the action is reversed on appeal, the owner may re-apply for enrollment and may be approved back to the date of the denied application if all qualifications are met.

*History Note: Authority G.S. 108A-54; 143B-139.1; Eff. July 1, 2004.*

**10A NCAC 22N .0301 DEFINITIONS**

For purposes of this Section:

- (1) Specified rehabilitative services are services as defined in 42 CFR 440.130(d), and 42 CFR

440.90. These regulations are hereby adopted by reference under G.S. 150B-21.6, including subsequent amendments and editions. A copy of these regulations may be obtained by contacting the Government Printing Office, Superintendent of Documents, Post Office Box 37194, Pittsburgh, Pennsylvania 15250-7954 or they may be accessed online at <http://www.gpoaccess.gov/cfr/retrieve/html>.

- (2) Specified habitative services are as defined in 42 CFR 440.180. This regulation is hereby adopted by reference under G.S. 150B-21.6, including subsequent amendments and editions. A copy of this regulation may be obtained by contacting the Government Printing Office, Superintendent of Documents, Post Office Box 37194, Pittsburgh, Pennsylvania 15250-7954 or it may be accessed online at <http://www.gpoaccess.gov/cfr/retrieve/html>.
- (3) The term "Division" means a Division of the North Carolina Department of Health and Human Services.
- (4) The term "owner" has the same meaning as defined in 10A NCAC 22N .0201.

*History Note: Authority G.S. 108A-54; 143B-139.1; Eff. July 1, 2004.*

**10A NCAC 22N .0302 DISCLOSURE OF OWNERSHIP**

Providers of Medicaid specified rehabilitative services defined in 10A NCAC 22N .0301 shall comply with the following disclosure conditions:

- (1) When applying to participate in the North Carolina Medicaid program, the provider shall supply the legal name and social security number of each individual who is an owner.
- (2) The provider shall notify the Division of Medical Assistance in writing of a change in the legal name of any owner. The notification must be received within 30 business days following the change.
- (3) The enrolled provider shall notify the Division of Medical Assistance in writing if a new owner joins the provider entity. The notification shall include the new owner's legal name and social security number. The notification must be received no later than 30 business days following the change.
- (4) The enrolled provider shall notify the Division of Medical Assistance in writing if an owner withdraws his ownership interest. The notification shall include the name of the departing owner and must be received no later than 30 business days following the change.

*History Note: Authority G.S. 108A-54; 143B-139.1; Eff. July 1, 2004.*

**10A NCAC 22N .0303 ENROLLMENT RESTRICTIONS**

(a) The Department shall terminate a provider's participation in the Medicaid program for specified rehabilitative services and specified habilitative services as defined in 10A NCAC 22N .0301 when notified in writing that the Division responsible for approving the provider's enrollment has withdrawn its approval. The termination shall become effective the date the Division of Medical Assistance is notified the approval has been withdrawn. The provider may re-apply for enrollment if said provider receives approval from the Division responsible for approving enrollment.

(b) The Department shall deny enrollment, including enrollment for new or additional services, to any entity applying to provide Medicaid habilitative or rehabilitative services when an owner of the applicant entity was the owner of another entity that had its approval withdrawn by the Division responsible for approving the provider's enrollment. The restriction shall become effective the date Division of Medical Assistance is notified the approval has been withdrawn. The provider may re-apply for enrollment if said provider subsequently receives approval from the Division responsible for approving enrollment.

*History Note: Authority G.S. 108A-54; 143B-139.1; Eff. July 1, 2004.*

**10A NCAC 26E .0102 DEFINITIONS**

As used in this Section, the following terms shall have the meanings specified:

- (1) The term "act" means the North Carolina Controlled Substances Act (G.S. Chapter 90, Article 5).
- (2) The term "Commission" means the same as defined in G.S. 90-87.
- (3) The term "basic class" means as to controlled substances listed in Schedules I, II and VI:
  - (a) each of the opiates including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation listed in Schedule I of the North Carolina Controlled Substances Act;
  - (b) each of the opium derivatives including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation listed in Schedule I of the North Carolina Controlled Substances Act;
  - (c) each of the hallucinogenic substances including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation listed in Schedule I of the North Carolina Controlled Substances Act;

(d) each of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

- (i) opium including raw opium, opium extracts, opium fluid extracts, powdered opium, granulated opium, deodorized opium and tincture of opium;
- (ii) apomorphine;
- (iii) ethylmorphine;
- (iv) hydrocodone;
- (v) hydromorphone;
- (vi) metopon;
- (vii) morphine;
- (viii) oxycodone;
- (ix) oxymorphone;
- (x) thebaine;
- (xi) mixed alkaloids of opium listed in Schedule I of the North Carolina Controlled Substances Act;
- (xii) cocaine; and
- (xiii) ecgonine;

(e) each of the opiates including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation listed in Schedule II of the North Carolina Controlled Substances Act; and

(f) methamphetamine including its salts, isomers and salts of isomers when contained in any injectable liquid.

- (4) The term "DEA" means the Federal Drug Enforcement Administration.
- (5) The term "Director" means the Director of the Division of Mental Health, Developmental Disabilities and Substance Abuse Services, Department of Health and Human Services.
- (6) The term "hearing" means any hearing held pursuant to this part of the granting, denial, revocation or suspension of a registration pursuant to G.S. 90-102 and 90-103.
- (7) The term "practitioner" means the same as defined in G.S. 90-87.
- (8) The term "person" means the same as defined in G.S. 90-87.
- (9) The terms "register" and "registration" refer only to registration required and permitted by G.S. 90-102.
- (10) The term "registrant" means any person who is registered pursuant to G.S. 90-102.

- (11) The term "office-based opioid treatment" means any controlled substance listed in Schedules III-V dispensed for the maintenance or detoxification treatment of opioid addiction or for the detoxification treatment of opioid dependence.
- (12) Any term not defined in this Section shall have the definition set forth in G.S. 90-87.

*History Note: Authority G.S. 90-100; 143B-147(a)(5); Eff. June 30, 1978; Amended Eff. July 1, 2004; May 1, 1990; May 15, 1979; September 30, 1978.*

**10A NCAC 26E .0104 PERSONS REQUIRED TO REGISTER**

- (a) Every person who manufactures, distributes or dispenses any controlled substance or who proposes to engage in the manufacture, distribution or dispensing of any controlled substance in this state shall obtain annually a registration unless exempted by law or pursuant to Rules .0107 through .0109 of this Section.
- (b) Only persons actually engaged in such activities are required to obtain a registration; related or affiliated persons who are not engaged in such activities are not required to be registered. (For example, a stockholder or parent corporation of a corporation manufacturing controlled substances is not required to obtain a registration.)
- (c) Any person applying for registration or re-registration shall file, annually, an application for registration with the Department of Health and Human Services and submit the required nonrefundable fee with the application. Categories of applicants and the annual fee for each category are as follows:

CATEGORY	FEE
(1) Clinic	125.00
(2) Hospital	300.00
(3) Nursing Home	100.00
(4) Teaching Institution	100.00
(5) Researcher	125.00
(6) Analytical Laboratory	100.00
(7) Distributor	500.00
(8) Manufacturer	600.00
(9) Office-Based Opioid Treatment	0.00

- (d) For any person applying for registration six months or less prior to the end of the fiscal year, the required annual fee submitted with the application shall be reduced by one-half of the above listed fee for each category.

*History Note: Authority G.S. 90-100; 90-101; 143B-210(9); Eff. June 30, 1978; Amended Eff. July 1, 2004; January 1, 1994.*

**10A NCAC 26E .0105 SEPARATE REGISTRATION FOR INDEPENDENT ACTIVITIES**

- (a) The following groups of activities are deemed to be independent of each other:
  - (1) manufacturing controlled substances;
  - (2) distributing controlled substances;

- (3) dispensing controlled substances listed in Schedules II through V;
- (4) conducting research [other than research described in Subparagraph (6) of this Paragraph] with controlled substances listed in Schedules II through V;
- (5) conducting instructional activities with controlled substances listed in Schedules II through V;
- (6) conducting research with narcotic drugs listed in Schedules II through V for the purpose of continuing the dependence on such drugs of a narcotic drug dependent person in the course of conducting an authorized clinical investigation in the development of a narcotic addict rehabilitation program pursuant to a notice of claims investigational exemption for a new drug approved by the Food and Drug Administration;
- (7) conducting research and instructional activities with controlled substances listed in Schedules I and VI;
- (8) conducting chemical analysis with controlled substances listed in any schedule; and
- (9) dispensing of controlled substances in Schedules III-V for opioid treatment.

(b) Every person who engages in more than one group of independent activities shall obtain a separate registration for each group of activities except as provided in this Paragraph. Any person when registered to engage in the group activities described in each Subparagraph in this Paragraph shall be authorized to engage in the coincident activities described in this Paragraph without obtaining a registration to engage in such coincident activities provided that unless specifically exempted, the person complies with all requirements and duties prescribed by law for persons registered to engage in such coincident activities:

- (1) A person registered to manufacture any controlled substance or basic class of controlled substance shall be authorized to distribute that substance or class but no other substance or class which the person is not registered to manufacture.
- (2) A person registered to manufacture any controlled substance listed in Schedules II through V shall be authorized to conduct chemical analysis and preclinical research (including quality control analysis) with narcotic and nonnarcotic controlled substances listed in the Schedules the person is authorized to manufacture.
- (3) A person registered or authorized to conduct research with a basic class of controlled substances listed in Schedules I and VI shall be authorized to manufacture such class if and to the extent that such manufacture is set forth in the research protocol filed with the Drug Enforcement Administration and to distribute such class to other persons registered or authorized to conduct research with such class

- or registered or authorized to conduct chemical analysis with controlled substances.
- (4) A person registered or authorized to conduct chemical analysis with controlled substances shall be authorized to manufacture such substances for analytical or instructional purposes, to distribute such substances to other persons registered or authorized to conduct chemical analysis or instructional activities or research with such substances and to persons exempted from registration pursuant to Rule .0109 of this Section and to conduct instructional activities with controlled substances.
- (5) A person registered or authorized to conduct research [other than research described in Paragraph (a)(6) of this Rule] with controlled substances listed in Schedules II through V shall be authorized to conduct chemical analysis with controlled substances listed in those schedules in which the person is authorized to conduct research, to manufacture such substances if and to the extent that such manufacture is set forth in a statement filed with the application for registration and to distribute such substances to other persons registered or authorized to conduct chemical analysis, instructional activities or research with such substances and to persons exempted from registration pursuant to Rule .0109 of this Section and to conduct instructional activities with controlled substances.
- (6) A person registered to dispense controlled substances listed in Schedules II through V shall be authorized to conduct research [other than research described in Paragraph (a)(6) of this Rule] and to conduct instructional activities with those substances.

(c) A single registration to engage in any group of independent activities may include one or more controlled substances listed in schedules authorized in that group of independent activities. A person registered to conduct research with controlled substances listed in Schedules I and VI may conduct research with any substance listed in Schedules I and VI for which the person has filed an approved a research protocol from the Drug Enforcement Administration.

*History Note: Authority G.S. 90-100; 90-101; 143B-210(9); Eff. June 30, 1978; Amended Eff. July 1, 2004.*

**10A NCAC 26E .0108 EXEMPTION OF INDIVIDUAL PRACTITIONERS**

- (a) The requirement of registration is waived for all physicians, dentists, podiatrists, pharmacists, optometrists and veterinarians practicing as individual practitioners and licensed in North Carolina by their respective boards to the extent authorized by their boards; except as noted in G.S. 90-101(a1).
- (b) An individual practitioner (other than an intern, resident or foreign trained physician on the staff of a Veterans

Administration facility or physician who is an agent or employee of the Health Bureau of the Canal Zone Government) who is an agent or employee of another practitioner registered to dispense controlled substances may, when acting in the usual course of employment, administer and dispense (other than by issuance of prescription) controlled substances if and to the extent that such individual practitioner is authorized or permitted to do so by the jurisdiction in which the individual practices under the registration of the employer or principal practitioner in lieu of being registered.

(c) An individual practitioner who is an intern, resident or foreign-trained physician or physician on the staff of a Veterans Administration facility or physician who is an agent or employee of the Health Bureau of the Canal Zone Government may dispense, administer and prescribe controlled substances under the registration of the hospital or other registered institution in which the individual is employed in lieu of being registered, provided that:

- (1) such dispensing, administering or prescribing is done in the usual course of professional practice;
- (2) such individual practitioner is authorized or permitted to do so by the jurisdiction in which the individual is practicing;
- (3) the hospital or other institution by whom the individual is employed has verified that the individual practitioner is so permitted to dispense, administer or prescribe drugs within the jurisdiction;
- (4) such individual practitioner is acting only within the scope of employment in the hospital or institution;
- (5) the hospital or other institution authorizes the intern, resident or foreign-trained physician to dispense or prescribe under the hospital registration and designates a specific internal code number for each intern, resident or foreign physician so authorized. The code number shall consist of numbers, letters or a combination thereof and shall be a suffix to the institution's Drug Enforcement Administration registration number preceded by a hyphen (e.g., AP0123456-10 or AP0123456-A12); and current list of internal codes and the corresponding individual practitioner is kept by the hospital or other institution and is made available at all times to other registrants and law enforcement agencies upon request for the purpose of verifying the authority of the prescribing individual practitioner.
- (6)

(d) An individual on the staff of a teaching or research institution may handle controlled substances under the registration of the institution in which the individual is employed in lieu of being registered, provided that:

- (1) the institution authorizes the staff member to handle under the institution registration and designates a specific internal code number for each staff member so authorized. The code number shall consist of numbers, letters or a combination thereof and shall be a suffix to the

- institution's Drug Enforcement Administration registration number preceded by a hyphen (e.g., AP0123456-10 or AP0123456-A12); and
- (2) a current list of internal codes and the corresponding staff members are kept by the institution and is made available at all times to other registrants and law enforcement agencies upon request for the purpose of verifying the authority of the individual staff member.

*History Note: Authority G.S. 90-100; 90-101; 143B-210(9); Eff. June 30, 1978; Amended Eff. July 1, 2004; September 30, 1978.*

**10A NCAC 26E .0111 APPLICATION FORMS:  
CONTENTS: SIGNATURE**

(a) Any person required to be registered and who is not registered and is applying for registration:

- (1) to manufacture or distribute controlled substances, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 225;
- (2) to dispense controlled substances listed in Schedules II through V, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 224;
- (3) to conduct instructional activities with controlled substances listed in Schedules II through V, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 224;
- (4) to conduct research with controlled substances listed in Schedules II through V other than research described in Rule .0105(a)(6) of this Subchapter, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 225 with evidence of federal registration to conduct research with such controlled substances;
- (5) to conduct research with narcotic drugs listed in Schedules II through V, as described in Rule .0105(a)(6) of this Subchapter, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 225 with evidence of federal registration to conduct research with narcotic drugs;
- (6) to conduct research with controlled substances listed in Schedules I and VI, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 225 with evidence of federal registration to conduct research with such controlled substances;
- (7) to conduct instructional activities with controlled substances listed in Schedules I and VI, shall apply as a researcher on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 225 with

evidence of federal registration to conduct instructional activities with controlled substances;

- (8) to conduct chemical analysis with controlled substances listed in any schedule, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 225; and
- (9) to dispense controlled substances in Schedule III-V for opioid treatment, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 224.

(b) Any person registered and who is applying for re-registration:

- (1) to manufacture or distribute controlled substances, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 227;
- (2) to dispense controlled substances in Schedules II through V, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 226;
- (3) to conduct instructional activities with controlled substances listed in Schedules II through VI, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 226;
- (4) to conduct research with controlled substances listed in Schedules II through V other than research described in Rule .0105(a)(6) of this Subchapter, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 227;
- (5) to conduct research with narcotic drugs listed in Schedules II through V, as described in Rule .0105(a)(6) of this Subchapter, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 227;
- (6) to continue to conduct research with controlled substances listed in Schedules I and VI under one or more approved research protocols, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 227;
- (7) to continue to conduct instructional activities with controlled substances listed in Schedules I and VI under one or more approved federal instructional statements, shall apply as a researcher on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 227;
- (8) to conduct chemical analysis with controlled substances listed in any schedule, he shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 227; and
- (9) to dispense controlled substances in Schedule III-V in opioid treatment, shall apply on



Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 226.

(c) Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Forms 224 and 225 may be obtained by writing to the Director. Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Forms 226 and 227 will be mailed as applicable to each registered person approximately 60 days before the expiration date of registration; if any registered person does not receive such forms within 45 days before the expiration date of registration, the registered person must give notice of such fact and request such forms by writing to the Director.

(d) Each application for registration to handle any basic class of controlled substance listed in Schedules I (except to conduct chemical analysis with such classes) and VI and each application for registration to manufacture a basic class of controlled substances listed in Schedule II or to conduct research with any narcotic controlled substance listed in Schedule II shall include the Federal Drug Enforcement Administration code number for each class or substance to be covered by such registration.

(e) Each application shall include all information called for in the form unless the item is not applicable, in which case this fact shall be indicated.

(f) An applicant may authorize one or more individuals who would not otherwise be authorized to do so to sign applications for the applicant by filing with the director a power of attorney for each such individual. The power of attorney shall be signed by a person who is authorized to sign applications under this Paragraph and shall contain the signature of the individual being authorized to sign applications. The power of attorney shall be valid until revoked by the applicant.

*History Note: Authority G.S. 90-100; 90-102; 143B-147(a)(5); Eff. June 30, 1978; Amended Eff. July 1, 2004; May 1, 1990; May 15, 1979; September 30, 1978.*

**10A NCAC 27G .0405 LICENSE DENIAL, AMENDMENT OR REVOCATION**

(a) Denial: DFS may deny an application for license based on the determination that:

- (1) the applicant is not in compliance with rules promulgated under G.S. 122C, for the facility which the applicant is seeking licensure;
- (2) the applicant is not in compliance with applicable provisions of the Certificate of Need law under G.S. 131E, Article 9 and rules adopted under that law for the facility which the applicant is seeking licensure;
- (3) 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;
- (4) 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;

(5) the applicant has an individual as part of their 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

(6) 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.

(b) Notice: When an application for license of a new facility is denied:

- (1) pursuant to G.S. 150B-22, the applicant shall be given an informal opportunity to provide reasons why the license should be issued or the matter otherwise settled;
- (2) DFS shall give the applicant written notice of the denial, the reasons for the denial and advise the applicant of the right to request a contested case hearing pursuant to G.S. 150B; and
- (3) the facility shall not operate until a decision is made to issue a license, despite an appeal action.

(c) Amendment: DFS may amend a license to indicate a provisional status whenever DFS determines there are violations of rules, but the violations do not pose an immediate threat to the health, safety or welfare of the clients served. The following applies to provisional status:

- (1) Provisional status shall be approved for not less than 30 days and not more than six months.
- (2) Provisional status shall be effective immediately upon notice to the licensee and must be posted in a prominent location, accessible to public view, within the licensed premises.
- (3) The facility shall inform each client residing or receiving services from the facility or their legally responsible person concerning the facility's provisional status.
- (4) A regular license shall be issued when a facility is determined by DFS to be in compliance with applicable rules.
- (5) If a facility fails to comply with the rules within the time frame for the provisional status, the license shall automatically terminate on the expiration date of the provisional status.
- (6) If a licensee has a provisional status at the time that the licensee submits a renewal application, the license, if renewed, shall also be of a provisional status unless DFS determines that the violations have been corrected.
- (7) A decision to issue a provisional status shall be stayed during the period of an appeal and the

licensee may continue to display its license during the appeal.

- (d) Revocation: DFS shall revoke a license whenever it finds:
- (1) there has been failure to comply with G.S. 122C;
  - (2) there has been failure to comply with rules promulgated under G.S. 122C; and
  - (3) such failure to comply endangers the health, safety or welfare of the individuals in the facility.

Except for summary suspensions which are governed by Paragraph (e) of this Rule, DFS shall give the licensee written notice of intent to revoke and the reasons for the proposed action, and the right to request a contested case hearing pursuant to G.S. 150B. If the licensee petitions for a hearing, the revocation shall not take effect until completion of the contested case process, otherwise it shall be effective as specified by DFS in its revocation order.

(e) Summary Suspension:

- (1) Should DFS find that public health, safety or welfare considerations require emergency action, DFS shall issue an order of summary suspension and include the findings in its order.
- (2) DFS shall suspend only those services as necessary to protect the public interest. An order of summary suspension shall be effective on the date specified in the order or on the date of service of the order at the last known address of the licensee, whichever is later.
- (3) The licensee may contest the order by requesting a contested case hearing pursuant to G.S. 150B. The order for summary suspension shall be in full force and effect during any contested case hearing.
- (4) The order may set a date by which the licensee shall remove the cause for the emergency action. If the licensee fails to meet that deadline, DFS may revoke or amend the facility's license.

*History Note:* Authority G.S. 122C-23; 122C-24; 122C-26; 122C-27; 122C-12.1; 143B-147; 150B-3; 150B-12(a); 150B-23(a)(f); 150B-45;  
 Eff. May 1, 1996;  
 Amended Eff. July 1, 2004.

**10A NCAC 43H .0111 MEDICAL SERVICES COVERED**

The following medical services are covered under the N.C. Sickle Cell Syndrome Program if the Program Supervisor determines that these services are related to sickle cell disease:

- (1) hospital outpatient care including emergency room visits. The total number of days per year for emergency room visits shall not exceed triple the Program average for each for the previous two years;
- (2) physicians' office visits;
- (3) drugs on a formulary established by the program based upon the following factors: the

medical needs of sickle cell patients, the efficacy and cost effectiveness of the drugs, the availability of generic or other less costly alternatives, and the need to maximize the benefits to patients utilizing finite program dollars. A copy of this formulary may be obtained free of charge by writing to the N. C. Sickle Cell Syndrome Program, 1929 Mail Service Center, Raleigh, North Carolina, 27699-1929.

- (4) medical supplies and equipment;
- (5) preventive dentistry including education, examinations, cleaning, and X-rays; remedial dentistry including tooth removal, restoration, and endodontic treatment for pain prevention; and emergency dental care to control bleeding, relieve pain, and treat infection;
- (6) eye care (when the division of services for the blind will not provide coverage); and
- (7) inpatient care. The cost of one inpatient admission per client per year for a maximum of seven days per fiscal year.

*History Note:* Authority G.S. 130A-129;  
 Eff. February 1, 1976;  
 Amended Eff. April 22, 1977;  
 Readopted Eff. December 5, 1977;  
 Amended Eff. July 1, 1982; January 1, 1982;  
 Temporary Amendment Eff. November 7, 1983, for a period of 120 days to expire on March 4, 1984;  
 Amended Eff. October 1, 1984; March 1, 1984;  
 Temporary Amendment Eff. October 14, 1988, for a period of 180 days to expire on April 12, 1989;  
 Temporary Amendment Expired April 12, 1989;  
 Amended Eff. September 1, 1990;  
 Temporary Amendment Eff. June 19, 1996;  
 Temporary Amendment Expired March 11, 1997;  
 Amended Eff. August 1, 2000;  
 Temporary Amendment Eff. December 17, 2001;  
 December 1, 2001;  
 Amended Eff. April 1, 2003;  
 Temporary Amendment Eff. January 27, 2004;  
 Amended Eff. July 1, 2004.

**TITLE 11 - DEPARTMENT OF INSURANCE**

**11 NCAC 11A .0511 CPA WORKPAPERS**

(a) Workpapers are the records kept by the CPA of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the CPA's examination of the financial statements of an insurer. Workpapers, accordingly, may include work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules, or commentaries prepared or obtained by the CPA in the course of the CPA's examination of the financial statements of an insurer and that support the CPA'S opinion thereof.

(b) Every insurer required to file an Audited Financial Report pursuant to this Section, shall require the CPA (through the

insurer) to make available for review by Department examiners, all workpapers prepared, or legible copies thereof, in the conduct of the CPA's examination. The completed workpapers and any written communications between the CPA and the insurer relating to the audit of the insurer shall be made available for review by Department examiners at the offices of the insurer. The insurer shall require that the CPA retain the audit workpapers for a period of not less than seven years after the period reported thereon.

(c) In the conduct of any periodic review by the Department examiners, photocopies of audit workpapers may be made and retained by the Department.

*History Note: Authority G.S. 58-2-40; 58-2-205; Eff. December 1, 1990; Amended Eff. July 1, 2004; April 1, 1993.*

**11 NCAC 11H .0102 LICENSE - STEPS**

An applicant shall apply for licensure in accordance with the following steps:

- (1) For new or development stage facilities:
  - (a) The applicant shall initially submit the following items to the Commissioner for review:
    - (i) The applicant's name, address and telephone number;
    - (ii) A copy of a non-binding reservation agreement form;
    - (iii) Escrow agreement;
    - (iv) Narrative describing the facility, its mode of operation, and its location; and
    - (v) Any advertising materials to be used.
  - (b) Upon completion of step (1)(a), the applicant may:
    - (i) Disseminate materials describing the intent to develop a Continuing Care facility; and
    - (ii) Enter into fully refundable non-binding reservation agreements for up to one thousand dollars (\$1,000.00). All funds received shall be escrowed.
- (2) Start-Up Certificate:
  - (a) In order to obtain a Start-Up Certificate, the applicant or provider shall submit the following to the Commissioner for review:
    - (i) Application for Licensure, as required by G.S. 58-64-5(b);
    - (ii) A Disclosure Statement, as required by G.S. 58-64-20;
    - (iii) A copy of a binding reservation agreement or resident agreement; and

- (iv) A market feasibility study.
- (b) Upon issuance of the Start-Up Certificate, the applicant or provider may:
  - (i) Enter into binding; reservation agreements or resident agreements;
  - (ii) Accept entrance fees and entrance fee deposits over one thousand dollars (\$1,000.00). Any funds received shall be escrowed and shall be released only in accordance with G.S. 58-64-35;
  - (iii) Begin site preparation work; and
  - (iv) Construct model units for marketing.
- (3) Preliminary Certificate:
  - (a) In order to obtain a Preliminary Certificate, the applicant or provider shall submit the following to the Commissioner for review:
    - (i) An explanation of any material differences between actual costs and projected costs contained in the Start-Up Certificate submission (not required for existing operational Continuing Care facilities that are expanding);
    - (ii) An updated Disclosure Statement;
    - (iii) Current interim financial statements; and
    - (iv) Confirmation of signed agreements for at least 50 percent of the new units, reserved by a deposit equal to at least 10 percent of the entrance fee or by a non-refundable deposit equal to the periodic fee for at least two months for facilities that have no entrance fee.
  - (b) Upon issuance of the Preliminary Certificate, the applicant or provider may:
    - (i) Purchase or construct a Continuing Care facility;
    - (ii) Renovate or develop structure(s) not already licensed as a Continuing Care facility; and
    - (iii) Expand existing Continuing Care facilities in excess of 10 percent of the current

number of available Independent Living Units (ILU's) or available health related units/beds.

quarterly financial statements and an occupancy report. These shall be due no later than 45 days following the end of each fiscal quarter.

- (4) Permanent License:
- (a) In order to obtain a Permanent License, the applicant or provider shall submit the following to the Commissioner for review at least 60 days before the facility opening:
    - (i) An updated Application for Licensure;
    - (ii) An updated Disclosure Statement; and
    - (iii) Confirmation of signed agreements for new units required by the Continuing Care facility to break-even, reserved by a deposit equal to at least 10 percent of the entrance fee or by a non-refundable deposit equal to the periodic fee for at least two months for facilities that have no entrance fee.
  - (b) Upon issuance of the Permanent License and satisfaction of all other legal requirements, the applicant or provider may:
    - (i) Open the Continuing Care facility; and
    - (ii) Provide Continuing Care.
- (5) Restricted or Conditional License:
- (a) If all other licensing requirements are met, the Commissioner shall, in lieu of denying the issuance of a Permanent License, issue a Restricted or Conditional License to an applicant when one or more of the following conditions exist:
    - (i) A hazardous financial condition.
    - (ii) Occupancy at the facility, or the number of executed agreements for new units at the facility, is below the level at which the facility would break-even.
  - (b) Upon issuance of the Restricted or Conditional License, the provider may operate the facility under the conditions or restrictions established by the Commissioner until such time as the Commissioner alters the conditions for continued operations or issues a Permanent License.
  - (c) Upon issuance of the Restricted or Conditional License, the provider shall file with the Commissioner

*History Note: Authority G.S. 58-2-40; 58-64-5; 58-64-65; Eff. April 1, 1993; Amended Eff. July 1, 2004.*

**11 NCAC 14 .0201 INFORMATION REQUIRED DURING PRE-INCORPORATION**

Prior to the certification of the articles of incorporation to the Office of the Secretary of State pursuant to G.S. 58-7-35, the following documentation shall be submitted to the Commissioner:

- (1) biographical affidavits in the form identified at 11 NCAC 14 .0409 shall be submitted for each key person as defined in G.S. 58-7-37;
- (2) a plan of operation describing the lines of insurance to be written and how the proposed company will perform its various functions;
- (3) an actuarial projection of the anticipated operational results for a five-year period based on the initial capitalization of the proposed company and its plan of operation, which projection shall be prepared by a qualified actuary, pursuant to and as defined in the most current NAIC Annual Statement Instructions, shall be in a format similar to the Annual Statement and shall be accompanied by a list of the assumptions utilized in making such projection;
- (4) a description of the source of the initial capitalization of the proposed company if other than through a public offering of pre-incorporation subscriptions to the capital stock of the company;
- (5) if a public offering of pre-organization subscriptions to capital stock of the proposed company is planned, a statement signed and dated by the proposed company's president or vice president affirming that all of the conditions required for a company to be exempt from G.S. 78A-24 and G.S. 78A-49(d) pursuant to G.S. 78A-17(10) have been met;
- (6) the names of the persons managing the accounting, actuarial, underwriting, claims, legal, treasury, marketing, information systems, and reinsurance functions of the proposed company. Such persons shall be experienced in their respective disciplines. Evidence of experience shall be a minimum of three years of employment in the respective disciplines if so noted in the biographical affidavit described in 11 NCAC 14 .0409; and
- (7) all background documentation, including fingerprint cards, for each key person as required by and in accordance with G.S. 58-7-37.

*History Note: Authority G.S. 58-2-40; 58-2-165; 58-7-35; 58-7-37; 58-7-40; 58-7-75; Eff. February 1, 1976; Readopted with Change Eff. January 22, 1980; Amended Eff. July 1, 2004; April 1, 1990.*

**11 NCAC 14 .0505 WAIVERS OF THREE-YEAR NET INCOME REQUIREMENT**

(a) The Commissioner shall waive the three-year net income requirement for a foreign insurance company of any type listed in G.S. 58-7-75 applying for admission to do business in North Carolina if the company meets all other requirements for admission and it is a subsidiary of, or affiliated under a holding company system, as defined in G.S. 58-19-5, with a licensed insurance company:

- (1) that has been licensed in North Carolina for a minimum of 10 years;
- (2) that has reflected net income three of the most recent five years;
- (3) that enjoys a satisfactory reputation in its dealings with its North Carolina policyholders, demonstrated by a volume of consumer complaints that are not material and market conduct examination findings which are not harmful to its policyholders; and
- (4) whose management has control as defined in G.S. 58-19-5 over the operations of the applicant company.

To be eligible for the waiver, the affiliated company shall guarantee to maintain the capital and surplus of the applicant company at or above the admission requirements in North Carolina for a minimum of three years or until the applicant company can provide a report on examination that certifies three consecutive years of net income, whichever last occurs. The affiliated company shall use the forms prescribed in 11 NCAC 14 .0421 and 14 .0422 to make such guaranty. Any guaranty provided by the affiliated company, that if exercised would place the guarantor in a hazardous financial condition as defined in G.S. 58-47-60, is ineffective in providing eligibility for the waiver. Any applicant company that is granted a waiver of this requirement shall place on deposit with the Commissioner, in addition to any other minimum required deposit for admission, qualified securities in the amount of two hundred thousand dollars (\$200,000) of the kind and nature set forth under G.S. 58-5-20.

(b) On an individual case basis, a foreign life insurance company of the type listed in G.S. 58-7-75(1), (2) and (6) shall be eligible for a waiver of the net income requirement if it has net income for the current or immediately preceding year and can provide a certified financial projection, prepared by a qualified actuary, pursuant to and as defined in the most current NAIC Annual Statement Instructions, or a certified financial forecast prepared by an independent certified public accountant that has experience in audits of insurers, pursuant to G.S. 58-2-205, reflecting continuing net income for at least the next three years. This financial projection or forecast shall be in a format similar to the Annual Statement for evaluation by the Commissioner. All assumptions used in the preparation of such a projection or forecast shall be included with the filing. Any applicant company that is granted a waiver under this Rule shall

place on deposit with the Commissioner, in addition to any other required deposit for admission, eligible securities in the amount of two hundred thousand dollars (\$200,000) of the kind and nature set forth under G.S. 58-5-20.

(c) A foreign fire, casualty, or fire and casualty insurance company of the type listed in G.S. 58-7-75(3), (4), (5), (7) and (8) shall be eligible for the waiver of the three-year net income requirement under the following conditions:

- (1) the applicant company reflects verifiable total statutory capital and surplus in excess of ten million dollars (\$10,000,000) on its most recent reporting period whether annually or quarterly;
- (2) the applicant company has been in business for at least five years under the same ultimate ownership and writing the same or similar lines of business;
- (3) the applicant company reflects net income for at least three of the most recent five years; or reflects verifiable total statutory capital and surplus in excess of twenty-five million dollars (\$25,000,000) in its most recent reporting period whether annually or quarterly; and
- (4) the applicant company certifies the adequacy of its loss and loss adjustment expense reserves, pursuant to and as defined in the most current NAIC Annual Statement Instructions as they pertain to its most recent annual statement.

Any company that is granted a waiver under this provision shall place on deposit with the Commissioner, in addition to any other required deposit for admission, eligible securities in the amount of five hundred thousand dollars (\$500,000) of the kind and nature set forth under G.S. 58-5-20.

(d) On an individual case basis, a foreign insurance company of any type listed in G.S. 58-7-75 shall be eligible for a waiver of the net income requirement under the following conditions:

- (1) the applicant company is owned by, or will within 12 months be owned by, a North Carolina licensed insurance company without restriction or an insurance company holding company system as defined in G.S. 58, Article 19, that has been or had been in existence for any three of the most recent five years. The North Carolina licensed insurance company must have reflected net income for any three of the most recent five years; or the largest insurer, whether or not licensed in North Carolina, based on its equity within the insurance holding company system must have reflected net income for any three of the most recent five years.
- (2) the applicant company is purchasing, or has had transferred to it, an existing block of insurance business and the existing management personnel;
- (3) the applicant company can demonstrate that the block of insurance business being purchased, or transferred to it, has net income for at least any three of the most recent five

- years and is projected by an actuary, or forecasted by a certified public accountant, to reflect net income for at least the next three years; and
- (4) the total capital and surplus of the applicant company is at least six times the authorized control level risk based capital pursuant to G.S. 58, Article 12, after the purchase of the block of business.

Any company that is granted a waiver under this provision shall deposit with the Commissioner, in addition to any other required deposit for admission, eligible securities in the amount of two hundred thousand dollars (\$200,000) of the kind and nature set forth under G.S. 58-5-20.

*History Note: Authority G.S. 58-2-40; 58-5-20; 58-5-40; 58-2-165; 58-7-75; 58-16-5(2); Eff. April 1, 1990; Amended Eff. July 1, 2004; April 1, 1993.*

**11 NCAC 14 .0603 FINANCIAL INFORMATION REQUIRED**

(a) Each request for surplus lines eligibility shall be accompanied by the following financial information so that verification of compliance with the eligibility requirements can be made:

- (1) annual statements for the preceding two years in the form required under G.S. 58-2-165 for companies licensed in at least one state in the United States;
- (2) for alien insurance companies, annual financial reports for the preceding two years in the English language and in U.S. dollar amounts;
- (3) a certified copy of the latest report on examination and CPA report or, if the company is not required to be examined by any jurisdiction, a copy of the latest CPA report and management letter; and
- (4) an actuarial certification of the loss reserves and loss adjustment expense reserves for the most recent year if such certification is available.

(b) An alien insurer shall file a copy of its United States trust agreement and shall also file with and be approved by the International Insurers Department of the NAIC to be eligible in North Carolina.

*History Note: Authority G.S. 58-2-40; 58-2-165; 58-21-20; Eff. April 1, 1990; Amended Eff. July 1, 2004; February 1, 1996; April 1, 1993.*

**11 NCAC 14 .0605 DELETION FROM ELIGIBLE COMPANY LIST**

(a) The Department shall delete a company from its eligible company list if the company is found to no longer satisfy the eligibility requirements and the event causing the ineligibility is not corrected within 15 calendar days after notification of the ineligibility.

(b) By written request, any eligible company may voluntarily withdraw from eligibility and be deleted from the Department's list.

(c) Any insurer that is deleted from the Department's list pursuant to Paragraph (a) or (b) of this Rule and has active policies or policy obligations in this State shall continue to file financial statements with the Department beyond the date the insurer is deleted from the list of eligible companies until all policies are inactive and policy obligations are satisfied.

*History Note: Authority G.S. 58-2-40; 58-21-5; 58-21-30; Eff. April 1, 1990; Amended Eff. July 1, 2004.*

**11 NCAC 14 .0702 PURCHASING GROUP FILING REQUIREMENTS**

(a) A purchasing group seeking to do business in North Carolina shall request an application for registration as a purchasing group before soliciting any member in North Carolina. The purchasing group shall then furnish notice to the Commissioner of its intent to do business in North Carolina on the form described in 11 NCAC 14 .0427.

(b) A purchasing group seeking to do business in North Carolina shall purchase insurance from a company licensed to do business in North Carolina or comply with the provisions of the North Carolina Surplus Lines Act.

(c) Each purchasing group shall specify the method by which, and the person or persons through whom, insurance will be offered to its members whose risks are resident or located in North Carolina.

(d) A purchasing group seeking to do business in North Carolina by complying with the provisions of the North Carolina Surplus Lines Act shall, before effecting coverage, designate the name and address of the surplus lines licensee.

(e) All policy forms and rates for use by purchasing groups soliciting in North Carolina with respect to insurance procured from companies licensed in North Carolina shall be filed with and approved by the Commissioner, pursuant to G.S. 58, prior to their use in North Carolina.

*History Note: Authority G.S. 58-2-40; 58-22-40; 58-22-45; 58-22-70; Eff. April 1, 1990; Amended Eff. July 1, 2004.*

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

**15A NCAC 06E .0102 DEFINITIONS FOR SUBCHAPTER 06E**

In addition to the definitions found in G.S. 143-215.75, the following terms used in this Subchapter have the following meanings:

- (1) Agriculture Nonpoint Source (NPS) Pollution means pollution originating from a diffuse source as a result of agricultural activities related to crop production, animal production units and land application of waste materials.

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| <p>(2) Allocation means the annual share of the state's appropriation to participating districts.</p> <p>(3) Applicant means a person(s) who applies for best management practice cost sharing monies from the district.</p> <p>(4) Average Costs means the calculated cost, determined by averaging recent actual costs and current cost estimates necessary for best management practice implementation. Actual costs include labor, supplies, and other direct costs required for physical installation of a practice.</p> <p>(5) Best Management Practice (BMP) means a structural or nonstructural management based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters.</p> <p>(6) Conservation Plan of Operation (CPO) means a written plan scheduling the applicant's decisions concerning land use, and both cost shared and non-cost shared BMPs to be installed and maintained on the operating unit.</p> <p>(7) Cost Share Agreement means an annual or long term agreement between the applicant and the district which defines the BMPs to be cost shared, rate and amount of payment, minimum practice life, and date of BMP installation. The agreement shall state that the recipient shall maintain and repair the practice(s) for the specified minimum life of the practice. The Cost Share Agreement shall have a maximum contract life of three years for BMP installation. The district shall perform an annual status review during the installation period.</p> <p>(8) Cost Share Incentive (CSI) means a predetermined fixed payment paid to an applicant for implementing a BMP in lieu of cost share.</p> <p>(9) Cost Share Rate means a cost share percentage paid to an applicant for implementing BMPs.</p> <p>(10) detailed implementation plan means the plan approved by the commission that specifies the guidelines for the current program year; including, bmps that will be eligible for cost sharing and the minimum life expectancy of those practices.</p> <p>(11) District BMP means a BMP designated by a district to reduce the delivery of agricultural NPS pollution and which is reviewed and approved by the Division to be technically adequate prior to funding.</p> <p>(12) Encumbered Funds means monies from a district's allocation which have been committed to an applicant after initial approval of the cost share agreement.</p> <p>(13) Full Time Equivalent (FTE) means 2,080 hours per annum which equals one full time technical position.</p> | <p>(14) In-kind Contribution means a contribution by the applicant towards the implementation of BMPs. In-kind contributions shall be approved by the district and can include but not be limited to labor, fuel, machinery use, and supplies and materials necessary for implementing the approved BMPs.</p> <p>(15) Landowner means any natural person or other legal entity, including a governmental agency, who holds either an estate of freehold (such as a fee simple absolute or a life estate) or an estate for years or from year to year in land, but does not include an estate at will or by sufferance in land. Furthermore, a governmental or quasi-governmental agency such as a drainage district or a soil and water conservation district, or any such agency, by whatever name called, exercising similar powers for similar purposes, can be a landowner for the purposes of these Rules if the governmental agency holds an easement in land.</p> <p>(16) Program Year means the period from July 1 through June 30 for which funds are allocated to districts.</p> <p>(17) Proper Maintenance means that a practice(s) is being maintained such that the practice(s) is successfully performing the function for which it was originally implemented.</p> <p>(18) Soil Loss Tolerance (t) means the maximum allowable annual soil erosion rate to maintain the soil resource base, depending on soil type.</p> <p>(19) Strategy Plan means the annual plan for the N.C. Agriculture Cost Share Program for Nonpoint Source Pollution Control to be developed by each district. The plan identifies pollution treatment needs and the level of cost sharing and technical assistance monies required to address those annual needs in the respective district.</p> <p>(20) Technical Representative of the district means a person designated by the district to act on their behalf who participates in the planning, design, implementation and inspection of BMPs. These practices shall be technically reviewed by the Division. The district chairman shall certify that the technical representative has properly planned, designed and inspected the BMPs.</p> <p>(21) Unencumbered Funds means the portion of the allocation to each district which has not been committed for cost sharing.</p> |
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*History Note: Authority G.S. 139-3; 143-215.74; 143B-294; Eff. May 1, 1987; Temporary Amendment Eff. September 23, 1996; Recodified from 15A NCAC 6E .0002 Eff. December 20, 1996; Amended Eff. April 1, 1997; Temporary Amendment Expired June 13, 1997; Amended Eff. July 1, 2004.*

**15A NCAC 06E .0105 COST SHARE AND INCENTIVE PAYMENTS**

- (a) Cost share and incentive payments may be made through Cost Share Agreements between the district and the applicant.
- (b) For all practices except those eligible for CSI, the state shall provide a percentage of the average cost for BMP installation not to exceed the maximum cost share percentages shown in subdivisions (6), (8), and (9) of G.S. 143-215.74(b), and the applicant shall contribute the remainder of the cost. In-kind contributions by the applicant shall be included in the applicants' cost share contribution. In-kind contributions shall be specified in the agreement for cost sharing and shall be approved by the district.
- (c) CSI payments shall be limited to a maximum of three years per farm.
- (d) Average installation costs for each comparative area or region of the state and the amount of cost share incentive payments shall be updated and revised at least triannually by the Division for approval by the Commission.
- (e) The total annual cost share payments to an applicant shall not exceed the maximum funding authorized in subdivisions (6) and (9) of G.S. 143-215.74(b).
- (f) Cost share payments to implement BMPs under this program may be combined with other funding programs, as long as the combined cost share rate does not exceed the amount and percentages set forth in Paragraphs (b) and (e) of this Rule. For special funding programs where the applicant relinquishes all production capability on his or her agricultural land for at least 10 years, combined funding may equal up to 100 percent. Agriculture Cost Share Program funding shall not exceed the maximum cost share percentages shown in subdivisions (6), (8), and (9) of G.S. 143-215.74(b).
- (g) Use of cost share payments is restricted to land located within the county approved for funding by the Commission. However, in the situation where an applicant's farm is not located solely within a county, the entire farm, if contiguous, shall be eligible for cost share payments.
- (h) Cost share contracts used on or for local, state or federal government land must be approved by the Commission in order to avoid potential conflicts of interest and to ensure that such contracts are consistent with the purposes of this program.
- (i) The district Board of Supervisors may approve Cost Share Agreements with cost share percentages or amounts less than the maximum allowable in subdivisions (6), (8), and (9) of G.S. 143-215.74(b) if:

- (1) The Commission allocates insufficient cost share BMP funding to the district to enable it to award funding to all applicants;
- (2) The district establishes other criteria in its annual strategy plan for cost sharing percentages or amounts less than those allowable in subdivisions (6), (8), and (9) of G.S. 143-215.74(b).

*History Note:* Authority G.S. 139-4; 139-8; 143-215.74; 143B-294;  
 Eff. May 1, 1987;  
 Temporary Amendment Eff. September 23, 1996;  
 Recodified from 15A NCAC 6E .0005 Eff. December 20, 1996;

*Temporary Amendment Expired June 13, 1997;  
 Amended Eff. July 1, 2004; April 1, 1999; January 1, 1998.*

**15A NCAC 06G .0101 OBJECTIVES**

- (a) The North Carolina Conservation Reserve Enhancement Program (CREP) is a state/federal/local partnership that combines existing federal Conservation Reserve Program (CRP) funding and state funding from various sources, including the Agriculture Cost Share Program (ACSP), to take environmentally sensitive land out of crop production. For purposes of this Rule the generic term "CREP" references either the federal portion or the combined federal and state portions of the program. The combined federal and state portion of CREP is referred to as NC-CREP. Under CREP, landowners may voluntarily enroll eligible land in 10-year, 15-year, 30-year or permanent agreements or contracts. The Commission operates the state portion of NC CREP program as the lead agency for the State of North Carolina (State), and may from time to time delegate activities to the Division.
- (b) The program objectives for the Commission, which are the same as those of the multi-agency CREP team, are the following: to reduce agricultural non-point source pollution; to enroll eligible land in 10-year, 15-year, 30-year or permanent contracts or easements; to encourage voluntary sign-ups for the program; and to enhance ecological aspects and wildlife habitat of areas near watercourses.
- (c) There shall be an initial enrollment period beginning March 1, 1999, which shall last five years unless otherwise extended, during which time requests to enroll acreage shall be received. The Division, or its agent, shall seek eligible applicants for enrollment into the program. Landowner payments shall be made in accordance with state and federal requirements, and shall be subject to the availability of funds.
- (d) The applicable standards, rules, regulations, and practices of the Natural Resource Conservation Service (NRCS) NRCS Field Office Technical Guide, the Farm Service Agency (FSA) 2-CRP Manual, the Division of Forest Resources, 15A NCAC 09C .0400 and the Wetlands Restoration Program, G.S. 143-214.8 are incorporated herein by reference, and such incorporation includes subsequent amendments and editions of the referenced material. Likewise, the provisions of the United States Department of Agriculture's 2-CRP Manual are incorporated herein by reference, and such incorporation includes subsequent amendments and editions of the referenced material. Copies of all of these materials are available at the offices of the Division, and the cost of any copies shall not exceed ten cents (\$.10) per page.

*History Note:* Authority G.S. 113A-235; 139-4; 143-215.74(a); 143B-294; S.L. 1998-165;  
 Temporary Adoption Eff. October 1, 2000;  
 Eff. August 1, 2002;  
 Amended Eff. July 1, 2004.

**15A NCAC 06G .0102 ELIGIBILITY**

- (a) Persons may offer to enroll acreage to CREP at any time within the enrollment period or any extension thereof. Acreage enrolled into the CREP is referred to as "CREP Enrollments." Acreage enrolled into NC-CREP is referred to as NC-CREP



Enrollments. In order to be enrolled into the CREP, all of the following shall be met:

- (1) the producer eligibility requirements within the 2-CRP Manual;
  - (2) the cropland and marginal pasture land requirements within the 2-CRP Manual;
  - (3) Acreage offered is eligible under the 2-CRP Manual and applicable NRCS standards, and is suitable for the intended practice; and
  - (4) Producer accepts the maximum payment rate based on the payment formula described in Rule .0105 of this Section.
- (b) The Commission may refuse enrollment where water quality benefits do not justify the payments, or where the acquisition is impractical or nuisance conditions exist on the land.
- (c) The following acreage is ineligible to be enrolled in CREP:
- (1) federally-owned land unless the applicant has a prior written lease for the time frame in which the land is under the Conservation Reserve Program (CRP);
  - (2) land on which a federal agency restricts the use in a mortgage or an easement;
  - (3) acreage permanently under water, including acreage currently enrolled in CRP;
  - (4) land currently enrolled in other federal programs and still under lifespan requirements;
  - (5) land already enrolled in CRP; or
  - (6) acreage withdrawn, terminated or otherwise released from the CRP after enrollment and before the contract expiration date.
- (d) For the NC-CREP, landowners may enroll in one of the following options:
- (1) 30-year contract or easement;
  - (2) Permanent easement with timber harvest allowed outside the 100 foot no-cut zone; or
  - (3) Permanent easement with no timber harvest allowed
- (e) Existing forested buffers may be enrolled under NC-CREP if the following conditions are met:
- (1) land must be enrolled in a permanent easement;
  - (2) land must be adjacent to enrolled cropland/marginal pasture land (land between enrolled cropland/ marginal pasture land and waterbody, adjacent to cropland/marginal pasture land, across the qualifying waterbody of the enrolled cropland/marginal pasture land if owned by same landowner, or up gradient from enrolled cropland /marginal pasture land if it meets condition 3 below;
  - (3) existing buffer must be either within 300-feet of qualifying waterbody or in the 100-year floodplain, whichever is greater;
  - (4) landowner may enroll existing forest buffers up to an equal number of cropland acres (1:1) that are adjacent to existing buffer;
  - (5) if the eligible acreage is  $\geq 80\%$  of the parent tract and enrolling the entire parent tract will eliminate the need for a survey, then the

landowner may exceed the 1:1 ration and enroll the entire parent tract.

- (f) The portion of an unmanageable field remnant that does not qualify for enrollment under FSA rules may be enrolled under NC-CREP and will qualify for the current state bonus payment being applied to the total NC-CREP enrollment, if the landowner uses one of the permanent easement options for the total enrollment.
- (g) Landowners may switch from a 30-year contract/easement to one of the permanent easement options under the payment schedule existing at the time of the change in enrollment.
- (h) Landowners may enroll additional forested buffers into one of the permanent easement options under the payment schedule at the time of additional enrollment.
- (i) Landowners may enroll field remnants into one of the permanent easement options under the payment schedule existing at the time of change in the enrollment.
- (j) Eligibility for the CREP shall be determined by the local District, Farm Service Agency (FSA), NRCS and the Division. An eligible applicant may enter into the federal agreements (10-years to 15-years), as well as the State agreements (30-year or permanent). Persons and land qualifying for the federal portion of CREP may also be qualified for enrollment under NC-CREP. Any landowner enrolling 10 acres or greater per tract, regardless of the length of enrollment, must enter into a 30-year or permanent State agreement.

*History Note: Authority G.S. 113A-235; 139-4; 143-215.74(a); 143B-294; S.L. 1998-165; Temporary Adoption Eff. October 1, 2000; Eff. August 1, 2002; Amended Eff. July 1, 2004.*

**15A NCAC 06G .0103 CONSERVATION PLAN**

- (a) A conservation plan is required for all CREP Enrollments. The conservation plan is a record of the applicant's decisions and supporting information for the treatment of a unit of land or water as a result of the planning process that meets the NRCS Field Office Technical Guide quality criteria for each natural resource and that addresses economic and social considerations. The plan shall describe the schedule of operations and activities required to solve identified natural resource concerns. Conservation plans shall be prepared according to all applicable federal, state and local environmental laws, executive orders, and rules. The conservation plan shall be consistent with any conservation easement protecting the enrollment area. This applies regardless of eligibility for cost-share funds. Participants shall also agree to establish and maintain approved practices according to the conservation plan of operations and forest management plans, for the duration of the agreement. Practices included in the conservation plan must cost-effectively achieve a reduction in soil erosion and nutrient transport. All forestry management practices must be completed according to a forestry management plan approved by a registered forester. The Division and the Commission may review conservation plans at any time while CREP agreements are effective.
- (b) All CREP Enrollments must provide interception of water from the crop or pasture land into the enrollment area. All CREP Enrollments must maintain a contiguous buffer with the water course. Enrollments of wetland restoration areas shall be

accepted only if lands are hydrologically restored to the greatest extent practicable and, if enrollments shall be in trees, in those areas where trees would be the natural cover. The riparian forested buffer or wetland practice may include an outer buffer layer of native grasses between cropped areas and the trees, as specified in the practice criteria. Hydrologic restoration to the greatest extent practicable shall occur on all NC-CREP Enrollments. Hydrologic restoration to the greatest extent practicable means to improve/increase hydrology and to retain water to the maximum extent as long as there are no adverse impacts to non-enrolled lands. This may be accomplished through the following means: creating sheet flow; reducing concentrated flow areas; blocking or filling artificial drainage; or using water control structures in conjunction with buffers. All shall meet or exceed appropriate NRCS standards. Water infiltration and retention shall be maximized on non-hydric soils by creating sheet flow and by reducing concentrated flow areas. Plans shall provide for improved wildlife habitat. The establishment of CREP practices shall be:

- (1) consistent with conservation compliance provisions;
- (2) at the participant's own expense;
- (3) included in the approved conservation plan;
- (4) approved by the local District; and
- (5) subject to FSA and Division approval where applicable.

(c) 30-year contracts/easements and permanent easements for which the participant chooses the timber harvest option shall require a 100-foot no-cut zone adjacent to the qualifying waterbody. Timber management and harvesting may be allowed in the remaining portion of the CREP enrollment as outlined in the contract/easement.

(d) A modification to an approved conservation plan must be in the best interest of CREP, and consistent with any conservation easement protecting the enrollment area. Such plans shall be revised as needed. Circumstances necessitating a revision include but are not limited to:

- (1) adding or revising a CREP practice;
- (2) substituting CREP practices;
- (3) scheduling reapplication of a CREP practice;
- (4) reflecting change in ownership; or
- (5) implementing other non-cost shared conservation measures, if producer agrees to install according to the approved conservation plan on CREP land already seeded to an acceptable cover.

*History Note: Authority G.S. 113A-235; 139-4; 143-215.74(a); 143B-294; S.L. 1998-165; Temporary Adoption Eff. October 1, 2000; Eff. August 1, 2002; Amended Eff. July 1, 2004.*

**15A NCAC 06G .0104 APPROVING STATE AGREEMENTS**

(a) Final approval for all NC-CREP agreements shall be the responsibility of the Division. Thirty-year agreements including more than 9.9 acres and all permanent agreements require recording of a conservation easement in the appropriate county registry. The intent is to provide that the NC-CREP Enrollment

Area shall be protected for the life of the signed agreement. The Division shall provide a mechanism to acquire and record easements for NC-CREP. The Division shall provide a survey where needed to develop legal description of the easement area. Conservation easements entered into shall be consistent with the requirements of the Department of Administration and with 01 NCAC 06B .0210.

- (b) For approval under NC-CREP, the Division must receive:
- (1) the State CREP form signed by the local District and the applicant;
  - (2) a copy of landowner's deed(s) to the land to be enrolled;
  - (3) a completed conservation easement(s);
  - (4) latitude and longitude coordinates locating the easement site; and
  - (5) descriptions (maps, surveys, directions to site, etc.) identifying the easement site.
- (c) Under a CREP 30-year or permanent conservation easement, the title of the land still resides with the landowner. The landowner may use the land under the conservation easement in a manner that does not violate the conditions and terms of the easement. The conservation easement does not restrict the owner from selling or devising the land, however the easement shall run with the land and remain an encumbrance thereon. The State must be allowed access to monitor the NC-CREP conservation easement area.

*History Note: Authority G.S. 113A-235; 139-4; 143-215.74(a); 143B-294; S.L. 1998-165; Temporary Adoption Eff. October 1, 2000; Eff. August 1, 2002; Amended Eff. July 1, 2004.*

**15A NCAC 06G .0105 PAYMENT**

(a) The NC-CREP combines federal and state funding to achieve the goals of the program. For that reason, the eligible person may receive two separate payments (i.e. federal and state) to meet expectations set by the applicable contracts.

(b) The State payment shall be dependent on the length of the contract signed. The State payment shall consist of a one-time bonus payment for executed contracts for 30-year contracts and 30-year and permanent easement enrollments that require a conservation easement. The State shall also pay a portion of cost-sharable practices implemented within the guidelines of the ACSP subject to availability of funds to the District. Any agricultural cost share payments shall be consistent with all Commission requirements, including but not limited to those in 15A NCAC 06E .0101-.0108.

(c) For enrollments involving the ACSP, all cost-share practices are subject to terms and policies as set forth in the ACSP rules and best management practices manual. State cost-share percentages, listed below, shall be dependent on the length of enrollment. All payments involving ACSP funds shall require approval of the local District Board of Supervisors, and are subject to the availability of funds to the District.

10 year	25%
15 year	30%
30 year	40%
permanent agreement	50%

(d) The maximum one-time bonus payment under NC-CREP that an eligible person can receive shall be limited by the maximum payment allowed under the federal payment. The payment for enrollment of land in 30-year contracts, 30-year or permanent conservation easements shall be made once the contract or conservation easement is executed by the State and a technical representative has determined that the participant is actively engaged in the applicable practices.

(e) The formula for payment of the one-time State bonus shall be as established in the 2-CRP Manual, subject to the availability of funds.

*History Note: Authority G.S. 113A-235; 139-4; 143-215.74(a); 143B-294; S.L. 1998-165; Temporary Adoption Eff. October 1, 2000; Eff. August 1, 2002; Amended Eff. July 1, 2004.*

**15A NCAC 18A .2532 SPAS AND HOT TUBS**

Spas and hot tubs shall meet all design specifications for swimming pools and wading pools included in Rules .2512-.2530 of this Section with the following exceptions:

- (1) The circulation system equipment shall provide a turnover rate for the entire water capacity at least once every 30 minutes.
- (2) The arrangement of water inlets and outlets shall produce a uniform circulation of water so as to maintain a uniform disinfectant residual throughout the spa.
- (3) A minimum of two inlets shall be provided with inlets added as necessary to maintain required flowrate.
- (4) Water outlets shall be designed so that each pumping system in the spa (filter systems or booster systems if so equipped) provides the following:
  - (a) Two drains connected by "T" piping. Connecting piping shall be of the same diameter as the main drain outlet. Filter system drains shall be capable of emptying the spa completely. In spas constructed after April 1, 2000 drains shall be installed at least three feet apart or located on two different planes of the pool structure.
  - (b) Filtration systems shall provide at least one surface skimmer per 100 square feet, or fraction thereof of surface area.
- (5) The water velocity in spa or hot tub discharge piping shall not exceed 10 feet per second (3.05 m/second); except for copper pipe where water velocity shall not exceed eight feet per second (2.44 m/second). Suction water velocity in any piping shall not exceed six feet per second (1.83 m/second).
- (6) Spa recirculation systems shall be separate from companion swimming pools.

(a) Where a two-pump system is used, one pump shall provide the required turnover rate, filtration and disinfection for the spa water. The other pump shall provide water or air for hydrotherapy turbulence without interfering with the operation of the recirculation system. The timer switch shall activate only the hydrotherapy pump.

(b) Where a single two-speed pump is used, the pump shall be designed and installed to provide the required turnover rate for filtration and disinfection of the spa water at all times without exceeding the maximum filtration rates specified in Rule .2519 of this Section. The timer switch shall activate only the hydrotherapy portion of the pump.

(c) Where a single one-speed pump is used, a timer switch shall not be provided.

- (7) A timer switch shall be provided for the hydrotherapy turbulence system with a maximum of 15 minutes on the timer. The switch shall be placed such that a bather must leave the spa to reach the switch.
- (8) The maximum operational water depth shall be four feet (1.22 m) measured from the water line.
- (9) The maximum depth of any seat or sitting bench shall be two feet (61 cm) measured from the waterline.
- (10) A minimum height between the top of the spa/hot tub rim and the ceiling shall be 7 ½ feet.
- (11) Depth markers are not required at spas.
- (12) Steps, step-seats, ladders or recessed treads shall be provided where spa and hot tub depths are greater than 24 inches (61 cm).
- (13) Contrasting color bands or lines shall be used to indicate the leading edge of step treads, seats, and benches.
- (14) A spa or hot tub shall be equipped with at least one handrail (or ladder equivalent) for each 50 feet (15.2 m) of perimeter, or portion thereof, to designate points of entry and exit.
- (15) Where water temperature exceeds 90° Fahrenheit (32° C), a caution sign shall be mounted adjacent to the entrance to the spa or hot tub. It shall contain the following warnings in letters at least 2 inch in height:
  - (a) CAUTION:
  - (b) -Pregnant women; elderly persons, and persons suffering from heart disease, diabetes, or high or low blood pressure should not enter the spa/hot tub without prior medical

- (c) consultation and permission from their doctor;
  - (c) -Do not use the spa/hot tub while under the influence of alcohol, tranquilizers, or other drugs that cause drowsiness or that raise or lower blood pressure;
  - (d) -Do not use alone;
  - (e) -Unsupervised use by children is prohibited;
  - (f) -Enter and exit slowly;
  - (g) -Observe reasonable time limits (that is, 10-15 minutes), then leave the water and cool down before returning for another brief stay;
  - (h) -Long exposure may result in nausea, dizziness, or fainting;
  - (i) -Keep all breakable objects out of the area.
- (16) Spas shall meet the emergency telephone and signage requirements for swimming pools in Rule .2530(f).
  - (17) A sign shall also be posted requiring a shower for each user prior to entering the spa or hot tub and prohibiting oils, body lotion, and minerals in the water.
  - (18) Spas shall not be required to provide the lifesaving equipment described in Rule .2530(a) of this Section
  - (19) In spas less than four feet deep the slope of the pool wall may exceed 11 degrees from plumb, but shall not exceed 15 degrees from plumb.

*History Note: Authority G.S. 130A-282; Eff. May 1, 1991; Amended Eff. July 1, 2004; February 1, 2004; April 1, 1999; January 1, 1996; July 1, 1992.*

**TITLE 21 - OCCUPATIONAL LICENSING BOARDS**

**CHAPTER 10 - BOARD OF CHIROPRACTIC EXAMINERS**

**21 NCAC 10 .0203 NORTH CAROLINA EXAMINATION**

- (a) Eligibility. Only those applicants who meet the requirements of this Rule and G.S. 90-143, or in the case of reciprocity applicants, G.S. 90-143.1, and who have submitted a timely and complete written application pursuant to 21 NCAC 10 .0202 shall be allowed to take the North Carolina examination.
- (b) Dates of Examination. The North Carolina examination shall be given four times each year, on the fourth Saturday in January, April, July and October. Eligible applicants shall be notified of the exact date, time and location of the examination as soon as possible after their written applications have been approved by the Board.
- (c) National Boards. Except as provided in Paragraph (e) of this Rule, in order to take the North Carolina examination, an applicant who has never been licensed in this state or who is not

a reciprocity applicant shall first achieve a score of 375 or higher on each of the following examinations given by the National Board of Examiners: Part I, Part II, Part III (WCCE) and the elective examination (termed "Physiotherapy" by the National Board). In addition, the applicant shall achieve a score of 475 or higher on Part IV of the National Board examination.

(d) Report of Scores. The applicant shall arrange for his test results from any National Board Examination to be reported to the North Carolina Board in a timely manner. Failure to comply with this provision shall be a basis for delaying the issuance of a license.

(e) Waiver of National Boards. The Board recognizes that many established chiropractors were licensed prior to the introduction of one or more National Board examinations. Notwithstanding the requirements of Paragraph (c) of this Rule, an applicant who submits National Board examination results in conformity with the following schedule shall not be disqualified from licensure in North Carolina:

- (1) If the applicant was initially licensed in his home state before July 1, 1966, he shall not be required to submit a score from any National Board examination;
- (2) If the applicant was initially licensed in his home state between July 1, 1966 and June 30, 1986, he shall be required to submit scores of 375 or higher on National Board Part I, Part II, and the elective examination termed "Physiotherapy"; but he shall not be required to submit a score on Part III (WCCE) or Part IV;
- (3) If the applicant was initially licensed in his home state between July 1, 1986 and June 30, 1997, he shall be required to submit scores of 375 or higher on National Board Part I, Part II, the elective examination termed "Physiotherapy" and Part III (WCCE); but he shall not be required to submit a score on Part IV.

In order to receive a license, an applicant who qualifies for a waiver of any National Board score must take and pass the SPEC examination and the North Carolina examination and satisfy all other requirements for licensure.

(f) SPEC Examination. In order to take the North Carolina examination, a reciprocity applicant, a waiver applicant pursuant to Paragraph (d) of this Rule, or an applicant previously licensed in this State whose license has been canceled pursuant to G.S. 90-155 for more than 180 days must first take and pass the Special Purpose Examination for Chiropractic ("SPEC").

(g) Nature of Examination. The North Carolina examination is a written test of an applicant's knowledge of chiropractic jurisprudence. No part of the examination is open-book, and no reference material of any kind shall be allowed in the examination area. The passing grade is 75.

(h) Review of Examination Results. An applicant who has been denied licensure because he failed the North Carolina examination may request a review of his answers provided his request is made in writing and received by the secretary not later than 20 days after issuance of the examination results. Unless the applicant specifically requests to review his answers in person, the review shall be limited to a re-tabulation of the applicant's

score to make certain no clerical errors were made in grading. If the applicant requests to review his answers in person, he shall be permitted to do so at the office of the Board in the presence of a representative of the Board and for a period of not more than 30 minutes. The applicant shall not be permitted to discuss his examination with any member of the Board, grader, or test administrator.

(i) **Date of Licensure.** An applicant who meets all the requirements for licensure shall be issued a license within 30 days after taking the North Carolina examination.

*History Note: Authority G.S. 90-142; 90-143; 90-143.1; 90-144; 90-145; 90-146;*  
*Eff. February 1, 1976;*  
*Readopted Eff. January 27, 1978;*  
*Amended Eff. January 1, 1983; October 17, 1980;*  
*Legislative Objection Lodged Eff. January 31, 1983;*  
*Curative Amendment Eff. February 18, 1983;*  
*Temporary Amendment Eff. May 1, 1998;*  
*Amended Eff. July 1, 2004; August 1, 2000; August 1, 1995;*  
*December 1, 1988.*

**21 NCAC 10 .0210 INDIVIDUAL-STUDY CONTINUING EDUCATION**

(a) **Hours permitted.** A doctor of chiropractic may obtain as many as 12 credit hours of continuing education each year by successfully completing one or more individual-study courses approved by the Board.

(b) **Course approval.** The criteria for Board approval of an individual-study course is as follows:

- (1) No practice-building or motivational course shall be approved;
- (2) No course shall be approved that requires participants, in order to utilize the information presented, to purchase equipment or clinical supplies available only through the course's instructors, sponsors, or co-sponsors;
- (3) Each subject taught shall fall within the extent and limitation of chiropractic licensure in this State;
- (4) The subject matter shall be presented in a logical, scientific manner comparable to instruction at chiropractic colleges accredited by the Council on Chiropractic Education;
- (5) The sponsor shall have a reliable method for recording and verifying a doctor's participation expressed in credit hours and fractions thereof, and the sponsor shall assume responsibility for submitting a certificate of participation to the Board within 60 days after a doctor completes the course;
- (6) The course shall include one or more examinations or other means of verifying that a participating doctor has mastered the material presented in the course.

(c) **Sponsor's obligation.** The sponsor shall provide all information the Board deems necessary to evaluate the course according to the foregoing criteria set forth in Paragraph (b) of this Rule. Failure to provide information required by the Board shall be a basis for withholding approval.

*History Note: Authority G.S. 90-142; 90-151; 90-155;*  
*Eff. July 1, 2004.*

**CHAPTER 32 – NORTH CAROLINA MEDICAL BOARD**

**21 NCAC 32B .0101 DEFINITIONS**

The following definitions apply to Rules within this Subchapter:

- (1) ABMS – American Board of Medical Specialties.
- (2) ACGME – Accreditation Council for Graduate Medical Education
- (3) AMA – American Medical Association
- (4) AMA Physician's Recognition Award – American Medical Association recognition of achievement by physicians who have voluntarily completed programs of continuing medical education.
- (5) AOA – American Osteopathic Association
- (6) AOIA – American Osteopathic Information Association
- (7) Board – The North Carolina Medical Board
- (8) CAQ – Certificate of Added Qualification
- (9) CME – Continuing Medical Education
- (10) COMLEX – Comprehensive Osteopathic Medical Licensure Examination
- (11) ECFMG – Educational Commission for Foreign Medical Graduates.
- (12) FCVS – Federation Credential Verification Service
- (13) Fifth Pathway – an avenue for licensure as defined in the Directory of Accredited Residencies 1977-1978, American Medical Association, pp. 30-32.
- (14) FLEX – Federation Licensing Examination (not administered after December 1993).
- (15) FSMB – Federation of State Medical Boards
- (16) LCME – Liaison Commission on Medical Education.
- (17) NBOME – National Board of Osteopathic Medical Examiners
- (18) SPEX – Special Purpose Examination.
- (19) USMLE – United States Medical Licensing Examination.

*History Note: Authority G.S. 90-6;*  
*Eff. May 1, 1989;*  
*Amended Eff. July 1, 2004; July 1, 1993; January 1, 1992;*  
*March 1, 1991.*

**21 NCAC 32B .0102 DISCARDING APPLICATION MATERIAL**

An application must be completed within one year of the date received by the Board's office. If not completed within one year, application materials received shall be considered invalid and may be discarded.

*History Note: Authority G.S. 90-6;*  
*Eff. May 1, 1989;*  
*Amended Eff. July 1, 2004.*

**21 NCAC 32B .0204 CERTIFIED PHOTOGRAPH AND CERTIFICATION OF GRADUATION**

An applicant for written examination shall submit a recent photograph, at least two inches by two inches, affixed to the Board's Medical Education Certification form certified as a true likeness of the applicant by the dean or other official of the applicant's medical school indicating the applicant's date of graduation from medical school. This certification must bear the original signature of the dean or other official of the medical school in the designated space and the seal of the medical school partially over the photograph.

*History Note: Authority G.S. 90-9; Eff. February 1, 1976; Amended Eff. November 1, 1985; Recodified from 21 NCAC 32B .0104 Eff. April 5, 1989; Amended Eff. July 1, 2004; May 1, 1989.*

**21 NCAC 32B .0206 APPLICATION FORMS**

(a) An applicant for written examination shall complete the Board's application forms requesting information regarding the applicant's personal, education, and professional background.  
 (b) An applicant for written examination may use the FSMB's FCVS process. This does not exclude the requirement of other documentation required by the Board as outlined in this Section that is not included in the FCVS profile.

*History Note: Authority G.S. 90-9; 90-11; Eff. February 1, 1976; Amended Eff. November 1, 1985; Recodified from 21 NCAC 32B .0106 Eff. April 5, 1989; Amended Eff. July 1, 2004; May 1, 1989.*

**21 NCAC 32B .0207 LETTERS OF RECOMMENDATION**

An applicant for written examination shall request that three letters of recommendation be submitted to the Board on his behalf. The letters shall be originals addressed to the Board and shall contain the original signature of the author. One of the letters shall be from someone who has known the applicant for a period of 10 years. Two of the letters shall be from physicians and shall be on the Board forms. Recommendations shall not be from relatives.

*History Note: Authority G.S. 90-9; 90-11; Eff. February 1, 1976; Recodified from 21 NCAC 32B .0107 Eff. April 5, 1989; Amended Eff. July 1, 2004; May 1, 1989.*

**21 NCAC 32B .0209 EXAMINATION FEE**

(a) A fee of two hundred and fifty dollars (\$250.00) is due at the time of application.  
 (b) In the event the applicant does not appear for the exam, licensure is denied, or the application is withdrawn no portion of the fee shall be refunded.

*History Note: Authority G.S. 90-15; Eff. February 1, 1976; Amended Eff. December 1, 1984;*

*Temporary Amendment Eff. January 31, 1985 for a period of 120 days to expire on May 30, 1985; Amended Eff. March 1, 1989; December 1, 1985; May 1, 1985; Recodified From 21 NCAC 32B .0109 Eff. April 5, 1989; Amended Eff. July 1, 2004; April 1, 1994; July 1, 1993; May 1, 1989.*

**21 NCAC 32B .0210 REQUIRED APPLICATION MATERIALS**

- An applicant for the written examination shall provide:
- (1) Reports from all relative state agencies in which the applicant has ever held a professional license, to include medical, dental, nursing and law, indicating the status of the applicant's license and whether or not the license has been revoked, suspended, surrendered, or placed on probation, must be mailed directly from other state agencies to the Board.
  - (2) AMA Physician Profile (requested by applicant of AMA);
  - (3) FSMB Data Bank inquiry (requested by applicant of FSMB);
  - (4) AOIA Physician Profile (requested by applicant of AOIA) if applicant is an osteopathic physician; and
  - (5) FSMB USMLE certified transcript of scores showing a score of at least 75 on USMLE Step 1 and USMLE Step 2 (requested by applicant of FSMB)

*History Note: Authority G.S. 90-9; Eff. February 1, 1976; Temporary Amendment Eff. January 31, 1985 for a period of 120 days to expire on May 30, 1985; Amended Eff. September 1, 1987; November 1, 1985; May 1, 1985; Recodified from 21 NCAC 32B .0110 Eff. April 5, 1989; Amended Eff. July 1, 2004; July 1, 1993; May 1, 1989.*

**21 NCAC 32B .0211 PASSING SCORE**

To pass Step 3 of the USMLE the applicant shall attain a score of at least 75. Step 3 shall be passed within seven years of passing Step 1 OR within 10 years if the reason for the delay is based on applicant obtaining an MD/PhD degree.

*History Note: Authority G.S. 90-9; 90-12; 90-15; Eff. February 1, 1976; Amended Eff. January 1, 1983; November 8, 1977; Temporary Amendment Eff. January 31, 1985 for a period of 120 days to expire on May 30, 1985; Amended Eff. November 1, 1985; May 1, 1985; Recodified from 21 NCAC 32B .0111 Eff. April 5, 1989; Amended Eff. July 1, 2004; July 1, 1993; May 1, 1989.*

**21 NCAC 32B .0212 EXAMINATION TIMES**

The USMLE Step 3 examination is available on a daily basis at centers established by the FSMB.

*History Note: Authority G.S. 90-5;*

*Eff. February 1, 1976;  
 Recodified from 21 NCAC 32B .0112 Eff. April 5, 1989;  
 Amended Eff. July 1, 2004; April 1, 1994; July 1, 1993;  
 May 1, 198.*

**21 NCAC 32B .0213 GRADUATE MEDICAL EDUCATION AND TRAINING FOR LICENSURE**

Before licensure, physicians who pass the written examination shall furnish the following current credentials:

- (1) Board application questionnaire;
- (2) Proof of graduate medical education and training taken after graduation from medical school, (except for a dentist as permitted in G.S. 90-9(2)), as follows:
  - (a) A graduate of a medical school approved by LCME or AOA must have satisfactorily completed one year of graduate medical education and training approved by ACGME or AOA.
  - (b) A graduate of a medical school not approved by LCME or AOA must have satisfactorily completed three years of graduate medical education and training approved by ACGME or AOA;
  - (c) A graduate of a medical school not approved by LCME or AOA may satisfy the three-year postgraduate training requirement with at least one year of LCME or AOA approved training in combination with certification by a specialty board recognized by the ABMS or AOA.
- (3) Letters from all training program directors since passing the written examination regarding standing and length of training;
- (4) Reports from all relative state agencies in which the applicant has ever held a professional license to include medical, dental, nursing and law, indicating the status of the applicant's license and whether or not the license has been revoked, suspended, surrendered, or placed on probation (must be mailed directly from other state agencies to the Board).
- (5) AMA Physician Profile (requested by applicant of AMA);
- (6) FSMB Data Bank Inquiry (requested by applicant of FSMB); and
- (7) AOIA Physician Profile (requested by applicant of AOIA) if applicant is an osteopathic physician).

*History Note: Authority G.S. 90-9;  
 Eff. November 8, 1977;  
 Amended Eff. November 1, 1985;  
 Recodified from 21 NCAC 32B .0113 Eff. April 5, 1989;  
 Amended Eff. July 1, 2004; July 1, 1993; May 1, 1989.*

**21 NCAC 32B .0301 MEDICAL EDUCATION**

An applicant for license by endorsement of credentials must have the medical education required by G.S. 90-9. To be eligible for license by endorsement of credentials, an applicant must have the following medical education:

- (1) be a graduate of a medical school approved by either LCME or AOA and meet the requirements regarding graduate medical education and training under Rule .0313 of this Section.
- (2) be a graduate of a medical school not approved by LCME or AOA and meet the requirements regarding:
  - (a) graduate medical education and training under Rule. 0313 of this Section; and
  - (b) ECFMG certification under Rule .0302 of this Section.

*History Note: Authority G.S. 90-13;  
 Eff. February 1, 1976;  
 Amended Eff. March 1, 1987; November 1, 1985;  
 Recodified from 21 NCAC 32B .0201 Eff. April 5, 1989;  
 Amended Eff. July 1, 2004; May 1, 1989.*

**21 NCAC 32B .0302 ECFMG CERTIFICATION**

To be eligible for license by endorsement of credentials, an applicant who is a graduate of a medical school not approved by LCME or AOA shall furnish an original ECFMG Certification Status Report of a currently valid standard certificate of ECFMG. ECFMG certification may be waived by the Board if the applicant has either:

- (1) Passed the ECFMG examination and successfully completed an approved Fifth Pathway Program (original ECFMG Certification Status Report from the ECFMG required); or
- (2) Been licensed in another state on the basis of written examination prior to the establishment of ECFMG in 1958.

*History Note: Authority G.S. 90-6; 90-9; 90-10;  
 Eff. February 1, 1976;  
 Amended Eff. January 1, 1983; October 29, 1979;  
 Temporary Amendment Eff. January 31, 1985 for a period of 120 days to expire on May 30, 1985;  
 Amended Eff. November 1, 1985; May 1, 1985;  
 Recodified from 21 NCAC 32B .0202 Eff. April 5, 1989;  
 Amended Eff. July 1, 2004; May 1, 1989.*

**21 NCAC 32B .0304 APPLICATION FORMS**

- (a) An applicant for license by endorsement of credentials shall complete the Board's application forms requesting information regarding the applicant's personal, education, and professional background.
- (b) An applicant for license by endorsement may use the FSMB's FCVS process. This does not exclude the requirement of other documentation required by the Board as outlined in this Section that is not included in the FCVS profile.

*History Note: Authority G.S. 90-10; 90-13;  
Eff. February 1, 1976;  
Amended Eff. November 1, 1985;  
Recodified from 21 NCAC 32B .0204 Eff. April 5, 1989;  
Amended Eff. July 1, 2004; May 1, 1989.*

**21 NCAC 32B .0305 EXAMINATION BASIS FOR ENDORSEMENT**

To be eligible for license by endorsement of credentials, a physician shall possess a valid and unrestricted license to practice medicine in another state based on an examination testing general medical knowledge or passed an examination for license testing general medical knowledge (examination determined by the Board to be equivalent to the Board's examination). Original certification of passing scores shall be provided to the Board from the examination source.

*History Note: Authority G.S. 90-10; 90-13;  
Eff. February 1, 1976;  
Recodified from 21 NCAC 32B .0205 Eff. April 5, 1989;  
Amended Eff. July 1, 2004; February 1, 1995; April 1, 1994;  
July 1, 1993; January 1, 1992.*

**21 NCAC 32B .0306 LETTERS OF RECOMMENDATION**

An applicant for license by endorsement of credentials shall request that three letters of recommendation be submitted to the Board on his behalf. The letters shall be originals addressed to the Board and shall contain the original signature of the author. One of the letters shall be from someone who has known the applicant for a period of 10 years. Two of the letters shall be from physicians and shall be on Board forms. Recommendations shall not be from relatives.

*History Note: Authority G.S. 90-11; 90-13;  
Eff. February 1, 1976;  
Recodified from 21 NCAC 32B .0206 Eff. April 5, 1989;  
Amended Eff. July 1, 2004; May 1, 1989.*

**21 NCAC 32B .0307 CERTIFIED PHOTOGRAPH AND CERTIFICATION OF GRADUATION**

An applicant for license by endorsement of credentials must submit a recent photograph, at least two inches by two inches, affixed to the Board's Medical Education Certification form, certified as a true likeness of the applicant by the dean or other official of the applicant's medical school indicating the applicant's date of graduation from medical school. This certification must bear the original signature of the dean or other official of the medical school in the designated space and the seal of the medical school over the photograph.

*History Note: Authority G.S. 90-13;  
Eff. February 1, 1976;  
Amended Eff. November 1, 1985; November 1, 1982;  
Recodified from 21 NCAC 32B .0207 Eff. April 5, 1989;  
Amended Eff. July 1, 2004; May 1, 1989.*

**21 NCAC 32B .0309 PERSONAL INTERVIEW**

An applicant may be required to appear, in person, for an interview with the Executive Director, a Board member, an

agent of the Board, or the full Board upon completion of all credentials.

*History Note: Authority G.S. 90-13;  
Eff. February 1, 1976;  
Amended Eff. November 1, 1985; November 8, 1977;  
Recodified from 21 NCAC 32B .0209 Eff. April 5, 1989;  
Amended Eff. May 1, 1989;  
ARRC Objection Lodged October 19, 1989;  
Temporary Amendment Eff. September 5, 1989 for a period of 180 days to expire on March 3, 1990;  
Temporary Amendment Eff. February 16, 1990, for a period of 135 days to expire on July 1, 1990;  
ARRC Objection Lodged March 15, 1990;  
Amended Eff. May 1, 1990;  
Temporary Amendment Eff. February 15, 1991 for a period of 180 days to expire on August 15, 1991;  
ARRC Objection Lodged February 25, 1991;  
Temporary Amendment Expired August 15, 1991;  
Amended Eff. July 1, 2004; September 1, 1995; July 1, 1993;  
September 1, 1991.*

**21 NCAC 32B .0311 ENDORSEMENT RELATIONS**

An Applicant under G.S. 90-13 is required to have a license in another state. The Board shall not grant a license by endorsement of credentials on the basis of practice in any government service nor on the basis of licensing by medical boards outside the United States and its territories.

*History Note: Authority G.S. 90-13;  
Eff. February 1, 1976;  
Recodified from 21 NCAC 32B .0211 Eff. April 5, 1989;  
Amended Eff. July 1, 2004; May 1, 1989.*

**21 NCAC 32B .0312 ROUTINE INQUIRIES**

An applicant for license by endorsement shall request the following reports be submitted to the Board:

- (1) Reports from all relative state Medical Boards or agencies in which the applicant has ever held a professional license to include medical, dental, nursing, and law, indicating the status of the applicant's license and whether or not the license has been revoked, suspended, surrendered, or placed on probation shall be mailed directly from other state boards or agencies to the Board.
- (2) An AMA Physician Profile (requested by applicant of AMA).
- (3) FSMB Data Bank inquiry (requested by applicant of FSMB).
- (4) AOIA Physician Profile (requested by applicant of AOIA) if applicant is an osteopathic physician.

*History Note: Authority G.S. 90-13;  
Eff. February 1, 1976;  
Amended Eff. November 1, 1985;  
Recodified from 21 NCAC 32B .0212 Eff. April 5, 1989;  
Amended Eff. July 1, 2004; May 1, 1989.*



**21 NCAC 32B .0313 GRADUATE MEDICAL EDUCATION AND TRAINING**

To be eligible for license by endorsement of credentials, an applicant shall furnish proof of graduate medical education and training taken after graduation from medical school, (except for a dentist as permitted in G.S. 90-9(2)), as follows:

- (1) A graduate of a medical school approved by LCME or AOA shall have satisfactorily completed one year of graduate medical education and training approved by ACGME or AOA.
- (2) A graduate of a medical school not approved by LCME or AOA shall have satisfactorily completed three years of graduate medical education and training approved by ACGME or AOA.
- (3) A graduate of a medical school not approved by LCME or AOA may satisfy the three-year postgraduate training requirement with at least one year of LCME or AOA approved training in combination with certification by a specialty board recognized by the ABMS or AOA specialty boards.

*History Note: Authority G.S. 90-13; Eff. November 8, 1977; Amended Eff. November 1, 1985; Recodified from 21 NCAC 32B .0213 Eff. April 5, 1989; Amended Eff. July 1, 2004; May 1, 1989.*

**21 NCAC 32B .0314 PASSING EXAM SCORE**

USMLE – Applicants who have taken USMLE may be eligible to apply for a license by endorsement of credentials if they meet the following score requirements:

- (1) A score of at least 75 is required on Step 3; and
- (2) The USMLE Step 3 shall be passed within seven years of the date of passing Step 1 OR within 10 years if the reason for the delay is based on applicant obtaining a MD/PhD degree.

*History Note: Authority G.S. 90-6; 90-10; 90-13; Eff. January 1, 1983; Temporary Amendment Eff. January 31, 1985 for a period of 120 days to expire on May 30, 1985; Amended Eff. November 1, 1985; May 1, 1985; Recodified from 21 NCAC 32B .0214 Eff. April 5, 1989; Amended Eff. July 1, 2004; July 1, 1993; January 1, 1992; May 1, 1989.*

**21 NCAC 32B .0315 TEN-YEAR QUALIFICATION**

Pursuant to the discretion granted in G.S. 90-13, the Board may issue a license to any applicant without examination using the following guidelines.

- (1) In addition to all other requirements for licensure, an applicant who has not met one of the following qualifications within the past 10 years of the date of the application to the Board, shall take the SPEX, or other

examination as determined by the Board, and attain a score of at least 75:

- (a) National Board of Medical Examiners certification;
  - (b) National Board of Osteopathic Medical Examiners certification;
  - (c) Examination for license testing general medical knowledge;
  - (d) SPEX score of at least 75;
  - (e) Certification or re-certification from a specialty board recognized by the ABMS or the AOA; or certification or re-certification with added qualifications from a specialty or subspecialty board recognized by the ABMS or AOA;
  - (f) Completion of formal postgraduate medical education as required under Rule .0313 of this Section.
- (2) The SPEX requirement may be waived by the Board upon receipt of a current AMA Physician's Recognition Award or acceptable AOA CME.

*History Note: Authority G.S. 90-11; 90-13; Eff. March 1, 1991; Amended Eff. July 1, 2004; February 1, 1995; July 1, 1993; January 1, 1992.*

**21 NCAC 32M .0101 DEFINITIONS**

The following definitions apply to this Subchapter:

- (1) "Medical Board" means the North Carolina Medical Board.
- (2) "Board of Nursing" means the Board of Nursing of the State of North Carolina.
- (3) "Joint Subcommittee" means the subcommittee composed of members of the Board of Nursing and Members of the Medical Board to whom responsibility is given by G.S. 90-6 and G.S. 90-171.23(b)(14) to develop rules to govern the performance of medical acts by nurse practitioners in North Carolina.
- (4) "Nurse Practitioner or NP" means a currently licensed registered nurse approved to perform medical acts consistent with the nurse's area of nurse practitioner academic educational preparation and national certification under an agreement with a licensed physician for ongoing supervision, consultation, collaboration and evaluation of medical acts performed. Such medical acts are in addition to those nursing acts performed; by virtue of registered nurse (RN) licensure. The NP is held accountable under the RN license for those nursing acts that he or she may perform.
- (5) "Registration" means authorization by the Medical Board and the Board of Nursing for a registered nurse to use the title nurse practitioner in accordance with this Subchapter.

- (6) "Approval to Practice" means authorization by the Medical Board and the Board of Nursing for a nurse practitioner to perform medical acts within her/his area of educational preparation and certification under a collaborative practice agreement (CPA) with a licensed physician in accordance with this Subchapter.
- (7) "Nurse Practitioner Applicant" means a registered nurse who may function prior to full approval as a Nurse Practitioner in accordance with Rule .0104(f) of this Subchapter.
- (8) "Supervision" means the physician's function of overseeing medical acts performed by the nurse practitioner.
- (9) "Collaborative practice agreement" means the arrangement for nurse practitioner-physician continuous availability to each other for ongoing supervision, consultation, collaboration, referral and evaluation of care provided by the nurse practitioner.
- (10) "Primary Supervising Physician" means the licensed physician who, by signing the nurse practitioner application, shall provide on-going supervision, collaboration, consultation and evaluation of the medical acts performed by the nurse practitioner as defined in the collaborative practice agreement. Supervision shall be in compliance with the following:
- (a) The primary supervising physician shall assure both Boards that the nurse practitioner is qualified to perform those medical acts described in the collaborative practice agreement.
- (b) A physician in a graduate medical education program, whether fully licensed or holding only a resident's training license, shall not be named as a primary supervising physician.
- (c) A fully licensed physician in a graduate medical education program who is also practicing in a non-training situation may supervise a nurse practitioner in the non-training situation.
- (11) "Back-up Supervising Physician" means the licensed physician who, by signing an agreement with the nurse practitioner and the primary supervising physician(s), shall provide supervision, collaboration, consultation and evaluation of medical acts by the nurse practitioner in accordance with the collaborative practice agreement when the Primary Supervising Physician is not available. Back-up supervision shall be in compliance with the following:
- (a) The signed and dated agreements for each back-up supervising physician(s) shall be maintained at each practice site.
- (b) A physician in a graduate medical education program, whether fully licensed or holding only a resident's training license, shall not be named as a back-up supervising physician.
- (c) A fully licensed physician in a graduate medical education program who is also practicing in a non-training situation and has a signed collaborative practice agreement with the nurse practitioner and the primary supervising physician may be a back-up supervising physician for a nurse practitioner in the non-training situation.
- (12) "Volunteer Approval" means approval to practice consistent with this Subchapter except without expectation of direct or indirect compensation or payment (monetary, in kind or otherwise) to the nurse practitioner.
- (13) "Disaster" means a state of disaster as defined in G.S. 166A-4(3) and proclaimed by the Governor, or by the General Assembly pursuant to G.S. 166A-6.
- (14) "Interim Status" means limited privileges granted by the Board of Nursing to a graduate of an approved nurse practitioner educational program meeting the requirements in Rule .0105(a) of this Subchapter or a registered nurse seeking initial approval in North Carolina, as defined in Rule .0104(f) of this Subchapter, while awaiting final approval to practice as a nurse practitioner.
- (15) "Temporary Approval" means authorization by the Medical Board and the Board of Nursing for a registered nurse to practice as a nurse practitioner in accordance with this Rule for a period not to exceed six months while awaiting notification of successful completion of the national certification examination.
- (16) "National Credentialing Body" means one of the following credentialing bodies that offers certification and re-certification in the nurse practitioner's specialty area of practice: American Nurses Credentialing Center (ANCC); American Academy of Nurse Practitioners (AANP); National Certification Corporation of the Obstetric, Gynecologic and Neonatal Nursing Specialties (NCC); and the Pediatric Nursing Certification Board (PNCB).

*History Note: Authority G. S. 90-6; 90-18(14); 90-18.2; Eff. January 1, 1991; Amended Eff. August 1, 2004; May 1, 1999; January 1, 1996.*

**21 NCAC 32M .0102 SCOPE OF PRACTICE**

A nurse practitioner shall be held accountable by both Boards for the continuous and comprehensive management of a broad range of personal health services for which the nurse practitioner is educationally prepared and for which competency has been

maintained, with physician supervision and collaboration as described in Rule .0110 of this Subchapter. These services include but are not restricted to:

- (1) promotion and maintenance of health;
- (2) prevention of illness and disability;
- (3) diagnosing, treating and managing acute and chronic illnesses;
- (4) guidance and counseling for both individuals and families;
- (5) prescribing, administering and dispensing therapeutic measures, tests, procedures and drugs;
- (6) planning for situations beyond the nurse practitioner's expertise, and consulting with and referring to other health care providers as appropriate; and
- (7) evaluating health outcomes.

*History Note: Authority G.S. 90-18(14); Eff. January 1, 1991; Amended Eff. August 1, 2004; May 1, 1999; January 1, 1996.*

**21 NCAC 32M .0103 NURSE PRACTITIONER REGISTRATION**

- (a) The Board of Nursing shall register an applicant who:
- (1) has an unrestricted license to practice as a registered nurse in North Carolina and, when applicable, an unrestricted approval, registration or license as a nurse practitioner in another state, territory, or possession of the United States;
  - (2) has successfully completed a nurse practitioner education program as outlined in Rule .0105 of this Subchapter; and
  - (3) has supplied information necessary to evaluate the application.
- (b) Beginning January 1, 2005 all registered nurses seeking first-time nurse practitioner registration in North Carolina shall:
- (1) hold a Master's Degree in Nursing or related field with primary focus on Nursing;
  - (2) have successfully completed a graduate level nurse practitioner education program accredited by a national credentialing body, and in addition have met the criteria as outlined in Rule .0105(a) and (c) of this Subchapter; and
  - (3) provide documentation of certification by a national credentialing body.

*History Note: Authority G.S. 90-18(13); 90-18.2; 90-171.36; Eff. August 1, 2004.*

**21 NCAC 32M .0104 PROCESS FOR APPROVAL TO PRACTICE**

- (a) Prior to the performance of any medical acts, a nurse practitioner shall:
- (1) submit notification of her/his intent to practice on forms provided by the Board of Nursing and the Medical Board. Such notification of intent to practice shall include:

- (A) the practice name, practice address, and telephone number of the nurse practitioner; and
  - (B) the practice name, practice address, and telephone number of the primary supervising physician(s);
- (2) submit any information necessary to evaluate the application; and
  - (3) have a collaborative practice agreement with a primary supervising physician.

(b) The nurse practitioner shall not practice until notification of approval to practice is received from the Boards.

(c) The nurse practitioner's approval to practice shall terminate when the nurse practitioner discontinues working within the approved nurse practitioner collaborative practice agreement and the nurse practitioner shall notify the Boards in writing. This Rule shall be waived in cases of emergency such as sudden injury, illness or death.

(d) Applications for first-time approval to practice in North Carolina shall be submitted to the Board of Nursing and then approved by both Boards as follows:

- (1) the Board of Nursing shall verify compliance with Rule .0103 of this Subchapter and Paragraph (a) of this Rule; and
- (2) the Medical Board shall verify compliance with Subparagraph (a) of this Rule.

(e) Applications for approval of changes in practice arrangements for a nurse practitioner currently approved to practice in North Carolina:

- (1) addition or change of primary supervising physician shall be submitted to both Boards; and
- (2) request for change(s) in the scope of practice shall be submitted to the Joint Subcommittee.

(f) Interim status for a nurse practitioner applicant shall be granted to a registered nurse who is a graduate of a nurse practitioner education program meeting the requirements of Rule .0105 of this Subchapter and has met the registration requirements as set forth in Rule .0103 of this Subchapter; or a registered nurse seeking first-time approval to practice as a nurse practitioner in North Carolina who has worked previously as a nurse practitioner in another state and who meets the nurse practitioner education requirement and has met the registration requirements as set forth in Rule .0103 and .0105 of this Subchapter; and with the following limitations:

- (1) no prescribing privileges;
- (2) primary or back-up physicians shall be continuously available for ongoing supervision, collaboration, consultation and countersigning of notations of medical acts in all patient charts within two working days of nurse practitioner applicant-patient contact;
- (3) face-to-face consultation with the primary supervising physician shall be weekly with documentation of consultation consistent with Rule .0110(e)(3) of this Subchapter; and
- (4) shall not exceed a period of six months.

(g) First-time applicants who meet the qualifications for approval to practice, but are awaiting certification from a national credentialing body as referenced in Rule .0101(16) of

this Subchapter, shall be granted a temporary approval to practice as a nurse practitioner. Temporary approval is valid for a period not to exceed six months from the date temporary approval is granted or until the results of the applicant's certification examination are available, whichever comes first.

(h) A registered nurse who was previously approved to practice as a nurse practitioner in this state shall:

- (1) meet the nurse practitioner approval requirements as stipulated in Rule .0108(c) of this Subchapter;
- (2) complete the appropriate application;
- (3) receive notification of approval;
- (4) meet the quality assurance standards and consultation requirements as outlined in Rule .0110(e)(2) –(3) of this Subchapter;
- (5) meet the continuing education requirements as stated in Rules .0107 and .0108(d) of this Subchapter; and
- (6) If for any reason a nurse practitioner discontinues working within the approved nurse practitioner-supervising physician(s) arrangement, or experiences an interruption in her/his registered nurse licensure status, the nurse practitioner shall notify both Boards in writing and the nurse practitioner's approval shall automatically terminate. A waiver to this requirement shall be given in an emergency situation.

(i) Volunteer Approval to Practice. Both Boards may grant approval to practice in a volunteer capacity to a nurse practitioner who has met the qualifications to practice as a nurse practitioner in North Carolina.

(j) The nurse practitioner shall pay the appropriate fee as outlined in Rule .0115 of this Subchapter.

*History Note: Authority G.S. 90-18(13), (14); 90-18.2; 90-171.20(7); 90-171.23(b); 90-171.42;*

*Eff. January 1, 1991;*

*Paragraph (b)(1) was recodified from 21 NCAC 32M .0104 Eff. January 1, 1996;*

*Amended Eff. May 1, 1999; January 1, 1996;*

*Recodified from 21 NCAC 32M .0103 Eff. August 1, 2004;*

*Amended Eff. August 1, 2004.*

**21 NCAC 32M .0105 EDUCATION AND CERTIFICATION REQUIREMENTS FOR REGISTRATION AS A NURSE PRACTITIONER**

(a) A nurse practitioner applicant who completed a nurse practitioner education program prior to December 31, 1999 shall provide evidence of successful completion of a course of education that contains a core curriculum including 400 contact hours of didactic education and 400 contact hours of preceptorship or supervised clinical experience.

- (1) The core curriculum shall contain the following components:
  - (A) health assessment and diagnostic reasoning including:
    - (i) historical data;
    - (ii) physical examination data;
    - (iii) organization of data base;

- (B) pharmacology;
- (C) pathophysiology;
- (D) clinical management of common health problems and diseases such as the following shall be evident in the nurse practitioner's academic program:
  - (i) respiratory system;
  - (ii) cardiovascular system;
  - (iii) gastrointestinal system;
  - (iv) genitourinary system;
  - (v) integumentary system;
  - (vi) hematologic and immune systems;
  - (vii) endocrine system;
  - (viii) musculoskeletal system;
  - (ix) infectious diseases;
  - (x) nervous system;
  - (xi) behavioral, mental health and substance abuse problems;
- (E) clinical preventative services including health promotion and prevention of disease;
- (F) client education related to Parts (a)(1)(D) and (E) of this Rule; and
- (G) role development including legal, ethical, economical, health policy and interdisciplinary collaboration issues.

(2) Nurse practitioner applicants exempt from components of the core curriculum requirements listed in Subparagraph (a)(1) of this Rule are:

- (A) Any nurse practitioner approved to practice in North Carolina prior to January 18, 1981, is permanently exempt from the core curriculum requirement.
- (B) A nurse practitioner certified by a national credentialing body prior to January 1, 1998, who also provides evidence of satisfying Parts (a)(1)(A) - (C) of this Rule shall be exempt from core curriculum requirements in Parts (a)(1)(D) - (G) of this Rule. Evidence of satisfying Parts (a)(1)(A) - (C) of this Rule shall include:
  - (i) a narrative of course content; and
  - (ii) contact hours.
- (C) A nurse practitioner seeking initial approval to practice after January 1, 1998 shall be exempt from the core curriculum requirements if certified as a nurse practitioner in her/his specialty by a national credentialing body.

(b) Any nurse practitioner applicant who received first-time approval to practice between January 1, 2000 and July 31, 2004 shall be certified by a national credentialing body as referenced

in Rule .0101(16) of this Subchapter or be awaiting initial certification by a national credentialing body for a period not to exceed 18 months from date temporary approval is granted.

(c) Each nurse practitioner applicant applying for approval to practice in North Carolina shall meet the education requirements as specified in Subparagraph (a)(1) of this Rule and shall provide documentation of certification by a national credentialing body within six months from the date temporary approval is granted.

(d) A Nurse Practitioner approved under this Rule shall keep proof of current licensure, registration and approval available for inspection at each practice site and made available for inspection upon request by agents of either Board.

*History Note: Authority G.S. 90-18(14); 90-171.42; Eff. January 1, 1991; Recodified from 21 NCAC 32M .0105 Eff. January 1, 1996; Amended Eff. August 1, 2004; May 1, 1999; January 1, 1996; Recodified from 21 NCAC 32M .0104 Eff. August 1, 2004; Amended Eff. August 1, 2004.*

**21 NCAC 32M .0106 ANNUAL RENEWAL**

(a) Each registered nurse who is approved to practice as a nurse practitioner in this state shall annually renew each approval to practice with the Medical Board no later than 30 days after the nurse practitioner's birthday by:

- (1) Maintaining current RN licensure;
- (2) Submitting the fee required in Rule .0115 of this Subchapter; and
- (3) Completing the renewal form.

(b) A nurse practitioner with first-time approval to practice after January 1, 2000, shall provide evidence of certification or recertification by a national credentialing body.

(c) If the nurse practitioner has not renewed within 60 days of her/his birthday, the approval to practice as a nurse practitioner shall lapse.

*History Note: Authority G.S. 90-6; 90-18(14); 90-171.23(b); Eff. January 1, 1996; Amended Eff. August 1, 2004; May 1, 1999; Recodified from Rule .0105 Eff. August 1, 2004.*

**21 NCAC 32M .0107 CONTINUING EDUCATION (CE)**

In order to maintain nurse practitioner approval to practice, the nurse practitioner shall earn 100 contact hours of continuing education every two years. Continuing Education hours are those hours for which approval has been granted by the American Nurses Credentialing Center (ANCC) and Accreditation Council on Continuing Medical Education (ACCME); other national credentialing bodies or practice relevant courses in an institution of higher learning. Documentation shall be maintained by the nurse practitioner and made available upon request to either Board.

*History Note: Authority G.S. 90-6; 90-18(14); 90-171.23(14); Eff. January 1, 1996; Amended Eff. August 1, 2004; May 1, 1999; Recodified from Rule .0106 Eff. August 1, 2004.*

**21 NCAC 32M .0108 INACTIVE STATUS**

(a) Any nurse practitioner who wishes to place her or his approval to practice on an inactive status shall notify the Boards by completing the form supplied by the Boards.

(b) A nurse practitioner with an inactive approval to practice status shall not practice as a nurse practitioner.

(c) A nurse practitioner with an inactive approval to practice status who reapplies for approval to practice shall meet the qualifications for approval to practice as stipulated in Rules .0103(a)(1), .0104(a); .0106(b); .0107; and .0110 and (b)(1) of this Subchapter and receive notification from both Boards of approval prior to beginning practice.

(d) A nurse practitioner with an inactive approval to practice status of greater than five years shall complete a nurse practitioner refresher course approved by the Board of Nursing in accordance with Paragraphs (o) and (p) of 21 NCAC 36 .0220 and consisting of common conditions and their management directly related to the nurse practitioner's area of education and certification.

(e) A nurse practitioner seeking first-time approval to practice who has not provided direct patient-care as a nurse practitioner in more than five years shall complete a nurse practitioner refresher course approved by the Board of Nursing in accordance with Paragraphs (o) and (p) of 21 NCAC 36 .0220 and consisting of common conditions and their management directly related to the nurse practitioner's area of education and certification.

*History Note: Authority G.S. 90-18(13); 90-18.2; 90-171.36; Eff. January 1, 1996; Amended Eff. August 1, 2004; May 1, 1999.*

**21 NCAC 32M .0109 PRESCRIBING AUTHORITY**

(a) The prescribing stipulations contained in this Rule apply to writing prescriptions and ordering the administration of medications.

(b) Prescribing and dispensing stipulations are as follows:

- (1) Drugs and devices that may be prescribed by the nurse practitioner in each practice site shall be included in the collaborative practice agreement as outlined in Rule .0110(b) of this Section.
- (2) Controlled Substances (Schedules II, IIN, III, IIIN, IV, V) defined by the State and Federal Controlled Substances Acts may be procured, prescribed or ordered as established in the collaborative practice agreement, providing all of the following requirements are met:
  - (A) the nurse practitioner has an assigned DEA number which is entered on each prescription for a controlled substance;
  - (B) dosage units for schedules II, IIN, III and IIIN are limited to a 30 day supply; and
  - (C) the prescription or order for schedules II, IIN, III and IIIN may not be refilled.

- (3) The nurse practitioner may prescribe a drug or device not included in the collaborative practice agreement only as follows:
  - (A) upon a specific written or verbal order obtained from a primary or back-up supervising physician before the prescription or order is issued by the nurse practitioner; and
  - (B) the written or verbal order as described in Part (b)(3)(A) of this Rule shall be entered into the patient record with a notation that it is issued on the specific order of a primary or back-up supervising physician and signed by the nurse practitioner and the physician.
- (4) Refills may be issued for a period not to exceed one year except for schedules II, IIN, III and IIIN which may not be refilled.
- (5) Each prescription shall be noted on the patient's chart and include the following information:
  - (A) medication and dosage;
  - (B) amount prescribed;
  - (C) directions for use;
  - (D) number of refills; and
  - (E) signature of nurse practitioner.
- (6) The prescribing number assigned by the Medical Board to the nurse practitioner shall appear on all prescriptions issued by the nurse practitioner.
- (7) Prescription Format:
  - (A) All prescriptions issued by the nurse practitioner shall contain the supervising physician(s) name, the name of the patient, and the nurse practitioner's name, telephone number, and prescribing number.
  - (B) The nurse practitioner's assigned DEA number shall be written on the prescription form when a controlled substance is prescribed as defined in Subparagraph (b)(2) of this Rule.

(c) The nurse practitioner may obtain approval to dispense the drugs and devices included in the collaborative practice agreement for each practice site from the Board of Pharmacy, and dispense in accordance with 21 NCAC 46 .1700, that is hereby incorporated by reference including subsequent amendments of the referenced materials.

*History Note: Authority G.S. 90-6; 90-18(14); 90-18.2; 90-171.23(14); 90-171.42; 58 Fed. Reg. 31,171 (1993) (to be codified at 21 C.F.R. 1301); Eff. February 1, 1991; Recodified from 21 NCAC 32M .0106 Eff. January 1, 1996; Amended Eff. August 1, 2004; May 1, 1999; January 1, 1996; September 1, 1994; March 1, 1994.*

**21 NCAC 32M .0110 QUALITY ASSURANCE STANDARDS FOR A COLLABORATIVE PRACTICE**

**AGREEMENT**

- (a) Availability: The primary or back-up supervising physician(s) and the nurse practitioner shall be continuously available to each other for consultation by direct communication or telecommunication.
- (b) Collaborative Practice Agreement:
  - (1) shall be agreed upon and signed by both the primary supervising physician and the nurse practitioner, and maintained in each practice site;
  - (2) shall be reviewed at least yearly. This review shall be acknowledged by a dated signature sheet, signed by both the primary supervising physician and the nurse practitioner, appended to the collaborative practice agreement and available for inspection by members or agents of either Board;
  - (3) shall include the drugs, devices, medical treatments, tests and procedures that may be prescribed, ordered and performed by the nurse practitioner consistent with Rule .0109 of this Subchapter; and
  - (4) shall include a pre-determined plan for emergency services.
- (c) The nurse practitioner shall demonstrate the ability to perform medical acts as outlined in the collaborative practice agreement upon request by members or agents of either Board.
- (d) Quality Improvement Process:
  - (1) The primary supervising physician and the nurse practitioner shall develop a process for the ongoing review of the care provided in each practice site including a written plan for evaluating the quality of care provided for one or more frequently encountered clinical problems.
  - (2) This plan shall include a description of the clinical problem(s), an evaluation of the current treatment interventions, and if needed, a plan for improving outcomes within an identified time-frame.
  - (3) The quality improvement process shall include scheduled meetings between the primary supervising physician and the nurse practitioner at least every six months. Documentation for each meeting shall:
    - (A) identify clinical problems discussed, including progress toward improving outcomes as stated in Subparagraph (d)(2) of this Rule, and recommendations, if any, for changes in treatment plan(s);
    - (B) be signed and dated by those who attended; and
    - (C) be available for review by members or agents of either Board for the previous five calendar years and be retained by both the nurse practitioner and primary supervising physician.
- (e) Nurse Practitioner-Physician Consultation. The following requirements establish the minimum standards for consultation

between the nurse practitioner/primary or back-up supervising physician(s):

- (1) During the first six months of the initial collaborative practice agreement, there shall be:
  - (A) review and countersigning of notations of medical acts by a primary or back-up supervising physician within seven days of nurse practitioner-patient contact.
  - (B) meetings with the primary supervising physician on a weekly basis for one month after approval to practice is received and at least monthly for a total of six months.
- (2) During the first six months of a subsequent collaborative practice agreement between a nurse practitioner previously approved to practice and a different primary supervising physician, there shall be meetings with the new primary supervising physician monthly for the first six months.
- (3) Documentation of the meetings shall:
  - (A) identify clinical issues discussed and actions taken;
  - (B) be signed and dated by those who attended; and
  - (C) be available for review by members or agents of either Board for the previous five calendar years and be retained by both the nurse practitioner and primary supervising physician.

*History Note: Authority G.S. 90-6; 90-18(14); 90-18.2; 90-171.23(14); Eff. January 1, 1991; Amended Eff. August 1, 2004; May 1, 1999; January 1, 1996; March 1, 1994; Recodified from Rule .0109 Eff. August 1, 2004.*

**21 NCAC 32M .0111 METHOD OF IDENTIFICATION**

When providing care to the public, the nurse practitioner shall identify herself/himself as specified in G.S. 90-640 and 21 NCAC 36 .0231.

*History Note: Authority G.S. 90-18(14); 90-640; Eff. January 1, 1991; Recodified from 21 NCAC 32M .0108 Eff. January 1, 1996; Amended Eff. August 1, 2004; May 1, 1999; January 1, 1996; Recodified from Rule .0110 Eff. August 1, 2004.*

**21 NCAC 32M .0112 DISCIPLINARY ACTION**

A nurse practitioner's approval to practice shall comply with G.S. 90-18 and G.S. 90-18.2 and the registered nurse license shall comply with G.S. 90-171.37; 90-171.44; 90-171.47 and 21 NCAC 36 .0217. After notice and hearing in accordance with provisions of G.S. 150B, Article 3A, action shall be taken by the appropriate Board if one or more of the following is found:

- (1) that the nurse practitioner has held herself/himself out or permitted another to

represent the nurse practitioner as a licensed physician;

- (2) that the nurse practitioner has engaged or attempted to engage in the performance of medical acts other than according to the collaborative practice agreement;
- (3) that the nurse practitioner has been convicted in any court of a criminal offense;
- (4) that the nurse practitioner is adjudicated mentally incompetent or that the nurse practitioner's mental or physical condition renders the nurse practitioner unable to safely function as a nurse practitioner; or
- (5) that the nurse practitioner has failed to comply with any of the provisions of this Subchapter.

*History Note: Authority G.S. 90-18(14); 90-171.37; 90-171.44; 90-171.47; Eff. February 1, 1991; Recodified from 21 NCAC 32M .0107 Eff. January 1, 1996; Amended Eff. August 1, 2004; May 1, 1999; January 1, 1996; Recodified from Rule .0111 Eff. August 1, 2004.*

**21 NCAC 32M .0115 FEES**

- (a) An application fee of one hundred dollars (\$100.00) shall be paid at the time of initial application for approval to practice, each subsequent application for approval to practice and annual renewal of approval to practice. The application fee shall be twenty dollars (\$20.00) for the volunteer approval.
- (b) The fee for annual renewal of approval shall be fifty dollars (\$50.00).
- (c) The fee for annual renewal of volunteer approval shall be ten dollars (\$10.00).
- (d) No portion of any fee in this Rule is refundable.

*History Note: Authority G.S. 90-6; Eff. January 1, 1996; Recodified from 21 NCAC 32M .0111 Eff. January 1, 1996; Amended Eff. August 1, 2004; May 1, 1999; January 1, 1996; Recodified from Rule .0112 Eff. August 1, 2004.*

**21 NCAC 32M .0116 PRACTICE DURING A DISASTER**

- (a) A nurse practitioner approved to practice in this State or another state may perform medical acts as a nurse practitioner under the supervision of a physician licensed to practice medicine in North Carolina during a disaster in a county in which a state of disaster has been declared or counties contiguous to a county in which a state of disaster has been declared.
- (b) The nurse practitioner shall notify both Boards in writing of the names, practice locations and telephone number for the nurse practitioner and each primary supervising physician within 15 days of the first performance of medical acts as a nurse practitioner during the disaster.
- (c) Teams of physician(s) and nurse practitioner(s) practicing pursuant to this Rule shall not be required to maintain on-site documentation describing supervisory arrangements and plans for prescriptive authority as otherwise required pursuant to Rules .0109 and .0110 of this Subchapter.

*History Note: Authority G.S. 90-18(c)(13), (14); 90-18.2; 90-171.20(7); 90-171.23(b); 90-171.42; Eff. August 1, 2004; May 1, 1999; Recodified from Rule .0105 Eff. August 1, 2004.*

**CHAPTER 34 - BOARD OF FUNERAL SERVICE**

**21 NCAC 34A .0101 AGENCY NAME AND ADDRESS: OFFICE HOURS: MEETINGS: FORM**

The name of the agency promulgating the rules in this Chapter is the North Carolina Board of Funeral Service. As used in these Rules, the word "Board" shall refer to this agency. The office of the Board is located at 1033 Wade Avenue, Suite 108, Raleigh, North Carolina 27605.

*History Note: Authority G.S. 90-210.22; 90-210.23(a); Eff. February 1, 1976; Readopted Eff. September 27, 1977; Amended Eff. July 1, 2004; November 1, 2001; December 1, 1993; July 1, 1991; October 1, 1983.*

**21 NCAC 34A .0107 REQUESTS FOR PROMULGATION: AMENDMENT OR REPEAL**

For the purpose of dealing with a petition of any person requesting an agency to adopt a rule, pursuant to G.S. 150B-20, the following procedures shall apply:

- (1) The petition shall be in writing and dated and verified by the petitioner and shall be submitted in person or by mail to the office of the Board.
- (2) The petition shall contain the name and address of the petitioner; his license number or numbers if licensed by the Board; his current employment; a description of the existing rule sought to be amended or repealed; a statement of the proposed rule or amendment to a rule; an argument in support of the petition; and a statement of how the proposed rule, amendment or repeal of a rule would affect the petitioner, if at all.
- (3) Within the time limits prescribed by G.S. 150B-20 the Board shall meet, at which meeting at least a quorum of its members shall be present, to consider the petition. At such meeting the Board shall decide, by majority vote of those present, whether to deny the petition or to initiate rule-making proceedings in accordance with G.S. 150B-21.1, G.S. 150B-21.1A, and G.S. 150B-21.2. Rule-making shall be initiated if the Board concludes, based on a study of the facts involved, that the public interest will be served thereby. The Board shall consider all of the contents of the submitted petition, plus any additional information it deems relevant. The Board shall, within the time limits prescribed by G.S. 150B-20, deposit in the United States mail, postage prepaid, a written statement addressed to the petitioner informing him as to

whether the Board denied or approved the petition. If the decision is to deny the petition, such written statement shall include the Board's reasons for the denial. If the decision is to approve the petition, the Board shall proceed to issue notices of proposed rule-making within the time limits prescribed by G.S. 150B-20.

*History Note: Authority G.S. 90-210.23(a); 150B-20; Eff. February 1, 1976; Readopted Eff. September 27, 1977; Amended Eff. July 1, 2004; August 1, 1988.*

**21 NCAC 34A .0108 REQUESTS FOR DECLARATORY RULING**

(a) For the purpose of dealing with a request by a person aggrieved for a declaratory ruling, pursuant to G.S. 150B-4, the following procedures shall apply:

- (1) The request shall be in writing and dated and verified by the person submitting the same and shall be submitted in person or by mail to the office of the Board.
- (2) The request shall contain the name and address of the person submitting the same; his license number or numbers if licensed by the Board; his current employment; a description of the rule or statute referred to; a statement of any facts the applicability of which to a rule or statute the person is questioning; and a statement of the manner in which the person is aggrieved by the rule or statute or its potential application to him.
- (3) Within 30 days after receiving such a request the Board shall meet, at which meeting at least a quorum of its members shall be present, to consider the request. At such meeting the Board shall make a decision by majority vote of those present as to whether to issue the ruling. The Board shall issue a ruling except:
  - (A) when it finds that the person making the request is not a "person aggrieved", as defined in G.S. 150B-2(6); or
  - (B) when it finds, in a request concerning the validity of a rule, that the circumstances are so unchanged since the adoption of the rule in question that a ruling would not be warranted; or
  - (C) when it finds, in a request concerning the validity of a rule, that the rulemaking record shows that the Board considered all specified relevant factors when it adopted the rule in question.

(b) The Board shall, not later than the 60th day after it received such a request, deposit in the United States mail, postage prepaid, a written statement addressed to the person making the request and setting forth the Board's ruling on the merits of the



request for a declaratory ruling, or setting forth the reason the ruling was not made, as the case may be. If the Board decides to make the ruling, it may make the ruling at the meeting convened to consider the request, or it may defer its ruling until a later date, but not later than the 60th day after the request for a ruling is received. Before making the ruling the Board may gather additional information, may give notice to other persons and may permit such other persons to submit information or arguments under such conditions as are set forth in such notice. Such ruling shall be made by the Board at a meeting at which at least a quorum of its members shall be present and by majority vote of those present.

*History Note: Authority G.S. 90-210.23(a); 150B-4; Eff. February 1, 1976; Readopted Eff. September 27, 1977; Amended Eff. July 1, 2004.*

**21 NCAC 34A .0109 ADMINISTRATIVE HEARING PROCEDURES**

The following rules establishing procedures for contested cases, adopted by the Office of Administrative Hearings and contained in Title 26, Chapter 3 of the North Carolina Administrative Code, are hereby incorporated by reference for contested cases for which the Board has authority to adopt rules under G.S. 150B-38(h): .0101(1), .0105, .0106, .0112, .0113, .0114, .0115, .0116, .0117, .0118, .0119, .0120, .0121, .0122 and .0125. This incorporation is made under G.S. 150B- 21.6 and applies to the listed rules in 26 NCAC 03 as amended as of January 1, 2004. References in such rules to the Office of Administrative Hearings shall be deemed for this purpose to be references to the Board, and the presiding officer for board hearings shall have the powers and duties given in such rules to the administrative law judge. Copies of the rules adopted by reference are on file in the Board's office and may be obtained there.

*History Note: Authority G.S. 90-210.23(a),(d); 150B-21.6; 150B-38(h); Eff. February 1, 1976; Readopted Eff. September 27, 1977; Amended Eff. July 1, 2004; December 1, 1988; July 1, 1988.*

**21 NCAC 34A .0124 DEFINITIONS**

Solicitation, as the term used in G.S. 90-210.25(e)(1)d, shall be interpreted to mean an uninvited, intentional contact with an individual, in person or by telephone, for the purpose of procuring the right to provide funeral services or merchandise, either immediately or at a future date. All licensees of the Board must comply with the following in order to avoid committing solicitation as prohibited by G.S. 90-210.25(e)(1)d:

- (1) A licensee of the Board shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective customer when a significant motive for the licensee's doing so is the licensee's pecuniary gain, unless the person contacted:
  - (a) is a licensee; or

- (b) has a family, close personal, or prior professional relationship with the licensee.
- (2) A licensee shall not solicit professional employment from a prospective customer by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by Sub-items (1)(a) or (1)(b) of this Rule if:
  - (a) the prospective customer has made known to the licensee a desire not to be solicited by the licensee; or
  - (b) the solicitation involves coercion, duress, harassment, compulsion, intimidation, or threats.
- (3) Every written, recorded or electronic communication from a licensee soliciting professional employment from a prospective client known to be in need of funeral services in a particular matter shall include the words "This is an advertisement for funeral services" on the outside envelope, if a written communication sent by mail, and at the beginning of the body of a written or electronic communication in print as large or larger than the licensee's or licensee's business name, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in Sub-items (1)(a) or (1)(b) of this Rule.

*History Note: Authority G.S. 90-210.23(a); Eff. April 1, 1987; Recodified from 21 NCAC 34 .0126 Eff. February 7, 1991; Amended Eff. July 1, 2004.*

**21 NCAC 34A .0126 COMPLAINTS; PRELIMINARY DETERMINATIONS**

- (a) A person who believes that any person, firm or corporation is in violation of any provision of G.S. 90, Article 13A, 13D, 13E, or 13F or Title 21, Chapter 34, of the North Carolina Administrative Code, may file a written complaint with the Board's staff. If the accused is subject to the jurisdiction of the Board, the complaint shall be handled pursuant to this Rule.
- (b) A complaint shall be handled initially by the Board's Executive Director, or staff designated by him or her.
- (c) The Executive Director or his or her staff designees shall notify the accused of the complaint in writing. Such notice shall be sent by certified mail, return receipt requested; shall state the allegations as contained in the complaint, or may enclose a copy of the complaint; and shall contain a request that the accused submit a response in writing within 10 days from the date the notice of the complaint is received by the accused.
- (d) If the accused responds to the allegations, the Executive Director or his or her staff designees shall forward a summary of the response, or the response itself, to the person who filed the complaint and give him or her 15 days to respond. Following a receipt of a rebuttal by the consumer or after 15 days without

having received a rebuttal, the matter shall then be referred to the disciplinary committee. The disciplinary committee shall review the file and may request additional investigation. Following a review of the file, to include any information received pursuant to its additional investigation, the disciplinary committee shall make a preliminary determination of the charges and shall recommend to the Board which of the actions in Paragraph (f) of this Rule should be taken.

(e) If the accused does not respond to the allegations, the Board's Executive Director or his or her staff designees shall investigate the allegations, and refer the complaint and any other available evidence to the Board's disciplinary committee for review. From such review, the committee shall make a preliminary determination and shall recommend to the Board which of the actions in Paragraph (f) of this Rule should be taken.

(f) In accordance with Paragraphs (d) through (e) of this Rule, the disciplinary committee shall review the complaint and the file, if applicable, shall make a preliminary determination, and shall recommend to the Board that one of the following actions be taken:

- (1) that the complaint be dismissed as unfounded, frivolous or trivial;
- (2) that a letter of caution be issued;
- (3) that the case be compromised pursuant to G.S. 90-210.25(e)(1), 90-210.123(g), or 90-210.69(c); or
- (4) that the case be set for a contested case hearing.

(g) The Board may accept or reject, in whole or in part, the recommendations of the disciplinary committee.

*History Note: Authority G.S. 90-210.23(a); 90-210.25(e); 90-210.69; 90-210.123(g); 90-210.134(a);*

*Eff. October 1, 1993;*

*Amended Eff. July 1, 2004; August 1, 1998; November 1, 1994.*

**21 NCAC 34C .0102 FORM OF DOCUMENTS**

When any provision of Article 13F, Chapter 90, of the North Carolina General Statutes or any rule in this Subchapter requires a crematory licensee to obtain any death certificate, report, authorization, waiver, statement or other document prior to cremation, it shall be deemed that such requirements are complied with if the crematory licensee receives the applicable document or documents, in the time specified, in the form of the original, a photocopy or by facsimile transmission.

*History Note: Authority G.S. 90-210.127; 90-210.134(a);*

*Eff. July 1, 1991;*

*Amended Eff. July 1, 2004.*

**21 NCAC 34C .0306 RETENTION OF RECORDS**

A copy of all death certificates, authorizations, waivers, statements, reports and other documents required by G.S. 90-210.40 through G.S. 90-210.54 and by the rules in this Subchapter shall be retained by the crematory licensee for a period of three years and shall, during that period, be subject to inspection by the Board or its agents.

*History Note: Authority G.S. 90-210.127; 90-210.134(a);*

*Eff. July 1, 1991;*

*Amended Eff. July 1, 2004.*

**CHAPTER 36 - BOARD OF NURSING**

**21 NCAC 36 .0801 DEFINITIONS**

The following definitions apply to this Section:

- (1) "Medical Board" means the North Carolina Medical Board.
- (2) "Board of Nursing" means the Board of Nursing of the State of North Carolina.
- (3) "Joint Subcommittee" means the subcommittee composed of members of the Board of Nursing and Members of the Medical Board to whom responsibility is given by G.S. 90-6 and G.S. 90-171.23(b)(14) to develop rules to govern the performance of medical acts by nurse practitioners in North Carolina.
- (4) "Nurse Practitioner or NP" means a currently licensed registered nurse approved to perform medical acts consistent with the nurse's area of nurse practitioner academic educational preparation and national certification under an agreement with a licensed physician for ongoing supervision, consultation, collaboration and evaluation of the medical acts performed. Such medical acts are in addition to those nursing acts performed by virtue of registered nurse (RN) licensure. The NP is held accountable under the RN license for those nursing acts that he or she may perform.
- (5) "Registration" means authorization by the Medical Board and the Board of Nursing for a registered nurse to use the title nurse practitioner in accordance with this Section.
- (6) "Approval to Practice" means authorization by the Medical Board and the Board of Nursing for a nurse practitioner to perform medical acts within her/his area of educational preparation and certification under a collaborative practice agreement (CPA) with a licensed physician in accordance with this Section.
- (7) "Nurse Practitioner Applicant" means a registered nurse who may function prior to full approval as a Nurse Practitioner in accordance with Rule .0804(f) of this Section.
- (8) "Supervision" means the physician's function of overseeing medical acts performed by the nurse practitioner.
- (9) "Collaborative practice agreement" means the arrangement for nurse practitioner-physician continuous availability to each other for ongoing supervision, consultation, collaboration, referral and evaluation of care provided by the nurse practitioner.
- (10) "Primary Supervising Physician" means the licensed physician who, by signing the nurse practitioner application, shall provide ongoing supervision, collaboration, consultation and

evaluation of the medical acts performed by the nurse practitioner as defined in the collaborative practice agreement. Supervision shall be in compliance with the following:

- (a) The primary supervising physician shall assure both Boards that the nurse practitioner is qualified to perform those medical acts described in the collaborative practice agreement.
  - (b) A physician in a graduate medical education program, whether fully licensed or holding only a resident's training license, shall not be named as a primary supervising physician.
  - (c) A fully licensed physician in a graduate medical education program who is also practicing in a non-training situation may supervise a nurse practitioner in the non-training situation.
- (11) "Back-up Supervising Physician" means the licensed physician who, by signing an agreement with the nurse practitioner and the primary supervising physician(s) shall provide supervision, collaboration, consultation and evaluation of medical acts by the nurse practitioner in accordance with the collaborative practice agreement when the Primary Supervising Physician is not available. Back-up supervision shall be in compliance with the following:
- (a) The signed and dated agreements for each back-up supervising physician(s) shall be maintained at each practice site.
  - (b) A physician in a graduate medical education program, whether fully licensed or holding only a resident's training license, shall not be named as a back-up supervising physician.
  - (c) A fully licensed physician in a graduate medical education program who is also practicing in a non-training situation and has a signed collaborative practice agreement with the nurse practitioner and the primary supervising physician. may be a back-up supervising physician for a nurse practitioner in the non-training situation.
- (12) "Volunteer Approval" means approval to practice consistent with this rule except without expectation of direct or indirect compensation or payment (monetary, in kind or otherwise) to the nurse practitioner.
- (13) Disaster" means a state of disaster as defined in G.S. 166A-4(3) and proclaimed by the Governor, or by the General Assembly pursuant to G.S. 166A-6.

- (14) "Interim Status" means limited privileges granted by the Board of Nursing to a graduate of a nurse practitioner educational program meeting the requirements of Rule .0805(a) of this Section or a registered nurse seeking initial approval in North Carolina as defined in Rule .0804(f) of this Section while awaiting final approval to practice as a nurse practitioner.
- (15) "Temporary Approval" means authorization by the Medical Board and the Board of Nursing for a registered nurse to practice as a nurse practitioner in accordance with this Section for a period not to exceed six months while awaiting notification of successful completion of the national certification examination.
- (16) "National Credentialing Body" means one of the following credentialing bodies that offers certification and re-certification in the nurse practitioner's specialty area of practice: American Nurses Credentialing Center (ANCC); American Academy of Nurse Practitioners (AANP); National Certification Corporation of the Obstetric Gynecologic and Neonatal Nursing Specialties (NCC); and the Pediatric Nursing Certification Board (PNCB).

*History Note: Authority G.S. 90-6; 90-18(14); 90-18.2; 90-171.20(4); 90-171.20(7); 90-171.23(b); 90-171.83; Recodified from 21 NCAC 36 .0227(a) Eff. August 1, 2004; Amended Eff. August 1, 2004.*

**21 NCAC 36 .0802 SCOPE OF PRACTICE**

A nurse practitioner shall be held accountable by both Boards for the continuous and comprehensive management of a broad range of personal health services for which the nurse practitioner is educationally prepared and for which competency has been maintained, with physician supervision and collaboration as described in Rule .0810 of this Section. These services include but are not restricted to:

- (1) promotion and maintenance of health;
- (2) prevention of illness and disability;
- (3) diagnosing, treating and managing acute and chronic illnesses;
- (4) guidance and counseling for both individuals and families;
- (5) prescribing, administering and dispensing therapeutic measures, tests, procedures and drugs;
- (6) planning for situations beyond the nurse practitioner's expertise, and consulting with and referring to other health care providers as appropriate; and
- (7) evaluating health outcomes.

*History Note: Authority G.S. 90-18(14); 90-171.20(7); 90-171.23(b)(14); Recodified from 21 NCAC 36 .0227(b) Eff. August 1, 2004; Amended Eff. August 1, 2004.*

**21 NCAC 36 .0803 NURSE PRACTITIONER  
REGISTRATION**

- (a) The Board of Nursing shall register an applicant who:
- (1) has an unrestricted license to practice as a registered nurse in North Carolina and, when applicable, an unrestricted approval, registration or license as a nurse practitioner in another state, territory, or possession of the United States;
  - (2) has successfully completed a nurse practitioner education program as outlined in Rule .0805 of this Section; and
  - (3) has supplied information necessary to evaluate the application.
- (b) Beginning January 1, 2005 all registered nurses seeking first-time nurse practitioner registration in North Carolina shall:
- (1) hold a Master's Degree in Nursing or related field with primary focus on Nursing;
  - (2) have successfully completed a graduate level nurse practitioner education program accredited by a national credentialing body, and in addition have met the criteria as outlined in Rule.0805(a) and (c) of this Section; and
  - (3) provide documentation of certification by a national credentialing body.

*History Note: Authority G.S. 90-18(13); 90-18.2; 90-171.20(7); 90-171.23(b); 90-171.83; Eff. August 1, 2004.*

**21 NCAC 36 .0804 PROCESS FOR APPROVAL TO PRACTICE**

- (a) Prior to the performance of any medical acts, a nurse practitioner shall:
- (1) submit notification of her/his intent to practice on forms provided by the Board of Nursing and the Medical Board. Such notification of intent to practice shall include:
    - (A) the practice name, practice address, and telephone number of the nurse practitioner; and
    - (B) the practice name, practice address, and telephone number of the primary supervision physician(s).
  - (2) submit any information necessary to evaluate the application.
  - (3) have a collaborative practice agreement with a primary supervising physician.
- (b) The nurse practitioner shall not practice until notification of approval to practice is received from the Boards.
- (c) The nurse practitioner's approval to practice shall terminate when the nurse practitioner discontinues working within the approved nurse practitioner collaborative practice agreement and the nurse practitioner shall notify both Boards in writing. This Rule shall be waived in cases of emergency such as injury, sudden illness or death.
- (d) Applications for first-time approval to practice in North Carolina shall be submitted to the Board of Nursing and then approved by both Boards as follows:

- (1) the Board of Nursing shall verify compliance with Rule .0803 and Paragraph (a) of this Rule; and
  - (2) the Medical Board shall verify compliance with Paragraph (a) of this Rule.
- (e) Applications for approval of changes in practice arrangements for a nurse practitioner currently approved to practice in North Carolina:
- (1) addition or change of primary supervising physician shall be submitted to both Boards; and
  - (2) request for change(s) in the scope of practice shall be submitted to the Joint Subcommittee.
- (f) Interim status for a nurse practitioner applicant shall be granted to: a registered nurse who is a graduate of a nurse practitioner education program meeting the requirements of Rule .0805(a) of this Section and has met the registration requirements as set forth in Rules .0803 and .0805 of this Section; or a registered nurse seeking first-time approval to practice as a nurse practitioner in North Carolina who has worked previously as a nurse practitioner in another state and who meets the nurse practitioner education requirement and has met the registration requirements as set forth in Rules .0803 and .0805 of this Section with the following limitations:
- (1) no prescribing privileges;
  - (2) primary or back-up physicians shall be continuously available for ongoing supervision, collaboration, consultation and countersigning of notations of medical acts in all patient charts within two working days of nurse practitioner applicant-patient contact;
  - (3) face-to-face consultation with the primary supervising physician shall be weekly with documentation of consultation consistent with Rule .0810(e)(3) of this Section; and
  - (4) shall not exceed period of six months.
- (g) First-time applicants who meet the qualifications for approval to practice, but are awaiting certification from a national credentialing body as referenced in Rule .0801(16) of this Section, shall be granted a temporary approval to practice as a nurse practitioner. Temporary approval is valid for a period not to exceed six months from the date temporary approval is granted or until the results of the applicant's certification examination are available, whichever comes first.
- (h) A registered nurse who was previously approved to practice as a nurse practitioner in this state shall:
- (1) meet the nurse practitioner approval requirements as stipulated in Rule .0808(c) of this Section;
  - (2) complete the appropriate application;
  - (3) receive notification of approval;
  - (4) meet the quality assurance standards and consultation requirements as outlined in Rule .0810(e)(2) – (3) of this Section; and
  - (5) meet the continuing education requirements as stated in Rule .0807 and .0808(d) of this Section.
  - (6) If for any reason a nurse practitioner discontinues working within the approved nurse practitioner-supervising physician(s)

arrangement, or experiences an interruption in her/his registered nurse licensure status, the nurse practitioner shall notify both Boards in writing and the nurse practitioner's approval shall automatically terminate. A waiver to this requirement shall be given in an emergency situation.

(i) Volunteer Approval to Practice. Both Boards may grant approval to practice in a volunteer capacity to a nurse practitioner who has met the qualifications to practice as a nurse practitioner in North Carolina.

(j) The nurse practitioner shall pay the appropriate fee as outlined in Rule .0813 of this Section.

*History Note: Authority G. S. 90-18(13), (14); 90-18.2; 90-171.20(7); 90-171.23(b); Recodified from 21 NCAC 36.0227(c) Eff. August 1, 2004; Amended Eff. August 1, 2004.*

**21 NCAC 36 .0805 EDUCATION AND CERTIFICATION REQUIREMENTS FOR REGISTRATION AS A NURSE PRACTITIONER**

(a) A nurse practitioner applicant who completed a nurse practitioner education program prior to December 31, 1999 shall provide evidence of successful completion of a course of education that contains a core curriculum including 400 contact hours of didactic education and 400 hours of preceptorship or supervised clinical experience.

- (1) The core curriculum shall contain the following components:
  - (A) health assessment and diagnostic reasoning including:
    - (i) historical data;
    - (ii) physical examination data;
    - (iii) organization of data base;
  - (B) pharmacology;
  - (C) pathophysiology;
  - (D) clinical management of common health problems and diseases such as the following shall be evident in the nurse practitioner's academic program:
    - (i) respiratory system;
    - (ii) cardiovascular system;
    - (iii) gastrointestinal system;
    - (iv) genitourinary system;
    - (v) integumentary system;
    - (vi) hematologic and immune systems;
    - (vii) endocrine system;
    - (viii) musculoskeletal system;
    - (ix) infectious diseases;
    - (x) nervous system;
    - (xi) behavioral, mental health and substance abuse problems;
  - (E) clinical preventative services including health promotion and prevention of disease;

- (F) client education related to Parts (a)(1)(D) and (E) of this Rule; and
- (G) role development including legal, ethical, economical, health policy and interdisciplinary collaboration issues.

(2) Nurse practitioner applicants exempt from components of the core curriculum requirements listed in Subparagraph (a)(1) of this Rule are:

- (A) Any nurse practitioner approved to practice in North Carolina prior to January 18, 1981, is permanently exempt from the core curriculum requirement.
- (B) A nurse practitioner certified by a national credentialing body prior to January 1, 1998, who also provides evidence of satisfying Parts (a)(1) (A) – (C) of this Rule shall be exempt from core curriculum requirements in Parts (a)(1)(D) – (G) of this Rule. Evidence of satisfying Parts (a)(1)(A) – (C) of this Rule shall include:
  - (i) a narrative of course content; and
  - (ii) contact hours.
- (C) A nurse practitioner seeking initial approval to practice after January 1, 1998 shall be exempt from the core curriculum requirements if certified as a nurse practitioner in her/his specialty by a national credentialing body.

(b) Any nurse practitioner applicant who received, first-time approval to practice between January 1, 2000 and July 31, 2004 shall be certified by a national credentialing body as referenced in Rule .0801(16) of this Section or be awaiting initial certification by a national credentialing body for a period not to exceed 18 months from date temporary approval is granted.

(c) Each nurse practitioner applicant applying for approval to practice in North Carolina shall meet the education requirements as specified in Subparagraph (a)(1) of this Rule and shall provide documentation of certification by a national credentialing body within six months from the date temporary approval is granted.

(d) A Nurse Practitioner approved under this Section shall keep proof of current licensure, registration and approval available for inspection at each practice site and made available for inspection upon request by agents of either Board.

*History Note: Authority G. S. 90-18(14); 90-171.42; Recodified from 21 NCAC 36.0227(d) Eff. August 1, 2004; Amended Eff. August 1, 2004.*

**21 NCAC 36 .0806 ANNUAL RENEWAL**

(a) Each registered nurse who is approved to practice as a nurse practitioner in this state shall annually renew each approval to practice with the Medical Board no later than 30 days after the nurse practitioner's birthday by:

- (1) Maintaining current RN licensure;

(2) Submitting the fee required in Rule .0813 of this Section; and

(3) Completing the renewal form.

(b) A nurse practitioner with first-time approval to practice after January 1, 2000, shall provide evidence of certification or recertification by a national credentialing body.

(c) If the nurse practitioner has not renewed within 60 days of her/his birthday, the approval to practice as a nurse practitioner shall lapse.

*History Note: Authority G.S. 90-6; 90-18(14) 90-171.23(b); 90-171.83;*

*Recodified from 21 NCAC 36.0227(e) Eff. August 1, 2004; Amended Eff. August 1, 2004.*

**21 NCAC 36 .0807 CONTINUING EDUCATION (CE)**

In order to maintain nurse practitioner approval to practice, the nurse practitioner shall earn 100 contact hours of continuing education every two years. Continuing Education hours are those hours for which approval has been granted by the American Nurses Credentialing Center (ANCC) or Accreditation Council on Continuing Medical Education (ACCME); other national credentialing bodies or practice relevant courses in an institution of higher learning. Documentation shall be maintained by the nurse practitioner and made available upon request to either Board.

*History Note: Authority G.S. 90-6; 90-18(14); 90-171.23(b)(14); 90-171.42;*

*Recodified from 21 NCAC 36 .0227(f) Eff. August 1, 2004; Amended Eff. August 1, 2004.*

**21 NCAC 36 .0808 INACTIVE STATUS**

(a) Any nurse practitioner who wishes to place her or his approval to practice on an inactive status shall notify both Boards by completing the form supplied by both Boards.

(b) A nurse practitioner with an inactive approval to practice status shall not practice as a nurse practitioner.

(c) A nurse practitioner with an inactive approval to practice status who reapplies for approval to practice shall meet the qualifications for approval to practice as stipulated in Rules .0803(a)(1), .0804(a), .0806(b), .0807, and .0810 of this Section and receive notification from both Boards of approval prior to beginning practice.

(d) A nurse practitioner with an inactive approval to practice status of greater than five years shall complete a nurse practitioner refresher course approved by the Board of Nursing in accordance with Paragraphs (o) and (p) of 21 NCAC 36 .0220 and consisting of common conditions and their management directly related to the nurse practitioner's area of education and certification.

(e) A nurse practitioner seeking first-time approval to practice who has not provided direct patient-care as a nurse practitioner in more than five years shall complete a nurse practitioner refresher course approved by the Board of Nursing in accordance with Paragraphs (o) and (p) of 21 NCAC 36 .0220 and consisting of common conditions and their management directly related to the nurse practitioner's area of education and certification.

*History Note: Authority G.S. 90-18(13); 90-18.2; 90-171.36; 90-171.83;*

*Recodified from 21 NCAC 36 .0227(g) Eff. August 1, 2004; Amended Eff. August 1, 2004.*

**21 NCAC 36 .0809 PRESCRIBING AUTHORITY**

(a) The prescribing stipulations contained in this Rule apply to writing prescriptions and ordering the administration of medications.

(b) Prescribing and dispensing stipulations are as follows:

(1) Drugs and devices that may be prescribed by the nurse practitioner in each practice site shall be included in the collaborative practice agreement as outlined in Rule .0810(b) of this Section.

(2) Controlled Substances (Schedules II, IIN, III, IIIN, IV, V) defined by the State and Federal Controlled Substances Acts may be procured, prescribed or ordered as established in the collaborative practice agreement, providing all of the following requirements are met:

(A) the nurse practitioner has an assigned DEA number which is entered on each prescription for a controlled substance;

(B) dosage units for schedules II, IIN, III, and IIIN are limited to a 30 day supply; and

(C) the prescription or order for schedules II, IIN, III, and IIIN may not be refilled.

(3) The nurse practitioner may prescribe a drug or device not included in the collaborative practice agreement only as follows:

(A) upon a specific written or verbal order obtained from a primary or back-up supervising physician before the prescription or order is issued by the nurse practitioner; and

(B) the written or verbal order as described in Part (b)(3)(A) of this Rule shall be entered into the patient record with a notation that it is issued on the specific order of a primary or back-up supervising physician and signed by the nurse practitioner and the physician.

(4) Refills may be issued for a period not to exceed one year except for schedules II, IIN, III, and IIIN, which may not be refilled.

(5) Each prescription shall be noted on the patient's chart and include the following information:

(A) medication and dosage;

(B) amount prescribed;

(C) directions for use;

(D) number of refills; and

(E) signature of nurse practitioner.

(6) The prescribing number assigned by the Medical Board to the nurse practitioner shall

appear on all prescriptions issued by the nurse practitioner.

(7) Prescription Format:

- (A) all prescriptions issued by the nurse practitioner shall contain the supervising physician(s) name, the name of the patient, and the nurse practitioner's name, telephone number, and prescribing number;
- (B) the nurse practitioner's assigned DEA number shall be written on the prescription form when a controlled substance is prescribed as defined in Subparagraph (b)(2) of this Rule.

(c) The nurse practitioner may obtain approval to dispense the drugs and devices included in the collaborative practice agreement for each practice site from the Board of Pharmacy, and dispense in accordance with 21 NCAC 36 .1700, that is hereby incorporated by reference including subsequent amendments of the referenced materials.

*History Note: Authority G.S. 90-6; 90-18(14); 90-18.2; 90-171.23(b)(14); Recodified from 21 NCAC 36 .0227(h) Eff. August 1, 2004; Amended Eff. August 1, 2004.*

**21 NCAC 36 .0810 QUALITY ASSURANCE STANDARDS FOR A COLLABORATIVE PRACTICE AGREEMENT**

(a) Availability: The primary or back-up supervising physician(s) and the nurse practitioner shall be continuously available to each other for consultation by direct communication or telecommunication.

(b) Collaborative Practice Agreement:

- (1) shall be agreed upon and signed by both the primary supervising physician and the nurse practitioner, and maintained in each practice site;
- (2) shall be reviewed at least yearly. This review shall be acknowledged by a dated signature sheet, signed by both the primary supervising physician and the nurse practitioner, appended to the collaborative practice agreement and available for inspection by members or agents of either Board;
- (3) shall include the drugs, devices, medical treatments, tests and procedures that may be prescribed, ordered and performed by the nurse practitioner consistent with Rule .0809 of this Section; and
- (4) shall include a pre-determined plan for emergency services.

(c) The nurse practitioner shall demonstrate the ability to perform medical acts as outlined in the collaborative practice agreement upon request by members or agents of either Board.

(d) Quality Improvement Process.

- (1) The primary supervising physician and the nurse practitioner shall develop a process for the ongoing review of the care provided in each practice site including a written plan for

evaluating the quality of care provided for one or more frequently encountered clinical problems.

(2) This plan shall include a description of the clinical problem(s), an evaluation of the current treatment interventions, and if needed, a plan for improving outcomes within an identified time-frame.

(3) The quality improvement process shall include scheduled meetings between the primary supervising physician and the nurse practitioner at least every six months. Documentation for each meeting shall:

- (A) identify clinical problems discussed, including progress toward improving outcomes as stated in Subparagraph (d)(2) of this Rule, and recommendations, if any, for changes in treatment plan(s);
- (B) be signed and dated by those who attended; and
- (C) be available for review by members or agents of either Board for the previous five calendar years and be retained by both the nurse practitioner and primary supervising physician.

(e) Nurse Practitioner-Physician Consultation. The following requirements establish the minimum standards for consultation between the nurse practitioner/primary or back-up supervising physician(s):

- (1) During the first six months of the initial collaborative practice agreement, there shall be:
  - (A) review and countersigning of notations of medical acts by a primary or back-up supervising physician within seven days of nurse practitioner- patient contact.
  - (B) meetings with the primary supervising physician on a weekly basis for one month after approval to practice is received and at least monthly for a total of six months.
- (2) During the first six months of a subsequent collaborative practice agreement between a nurse practitioner previously approved to practice and a different primary supervising physician, there shall be meetings with the new primary supervising physician monthly for the first six months.
- (3) Documentation of the meetings shall:
  - (A) identify clinical issues discussed and actions taken;
  - (B) be signed and dated by those who attended; and
  - (C) be available for review by members or agents of either Board for the previous five calendar years and be retained by both the nurse practitioner and primary supervising physician.

*History Note: Authority G.S. 90-6; 90-18(14); 90-18.2; 90-171.23(b)(14); Recodified from 21 NCAC 36 .0227(i) Eff. August 1, 2004; Amended Eff. August 1, 2004.*

**21 NCAC 36 .0811 METHOD OF IDENTIFICATION**  
When providing care to the public, the nurse practitioner shall identify herself/himself as specified in G.S. 90-640 and 21 NCAC 36 .0231.

*History Note: Authority G.S. 90-18(14); 90-640; Recodified from 21 NCAC 36 .0227(j) Eff. August 1, 2004; Amended Eff. August 1, 2004.*

**21 NCAC 36 .0812 DISCIPLINARY ACTION**  
A nurse practitioner's approval to practice shall comply with G.S. 90-18 and G.S. 90-18.2 and the registered nurse license shall comply with G.S. 90-171.37; 90-171.44; 90-171.47 and 21 NCAC 36 .0217. After notice and hearing in accordance with provisions of Article 3A of G.S. 150B, action shall be taken by the appropriate Board if one or more of the following is found:

- (1) that the nurse practitioner has held himself or herself out or permitted another to represent the nurse practitioner as a licensed physician.
- (2) that the nurse practitioner has engaged or attempted to engage in the performance of medical acts other than according to the collaborative practice agreement;
- (3) that the nurse practitioner has been convicted in any court of a criminal offense;
- (4) that the nurse practitioner is adjudicated mentally incompetent or that the nurse practitioner's mental or physical condition renders the nurse practitioner unable to safely function as a nurse practitioner; or
- (5) that the nurse practitioner has failed to comply with any of the provisions of this Rule.

*History Note: Authority G.S. 90-18(14); 90-171.37; 90-171.44; 90-171.47; 90-171.48; Recodified from 21 NCAC 36 .0227(k) Eff. August 1, 2004; Amended Eff. August 1, 2004.*

**21 NCAC 36 .0813 FEES**  
(a) An application fee of one hundred dollars (\$100.00) shall be paid at the time of initial application for approval to practice, each subsequent application for approval to practice and annual renewal of approval to practice. The application fee shall be twenty dollars (\$20.00) for volunteer approval.  
(b) The fee for annual renewal of approval shall be fifty dollars (\$50.00).  
(c) The fee for annual renewal of volunteer approval shall be ten dollars (\$10.00).  
(d) No portion of any fee in this Rule is refundable.

*History Note: Authority G.S. 90-6; 90-171.23(b)(14); Recodified from 21 NCAC 36 .0227(l) Eff. August 1, 2004; Amended Eff. August 1, 2004.*

**21 NCAC 36 .0814 PRACTICING DURING A DISASTER**

(a) A nurse practitioner approved to practice in this State or another state may perform medical acts, as a nurse practitioner under the supervision of a physician licensed to practice medicine in North Carolina during a disaster in a county in which a state of disaster has been declared or counties contiguous to a county in which a state of disaster has been declared.

(b) The nurse practitioner shall notify the Board of Nursing and the Medical Board in writing of the names, practice locations and telephone numbers for the nurse practitioner and each primary supervising physician within 15 days of the first performance of medical acts, as a nurse practitioner during the disaster.

(c) Teams of physician(s) and nurse practitioner(s) practicing pursuant to this Rule shall not be required to maintain on-site documentation describing supervisory arrangements and plans for prescriptive authority as otherwise required pursuant to Rules .0809 and .0810 of this Section.

*History Note: Authority G.S. 90-18(c)(13), (14); 90-18.2; 90-171.23(b); Recodified from 21 NCAC 36 .0227(m) Eff. August 1, 2004; Amended Eff. August 1, 2004.*

**CHAPTER 37 - BOARD OF NURSING HOME ADMINISTRATORS**

**21 NCAC 37D .0303 REQUIRED COURSE**  
The course prescribed by the Board pursuant to G.S. 90-278(1)c shall be comprised of in-class, field and correspondence components substantially equivalent to the 2003 description of the Basic Nursing Home Administrator Course provided by the School of Public Health at UNC-Chapel Hill. An applicant with a health care administration degree may request in writing that the Board approve college courses as substantially equivalent to portions of the required course, provided the applicant tests out of portions of the required course with a passing score of at least 70 percent.

*History Note: Authority G.S. 90-278(1)c; Eff. April 1, 1996. Amended Eff. July 1, 2004; July 1, 2000.*

**21 NCAC 37D .0402 APPLICATION TO BECOME ADMINISTRATOR-IN-TRAINING**

(a) The applicant shall submit to the Board an application, which shall contain such information as name, education, employment history, questions pertaining to moral character, and any other information the Board may require to process an application according to these Rules, and an affidavit stating that the applicant, if granted a license, shall obey the laws of the state and the rules of the Board, and shall maintain the honor and dignity of the profession.

(b) The applicant shall submit a background resume indicating the areas in which he is competent or lacking.

(c) The applicant shall submit three reference forms as required and defined by Rule .0203 of this Subchapter.



(d) The applicant shall supply a certified copy of each college transcript indicating the courses completed and hours earned, specifying whether semester or quarter hours. The applicant shall supply documentation of his supervisory experience in a nursing home if he is utilizing the experience substitute for the education requirement as allowed by G.S. 90-278(1)b.

(e) The applicant shall appear before the Board for a personal interview.

(f) The preceptor shall submit to the Board three weeks prior to the personal interview:

- (1) Facility Survey Form;
- (2) Letter accepting individual as an AIT;
- (3) An individualized curriculum for the AIT program that provides the AIT with on the job experience in the subject areas as outlined in Rule .0605 of this Subchapter, including the recommended number of weeks in the program as outlined on the Rationale Form;
- (4) Based on the education or experience of the AIT applicant, the preceptor shall be responsible for providing a rationale for any subject area in which the recommended number of weeks for the AIT is less than the number of weeks provided on the Form;
- (5) Map to facility or directions.

(g) The owner of the facility or governing board shall submit to the Board three weeks prior to the personal interview, a letter of approval for the AIT applicant to train in their facility.

(h) A fee of one hundred fifty dollars (\$150.00) shall be submitted with the application.

(i) An AIT applicant shall maintain at all times a current residence mailing address with the Board office.

*History Note: Authority G.S. 90-278; 90-280; 90-285; Eff. February 1, 1976; Amended Eff. August 1, 1977; April 8, 1977; Readopted Eff. December 15, 1977; Amended Eff. February 1, 1980; Readopted Eff. October 1, 1981; Amended Eff. August 1, 1995; August 2, 1993; February 1, 1991; May 1, 1989; Transferred and Recodified from 21 NCAC 37A .0502 Eff. April 1, 1996; Amended Eff. July 1, 2004; April 1, 1996.*

**21 NCAC 37D .0404 ADMINISTRATOR IN-TRAINING SELECTION OF PRECEPTOR**

(a) From an approved list of preceptors, the AIT applicant shall select a preceptor prior to submitting application to the Board.

(b) It shall be the responsibility of the AIT applicant to contact a preceptor to ensure that the preceptor accepts the AIT applicant.

(c) The AIT must notify the Board of any change in preceptor. Any change in preceptor shall be from the approved list.

*History Note: Authority G.S. 90-278; 90-285; Eff. February 1, 1976; Amended Eff. April 8, 1977; Readopted Eff. October 1, 1981; December 15, 1977; Amended Eff. August 2, 1993; February 1, 1991; May 1, 1989; Transferred and Recodified from 21 NCAC 37A .0505 Eff.*

*April 1, 1996; Amended Eff. July 1, 2004; April 1, 1996.*

**21 NCAC 37D .0605 SUBJECT AREAS**

The national examination shall include, but need not be limited to, the following subjects:

- (1) Resident Care and Quality of Life;
- (2) Human Resources;
- (3) Finance;
- (4) Physical Environment and Atmosphere;
- (5) Leadership and Management.

*History Note: Authority G.S. 90-278; 90-285; Eff. February 1, 1976; Readopted Eff. October 1, 1981; December 15, 1977; Amended Eff. August 2, 1993; Transferred and Recodified from 21 NCAC 37A .0701 Eff. April 1, 1996; Amended Eff. July 1 2004; July 1, 2000; April 1, 1996.*

**21 NCAC 37E .0101 APPLICATION PROCESS**

(a) The Board may issue a license to a nursing home administrator who holds a nursing home administrator license issued by the proper authorities of any other state, upon payment of the current licensing fee, successful completion of the state examination, and submission of evidence satisfactory to the Board as to the following:

- (1) such applicant for licensure shall have personal qualifications, education, training and experience at least substantially equivalent to those required in this state;
- (2) such applicant shall be licensed in another state that gives similar recognition and reciprocity/endorsement to nursing home administrator licenses of this state;
- (3) such applicant for license by reciprocity/endorsement holds a valid active license as a nursing home administrator in the state from which he is transferring; and
- (4) such applicant shall appear before the Board for a personal interview.

(b) If the applicant for reciprocity does not submit evidence satisfactory to the Board as required by Subparagraph (a)(1) or (a)(2) of this Rule, the Board may issue a temporary reciprocal license for six months upon the following conditions:

- (1) Within one month of expiration of the temporary reciprocal license, submission of a statement that the temporary licensee has administered the nursing home in a manner satisfactory to the nursing home owner or representative of the owner; or
- (2) Completion of Continuing Education course(s) that the Board may require as a condition of issuance of a temporary reciprocal license.

If the applicant for temporary reciprocal license does not submit evidence satisfactory to the Board as required by Subparagraph (a)(1) or (a)(2) of this Rule and at the time of the interview with the Board would qualify for condition Subparagraph (b)(1) of this Rule and the Board determines from the application that the applicant does not possess education substantially equivalent to

the qualifications required by this state, the Board may also require completion of Continuing Education course(s) as a condition of issuance of a temporary reciprocal license.

(c) If a temporary reciprocal license is issued pursuant to Paragraph (b) of this Rule and the applicant notifies the Board prior to the expiration of the six-month term that the circumstances have changed such that the condition(s) imposed is no longer applicable, the Board may extend the temporary reciprocal license for an additional period not to exceed six months and require the applicant to fulfill the other condition from Paragraph (b) of this Rule not originally imposed, upon consideration of the following:

- (1) the period of extension requested;
- (2) the extent of control the applicant had over the situation causing the request for extension;
- (3) the applicant's good faith effort at compliance with the original term imposed;
- (4) if condition Subparagraph (b)(1) of this Rule was imposed, any issues arising during the term of the applicant at the facility identified during a survey conducted by the Division of Facility Services or a Federal Surveying agency.

(d) If a temporary reciprocal license is issued pursuant to Paragraph (b) of this Rule and the applicant notifies the Board prior to the expiration of the six-month term that the applicant was unable to fulfill the condition within the six-month time period, the Board may extend the temporary reciprocal license for an additional period not to exceed six months upon consideration of the following:

- (1) the period of extension requested;
- (2) the extent of control the applicant had over the situation causing the request for extension;
- (3) the applicant's good faith effort at compliance with the original term imposed;
- (4) if condition Subparagraph (b)(1) of this Rule was imposed, any issues arising during the term of the applicant at the facility identified during a survey conducted by the Division of Facility Services or a Federal Surveying agency.

*History Note:* Authority G.S. 90-278; 90-280; 90-285; 90-287;

*Eff. February 1, 1976;*

*Readopted Eff. December 15, 1977;*

*Amended Eff. February 1, 1980;*

*Readopted Eff. October 1, 1981;*

*Amended Eff. August 1, 1995; August 2, 1993;*

*February 1, 1991; May 1, 1989;*

*Transferred and Recodified from 21 NCAC 37A .0912(a)*

*Eff. April 1, 1996;*

*Amended Eff. July 1, 2004; July 1, 2000; April 1, 1996.*

**21 NCAC 37E .0102 APPLICATION CONTENTS**

An applicant for reciprocity/endorsement shall submit the following items which must be received by the Board three weeks prior to the personal interview:

- (1) a completed application;
- (2) background resume;

- (3) certified college transcript(s);
- (4) three reference forms (one of which shall be from an employer) from individuals not related to the applicant who shall certify to the good moral character of the applicant as defined in 21 NCAC 37D .0203;
- (5) licensing questionnaire(s) from every state where the applicant has held a license; and
- (6) a two hundred dollar (\$200) application fee.

*History Note:* Authority G.S. 90-280; 90-285; 90-287;

*Eff. February 1, 1976;*

*Readopted Eff. December 15, 1977;*

*Amended Eff. February 1, 1980;*

*Readopted Eff. October 1, 1981;*

*Amended Eff. August 1, 1995; August 2, 1993;*

*February 1, 1991; May 1, 1989;*

*Transferred and Recodified from 21 NCAC 37A .0912(b)*

*Eff. April 1, 1996;*

*Amended Eff. April 1, 1996;*

*Temporary Amendment Eff. August 15, 1999;*

*Amended Eff. July 1, 2004; July 1, 2000.*

**21 NCAC 37G .0301 REINSTATEMENT OF LICENSE**

Upon re-applying for a license as provided in 21 NCAC 37D .0201, .0202, .0203, .0204 and after a revocation period of two years, the Board may reinstate a license for good cause. Good cause means that the applicant is completely rehabilitated with respect to the conduct which was the basis of the discipline. Evidence of such rehabilitation shall include, but is not limited to, evidence that:

- (1) such person has not engaged in conduct during the discipline period which, if the person had been licensed during such period, would have constituted the basis for discipline under G.S. 90-285.1;
- (2) with respect to any criminal conviction which constituted any part of the previous discipline, the person has completed the sentence imposed, and is no longer on probation, whether supervised or unsupervised; and
- (3) restitution has been made to any aggrieved party.

*History Note:* Authority G.S. 90-285;

*Eff. February 1, 1976;*

*Readopted Eff. October 1, 1981; December 15, 1977;*

*Amended Eff. May 1, 1989;*

*Transferred and Recodified from 21 NCAC 37A .0913*

*Eff. April 1, 1996;*

*Amended Eff. July 1, 2004; April 1, 1996.*

**21 NCAC 37G .0302 RESTORATION OF LAPSED LICENSE**

(a) A nursing home administrator whose license has lapsed for a period of time less than two years shall submit an application to the Board in accordance with 21 NCAC 37D .0402. The application shall be on a form provided by the Board and shall include:

- (1) documentation of the applicant's completion of thirty hours of continuing education approved by the Board during the preceding twenty four months;
  - (2) payment of the current license application fee; and
  - (3) successfully completing the state examination.
- (b) A previously licensed nursing home administrator whose license has lapsed for a period of time exceeding two years may activate the license by submitting an application and shall comply with all of the requirements for licensure as set out in Rule 37D .0102. The Board shall determine whether the applicant complies with the then current requirements of licensure.

*History Note: Authority G.S. 90-285; 90-286; Eff. July 1, 2004.*

**CHAPTER 46 - BOARD OF PHARMACY**

**21 NCAC 46 .2510 WAIVER OF ENFORCEMENT**

The Board may waive the enforcement of specific rules under the following circumstances:

- (1) The departure from ordinary practice is designed to have a positive impact on the delivery of pharmaceutical care or designed to reduce healthcare expenditures;
- (2) Patient health and safety are not compromised by the waiver;
- (3) A policy and procedure manual detailing the type and method of operation, hours of operation, and method of documentation of continuing pharmacist control accompanies the application; and
- (4) The waiver is subject to continuing compliance with the conditions approved by the Board.

*History Note: Authority G.S. 90-85.6; 90-85.34; 150B-19(6); Eff. July 1, 2004.*

**CHAPTER 64 - BOARD OF EXAMINERS OF SPEECH AND LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS**

**21 NCAC 64 .0212 SUPERVISION OF HEARING SCREENING**

(a) The Board of Examiners for Speech and Language Pathologists and Audiologists interprets the words "audiometric screening" used in G.S. 90-294(c) (6) and (f) as the presentation of pure tone stimuli at fixed intensity using pass/fail criteria requiring no interpretation by the person administering the screening. Objective methods of screening auditory function based upon new technology may be used subject to the conditions specified in this Rule.

(b) Fixed-intensity, pure tone audiometric screening performed within the context of an individual speech-language evaluation or assessment is within the scope of practice of licensed speech and language pathologists, and by extension allowed for registered speech-language pathology assistants, provided that it

can be demonstrated that the licensee or registered assistant has received formal instruction and practicum in audiometric screening as part of his or her training program.

(c) Licensed speech and language pathologists, registered speech-language pathology assistants, and unlicensed persons may perform screenings of hearing sensitivity and auditory function on the general public or specific populations provided that the individuals performing such screenings have been properly trained by a licensed audiologist or physician in the specific techniques for that screening and provided that supervision of the screening program is formally vested in a licensed audiologist or physician.

(d) Screening programs using objective or technology-based hearing screening techniques in place of traditional fixed-frequency, pure tone audiometry (for example, automated auditory brainstem response tests, otoacoustic emission screening instruments, microprocessor audiometers, etc.), even though such techniques and instruments may yield a pass-fail indication, require the oversight and supervision of a licensed audiologist or physician.

(e) The Board of Examiners for Speech and Language Pathologists and Audiologists interprets the word "supervision" in G.S. 90-294(c)(6) and (f) to include the following elements:

- (1) Selecting the appropriate calibrated screening instrument to be used for the target population;
- (2) Providing sufficient initial and refresher training in the specific screening methods and instruments to be used to ensure that the screeners have sufficient knowledge of the screening methods, understand the limitations of the screening program, and can demonstrate proper operation of the equipment;
- (3) Assuring that records are maintained describing the training received by the screeners, the names of attendees, the nature of any evaluation and any referral made;
- (4) Providing sufficient evaluation of the test site for ambient sound and to ensure that the screeners are following the screening protocol; and
- (5) Reviewing samples of screening records to confirm that the screening has conformed to the program standards.

(f) Licensed speech and language pathologists and registered speech-language pathology assistants may shall not instruct others in the techniques of hearing screening or supervise hearing screening programs. These aspects of a hearing screening program are within the scope of practice of licensed audiologists and physicians.

*History note: Authority G.S. 90-304(a)(3); Eff. April 1, 2005.*

**21 NCAC 64 .0213 SUPERVISION OF SPEECH SCREENING**

(a) The Board of Examiners for Speech and Language Pathologists and Audiologists interprets the word "testing" used in G.S. 90-293(7) as including speech screening.

(b) Licensed speech and language pathologists, registered speech-language pathology assistants, and unlicensed persons

may perform speech screenings on the general public or specific populations provided that the individuals performing such screenings have been properly trained by a licensed speech and language pathologist in the specific screening techniques for that screening and provided that supervision of the screening program is formally vested in a licensed speech and language pathologist.

(c) The Board of Examiners for Speech and Language Pathologists and Audiologists interprets the word "supervision" in G.S. 90-301A to include the following elements:

- (1) Selecting the appropriate screening instrument to be used for the target population;
- (2) Providing sufficient initial and refresher training in the specific screening methods and instruments to be used to ensure that the screeners have sufficient knowledge of the screening methods, understand the limitations of the screening program, and can demonstrate proper use of the screening materials;
- (3) Assuring that records are maintained describing the training received by the screeners the names of attendees, the nature of any evaluation and any referral made;
- (4) Providing sufficient evaluation of the test site to ensure that the screeners are following the screening protocol; and
- (5) Reviewing samples of screening records to confirm that the screening has conformed to the program standards.

*History note: Authority G.S. 90-304(a)(3); Eff. April 1, 2005.*

**TITLE 25 – OFFICE OF STATE PERSONNEL**

**25 NCAC 02 .0101 ACCOMMODATING REQUESTS FOR ACCESS TO PUBLIC SERVICES**

- (a) Each public agency or contractor shall designate a Public Service Accessibility Coordinator (PSAC). This person may be the ADA Coordinator, but is not required to be.
- (b) Requests for public service program modifications shall be forwarded by the person receiving the request to the PSAC.
- (c) The PSAC shall determine if the requesting party is a "person with a disability" under the provisions of G.S. 168A. The PSA Coordinator shall consult with the North Carolina Office on the ADA (NCOADA) when technical assistance is needed in making the determination.
- (d) The PSAC shall transmit the request for program modifications to the person designated by agency rules to make decisions on such requests. This may be the PSAC or another designee.
- (e) The request shall be evaluated to determine if granting the request would cause an undue hardship on the available resources.
- (f) The request shall be evaluated to determine if the modification requested can be accomplished within the specified time frame.
- (g) When the request can be honored without undue hardship and can be accomplished within the specified time frame, it shall

be approved. The approved request shall be provided without surcharge to the requesting party.

(h) When the request is approved, the PSAC shall contact the requesting party with approval details.

(i) When the request is rejected, the PSAC shall contact the requesting party and provide details of the rationale for the rejection and provide information on any available internal or external dispute resolution and appeal process.

*History Note: Authority G.S. 168A-10.1; Eff. July 1, 2004.*

**25 NCAC 02 .0201 DISPUTE RESOLUTION PROCESS**

When a public entity or contractor refuses to provide a requested program modification, the following procedure shall apply:

- (1) The individual or entity denying a program modification request shall provide a written rationale to the PSAC for the refusal of the request.
- (2) The PSAC shall review the decision and consult with the agency ADA Coordinator and the NCOADA for technical assistance.
- (3) The PSAC shall transmit the decision and the rationale for the denial to the requesting party and shall discuss other possible methods of assuring accessibility with the requesting party.
- (4) The PSAC shall inform the requesting party of the availability of the alternative dispute resolution process and shall also inform him of his right to contact the NC Governor's Advocacy Council for Persons with Disabilities or the United States Department of Justice to request an investigation of the denial of the program modification request.
- (5) When the requesting party chooses informal resolution, he shall be referred to the NCOADA, which shall make efforts to informally resolve the issue of the denial of the program modification request by the use of facilitation and mediation efforts involving the requesting party and the person or agency denying the request.
- (6) When the NCOADA does not achieve informal resolution, which shall be indicated by the withdrawal of the complaint, the NCOADA shall refer the requesting party to mediation sources in the requesting parties locality.
- (7) When the requesting party refuses the referral or resolution is not achieved through formal mediation, the NC Office on the ADA shall, on request, assist the requesting party in contacting the NC Governor's Advocacy Council for Persons with Disabilities or the United States Department of Justice to request an investigation of the denial of the program modification request.

- (8) The PSAC shall keep records of all requests both approved and denied and shall document on-going efforts to provide equal accessibility in its delivery of services to disabled consumers.

*History Note: Authority G.S. 168A-10.1;  
Eff. July 1, 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*

### RULES DECLARED VOID

04 NCAC 02S .0212 CONSUMPTION: INTOXICATION BY PERMITTEE PROHIBITED  
Pursuant to G.S. 150B-33(b)(9), Administrative Law Judge James L. Conner, II declared 04 NCAC 02S .0212(b) void as applied in NC Alcoholic Beverage Control Commission v. Midnight Sun Investments, Inc. t/a Tiki Cabaret (03 ABC 1732).

20 NCAC 02B .0508 FAILURE TO RESPOND  
Pursuant to G.S. 150B-33(b)(9), Administrative Law Judge Melissa Owens Lassiter declared 20 NCAC 02B .0508 void as applied in Burton L. Russell v. Department of State Treasurer, Retirement Systems Division (03 DST 1715).

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b><u>VICTIMS COMPENSATION</u></b>				
Angelique M. Jones on behalf of a juvenile victim, her son, Jaquial Jones v. Victims Compensation Commission	03 CPS 2353	Conner	07/12/04	
<b><u>HEALTH AND HUMAN SERVICES</u></b>				
Walter Ray Nelson, Jr., Karen Marie Nelson v. DHHS	03 DHR 0884	Lassiter	05/18/04	
Olufemi Augustine Ohome v. DHHS, Div. of Facility Services	03 DHR 1062	Lassiter	05/24/04	
Charles Crawford Cox v. DHHS	03 DHR 1546	Lassiter	07/07/04	
Bio-Medical Applications of North Carolina, Inc v. DHHS, Div of Facility Services, CON Section and Total Renal Care of NC, LLC	03 DHR 1553	Chess	06/02/04	
Herbert Lee Henry v DHHS, Division of Facility Services	03 DHR 1590	Connor	06/18/04	19:03 NCR 451
Rebecca Stephens Short v. DHHS, Div of Facility Services	03 DHR 1806	Conner	06/11/04	
Mooreville Hospital Management Assoc, Inc d/b/a Lake Norman Reg. Medical Center v. DHHS, Div of Facility Services, CON Section and Novant Health, Inc. (Lessor) and Forsyth Memorial Hospital (Lessee) d/b/a Forsyth Medical Center	03 DHR 2404	Conner	06/08/04	
Louvenia Jones, Sheryl Willie – General Power of Attorney v. DHHS, Div of Child Development	03 DHR 2445	Gray	06/15/04	
LaDunna K. Brewington v. DHHS, Div of Medical Assistance	04 DHR 0192	Mann	06/09/04	
Martha Williams, Kitz Town v Div of Child Development	04 DHR 0200	Elkins	06/11/04	
Donnell Williams v. Harnet County DSS	04 DHR 0334	Conner	06/28/04	
Terry William Waddell v. Medicaid/NC Health Choice	04 DHR 0335	Mann	06/04/04	
Nathan E. Lang vs DHHS	04 DHR 0439	Conner	06/23/04	
Connie Watt Redice v. DHHS	04 DHR 0546	Lassiter	06/29/04	
Sabrina Betts v. NC Health Personnel Registry	04 DHR 0644	Lassiter	06/02/04	
Tanisha Mitchell v. DHHS, Div. of Facility Services	04 DHR 0787	Mann	06/23/04	

A list of Child Support Decisions may be obtained by accessing the OAH Website: [www.ncoah.com/decisions](http://www.ncoah.com/decisions).

### **DEPARTMENT OF JUSTICE**

Larry Mitchel Batton, Jr. v. Criminal Justice Education & Training Standards Commission	03 DOJ 1067	Lassiter	06/15/04	
Steve A. Matthews v. Sheriff's Education & Training Standards Commission	03 DOJ 1702	Conner	05/10/04	
Charles Robert Branham v. Criminal Justice Education & Training Standards Commission	03 DOJ 2431	Conner	06/22/04	

**CONTESTED CASE DECISIONS**

Bernard Cotton v. DOJ	04 DOJ 0063	Chess	06/03/04	
Jason Oneil Rice v. Sheriffs' Education & Training Standards Commission	04 DOJ 0318	Mann	06/24/04	
<b><u>DEPARTMENT OF PUBLIC INSTRUCTION</u></b>				
Alice Bins Rainey, Michele R Rotosky and Madeline Davis Tucker	02 EDC 2310	Lassiter	06/01/04	19:01 NCR 153
<b><u>ENVIRONMENT AND NATURAL RESOURCES</u></b>				
Beltex Corporation, a Debtor-in Possession v. DENR, Div of Air Quality	00 EHR 1706	Gray	06/18/04	
J.L. Marsh Smith Farms, Inc v. DENR, Div of Air Quality	00 EHR 2116	Gray	06/04/04	
Raymond Wallace, The Golden Mirror vs. Div of Radiation Protection	01 EHR 1558	Mann	06/17/04	
Sandy Mush Properties, Inc v. DENR, Div of Air Quality	03 EHR 1411	Conner	06/28/04	
Ronald Frye v DENR	03 EHR 1636	Gray	06/23/04	
Robert I. Swinson Sr. v. DENR, Div of Marine Fisheries	03 EHR 2248	Chess	06/10/04	
Winston N. Cahoon v. DENR	03 EHR 2305	Lassiter	07/01/04	
Jimmy Mathis, Mathis Pump & Well v. DENR	03 EHR 2336	Wade	05/25/04	
Big Beaver Drilling Rig v. UST Trust Fund Section Final Agency Decision	04 EHR 0612	Wade	05/25/04	
<b><u>MISCELLENOUS</u></b>				
Alesia Braswell Al Wahshi v. Deborah Mcintyre, Wayne Co, Dept. of Social Services	04 MIS 0146	Gray	06/18/04	
O'marr S. Reid v. Gaston Co. Judicial System and Defendants 1,2,3,4,5,6,7,8,9,10	04 MIS 0682	Elkins	06/22/04	
<b><u>DEPARTMENT OF INSURANCE</u></b>				
Amy Coppedge (I.D. No. 156-72-4680-05) and Emma Coppedge v. Speros J. Fleggas vs. DOI	03 INS 0634	Connor	07/06/04	19:03 NCR 457
	04 INS 0251	Elkins	06/10/04	
<b><u>OFFICE OF STATE PERSONNEL</u></b>				
James A. Ray v. Mr. Don Shore, Human Resources, UNC Greensboro	03 OSP 2451	Elkins	06/01/04	
James A. Ray v. Sherry Stevens and Facility Services Management., UNC Greensboro	03 OSP 2452	Elkins	06/01/04	
James A. Ray v. Hoyte Phifer and Facility Services Management, UNC Greensboro	03 OSP 2453	Elkins	06/01/04	
Samuel Williams v. DOC, Div of Alcoholism, Chemical Dependency Programs	04 OSP 0194	Mann	06/09/04	
Jerry William Wiley v. Div of Public Health and DHHS	04 OSP 0210	Elkins	06/23/04	
Barbara Hoffner v. DOC, Div of Prisons, Central Prison	04 OSP 0415	Chess	06/17/04	
Phyllis Holt v. UNC Chapel Hill	04 OSP 0486	Chess	06/01/04	
John V. Smith v. NCSU	04 OSP 0505	Chess	06/17/04	
Mark A. Boyce v. Dept. of Commerce	04 OSP 0543	Gray	07/06/04	
Eldredia B. Mizelle v. Craven Correctional Institution, Dept. of Corrections, David W. Chester, Capt. Kathryn Brown	04 OSP 0582	Wade	06/24/04	
Bernadine Ralph v. O'Berry Center	04 OSP 0706	Lassiter	06/29/04	
<b><u>UNC HOSPITALS</u></b>				
Carrie Ann Sykes v. Chapel Hill Hospital	04 UNC 0245	Elkins	06/25/04	
Danielle Catoe v. UNC Hospitals	04 UNC 0291	Elkins	06/25/04	
Rex A. Coughenour v. UNC Hospitals	04 UNC 0306	Elkins	06/22/04	
Thomas Sherman Tate v. UNC Hospitals	04 UNC 0538	Chess	06/15/04	

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STATE OF NORTH CAROLINA  
COUNTY OF GUILFORD

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
03 DHR 1590

HERBERT LEE HENRY, )  
)  
Petitioner, )  
)  
v. )  
)  
NORTH CAROLINA DEPARTMENT )  
OF HEALTH AND HUMAN SERVICES, )  
DIVISION OF FACILITY SERVICES, )  
)  
Respondent. )

DECISION

THIS MATTER came on for hearing before the undersigned James L. Conner, II, Administrative Law Judge, on the 25<sup>th</sup> day of February in High Point, North Carolina. Respondent filed a "Proposed Recommended Decision" [sic] on April 19, 2004. Petitioner filed handwritten argument on May 4, 2004. An extension of time to file this Decision was granted by Order dated June 3, 2004.

APPEARANCES

Petitioner Pro Se: Herbert Lee Henry  
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Greensboro, NC 27410

For Respondent: Wendy L. Greene  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602

ISSUE

Whether Respondent substantially prejudiced Petitioner's rights when it substantiated the allegation that Petitioner neglected a resident of River Landing at Sandy Ridge by using an improper lifting technique.

APPLICABLE STATUTES AND RULES

N.C. Gen. Stat. §§ 131E-255, 256  
N.C. Gen. Stat. §150B-23  
42 CFR § 488.301  
10 NCAC 3B.1001

EXHIBITS

Respondent's exhibits 1 - 3, 5 - 11, and 13 - 16.

FINDINGS OF FACT

In making the Findings of Fact, the undersigned has weighed all the evidence, and assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case. After careful consideration of the sworn witness testimony presented at the



hearing, the documents and exhibits admitted into evidence, and the entire record in this proceeding, the undersigned makes the following Findings of Fact. To the extent that any of these findings would be more properly characterized as conclusions of law, or any of the conclusions of law more properly characterized as findings of fact, such findings and conclusions are hereby incorporated into the more appropriate section of this Decision.

1. River Landing at Sandy Ridge (River Landing”) is a continuing care retirement community in Colfax, North Carolina. There is both a rest home and nursing home at Sandy Ridge, which makes it subject to N.C. Gen. Stat. §§ 131E-255, 256. (T p. 18; Resp. Exh. 14)

2. At all times relevant to this matter Petitioner, Herbert Lee Henry, was a Certified Nurse Aide (“CNA”), employed on a part-time basis by River Landing to take care of its residents. In addition to being a CNA, Petitioner was also a medication tech, rehabilitation technician and driver. As a CNA, Petitioner helped residents with activities of daily living. As a medical technician, Petitioner administered medications to residents, primarily in the assisted living setting. As a rehabilitation technician Petitioner performed range of motion activities, ambulation, and other activities related to physical or occupational therapy. To become a rehabilitation technician, Petitioner was provided hands on and academic training. As a driver, Petitioner transferred residents from their wheelchairs to the vehicles and took them to appointments. (T pp. 13, 14, 18, 24)

3. Petitioner understands resident neglect to be a failure to look out for a resident in the manner they deserve. (T p. 35)

4. To transfer patients, Petitioner knew how to perform a one person transfer, using a technique that required him to face the resident, grasp the resident’s waistband on either side with his hands, and pivot the resident and sit him/her in a chair that had been placed close to the bed. (T pp. 35 - 39)

5. On July 31, 2003, Petitioner worked second shift, 3:00 p.m. till 11:00 p.m., at the Pebble Beach 2 unit, which provides care for residents needing skilled care. Petitioner cared for approximately four to six residents during a shift. He received instructions on the different services required for the residents at the front desk. In addition, the River Landing nurse would give Petitioner an assignment sheet outlining the specific services needed for the residents on a given shift, such as being taken to the beauty parlor or given a shower. (T p. 19 - 22, 48)

6. At all times relevant to this matter HH was a resident of the Pebble Beach 2 unit of River Landing. Petitioner knew HH because he worked with her from the time she first began to reside at the facility, at which point she resided in Pebble Beach 1. Petitioner estimated HH to be in the range of 88 to 89 years old. She had partial paralysis on her right side and speech problems. (T pp. 25, 26, 27, 42, 43, 44, 47)

7. At the beginning of Petitioner’s employment at River Landing its Hoyer lift, used to transfer residents, was out of order. Under that circumstance, when transferring a Petitioner would sometimes have another aide help him lift a resident for a transfer, but at times he would perform the transfer by himself. Petitioner was trained how to use the Hoyer lift on June 10, 2003. After he was trained, Petitioner used it to transfer residents. (T pp. 28, 29, 30; Resp. Exhs. 1, 2)

8. Petitioner stated that residents who can partially stand are transferred using a gaiter belt to lift them up. This is also called the sit to stand lift. Mechanical lifts should be used to transfer total care residents. According to Petitioner, HH was a total care resident. He said that he could handle HH safely in a one-person lift because he is large and HH was small. (T pp. 58, 59, 60, line 4, 64, 96)

9. On July 31, 2003 Petitioner transferred HH by himself two times. To do so he grasped her waistband on either side, stood her up, and pivoted her around to her chair. He preferred to transfer HH alone that day because it was safer and more protective of the patient to do so than to have someone else helping him. (T pp. 39, 40)

10. Petitioner testified that the first transfer was at approximately 3:30 p.m., so HH could go to dinner. HH’s sitter Vernice Simmons was in the room when Petitioner transferred HH. Petitioner remembered Ms. Simmons standing close by the bed while he transferred HH. She was transferred from the bed to her chair. (T pp. 40, 41)

11. Petitioner further testified that the second transfer was from the chair to the bed. Once again, Petitioner performed the transfer alone using the technique described above. Petitioner thought the transfer went well. In fact, Petitioner had a habit of transferring HH as a one person transfer during the time he worked with her at Pebble Beach 1. Petitioner did not check HH’s care plan on July 31, 2003. He testified that he did check the care plan when HH resided at Pebble Beach1. (T p. 41, 42, 49 - 51)

12. Petitioner provided a written statement to the facility, and testified to the fact that when he transferred HH on July 31, 2003, she said “oh or ouch.” He testified that he asked HH what was wrong, and she responded by smiling. Petitioner also testified that nothing out of the ordinary happened that day. (T p. 52, 53, 54; Resp. Exh. 5)

13. At all times relevant to this matter Vernice Simmons Gaston was a CNA who worked as a Sitter for resident HH. As a sitter, Ms. Gaston's job was to care for the patient in terms of feeding, dressing, watching them, and providing companionship. Ms. Gaston is hired by families, as opposed to facilities, and works with one patient at a time. She sat for HH from November 2000, until HH's death in December 2003. Ms. Gaston sat with HH at River Landing. Ms. Gaston sat with her in twelve hour shifts, beginning at 8:00 a.m. (T pp. 67 - 69)

14. On July 31, 2003, Ms. Gaston sat with HH. In response to Ms. Gaston's request, Petitioner came to HH's room to transfer her at about 4:30 p.m., so Ms. Gaston could get HH ready for dinner. Ms. Gaston told Petitioner that it takes two people to lift HH. Petitioner responded that he had transferred her by himself and knew how to do it. The care plan for HH was inside the bathroom door. Ms. Gaston held the chair next to the bed and Petitioner transferred HH in the one person transfer described above. Ms. Gaston did not offer to help with the transfer, other than holding the chair. (T pp. 70, 71, 83)

15. Ms. Gaston remembered that Petitioner returned to HH's room sometime between 6:30 and 7:00 p.m. to transfer HH. Ms. Gaston stood behind HH's wheelchair. Petitioner told HH that he was about to transfer her. HH did not like men providing her with services. She looked up at Ms. Gaston and said "huh-uh." Ms. Gaston reassured her. She then saw Petitioner use his usual transfer technique of securing HH at the back of her waist by gripping HH's waistband. Petitioner's arms were under HH's arms. He then rocked HH twice, and used the momentum to put HH on the bed. He then put his arms around her shoulders and let her down onto the bed. (T pp. 71, 72, 73, 74)

16. As Petitioner pulled HH onto the bed, HH said "ooh." HH motioned for Petitioner to leave her alone. When Ms. Gaston asked HH what was wrong, HH shook her head back and forth and sighed. (T p. 74)

17. Ms. Gaston removed HH's pants by pulling them off, washed HH, put on her sleeping pad, and put her on her leg braces. HH said "pain," so Ms. Gaston asked for some Tylenol for her. Dorothy Wood, LPN came to HH's room, returned to get two Tylenol, and gave them to HH, who fell asleep shortly thereafter. She often needed Tylenol at night, because having her leg braces put on caused her pain because of her arthritic knees. (T pp. 75, 76)

18. When Ms. Gaston got to work the next day she learned that HH had an injury. She was informed that HH's blood pressure was 180/110, and that HH was in pain. When Ms. Gaston got to HH's room she saw that HH was in a good deal of pain. Ms. Gaston learned that HH had a large bruise on her arm. (T pp. 77, 78)

19. At all times relevant to this matter Megan Riffe was a CNA at River Landing. She worked third shift, from 11:00 p.m. to 7:00 a.m. On July 31, 2003 Ms. Riffe worked with HH. She had worked with her before that day. (T pp. 88 - 90)

20. During the night which began on July 31, 2003, Ms. Riffe noticed that when she tried to turn HH, she whined more than usual and was more agitated. She also noticed the HH would try to prevent her from turning her by grabbing onto her arm. Ms. Riffe called Deborah Jeppsson, RN to look at HH. Ms. Jeppsson, as quoted above, saw nothing unusual in HH's condition or behavior. (T pp. 91 -93)

21. In the morning, Ms. Riffe and another aide did a two person transfer on HH and took her to the shower room. HH would not let them touch her right arm. Once they got HH into the shower, they saw the bruise around on HH's right shoulder. (T pp. 93 - 95; Resp. Exh. 80)

22. Ms. Riffe said that she and the other aide did a two-person transfer on HH because the Hoyer lift's battery was out, but that they usually used the lift to transfer HH. Ms. Riffe thought she remembered a sticker next to HH's door indicating that she was a total lift, which means that a Hoyer lift is necessary. (T p. 95 - 97)

23. At all times relevant to this matter Deborah Jeppsson was a part time Night Nurse at River Landing. On July 31, 2003 Ms. Jeppsson worked the 11:00 p.m. To 7:00 a.m. shift. She worked with HH that evening. (T pp. 108, 109)

24. During Ms. Jeppsson's first round, at about 11:15 p.m, HH was asleep. Later, Ms. Riffe approached Ms. Jeppsson and told that HH was fussing a lot and that she thought she was in pain. When Ms. Jeppsson offered HH medication, HH pressed her lips together and tilted her head back in refusal. (T pp. 110, 111, 112; Resp. Exhs. 10, 11)

25. The next morning, Ms. Riffe and the other aide came to get Ms. Jeppsson so she could see the bruise on HH. It was a full color bruise. Ms. Jeppsson later learned that HH had a fracture in the shoulder area. (T pp. 112, 113, 116; Resp. Exh. 11)

26. At all times relevant to this matter Sheri Wilson Osborne was the Assistant Director of Nursing at River Landing. She was responsible for overall care of the residents at the different units of River Landing. She is also responsible for investigation of allegations against nurse aides. From August 1 - 5 Ms. Osborne conducted the investigation into HH's injury. (T pp. 118, 119, 124)

27. Ms. Osborne reviewed the staffing sheets, telephoned or went to meet with the nurse aides that had provided care to HH, including Ms. Gaston, the Sitter, and asked the people involved to write statements. She concluded that Petitioner had inappropriately transferred HH (T pp. 119, 120)

28. Ms. Osborne said that River Landing policy is to use mechanical lifts. From the time that the facility opened, it adopted that policy, which was against manual lifts. She also stated that although July 31, 2003 was Petitioner's first time working at Pebble Beach 2, it was occupied by residents who had been transferred from Pebble Beach 1, where Petitioner had worked numerous times. (T pp. 122, 123, 124, 126; resp. Exh. 3)

29. At all times relevant to this matter Jean Miller-Levette was an Investigator with the Health Care Personnel Registry/Nurse Aide Registry. Ms. Miller-Levette has been a registered nurse for approximately 27 years, and an investigator with the Registry for approximately two and one half years. She is responsible for investigating allegations of abuse, neglect, diversion of drugs, misappropriation, and fraud in Guilford County. Ms. Miller-Levette received a report that Petitioner had neglected HH at River Landing. She screened in and investigated the allegation. (T pp. 130 - 132)

30. A letter of notice of the investigation was sent to Petitioner, who responded by submitting a letter explaining what happened on July 31, 2003 in his own words. In his letter, Petitioner informed Ms. Miller-Levette that he would be out of the country for a number of weeks. Because he would be unavailable, Petitioner's written statement served as a substitute for an interview. Ms. Miller-Levette interviewed witnesses and the Director of Nursing, Ms. Osborne, and reviewed the facility's documents. Ms. Miller-Levette did not interview Petitioner prior to entering her finding against him. (T pp. 133, 134; Resp. Exhs. 5, 7, 8, 9, 13, 14 )

31. Ms. Miller-Levette concluded that the evidence supported a substantiated finding that on July 31, 2003, Petitioner neglected HH. She defined neglect as the failure to provide a service, resulting in a potential for harm or actual harm. She felt that Petitioner committed neglect because she thought the care plan and lift policy at River Landing indicated that HH was a two-person transfer. This was erroneous. The actual policy and care plan was for HH to be lifted only by the Hoyer lift, because HH's condition required total lift. (T pp. 134 - 137; Resp. Exh. 15)

32. Petitioner was notified of the substantiated finding by letter dated December 8, 2003. (T pp. 138, 139; Resp. Exh. 16)

33. If Mr. Herbert's lift caused the broken shoulder, and if the Hoyer lift had been available, then his failure to use that equipment, resulting in physical harm, might be neglect under the law. HH's injury was tragic, and it is important to make whatever changes are necessary to prevent such injuries.

34. The problem is that there is little evidence of those two critical points regarding Mr. Henry. Most importantly, there is no evidence that the lift performed by Mr. Herbert caused the injury suffered by HH **nor that it was capable of causing any such injury.**

35. There is some circumstantial evidence that Petitioner might have caused the injury. He did lift HH twice the evening before the shoulder break was discovered. HH did indicate discomfort in a couple of ways during the lift and shortly thereafter. The lift was contrary to what was intended for HH. She was supposed to be lifted with the Hoyer lift, but it was inoperative. HH was also fussier during the night than normal, though not enough to cause any of her care providers to suspect serious injury, or for them to desist from rolling her back and forth in the bed to change her.

36. However, the circumstantial evidence that Petitioner did not cause the injury is just as strong, if not stronger. HH slept through much of the night, with only two Tylenol in the early evening for pain. She often needed Tylenol at night, because having her leg braces put on caused her pain because of her arthritic knees. T pp. 75-77. Though she did make some noises indicating discomfort or pain, she always did this when being handled. In fact, HH refused pain medication when offered it during the night. The best trained staff who had contact with HH several times between Petitioner's lifts and the discovery of the injury—two registered nurses—saw nothing about her behavior to indicate that HH had suffered a serious injury. *E.g.* T p. 116; R. Exh 10. Ms. Jeppson, the R.N. on duty that night, wrote in her contemporaneous statement that during that night she

walked by many times. [HH] was always still in bed. No moaning. . . . I helped turn and change pads under [HH] but didn't notice anything very unusual because [HH] usually fusses (mumbles and frowns slightly) when changed. I didn't notice any guarding of any limbs in particular and when we turned her side to side it was by placing palm of hands on hip and behind scapula.

R. Exh. 10. HH was lifted again in the morning to go to the shower. She had also been handled during the night after the lift. Her sitter changed her clothes, diapered her, and put on her leg braces shortly after Petitioner's last transfer of HH. Other CNAs came into the room to change HH's diaper at two a.m., four a.m., and six a.m., which involved rolling HH from side to side. T pp. 74-75, 99, 112. If movement of her arm was sufficient to break it, there are any number of ways the break could have happened in the twelve hours or so between Petitioner's last contact with her and the discovery that she had an injury.

37. No medical evidence was presented. Therefore, there is no evidence of exactly what injury HH received beyond the information that she had a large bruise the next morning and was later determined to have a "broken shoulder" or a break to the "surgical neck of the humerus", which is "more toward the upper area of the arm." T p. 125. There is no medical evidence of how the particular injury suffered by HH can be caused or how it was in fact caused. It might be thought that this court should just assume that a one-person lift causes broken shoulders. I can make no such assumption. When Petitioner performed the lifts, he did not bang HH into anything, such as the bed rails, nor did he drop her. T p 85. The only explanation offered for how the lift could have caused the break is that it caused HH's arms to flop up when he grasped her from the front and under her arms. Though it may be possible for mere movement—rather than impact—to break the shoulder of a very elderly person, it is not such common knowledge that I could take official notice of it, and there was no medical evidence that such a thing is possible, much less likely. Other staff had done single handed lifts with HH at least three or four times. T p. 83. Petitioner had done single handed lifts with HH numerous times before himself. There was no evidence as to what it is about having a second person that would make any injury like this less likely. In the absence of such evidence, one might assume that the reason for two person lifts is to avoid dropping the patient or injury to the staff member. Neither of those things happened here. In fact, Megan Riffe, CNA, testified for the Respondent that she wouldn't use a one person lift on HH "just to make sure that I didn't have any problems with her, like picking her up or swinging her around or just in case that I lost my balance." T p. 104.

38. There was conflicting evidence as to whether HH's room was properly marked indicating that HH was a Total Lift patient. Ms. Gaston testified that there was no such indication outside HH's door, as there should have been, at the time of this occurrence. T p 82. Ms. Riffe, however, thought she remembered a sticker being there that indicated "TL" for total lift, which meant to use the Hoyer lift. T p. 96-97. Petitioner testified that he does not remember there being such a sticker outside HH's door at that time, and that the marking outside the room door was what he relied upon to know how to transfer a patient.

39. Petitioner testified that he felt it was safer to perform a one person transfer than a two person transfer, especially if Ms. Gaston was the one trying to help. He had tried the transfer with Ms. Gaston before, and they had "stumbled with her and almost lost her." T p. 156. His experience told him that having Ms. Gaston hold the chair so it didn't move, and so that the chair could be closer to the bed than it could be if two people were trying to fit in the area between the chair and bed, was safer for the patient. T pp. 155-156.

40. Though much was made of the fact that Petitioner did a one person lift instead of a two person lift for HH, there is no evidence that the two person lift was appropriate for HH. In fact, according to all the testimony, HH was supposed to be lifted ONLY by the Hoyer lift. T p 97; R. Exh 13 ("A TL sticker was posted at her door to alert staff that she is a total lift i.e. mechanical lift resident. We have alerted staff that under no circumstances are they to be transferring resident's [sic] without the proper equipment . . . .") There was no substantial evidence as to how a two person lift would be safer than a one person lift in the circumstances presented to Mr. Henry. A facility policy regarding use of the Hoyer lift was put into evidence (R. Exh. 3), but there was no such policy offered regarding one person versus two person lifts. **This is critical because the Hoyer lift was not in working order when this lift occurred.** Its battery was dead. T p. 95. The Hoyer lift was not one of Mr. Henry's choices. Mr. Henry had a choice between neglecting the patient by refusing to lift her at all, lifting her with help of Ms. Gaston—which he had found to be dangerous for the patient, or lifting her as he had many times before without incident or injury. He made the sensible choice from among those options. If sanctions need to be imposed for this injury, perhaps they should be imposed on the facility for failing to have the proper equipment available for the care of the residents. An individual CNA should not be punished and blacklisted for doing the best he could in the face of his employer's failure.

Based upon the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following:

**CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter pursuant to chapters 131E and 150B of the North Carolina General Statutes.
2. All parties have been correctly designated and there is no question as to misjoinder or nonjoinder.
3. As a certified nurse aide working in a health care facility, Petitioner is subject to the provisions of N.C. Gen. Stat. § 131E-255, 256.

4. "Neglect" is defined as a failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness. 10 NCAC 3H.2001

5. Petitioner did not neglect HH under this definition.

6. In substantiating the allegation of neglect, Respondent acted erroneously, arbitrarily, capriciously, and in violation of law, and thereby prejudiced Petitioner's rights.

**DECISION**

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby determines that the Respondent's decision to place a finding of neglect at Petitioner's name on the Health Care Personnel Registry was erroneous and is hereby REVERSED. The finding of neglect, and any notation that Petitioner was alleged to have committed neglect, shall be removed from the Registry immediately.

**NOTICE**

The Agency that will make the final decision in this contested case is the North Carolina Department of Health and Human Resources, Division of Facility Services.

The Agency is required to give each party an opportunity to file exceptions to the recommended decision and to present written arguments to those in the Agency who will make the final decision. N.C. Gen. Stat. § 150-36(a). The Agency is required by N.C. Gen. Stat. § 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

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 finding of fact and the evidence in the record relied upon by the agency in not adopting the finding of fact. For each new finding of fact made by the agency that is not contained in the Administrative Law Judge's decision, the agency shall set forth separately and in detail the evidence in the record relied upon by the agency in making the finding of fact.

This the 18th day of June, 2004.

\_\_\_\_\_  
James L. Conner, II  
Administrative Law Judge

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
03 INS 0634

AMY COPPEDGE (I.D. Number 156-72-4680-05), )  
and EMMA COPPEDGE, )  
a minor, )

Petitioners, )

v. )

DECISION

STATE OF NORTH CAROLINA )  
TEACHERS' AND STATE )  
EMPLOYEES' COMPREHENSIVE )  
MAJOR MEDICAL PLAN, )

Respondent. )

This contested case was heard before James L. Conner II, Administrative Law Judge, on August 29, 2003 and April 14, 2004 in Raleigh, North Carolina. Petitioner submitted her Proposed Findings of Fact on April 16, 2004. Respondent submitted its Proposed Decision in hard copy on May 20, 2004, and electronically on July 1, 2004. The record was thereupon closed.

APPEARANCES

For Petitioner: Sanford Thompson, P.L.L.C.  
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For Respondent: Lori A. Kroll  
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ISSUE

Whether Respondent correctly denied coverage for durable medical equipment after determining that the use of an orthotic device as treatment for torticollis and positional plagiocephaly was not medically necessary but rather, was for cosmetic purposes.

FINDINGS OF FACT

1. Amy Coppedge is a citizen and resident of Wake County. She is an employee of the State who has been covered by the State of North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan (hereinafter "State Health Plan" or the "Plan") since 1998; her State Health Plan member ID number is 156-72-4680-05.

2. Emma Coppedge was born September 24, 2001. Emma is the daughter of Amy and Mark Coppedge, and she lives with her parents in Wake County. She is a dependent child who has been covered by the State Health Plan since birth.

3. On October 15, 2001, when she was 3 weeks old, Emma Coppedge was taken to her Raleigh pediatrician, Dr. Michael Knudsen, for a sick visit. On that date, Dr. Knudsen examined Emma and noted that she had a soft tissue mass in the left side of her neck.

4. Dr. Knudsen sent Emma for an ultrasound of her neck, and on October 17, 2001, an ultrasound was performed. Emma was diagnosed as having a mass in the sternocleidomastoid muscle on the left side of her neck.

5. The muscle in Emma's neck was abnormal – it was shorter than normal and did not function properly. As a result, Emma was unable to turn her neck and head normally. Emma's neck was twisted and her doctors described the abnormal condition of her neck as torticollis.

6. On October 24, 2001, Dr. Knudsen prescribed physical therapy for Emma, and she began physical therapy on October 24, 2001. Between therapy appointments, Emma's parents regularly did exercises that were recommended by the physical therapists with Emma.

7. Since Emma could not turn her head and neck normally, her skull grew and developed abnormally. Her doctors described the abnormal condition of her head as plagiocephaly.

8. Dr. Knudsen testified, in his opinion, that Emma's torticollis resulted from the congenital muscle abnormality and that her plagiocephaly resulted directly from the congenital abnormality.

9. Despite physical therapy, repositioning, and medical attention from Dr. Knudsen, Emma's skull grew progressively worse and more abnormal: Emma's right ear shifted forward; the right side of her head became flat in the back and the left side of her head grew larger in the front; and her forehead began to bulge forward.

10. When the physical therapy and conservative treatment did not work, Dr. Knudsen discussed use of an orthotic device with Amy Coppedge. He recommended the device to treat Emma before her skull hardened.

11. Dr. Herbert Fuchs, a neurosurgeon in Durham, examined Emma Coppedge on March 27, 2002. It was his opinion that her skull was "obviously" abnormally shaped and that the abnormal shape of Emma's skull resulted directly from the problem with her sternocleidomastoid muscle.

12. On April 11, 2002, Dr. David Matthews, a doctor in Charlotte with an expertise in surgery and plastic surgery with an emphasis in treating children, examined Emma Coppedge. It was his clinical opinion that Emma's torticollis was "severe" and that her plagiocephaly was "severe".

13. Dr. Matthews testified, in his opinion, that Emma's torticollis was caused by the abnormal sternocleidomastoid muscle that was either the result of a congenital defect or a birth injury. Her plagiocephaly resulted from the torticollis.

14. Dr. Matthews prescribed an orthotic device called a Dynamic Orthotic Cranioplasty ("DOC") to treat Emma.

15. DOC is an FDA-approved medical device used to treat infants between the ages of 3 months and 18 months. DOC was approved by the FDA effective August 31, 1998, more than 3 years before Emma was born. A copy of the FDA approval was offered in evidence.

16. Emma Coppedge began DOC treatment, and she continued physical therapy, exercises and repositioning.

17. It was the opinion of Dr. Knudsen that DOC treatment was successful and that DOC prevented Emma from having surgery. He testified that without DOC treatment Emma would have had permanent structural abnormalities of her head resulting in problems with vision, jaw alignment, otitis media, and/or potentially abnormal bone growth.

18. Dr. Matthews testified that in his opinion DOC treatment corrected problems with Emma's cranial base and that without DOC treatment she would have probably had a cross-bite and deformities of her facial region.

19. Dr. Knudsen testified that he believed DOC was a medically necessary, reasonable and customary treatment for Emma Coppedge. His opinions specifically addressed the criteria set forth in the definition of "covered services" appearing at N.C.G.S. §135-40.1(1a).

20. Dr. Knudsen testified: (a) that DOC was appropriate to treat, cure or relieve the abnormal conditions of Emma's skull that occurred as she grew and developed; (b) that DOC was FDA approved and not experimental; (c) that DOC was necessary and appropriate for the treatment, cure or relief of Emma's abnormal condition; (d) that DOC was within the generally accepted standards of medical care in the community where Emma was treated; (e) that DOC was not used solely for the convenience of the Coppedges or himself; (f) that DOC was more cost effective than surgical alternatives; and (g) that DOC was less risky to Emma than likely surgical alternatives. These opinions address the criteria for "medically necessary" set forth in SHD policy ADO125.

21. Dr. Matthews testified that he believed DOC was a medically necessary, reasonable and customary treatment for Emma Coppedge; his opinions specifically addressed the criteria set forth in the definition of "covered services" appearing at N.C.G.S. §135-40.1(1a)

22. Dr. Matthews testified: (a) that DOC was appropriate to treat, cure or relieve the abnormal conditions of Emma's skull that occurred as she grew and developed; (b) that DOC was FDA approved and not experimental; (c) that DOC was necessary and appropriate for the treatment, cure or relief of Emma's abnormal condition; (d) that DOC was within the generally

accepted standards of medical care in the community where Emma was treated; (e) that DOC was not used solely for the convenience of the Coppedges or himself; (f) that DOC was more cost effective than surgical alternatives; and (g) that DOC was less risky to Emma than likely surgical alternatives. These opinions address the criteria for “medically necessary” set forth in SHP policy ADO125.

23. Dr. Knudsen testified that it was his opinion that DOC treatment raised Emma Coppedge to her optimum functioning level and that it was reconstructive treatment; in his opinion, DOC was used to correct a condition which directly resulted from a congenital anomaly in Emma’s sternocleidomastoid muscle.

24. Dr. Knudsen testified that DOC treatment was not used solely to beautify Emma.

25. Dr. Knudsen testified that Emma’s skull was abnormal when DOC was used to treat her, therefore, DOC was not used to change or revise a condition which was within normal and acceptable variations.

26. Dr. Matthews testified that it was his opinion that DOC treatment raised Emma Coppedge to her optimum functioning level and that it was reconstructive treatment; in his opinion, DOC was used to correct a condition that directly resulted from an anomaly in Emma’s sternocleidomastoid muscle.

27. Dr. Matthews testified that DOC treatment was not used solely to beautify Emma.

28. Dr. Matthews testified that Emma’s skull was abnormal when DOC was used to treat her, therefore, DOC was not used to change or revise a condition which was within normal and acceptable variations.

29. The DOC orthotic device is not on a list of non-covered Durable Medical Equipment set forth in SHP policy AHO-0200.

30. DOC treatment for Emma Coppedge was prescribed by a medical doctor. Petitioner requested pre-certification for DOC treatment, but it was turned down by the State Health Plan.

31. DOC treatment is not effective after the skull sutures close and the skull hardens.

32. DOC treatment was begun with Emma Coppedge in April 2002, before her skull hardened; the treatment was successful, and it has been concluded.

33. The total cost for DOC treatment denied by the State Health Plan, \$9,000, is specified in Explanations of Benefits generated by the Plan.

34. The Plan denied benefits for DOC treatment on two bases – that treatment was “not medically necessary” and that it was solely “cosmetic”.

35. Prior to filing this petition, petitioners exhausted all internal and external reviews or appeals.

36. Amy Coppedge has paid for DOC treatment for her daughter, and she seeks reimbursement from the State Health Plan.

37. Neither Dr. Fisher nor Dr. Komives, who testified for the Plan, ever examined, treated or saw Emma Coppedge.

38. Neither Dr. Fisher, Dr. Komives nor Dr. Fuchs ever discussed Emma Coppedge’s condition or treatment with Dr. Knudsen, Dr. Matthews or Emma’s physical therapists.

39. The abnormality of the sternocleidomastoid muscle in Emma Coppedge’s neck, which was diagnosed when Emma was 3 weeks old, was most likely congenital.

40. As Emma Coppedge grew and developed, her skull grew abnormally as a direct result of the deformity, abnormality or anomaly of her sternocleidomastoid muscle.

41. Emma Coppedge did not improve with conservative treatment, including physical therapy and repositioning; and the abnormal shape of her skull continued to worsen despite conservative treatment.

42. DOC treatment was medically necessary, reasonable and customary for Emma’s condition.

43. DOC treatment for Emma Coppedge was prescribed by a treating medical doctor.

44. DOC treatment was a less invasive and less expensive than potential surgical alternatives.



45. DOC treatment was not used solely to beautify Emma Coppedge; in Emma's case, DOC treatment was used to correct a progressively worsening condition that was causing her skull to grow and develop abnormally as a direct result of a congenital deformity or anomaly.

46. DOC treatment was not solely cosmetic for Emma Coppedge. It was reconstructive treatment.

47. Even if Emma's DOC treatment had been solely cosmetic, it would have come within the exception to the exclusion set forth at N.C. Gen. Stat. §135-40.7(14).

CONCLUSIONS OF LAW

1. Our courts have allocated the burden of proof to the insurer where the insurer seeks to avoid payment of a claim, otherwise covered, by application of an exception or limitation in the policy. "The defendant [insurer] had the burden of proving that the expenses incurred for [the insured's] hospitalization came within the stated exception of the policy." *Gunther v. Blue Cross/Blue Shield of North Carolina*, 58 N.C. App. 341, 347 (1982). Similarly, "an insurer seeking to defeat a claim because of an exception or limitation in the policy has the burden of proving that the loss, of a part thereof, comes within the purview of the exception or limitation set up." *Flintall v. Charlotte Liberty Mutual Insurance Company*, 259 N.C. 666, 670 (1963), quoting 29A Am. Jur., Insurance, section 1854, p 918.

2. Our courts have also set up rules of construction governing the interpretation of insurance policies. The following sets out the rules applicable here: "[T]he rules of construction which govern the interpretation of insurance policy provisions extending coverage to the insured differ from the rules of construction governing policy provisions which exclude coverage. Those provisions in an insurance policy which extend coverage to the insured must be construed liberally so as to afford coverage whenever possible by reasonable construction. However the converse is true when interpreting the exclusionary provisions of a policy; exclusionary provisions are not favored and, if ambiguous, will be construed against the insurer and in favor of the insured." *N.C. Farm Bureau Mutual Ins. Co. v. Stox*, 330 N.C. 697, 702 (1992)(citations omitted).

3. The court finds, and the parties stipulated and agreed, that once petitioners offered evidence that Emma Coppedge was covered by the State Health Plan and that a claim for benefits was made, the burden of proof shifted to the Plan to prove that the claimed benefits came within an exception or exclusion to coverage. *Langley v. Durham Life Ins. Co.*, 261 N.C. 459, 135 S.E.2d 38 (1964).

4. The State Health Plan was created by Statute; and provisions of Chapter 135 of the North Carolina General Statutes address the Plan.

5. In addition to the provisions of Chapter 135, the State Health Plan is governed by certain specific policies, including: "Medically Necessary" - policy number ADO125; "Reconstructive & Cosmetic Surgeries" - policy number SUO575; and "Durable Medical Equipment" - policy number AHO200.

6. Amy Coppedge and Emma Coppedge were covered by the State Health Plan at all times pertinent to this action, and a claim was made for DOC treatment for Emma Coppedge.

7. The insuring provisions in the statutes and policies of the State Health Plan must be construed broadly in favor of coverage per the above case law.

8. The State Health Plan has failed to prove by the preponderance of evidence that DOC treatment for Emma Coppedge should have been excluded or excepted from coverage.

9. DOC treatment for Emma Coppedge was medically necessary and was therefore covered.

10. The State Health Plan should reimburse Amy Coppedge fully for payments she made for DOC treatment for Emma Coppedge, less any applicable deductibles or co-payments under the policy.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the decision of Respondent Board of Trustees of the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan to deny Petitioner's reimbursement claim for the DOC treatment is hereby **OVERRULED**. The Plan shall pay directly to Petitioner, within 30 days of this Decision, the full amount she paid for DOC treatment for Emma Coppedge, less any applicable deductibles or co-payments under the policy.

NOTICE

The agency that will make the final decision in this contested case is the Board of Trustees of the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan.

The Agency is required to give each party an opportunity to file exceptions to the recommended decision and to present written arguments to those in the Agency who will make the final decision. N.C. Gen. Stat. § 150-36(a). The Agency is required by N.C. Gen. Stat. § 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

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 finding of fact and the evidence in the record relied upon by the agency in not adopting the finding of fact. For each new finding of fact made by the agency that is not contained in the Administrative Law Judge's decision, the agency shall set forth separately and in detail the evidence in the record relied upon by the agency in making the finding of fact.

**ORDER**

The agency is required by N.C.G.S. §150B-36 to serve a copy of the final agency decision on all parties and to furnish a copy to each party's attorney of record and to the Office of Administrative Hearings.

This the 6<sup>th</sup> day of July, 2004.

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James L. Conner, II  
Administrative Law Judge