

NORTH CAROLINA REGISTER

IN THIS ISSUE



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NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

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

NCAC TITLES		TITLE 21 LICENSING BOARDS	TITLE 24 INDEPENDENT AGENCIES
1	ADMINISTRATION	1 Acupuncture	1 Housing Finance
2	AGRICULTURE & CONSUMER SERVICES	2 Architecture	2 Agricultural Finance Authority
3	AUDITOR	3 Athletic Trainer Examiners	3 Safety & Health Review Board
4	COMMERCE	4 Auctioneers	4 Reserved
5	CORRECTION	6 Barber Examiners	5 State Health Plan Purchasing Alliance Board
6	COUNCIL OF STATE	8 Certified Public Accountant Examiners	
7	CULTURAL RESOURCES	10 Chiropractic Examiners	
8	ELECTIONS	11 Employee Assistance Professionals	
9	GOVERNOR	12 General Contractors	
10A	HEALTH AND HUMAN SERVICES	14 Cosmetic Art Examiners	
11	INSURANCE	16 Dental Examiners	
12	JUSTICE	17 Dietetics/Nutrition	
13	LABOR	18 Electrical Contractors	
14A	CRIME CONTROL & PUBLIC SAFETY	19 Electrolysis	
15A	ENVIRONMENT & NATURAL RESOURCES	20 Foresters	
16	PUBLIC EDUCATION	21 Geologists	
17	REVENUE	22 Hearing Aid Dealers and Fitters	
18	SECRETARY OF STATE	25 Interpreter/Transliterator (Reserved)	
19A	TRANSPORTATION	26 Landscape Architects	
20	TREASURER	28 Landscape Contractors	
21*	OCCUPATIONAL LICENSING BOARDS	29 Locksmith Licensing	
22	ADMINISTRATIVE PROCEDURES (REPEALED)	30 Massage & Bodywork Therapy	
23	COMMUNITY COLLEGES	31 Marital and Family Therapy	
24*	INDEPENDENT AGENCIES	32 Medical Examiners	
25	STATE PERSONNEL	33 Midwifery Joint Committee	
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27	NC STATE BAR	36 Nursing	
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		38 Occupational Therapists	
		40 Opticians	
		42 Optometry	
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		45 Pastoral Counselors, Fee-Based Practicing	
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		48 Physical Therapy Examiners	
		50 Plumbing, Heating & Fire Sprinkler Contractors	
		52 Podiatry Examiners	
		53 Professional Counselors	
		54 Psychology	
		56 Professional Engineers & Land Surveyors	
		57 Real Estate Appraisal	
		58 Real Estate Commission	
		60 Refrigeration Examiners	
		61 Respiratory Care	
		62 Sanitarian Examiners	
		63 Social Work Certification	
		64 Speech & Language Pathologists & Audiologists	
		65 Therapeutic Recreation Certification	
		66 Veterinary Medical	
		68 Substance Abuse Professionals	
		69 Soil Scientists	

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

NORTH CAROLINA REGISTER
 Publication Schedule for January 2004 – December 2004

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

EXPLANATION OF THE PUBLICATION SCHEDULE

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

GENERAL

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

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

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

FILING DEADLINES

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

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

NOTICE OF TEXT

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

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

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

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

**EXECUTIVE ORDER NO. 61
PUBLIC SCHOOL FUNDING**

WHEREAS, the Constitution of North Carolina, Article I, Section 15, and Article IX, Section 2, combine to guarantee every child of this State an opportunity to receive a sound basic education in our public schools; and,

WHEREAS, in the lawsuit of Leandro v. State of North Carolina, 346 N.C. 336 (1997), the North Carolina Supreme Court defined a "sound basic education" by four enumerated requirements. (Id. p. 347); and,

WHEREAS, based on Leandro, a lawsuit was filed by several school districts, Hoke County Board of Education, et al. and Asheville City Board of Educators, et al., vs. State of North Carolina; State Board of Education, alleging that the State of North Carolina had failed to provide adequate funds for the education of children in low-wealth and other school districts; and

WHEREAS, The Honorable Howard E. Manning, Jr., Superior Court Judge of Wake County, entered a judgment on April 4, 2002, ordering the State to remedy the deficiencies for those children, regardless of the county they reside in, who are not being provided the basic educational services. The court further observed that this responsibility cannot be passed down by the State of North Carolina to the local boards of education; and,

WHEREAS, the State Board of Education and the State Superintendent of Public Instruction have developed a plan to comply with the court order and requested supplemental funds to support disadvantaged students in certain low-wealth counties; and,

WHEREAS, Session Law 2004-124, House Bill 1414, also known as the budget bill, did not provide funding to address the court mandate; and

WHEREAS, the state has unexpended appropriations from the 2003-04 fiscal year remaining that were not allocated for public instruction use by the General Assembly in the budget bill; and

WHEREAS, the Public School Fund appropriations for the 2003-04 fiscal year had not been used completely and were not needed to balance the 2004-05 fiscal year budget; and,

WHEREAS, the court order constitutes a continuing obligation of the state.

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

1. Any unexpended 2003-04 appropriations in the Department of Public Instruction in excess of the amounts used by the legislature in the formation of the final 2004-05 budget as signed into law by the Governor shall be carried forward and used for purposes related to school districts in the manner proposed by the State Board of Education and the State Superintendent of Public Instruction in response to the court order. These funds, together with other funds already otherwise expended or committed, shall not exceed the total amount appropriated to the Public School Fund for the 2003-04 school year.
2. The funds authorized under this Executive Order are deemed to be continuing obligations of the State necessary to comply with the court order.

This Executive Order shall be effective immediately.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh, this the 28th day of July, 2004.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

EXECUTIVE ORDER NO. 62
PROCLAMATION OF STATE OF DISASTER FOR DARE AND HYDE COUNTIES

WHEREAS, I have determined that a State of Disaster and State of Emergency, as defined in N.C.G.S. §§ 166A-4 and 14.288.1(10), exists in the State of North Carolina, specifically in Dare and Hyde Counties as a result of the impact of Hurricane Alex on August 3, 2004.

WHEREAS, on August 3, 2004, Dare and Hyde Counties proclaimed a local State of Emergency;

WHEREAS, pursuant to N.C.G.S. § 166A-6, the criteria of Type I disaster are met including the following: 1) Receipt of the preliminary damage assessment from the Secretary of Crime Control and Public Safety; 2) Dare and Hyde Counties declared a local state of emergency pursuant to N.C.G.S. § 166A-8 and N.C.G.S. §§ 14-288.12, 14-288.13 and 14-288.14, and forwarded a written copy of the declaration to the Governor; 3) The preliminary damage assessment meets or exceeds the criteria established for the Small Business Disaster Loan Program pursuant to 13 C.F.R. Part 123, or meets or exceeds the State infrastructure criteria set out in N.C.G.S. § 166A-6.01(b)(2)a; and, 4) A major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared; and

NOW THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, IT IS ORDERED:

Section 1. Pursuant to N.C.G.S. §§ 166A-6 and 14-288.15, a State of Disaster and State of Emergency is hereby declared for Dare and Hyde Counties.

Section 2. State and local government entities and agencies are hereby ordered to cooperate in the implementation of the provisions of this proclamation and the provisions of the North Carolina Emergency Operations Plan.

Section 3. Bryan E. Beatty, Secretary of Crime Control and Public Safety and/or his designee, is hereby delegated all power and authority granted to me and required of me by Chapter 166A and Article 36A of Chapter 14 of the General Statutes for the purpose of implementing the said Emergency Operations Plan and to take such further action as is necessary to promote and secure the safety and protection of the populace in the above-referenced City.

Section 4. Further, Bryan E. Beatty, Secretary of Crime Control and Public Safety, as chief coordinating officer of the State of North Carolina, shall exercise the powers prescribed in N.C.G.S. § 143B-476.

Section 5. I authorize this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) unless the circumstances of the state of disaster prevent or impede, to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to assure proper implementation of this proclamation.

Section 6. The Type I disaster declaration shall expire 30 days after the issuance of the State of Disaster and State of Emergency and Type I disaster proclamation for Dare and Hyde Counties, issued on August 6, 2004, unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date of first issuance. The Joint Legislative Commission on Governmental Operations shall be notified prior to the issuance of any renewal of a Type I disaster declaration.

Done in the Capital City of Raleigh, North Carolina this the 6th day of August, 2004.

MICHAEL F. EASLEY
GOVERNOR

ATTEST:

ELAINE 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.

STATE OF NORTH CAROLINA

**BEFORE THE
TAX REVIEW BOARD**

**COUNTY OF WAKE
IN THE MATTER OF:**

The Proposed Assessments of Additional)
Income Tax for the taxable years 1999)
and 2001 by the Secretary of Revenue)
)
vs.)
)
Rebekah H. Miller,)
Taxpayer)

**ADMINISTRATIVE DECISION
NUMBER: 444**

This Matter was heard before the Regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Tuesday, April 13, 2004, pursuant to the petition of Rebekah H. Miller (hereinafter "Taxpayer") for administrative review of the final decision entered by the Assistant Secretary of Revenue on May 6, 2003, sustaining the proposed assessments of additional income tax for the taxable years 1999 and 2001.

Pursuant to N.C. Gen. Stat. § 105-241.1, a Notice of Individual Income Tax Assessment for tax year 2001 proposing an assessment of additional income tax; ten percent late payment penalty; a twenty-five percent negligence penalty; a \$500 frivolous return penalty, and accrued interest totaling \$2,865.28 was mailed to the Taxpayer on October 15, 2002. On November 26, 2002, a Notice of Individual Income Tax Assessment for tax year 1999 proposing a ten percent late payment penalty; a twenty-five percent negligence penalty, and accrued interest totaling \$2,667.95 was mailed to the Taxpayer. The Taxpayer protested the assessments and requested a hearing before the Secretary of Revenue. After conducting a hearing, Eugene J. Cella, Assistant Secretary of Revenue, issued a final decision sustaining the proposed assessments for the taxable years at issue. Thereafter, the Taxpayer filed a notice of intent and petition for administrative review of the final decision with the Board.

ISSUE

The issue presented to the Board on administrative review of this matter is stated as follows:

Are the assessments for additional income tax proposed against the Taxpayer for the taxable years 1999 and 2001 lawful and proper?

EVIDENCE

Pursuant to N.C. Gen. Stat. § 105-241.2(b), the Board reviewed all the documents, records, data, evidence and other materials that the parties presented at the hearing before the Assistant Secretary. Based upon the Board's review of the documentation, those documents are incorporated by reference and are made a part of this administrative decision.

DECISION

The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2(b2). After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the taxpayer to rebut that presumption. In order to rebut the presumption, the Taxpayer must offer evidence to show that the assessment is not proper. It is the function of this Board, upon administrative review, to review the record and determine whether the final decision is proper based upon the evidence in the record. From a review of the record, the Board determines that the Taxpayer did not provide evidence to show that the assessments are not correct.

Thus, the Board having conducted an administrative hearing in this matter, and having considered the petition, the briefs, the whole record and the Assistant Secretary's final decision, concluded that there was sufficient evidence in the record to support the final decision of the Assistant Secretary.

WHEREFORE, THE BOARD ORDERS that the Assistant Secretary's final decision be confirmed in every respect.

Made and entered into the 7th day of July 2004.

TAX REVIEW BOARD

Richard H. Moore, Chairman
State Treasurer

Jo Anne Sanford, Member
Chair, Utilities Commission

Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE
IN THE MATTER OF:

The Proposed Assessments of Individual)
Income Tax for the taxable years 1993)
through 1996 by the Secretary of Revenue)
))
vs.))
))
Darryl L. and Brenda S. Roberts,)
Taxpayers)

**ADMINISTRATIVE DECISION
NUMBER: 445**

This Matter was heard before the Regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Wednesday, May 26, 2004, pursuant to the petition of Darryl L. and Brenda S. Roberts (hereinafter "Taxpayers") for administrative review of the final decision entered by the Assistant Secretary of Revenue on May 15, 2003, sustaining the proposed assessments of individual income tax for the taxable years 1993 through 1996.

This matter was heard before the Assistant Secretary for Administrative Hearings, Eugene J. Cella, on December 18, 2002, upon an application for hearing by the Taxpayers, wherein they protested the proposed assessments of individual income tax, penalties and interest in the total amount of \$14,220.31. On May 15, 2003, the Assistant Secretary ruled that the proposed income tax assessments were lawful and proper and sustained the assessment in every respect. Pursuant to G.S. 105-241.2, Taxpayers filed a notice of intent and petition for administrative review of the Assistant Secretary's final decision with the Tax Review Board.

ISSUES

The issues on review to the Board are stated as follows:

1. Are the Taxpayers entitled to deductions for nonbusiness itemized deductions in excess of the amounts allowed by the Department of Revenue?
2. Are the Taxpayers entitled to deductions for the husband's employee business expenses and self-employment related expenses in excess of the amounts allowed by the Department of Revenue?
3. Are the individual income tax assessments proposed against the Taxpayers for taxable years 1993 through 1996 lawful and proper?

EVIDENCE

Pursuant to N.C. Gen. Stat. § 105-241.2(b), the Board reviewed all the documents, records, data, evidence and other materials that the parties presented at the hearing before the Assistant Secretary. Based upon the Board's review of the record, the documents are incorporated by reference in this decision.

FINDINGS OF FACT

The Board reviewed and considered the findings of fact entered by the Assistant Secretary in his decision regarding this matter, and Board incorporates by reference the findings of fact in this decision.

CONCLUSIONS OF LAW

The Board reviewed and considered the conclusions of law entered by the Assistant Secretary in his decision regarding this matter, and the Board incorporates by reference the conclusions of law in this decision.

DECISION

The proposed assessments at issue in this matter were based upon the Department of Revenue's disallowance of multiple deductions claimed as miscellaneous employee business expenses, and for items deducted by Taxpayers as incurred in a separate trade or business. The deductions were taken while Dr. Roberts was a visiting professor at Tuskegee University. Dr. Roberts claimed the miscellaneous employee business expenses for tax years 1993 through 1996. The proposed assessments for 1995 and 1996 disallowed

losses and expenses claimed in a “consulting” business that Dr. Roberts began in 1995. From a review of the record, the primary issue before the Assistant Secretary was the business expense deductions and losses claimed for Dr. Roberts’ consulting business for tax years 1995 and 1996. The record shows that Dr. Roberts furnished receipts, canceled checks, and spreadsheets listing various expenses incurred during the tax years at issue, but he did not document how expenses for office equipment and supplies were not in fact for his salaried position with the university. In the final decision, the Assistant Secretary ruled that the Taxpayers failed to establish that the items and various expenses listed qualified under the statute as allowable “business” deductions. The Assistant Secretary also concluded that Dr. Roberts did not keep records to show the actual business need and purpose for the expenditures.

The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2(b2). After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:

(b2). “The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary.”

Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the taxpayer to rebut that presumption. In order to rebut the presumption, the Taxpayer must offer evidence to show that the assessment is not proper. It is the function of this Board, upon administrative review, to review the record and determine whether the final decision is proper based upon the evidence in the record. From a review of the record, the Board determines that the Taxpayer did not provide sufficient evidence to show that the assessments are not proper.

Thus, the Board having conducted an administrative hearing in this matter, and having considered the petition, the brief, the arguments presented, the whole record and the Assistant Secretary’s final decision, concluded that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record; that based upon the findings of fact, the Assistant Secretary’s conclusions of law were fully supported by the findings of fact; therefore the decision of the Assistant Secretary should be confirmed.

WHEREFORE, THE BOARD ORDERS that the Assistant Secretary’s final decision be confirmed in every respect.

Made and entered into the 14th day of June 2004.

TAX REVIEW BOARD

Richard H. Moore, Chairman
State Treasurer

Jo Anne Sanford, Member
Chair, Utilities Commission

Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE
IN THE MATTER OF:

The Proposed Assessment of Unauthorized
Substance Tax dated August 23, 2002 by
the Secretary of Revenue)
)
)
)
vs.)
)
)
Jonathan Tyrone Hough,)
Taxpayer)

**ADMINISTRATIVE DECISION
NUMBER: 446**

This Matter was heard before the Regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Wednesday, May 26, 2004 pursuant to the petition of **Jonathan Tyrone Hough** (hereinafter "Taxpayer") for administrative review of the final decision entered by the Assistant Secretary of Revenue on July 29, 2003, sustaining a proposed assessment of unauthorized substance tax dated August 23, 2002.

Pursuant to N.C. Gen. Stat. § 105-113.111(a) and N.C. Gen. Stat. § 105-241.1, a Notice of Unauthorized Substance Tax Assessment was issued to the Taxpayer assessing \$400.00 tax, \$160.00 penalty and \$35.87 interest, for a total liability of \$595.87. The assessment alleged that the Taxpayer had unauthorized possession of 7.6 grams of crack cocaine on May 16, 2001, without the proper tax stamps affixed. The Taxpayer protested the assessment and requested a hearing before the Secretary of Revenue. Eugene J. Cella, Assistant Secretary, conducted a hearing upon Taxpayer's timely application and objection to the proposed assessment. On July 29, 2003, the Assistant Secretary issued a final decision sustaining the proposed assessment against the Taxpayer. Thereafter, the Taxpayer timely filed a petition for administrative review of the final decision with the Board.

ISSUES

The issues considered by the Board on administrative review of this matter are stated as follows:

1. Did the Taxpayer have actual and/or constructive possession of crack cocaine without the proper tax stamps affixed?
2. Is the Taxpayer subject to the assessment of unauthorized substance excise tax?

EVIDENCE

Pursuant to N.C. Gen. Stat. § 105-241.2(b), the Board reviewed all the documents, records, data, evidence and other materials that the parties presented at the hearing before the Assistant Secretary. Based upon the Board's review of the documentation, that evidence is incorporated by reference and is made a part of this administrative decision.

FINDINGS OF FACT

The Board reviewed and considered the following findings of fact entered by the Assistant Secretary in his decision regarding this matter:

1. On May 16, 2001, officers with the Greensboro Police Department stopped a vehicle operated by the Taxpayer on suspicion that he was driving while impaired.
2. Officers obtained the Taxpayer's consent to search the vehicle and inside they located a nontaxable quantity of marijuana.
3. The Taxpayer was placed under arrest and asked if he had any contraband on his person, since the officers had previously noted the Taxpayer's zipper was down.
4. The Taxpayer admitted he had hidden some crack cocaine in his pants, which was later recovered during a strip search.
5. The SBI lab determined the substance at issue was cocaine [base] weighing 7.6 grams.
6. On August 23, 2002, an assessment of unauthorized substance tax was made against the Taxpayer comprised of excise tax in the amount of \$400.00, penalties totaling \$160.00, and interest in the amount of \$35.87, for a total proposed tax liability of \$595.87, based upon the Taxpayer's possession of 7.6 grams of crack cocaine. Notice of said assessment was sent to the Taxpayer by U.S. Mail.
7. Upon being assessed, and in a timely manner, the Taxpayer requested in writing an administrative tax hearing. He subsequently requested that the hearing be conducted by written communication and he waived his right to appear in person.

8. Neither the Taxpayer nor anyone representing the Taxpayer offered any arguments or evidence that would tend to contradict the assessment.
9. On May 16, 2001, the Taxpayer had actual possession of 7.6 grams of crack cocaine.
10. No tax stamps were purchased for or affixed to the crack cocaine as required by law.

CONCLUSIONS OF LAW

The Board reviewed and considered the following conclusions of law entered by the Assistant Secretary in his decision regarding this matter:

1. A preponderance of the evidence supports the foregoing findings of fact, therefore the Taxpayer is subject to an assessment of unauthorized substances tax.
2. Without authorization, the Taxpayer had actual possession of 7.6 grams of crack cocaine on May 16, 2001, and was therefore a “dealer” as that term is defined in N.C.G.S. 105-113.106(3).
3. The Taxpayer is liable for excise tax in the amount of \$400.00, penalties totaling \$160.00, and such interest as allowed by law.

DECISION

The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2(b2). After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:

- (b2). “The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary.”

Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the taxpayer to rebut that presumption. In order to rebut the presumption, the taxpayer must offer evidence to show that the assessment is not correct. It is the function of this Board, upon administrative review, to review the record and determine whether the final decision is proper based upon the evidence presented at the hearing before the Assistant Secretary.

The Board having conducted an administrative hearing in this matter, and having considered the petition, the briefs, the whole record and the Assistant Secretary’s final decision, concluded that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record; that based upon the findings of fact, the Assistant Secretary’s conclusions of law were fully supported by the findings of fact; therefore the decision of the Assistant Secretary should be confirmed.

WHEREFORE, THE BOARD ORDERS that the Assistant Secretary’s final decision be confirmed in every respect.

Made and entered into the 14th day of June 2004.

TAX REVIEW BOARD

Richard H. Moore, Chairman
State Treasurer

Jo Anne Sanford, Member
Chair, Utilities Commission

Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE
IN THE MATTER OF:

The Proposed Assessment of Unauthorized
Substance Tax dated February 4, 2002 by
the Secretary of Revenue)
)
)
)
vs.)
)
)
Loren D. Dockery,)
Taxpayer)

ADMINISTRATIVE DECISION
NUMBER: 447

This Matter was heard before the Regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Wednesday, May 26, 2004 pursuant to the petition of **Loren D. Dockery** (hereinafter "Taxpayer") for administrative review of the final decision entered by the Assistant Secretary of Revenue on July 2, 2003, sustaining a proposed assessment of unauthorized substance tax dated February 4, 2002.

Pursuant to N.C. Gen. Stat. § 105-113.111(a) and N.C. Gen. Stat. § 105-241.1, a Notice of Unauthorized Substance Tax Assessment was mailed to the Taxpayer assessing tax in the amount of \$1,769,064.50 penalty in the amount of \$707,625.80 and \$187,324.28 interest, for a total proposed liability of \$2,664,014.58.

The Taxpayer protested the assessment and requested a hearing before the Secretary of Revenue. On July 2, 2003, the Assistant Secretary issued the final decision and determined that the Taxpayer possessed 505,446.48 grams of marijuana, without proper tax stamps affixed to the substance. Thereafter, the Taxpayer timely filed a petition for administrative review of the final decision with the Board.

ISSUES

The issues considered by the Board on administrative review of this matter are stated as follows:

1. Did the Taxpayer have actual and/or constructive possession of marijuana without the proper tax stamps affixed?
2. Is the Taxpayer subject to the assessment of unauthorized substance excise tax?

EVIDENCE

Pursuant to N.C. Gen. Stat. § 105-241.2(b), the Board reviewed all the documents, records, data, evidence and other materials that the parties presented at the hearing before the Assistant Secretary. Based upon the Board's review of the documentation, that evidence is incorporated by reference and is made a part of this administrative decision.

FINDINGS OF FACT

The Board reviewed and considered the following findings of fact entered by the Assistant Secretary in his decision regarding this matter:

1. On October 4, 2000, state and federal law enforcement officers executed a federal search at the Taxpayer's home and recovered a large quantity of marijuana.
2. During the search a marijuana processing facility was found in an outbuilding on the Taxpayer's property.
3. The Taxpayer admitted to starting marijuana plants on his property and transplanting them to the area near Allen Gap.
4. The Taxpayer admitted to harvesting the marijuana at Allen Gap and taking it back to his residence for drying and processing.
5. The Taxpayer was caught on a remote surveillance system on September 29, 2000, harvesting the marijuana plants at Allen Gap.
6. The Taxpayer accompanied investigators to Allen Gap and revealed the locations where he had marijuana growing.
7. At the grow area near Allen Gap, agents recovered a total of 461 marijuana plants that weighed a total of 763.36 pounds.

8. There is no evidence that on October 4, 2000, the Taxpayer was in possession of “harvested marijuana stems and stalks that [had] been separated from and [were] not mixed with any other parts of the marijuana plant[s].” (Quoted from G.S. 105-113.107(a)(1).
9. On February 4, 2002, an assessment of unauthorized substance tax was made against the Taxpayer comprised of excise tax in the amount of \$1,769,064.50, penalties totaling \$707,625.80, and interest in the amount of \$187,324.28, for a total proposed tax liability of \$2,664,014.58, based upon the Taxpayer’s possession of 505,446.48 grams of marijuana. Notice of said assessment was sent to the Taxpayer by U.S. Mail.
10. Upon being assessed, and in a timely manner, the Taxpayer requested in writing an administrative tax hearing. He subsequently requested that the hearing be conducted by written communication and he waived his right to appear in person.
11. The substance at issue is marijuana weighing 505,446.48 grams according to the SBI lab report.
12. No tax stamps were purchased for or affixed to the marijuana as required by law.

CONCLUSIONS OF LAW

The Board reviewed and considered the following conclusions of law entered by the Assistant Secretary in his decision regarding this matter:

1. A preponderance of the evidence supports the foregoing findings of fact, therefore the Taxpayer is subject to an assessment of unauthorized substances tax.
2. Without authorization, the Taxpayer had constructive possession of 505,446.48 grams of marijuana on October 4, 2000, and was therefore a “dealer” as that term is defined in N.C.G.S. 105-113.106(3).
3. A proviso in a statute taxing possession of certain separated parts of marijuana at a lower rate than that made applicable in general is a partial exemption and is therefore to be strictly construed against the claim of such special or preferred treatment. Absent evidence that Taxpayer was in possession of separated stems and stalks, Taxpayer is subject to the \$3.50 per gram tax rate rather than the \$.40 per gram rate.
4. Article 2D of the Revenue Act’s definition of “controlled substance” refers to Article 5 of the Controlled Substance Act. Article 5’s definition of “controlled substance” is “a drug, substance or immediate precursor included in Schedules I through VI of this Article.” Schedule VI of Article 5 includes “marijuana.” While both Articles include definitions of “marijuana,” the definitions provided in G.S. 90-87(16) (Article 5) and G.S. 105-113.106(6) (Article 2D) apply only to their respective Articles. Therefore, the definition of marijuana with respect to the unauthorized substance tax assessed against the Taxpayer is that definition found in G.S.105-113.106(6), which includes stems and stalks which have not been separated from other parts of the marijuana plant.
5. An administrative tax hearing lacks the statutory authority to adjudicate constitutional issues.

DECISION

The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2(b2). After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:

- (b2). “The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary.”

Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the taxpayer to rebut that presumption. In order to rebut the presumption, the taxpayer must offer evidence to show that the assessment is not correct. It is the function of this Board, upon administrative review, to review the record and determine whether the final decision is proper based upon the evidence presented at the hearing before the Assistant Secretary.

The Board having conducted an administrative hearing in this matter, and having considered the petition, the brief, the whole record and the Assistant Secretary’s final decision, concluded that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record; that based upon the findings of fact, the Assistant Secretary’s conclusions of law were fully supported by the findings of fact; therefore the decision of the Assistant Secretary should be confirmed.

WHEREFORE, THE BOARD ORDERS that the Assistant Secretary’s final decision be confirmed in every respect.

Made and entered into the 14th day of June 2004.

TAX REVIEW BOARD

Richard H. Moore, Chairman
State Treasurer

IN ADDITION

Jo Anne Sanford, Member
Chair, Utilities Commission

Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE
IN THE MATTER OF:

The Proposed Assessment of Unauthorized)
Substance Tax dated November 6, 2002 by)
the Secretary of Revenue)
)
vs.)
)
Derek B. Stone,)
Taxpayer)

ADMINISTRATIVE DECISION
NUMBER: 448

This Matter was heard before the Regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Thursday, June 10, 2004 pursuant to the petition of Derek B. Stone (hereinafter "Taxpayer") for administrative review of the final decision entered by the Assistant Secretary of Revenue on June 20, 2003, sustaining a proposed assessment of unauthorized substance tax dated November 6, 2002.

Pursuant to N.C. Gen. Stat. § 105-113.111 and N.C. Gen. Stat. § 105-241.1(a)&(b), a notice of proposed assessment was delivered to the Taxpayer by U.S. Mail to his last known address of 109 Ramblewood Drive Apt. # 22, Raleigh, NC 27609. The notice alleged that on October 15, 2002, the Taxpayer was in possession of 705 dosages of clonazepam, 100 dosages of diazepam, 3,933 dosages of hydrocodone, and 200 dosages of Vicodin (hydrocodone), without proper tax stamps affixed to the substances. The notice proposed an assessment comprised of excise tax in the amount of \$24,750.00, penalties totaling \$9,900.00, and interest in the amount of \$123.75, for a total proposed tax liability of \$34,773.75.

The Taxpayer protested the assessment and requested a hearing before the Secretary of Revenue. On June 20, 2003, the Assistant Secretary issued the final decision that sustained the proposed assessment against the Taxpayer. Thereafter, the Taxpayer timely filed a petition for administrative review of the final decision with the Board.

ISSUES

1. Did the Taxpayer have actual and/or constructive possession of clonazepam, diazepam, hydrocodone and Vicodin without proper tax stamps affixed?
2. Is the Taxpayer subject to the assessment of unauthorized substance excise tax?

EVIDENCE

Pursuant to N.C. Gen. Stat. § 105-241.2(b), the Board reviewed all the documents, records, data, evidence and other materials that the parties presented at the hearing before the Assistant Secretary. Based upon the Board's review of the documentation, that evidence is incorporated by reference and is made a part of this administrative decision.

FINDINGS OF FACT

The Board reviewed and considered the following findings of fact entered by the Assistant Secretary in his decision regarding this matter:

1. On October 15, 2002, the Taxpayer gave a written statement wherein he admitted to specific quantities of controlled substances that he had stolen from his employer, CVS Pharmacy, since beginning his employment there in August 2002.
2. The Taxpayer's admission was written and signed by him and contains a statement that it was made voluntarily. The Taxpayer made no showing that the admission was involuntary.
3. In the Taxpayer's case, his signed written admission is supported by substantial independent evidence tending to establish its trustworthiness, namely a CVS Pharmacy surveillance tape shot between October 8 and October 15, 2002 that shows the Taxpayer stealing a total of 1,100 dosages of hydrocodone. (The Taxpayer conceded the existence of the tape at the hearing, see Transcript page 9).
4. The Taxpayer admitted in his signed admission to stealing these same 1,100 dosages of hydrocodone, along with other controlled substances, in taxable quantities from the pharmacy.

5. Furthermore, at the hearing it was established that the Taxpayer worked at the pharmacy from the end of August 2002 until the end of October 2002. This fact tends to show that the Taxpayer had the opportunity to commit the acts of theft of controlled substances from the pharmacy that he admitted to in his signed admission.
6. On November 6, 2002, an assessment of unauthorized substance tax was made against the Taxpayer comprised of excise tax in the amount of \$24,750.00, penalties totaling \$9,900.00, and interest in the amount of \$123.75, for a total proposed tax liability of \$34,773.75, based upon the Taxpayer's possession of 705 dosages of clonazepam, 100 dosages of diazepam, 3,933 dosages of hydrocodone, and 200 dosages of Vicodin. Notice of said assessment was delivered to the Taxpayer by U.S. Mail.
7. Upon being assessed, and in a timely manner, the Taxpayer requested in writing an administrative tax hearing.
8. By his own admission, between August and October 2002, the Taxpayer stole, and thereby possessed, 705 dosages of clonazepam, 100 dosages of diazepam, 3,933 dosages of hydrocodone, and 200 dosages of Vicodin.
9. No tax stamps were purchased for or affixed to the controlled substances as required by law.

CONCLUSIONS OF LAW

The Board reviewed and considered the following conclusions of law entered by the Assistant Secretary in his decision regarding this matter:

1. A preponderance of the evidence supports the foregoing findings of fact; therefore the assessment of unauthorized substances tax against the Taxpayer is concluded to be correct.
2. The Taxpayer's written, signed admission was voluntary.
3. If a Taxpayer's admission is supported by substantial independent evidence tending to establish its trustworthiness, including facts that tend to show the Taxpayer had the opportunity to commit the acts admitted to, then the Taxpayer's admission can be relied upon to sustain an assessment.
 - a. The Taxpayer's admission was written and signed by him and detailed with specificity the controlled substances that he stole and thereby possessed; and
 - b. The Taxpayer's admission is supported by substantial independent evidence tending to establish its trustworthiness, including facts that tend to show the Taxpayer had the opportunity to commit the acts admitted to; therefore, the Taxpayer's admission can be relied upon to sustain the assessment.
4. Without authorization, the Taxpayer possessed 705 dosages of clonazepam, 100 dosages of diazepam, 3,933 dosages of hydrocodone, and 200 dosages of Vicodin between August and October 2002, and was therefore a "dealer" as that term is defined in N.C.G.S. § 105-113.106(3).
5. The Taxpayer is liable for excise tax in the amount of \$24,750.00, penalties totaling \$9,900.00, and interest until date of full payment.

DECISION

The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2(b2). After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:

- (b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the taxpayer to rebut that presumption. In order to rebut the presumption, the taxpayer must offer evidence to show that the assessment is not correct. It is the function of this Board, upon administrative review, to review the record and determine whether the final decision is proper based upon the evidence presented at the hearing before the Assistant Secretary.

The Board having conducted an administrative hearing in this matter, and having considered the petition, the brief, the whole record and the Assistant Secretary's final decision, concluded that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record; that based upon the findings of fact, the Assistant Secretary's conclusions of law were fully supported by the findings of fact; therefore the decision of the Assistant Secretary should be confirmed.

WHEREFORE, THE BOARD ORDERS that the Assistant Secretary's final decision be confirmed in every respect.

Made and entered into the 7th day of July 2004.

TAX REVIEW BOARD

Richard H. Moore, Chairman
State Treasurer

IN ADDITION

Jo Anne Sanford, Member
Chair, Utilities Commission

Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE
IN THE MATTER OF:

The Proposed Assessment of Unauthorized)
Substance Tax dated October 4, 2002)
by the Secretary of Revenue)
)
vs.)
)
Jeffery Stoughton,)
Taxpayer)

ADMINISTRATIVE DECISION
NUMBER: 449

This Matter was heard before the Regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on Thursday, June 10, 2004 pursuant to the petition of Jeffery Stoughton (hereinafter "Taxpayer") for administrative review of the final decision entered by the Assistant Secretary of Revenue on May 28, 2003, sustaining the proposed tax assessment together with penalty and interest against the Taxpayer.

Pursuant to N.C. Gen. Stat. § 105-113.111 and N.C. Gen. Stat. § 105-241.1(a)&(b), a notice of proposed assessment was delivered to the Taxpayer at his last known address of 106 Persimmon Lane, Hampstead, NC 28457. The assessment was based upon the Taxpayer's unauthorized possession of 86 dosages of oxycodone on September 19, 2002, without proper tax stamps affixed to the substance. The notice proposed an assessment comprised of excise tax in the amount of \$1,800.00, penalties totaling \$720.00, and interest in the amount of \$9.00, for a total proposed tax liability of \$2,529.00.

The Taxpayer protested the assessment and requested a hearing before the Secretary of Revenue. On May 28, 2003, the Assistant Secretary issued the final decision that sustained the proposed assessment against the Taxpayer. Thereafter, the Taxpayer timely filed a petition for administrative review of the final decision with the Board.

On September 19, 2002, the Taxpayer was stopped while driving a white Mazda in the 8000 block of Market Street in Wilmington, North Carolina. The Taxpayer was suspected of being under the influence, and was arrested for DWI after he was given a sobriety test. A search of the Taxpayer's vehicle revealed a black bag under the passenger seat that contained multiple types of drugs, including 86 dosages of oxycodone, and drug paraphernalia. The oxycodone pills were white round tablets bearing the imprint of 54/582. The white round tablets were later identified as roxicodone, a brand name for controlled prescription pills containing oxycodone.

ISSUES

1. Did the Taxpayer have actual and/or constructive possession of oxycodone without proper tax stamps affixed?
2. Is the Taxpayer subject to the assessment of unauthorized substance excise tax?

EVIDENCE

Pursuant to N.C. Gen. Stat. § 105-241.2(b), the Board reviewed all the documents, records, data, evidence and other materials presented at the hearing before the Assistant Secretary and reviewed the final decision entered by the Assistant Secretary in this matter.

DECISION

The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2(b2).

After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

On June 10, 2004, the Board conducted an administrative hearing in this matter, and considered the petition, the brief, the record, the Assistant Secretary's final decision, the arguments presented at the administrative hearing and the documentary evidence filed with the Board on April 19, 2004. Upon review of the additional evidence filed by the Taxpayer on April 19, 2004, the Board

deems this evidence material to the issues and determines that it is appropriate to remand this matter to the Assistant Secretary where the evidence shall be taken and ruled upon by the Assistant Secretary. Thus, the Board, in its discretion, remands this matter to the Assistant Secretary for a further proceeding to consider the Taxpayer's additional evidence.

THEREFORE, it is the decision of the Board to **Remand** this matter to the Assistant Secretary for a further proceeding.

Made and entered into the 7th day of July 2004.

TAX REVIEW BOARD

Richard H. Moore, Chairman
State Treasurer

Jo Anne Sanford, Member
Chair, Utilities Commission

Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE
IN THE MATTER OF:

The Proposed Assessment of Sales and Use)
Tax for the period January 1, 1998 through)
December 31, 2000, by the Secretary of)
Revenue of North Carolina)
)
)
)
vs.)
)
Anilox Roll Company, Incorporated,)
Taxpayer)

ADMINISTRATIVE DECISION
Number: 450

This Matter was heard before the Regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer on Tuesday, April 13, 2004, upon a petition filed by Anilox Roll Company, Inc. (hereafter "Taxpayer") for administrative review of the Final Decisions of the Assistant Secretary of Revenue sustaining the sales and use tax assessments, penalties and interest imposed against the Taxpayer for the period of January 1, 1998 through December 31, 2000.

Chairman Richard H. Moore, State Treasurer, presided over the hearing with ex officio member, Jo Anne Sanford, Chair, Utilities Commission and duly appointed member, Noel L. Allen, Attorney at Law participating.

Pursuant to N.C. Gen. Stat. § 105-241.2, the Taxpayer, through counsel, appeals from adverse decisions by the Assistant Secretary of Revenue issued on December 19, 2002 in Docket Numbers 2002-501 and 2002-502 sustaining the assessments of sales and use tax in the amount of \$330,180.43, plus interest, and Mecklenburg Public Transportation sales and use tax in the amount of \$14,552.76, plus interest.

STATEMENT OF CASE AND FACTS

The Taxpayer is a South Carolina corporation that qualified to do business in North Carolina in 1988. The Taxpayer's corporate headquarters and place of business is located in Charlotte, North Carolina. The Taxpayer is in the business of resurfacing metal cylinders used in printing by stripping, electroplating and engraving the cylinders. In performing its business tasks, 80% of the Taxpayer's business concerns cylinders owned by customers that are sent back for resurfacing. The other 20% of the business involves using steel purchased by the Taxpayer to fabricate new cylinders, which it then surfaces and sells to customers. The Taxpayer paid tax on machinery purchased to resurface cylinders at the rate of 1% pursuant to N.C. Gen. Stat. § 105-164.4(1d)b.(1997)(later recodified) on the basis that it was a manufacturer entitled to the reduced rate. The Taxpayer also issued N.C. form E-575s to vendors, which represented that it was a manufacturer, and exempt from sales tax on products and did not pay the Mecklenburg Public Transportation Sales and Use Tax on materials used to surface the cylinders pursuant to N.C. Gen. Stat. § 105-164.13(8) exempting from tax "sales of tangible personal property to a manufacturer which enters into or becomes an ingredient or component part of tangible personal property which is manufactured."

After an audit, the North Carolina Department of Revenue disallowed Taxpayer's claim of exemption for materials used to resurface the cylinders, and denied the 1% preferential state tax levy on equipment, parts and accessories on the basis that the Taxpayer was not a manufacturer and not engaged primarily in retail sales.

ISSUES

The issues considered by the Board on review of this matter are stated as follows:

1. Is the Taxpayer a manufacturer subject to the 1% State rate of tax with a maximum tax of \$80.00 per article with respect to its purchases of mill machinery, mill machinery parts and accessories?
2. Are the Taxpayer's purchases of materials used to refinish steel cylinders or rolls, which belong to its customers, exempt from tax pursuant to N.C. Gen. Stat. § 105-164.13(8) as an ingredient or component parts of manufactured products?

EVIDENCE

Pursuant to N.C. Gen. Stat. § 105-241.2(b), the Board reviewed all the documents, records, data, evidence and other materials that the parties presented at the hearing before the Assistant Secretary.

FINDINGS OF FACTS

The Board reviewed and considered the findings of fact entered by the Assistant Secretary in his decisions regarding Docket Numbers 2002-501 and 2002-502.

CONCLUSIONS OF LAW

The Board reviewed and considered the conclusions of law made by the Assistant Secretary in his decisions regarding Docket Numbers 2002-501 and 2002-502.

DECISION

The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. § 105-241.2(b2). After the Tax Review Board conducts an administrative hearing, this statute provides in pertinent part:

(b2). “The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary.”

Pursuant to N.C. Gen. Stat. § 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the Taxpayer to rebut that presumption. In order to rebut the presumption, the Taxpayer must offer evidence to show that the assessment is not proper. Where the Taxpayer claims an exemption, it has the burden of proving that it falls within the parameters of the exemption statute because exemptions are strictly construed against the Taxpayer.

The uncontested facts in this matter show that the Taxpayer is engaged in the business of stripping, electroplating, and engraving print cylinders. The cylinders are engraved to customer specifications and are used by customers to print packaging materials. Approximately 80% of the Taxpayer’s business concerns the resurfacing of rolls or cylinders that are furnished and owned by its customers. The remaining 20% of the Taxpayer’s business involves the manufacture and sale of new rolls that are engraved by the Taxpayer for use by its customers.

In its petition to this Board, the Taxpayer contends that its purchase of mill machinery used to resurface cylinders used in printing qualifies under N.C. Gen. Stat. § 105-164.4A(2) as the sale of mill machinery to a manufacturing mill or plant. The Taxpayer also claims that its purchases of materials used to resurface the rolls are exempt from taxation under N.C. Gen. Stat. § 105-164.13(8). After conducting an audit, the North Carolina Department of Revenue disallowed Taxpayer’s claim of exemption for materials used to resurface the cylinders, and denied the 1% preferential state tax levy on equipment, parts and accessories on the basis that the Taxpayer was not a manufacturer and not engaged primarily in retail sales.

In the final decisions, the Assistant Secretary concluded that the Taxpayer is not a “manufacturing industry or plant” with the meaning of N.C. Gen. Stat. § 105-164.4A(2) since its principal business is the refurbishing and refinishing of the rolls that belong to its customers. The Assistant Secretary’s conclusion is supported by the fact that the Taxpayer is in the business of resurfacing metal cylinders used in printing by its customers and that approximately 80% of its business consists of resurfacing used rolls that are furnished and owned by its customers. The Assistant Secretary also concluded that the Taxpayer is not entitled to the preferential 1% rate of tax with an \$80.00 maximum tax on its purchases of machinery and equipment used in the resurfacing and engraving of cylinders owned by its customers. In rendering his decisions, the Assistant Secretary determined that the Taxpayer’s operations do not involve a manufacturing process in which it works a substantial change to the ingredients to produce the print rolls or cylinders and that the processes of refurbishing the rolls or cylinders owned by its customers is not identical to the process of manufacturing a new roll or cylinder.

The Board, after conducting an administrative hearing in this matter, and after considering the petition, the briefs, the whole record and the Assistant Secretary’s final decisions, concludes that the findings of fact made by the Assistant Secretary in the decisions were supported by competent evidence in the record; that based upon the findings of fact, the Assistant Secretary’s conclusions of law were fully supported by the findings of fact; therefore the decisions of the Assistant Secretary should be confirmed.

WHEREFORE, THE BOARD ORDERS that the Assistant Secretary’s final decisions be confirmed in every respect.

Made and entered into the 7th day of July 2004.

TAX REVIEW BOARD

Richard H. Moore, Chairman
State Treasurer

IN ADDITION

Jo Anne Sanford, Member
Chair, Utilities Commission

Noel L. Allen, Appointed Member

U.S. Department of Justice

Civil Rights Division

JDR:JBG:NT:tgf
DJ 166-012-3
2004-2259

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

July 12, 2004

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

Dear Mr. Holec:

This refers to the seven annexations (Ordinance Nos. 04-12, 04-13, 04-19, 04-28, 04-33, 04-34, and 04-35) and their designation to districts of the City Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on May 17, 2004.

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

Sincerely,

Joseph D. Rich
Chief, Voting Section

**SUMMARY OF NOTICE OF
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY**

Holden Business Park, LLC

Pursuant to N.C.G.S. § 130A-310.34, Holden Business Park, LLC has filed with the North Carolina Department of Environment and Natural Resources (“DENR”) a Notice of Intent to Redevelop a Brownfields Property (“Property”) in Charlotte, Mecklenburg County, North Carolina. The Property consists of 5.1 acres and is located at 724 Montana Drive. Environmental contamination exists on the Property in groundwater. Holden Business Park, LLC has committed itself to redevelopment of the Property for no uses other than office and warehouse space, and an asphalt parking lot. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Holden Business Park, LLC, which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the Economic Development offices of the City of Charlotte, located at 600 East Trade Street, Charlotte, NC 28202, by contacting Carolyn Minnich at that address, at cminnich@ci.charlotte.nc.us, or at (704) 336-3499; or at 401 Oberlin Rd., Raleigh, NC 27605 by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net, or at (919) 733-2801, ext. 336, where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents. Written public comments may be submitted to DENR within 60 days after the date this Notice is published in a newspaper of general circulation serving the area in which the brownfields property is located, or in the North Carolina Register, whichever is later. Written requests for a public meeting may be submitted to DENR within 30 days after the period for written public comments begins. All such comments and requests should be addressed as follows:

Mr. Bruce Nicholson
Brownfields Program Manager
Division of Waste Management
NC Department of Environment and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

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 02 – AGRICULTURE & CONSUMER SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Agriculture intends to adopt the rule cited as 02 NCAC 09N .0101 and amend the rules cited as 02 NCAC 52B .0208-.0209.

Proposed Effective Date: January 1, 2005

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rules by submitting a request in writing no later than September 16, 2004, to David S. McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

Reason for Proposed Action:

02 NCAC 09N .0101 – Infant formula is required by Federal law to have a "use by" date on the label. The proposed rule would establish a standard of quality for infant formula that would deem the product to be adulterated if offered for sale after the "use by" date.

02 NCAC 52B .0208-.0209 – Proposed changes would exempt goats and sheep from brucellosis and tuberculosis test requirements under certain conditions when entering the state for purposes of exhibition for no more than 30 days.

Procedure by which a person can object to the agency on a proposed rule: Any person may object to the proposed rules by submitting a written statement of objection(s) to David S. McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

Written comments may be submitted to: David S. McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001, Phone (919)733-7125 -x249, Fax (919)716-0105, email david.mcleod@ncmail.net.

Comment period ends: November 1, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, 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 day following the day the Commission approves the rule. 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 09 - FOOD AND DRUG PROTECTION DIVISION

SUBCHAPTER 09N - INFANT FORMULA

02 NCAC 09N .0101 INFANT FORMULA STANDARD OF QUALITY

(a) Infant formula shall be deemed to be adulterated if held or offered for sale after the "use by" date appearing on the label.

(b) For the purpose of this Rule, "infant formula" shall have the same meaning as in the Federal Food Drug and Cosmetic Act at 21 United States Code, Section 321.

Authority G.S. 106-128.

CHAPTER 52 - VETERINARY DIVISION

SUBCHAPTER 52B - ANIMAL DISEASE

SECTION .0200 - ADMISSION OF LIVESTOCK TO NORTH CAROLINA

02 NCAC 52B .0208 IMPORTATION REQUIREMENTS: GOATS

(a) All goats entering the state except those consigned to a federal or state-inspected slaughtering establishment shall be accompanied by a health certificate from the state of origin. The health certificate shall state that the goats were clinically free of any infectious or communicable disease. The health certificate shall include a description of each animal, the age, sex, breed and color or marking shall be given. Goats over six months of age and sexually intact imported from out-of-state shall have a negative brucellosis test within 30 days prior to import, and all imports over six months of age must have a negative tuberculosis test within 60 days prior to import unless they originate from a certified and accredited herd or unless they are consigned to a slaughtering establishment under state or federal inspection.

(b) The brucellosis and tuberculosis testing requirements of this Rule shall not apply to goats entering the state only for exhibition purposes from states that are Tuberculosis Accredited-Free and Brucellosis Certified Free, when

accompanied by an official health certificate. Such animals may remain in the state for exhibition purposes for no more than 30 days from the date of issuance of the health certificate.

Authority G.S. 106-307.5; 106-396.

02 NCAC 52B .0209 IMPORTATION REQUIREMENTS: SHEEP

(a) The health certificate covering the importation of sheep shall include a report of inspection by a veterinarian approved by the chief livestock sanitary official of the state of origin indicating the sheep are not under quarantine and are free from signs of any infectious or communicable disease. The health certificate shall contain a statement that the flock of origin has not had scrapie diagnosed within the past 42 months.

(b) Sheep which have not been handled in stockyards, stock pens or on premises in public use for livestock may be imported without dipping, from a state or area designated as scabies-free by the United States Department of Agriculture.

(c) Unless waived by the State Veterinarian, sheep for purposes other than immediate slaughter that have not been dipped in accordance with the regulations of the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture may not be imported into the state. The requirements for dipping will be waived when it can be determined that the sheep will be isolated from other animals at the North Carolina destination until dipped. While in transit they shall be accompanied by a certificate of such dipping.

(d) Sheep consigned for the purpose of immediate slaughter to a recognized stockyard, or to a slaughtering establishment with state or federal inspection may be imported without a health certificate. A waybill or certificate marked for immediate slaughter must accompany such shipments.

(e) Sheep over six months of age and sexually intact imported from out-of-state shall have a negative brucellosis test within 30 days prior to import, and all imports must have a negative tuberculosis test within 60 days prior to import unless they originate from a certified and accredited herd or unless they are consigned to a slaughtering establishment under state or federal inspection.

(f) The brucellosis and tuberculosis testing requirements of this Rule shall not apply to sheep entering the state only for exhibition purposes from states that are Tuberculosis Accredited-Free and Brucellosis Certified Free, when accompanied by an official health certificate. Such animals may remain in the state for exhibition purposes for no more than 30 days from the date of issuance of the health certificate.

Authority G.S. 106-307.5.

TITLE 10A – DEPARTMENT OF HEALTH & HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Medical Assistance intends to adopt the rules cited as 10A NCAC 22G .0109-.0110 and amend the rules cited as 10A NCAC 22G .0102-.0108.

Proposed Effective Date: January 1, 2005

Public Hearing:

Date: September 22, 2004

Time: 10:00 a.m.

Location: 1985 Umstead Drive, Raleigh, NC 27603, Kirby Building, Room 132

Reason for Proposed Action: Pursuant to HB397, Section 10.28 and State Plan Amendment #03-009, the Nursing Facility Provider Assessment is effective October 1, 2003. The reason for this action is to make the temporary rules in 10A NCAC 22G .0102-.0110 permanent and therefore consistent with the already approved State Plan amendment and Centers for Medicare and Medicaid Services (CMS) waiver. Permanent adoption of these rules will maintain continuity of the administrative rules of the Department of Health and Human Services (DHHS) with the guidance set by the North Carolina General Assembly (HB397, Section 10.28) and the federal Centers for Medicare and Medicaid Services (SPA #03-009 and Waiver).

Procedure by which a person can object to the agency on a proposed rule: Should you desire to object to a proposed rule(s), please respond to DMA with the objection, reasons for the objection, and the clearly identified portion of the rule to which the objection pertains. This must be submitted in writing to Kris M. Horton, Division of Medical Assistance, 2501 Mail Service Center, Raleigh, NC 27699-2501, or fax (919)733-6608.

Written comments may be submitted to: Kris M. Horton, Division of Medical Assistance, 2501 Mail Service Center, Raleigh, NC 27699-2501, or fax (919)733-6608.

Comment period ends: November 1, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, 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 day following the day the Commission approves the rule. 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 22 – MEDICAL ASSISTANCE ELIGIBILITY

SUBCHAPTER 22G – REIMBURSEMENT PLANS

SECTION .0100 – REIMBURSEMENT FOR

NURSING FACILITY SERVICES

10A NCAC 22G .0102 RATE SETTING METHODS

(a) A rate for skilled nursing facility care and a rate for intermediate nursing care shall be determined annually quarterly for each facility to be effective for dates of service for a twelve three month period beginning each October 1. Each patient shall be classified in one of the two categories depending on the services needed. the first day of each calendar quarter. Rates are shall be derived from either filed, desk, desk or field audited cost reports for a base year period to be selected by the state. For rates effective October 1, 2003, the FY01 cost reports shall be used as the base year period. Rates developed from filed cost reports may be retroactively adjusted if there is found to exist more than a two percent difference between the filed direct per diem cost and either the desk audited or field audited direct per diem cost for the same reporting period. Cost reports shall be filed and audited under provisions set forth in 10A NCAC 22G .0104. The minimum requirements of the 1987 OBRA are met by these provisions.

(b) Each prospective rate consists of two components: a direct patient care rate and an indirect rate computed and applied as follows:

- (1) The direct care rate shall based on the Medicaid cost per day incurred in the following cost centers: shall be that portion of the Medicaid daily rate that shall be attributable to:

- (A) Case-mix adjusted costs defined as registered nurse (RN), licensed practical nurse (LPN) and nurse aide salaries and wages; a direct allocation or proportionate allocation of allowable payroll taxes and employee benefits; and the direct allowable cost of contracted services for RN, LPN and nurse aide staff from outside staffing companies.

- (B) Non-case-mix adjusted costs defined as nursing supplies, dietary or food service, patient activities, social services, a direct allocation or proportionate allocation of allowable payroll taxes and employee benefits, and Medicaid cost of direct ancillary services.

- (2) Each facility's direct care rate shall be determined as follows:

- (A) The per diem case-mix adjusted cost shall be determined by dividing the facility's case-mix adjusted base year cost by the facility's total base year inpatient days. This case-mix adjusted base year cost per diem shall be trended forward using the index factor set forth in Paragraph (e) of this Rule. A per diem neutralized case-mix adjusted cost shall be then calculated by dividing each facility's case-mix adjusted per diem cost by the facility cost report period case-

mix index. The facility cost report period case-mix index shall be the resident-weighted average of quarterly facility-wide average case-mix indices, carried to four decimal places. The quarters used in this average shall be the quarters that most closely coincide with the facility's base year cost reporting period. Example: An October 1, 2000 – September 2001 cost report period would use the facility-wide average case-mix indices for quarters ending December 31, 2000, March 31, 2001, June 30, 2001, and September 30, 2001.

- (B) The per diem non-case-mix adjusted cost shall be determined by dividing the facility's non-case-mix adjusted base year cost, excluding the Medicaid cost of direct ancillary services, by the facility's total base year inpatient days plus the facility's Medicaid cost of direct ancillary services base year cost divided by the facility's total base year Medicaid resident days. This non-case-mix adjusted base year cost per diem shall be trended forward using the index factor set forth in Paragraph (e) of this Rule.

- (C) The base year per diem neutralized case-mix adjusted cost and the base year per diem non-case-mix adjusted cost shall be summed for each nursing facility. Each facility's base year per diem result shall be arrayed from low to high and the Medicaid-day-weighted median cost shall be determined. Also for each facility, the percentage that each of these components represents of the total shall be determined.

- (D) The statewide direct care ceiling shall be established at 110 percent of the base year neutralized case-mix adjusted and non-case mix adjusted Medicaid-day-weighted median cost.

- (E) For each nursing facility, the statewide direct care ceiling shall be apportioned between the per diem case-mix adjusted component and the per diem non-case-mix adjusted component using the facility-specific percentages determined in Part (b)(2)(c) of this Rule.

- (F) On a quarterly basis, each facility's direct care rate shall be adjusted to account for changes in its Medicaid average case-mix index. The facility's direct care rate shall be determined as

the lesser of the facility's specific case-mix adjusted component of the statewide ceiling times the facility's Medicaid average case-mix index, plus each facility's specific non-case mix adjusted component of the statewide ceiling; or the facility's per diem neutralized case-mix adjusted cost times the Medicaid average case-mix index, plus the facility's per diem non-case-mix adjusted cost. If applicable an incentive allowance shall be included as provided below. Effective October 1, 2003, the incentive allowance shall be equal to 50% times the difference (if greater than zero) of the facility-specific case-mix component as set out above. The program will be rebased using full price-based methodology. The Division of Medical Assistance may negotiate direct rates that exceed the facility's specific direct care ceiling for ventilator dependent and head injury patients. Payment of such special direct care rates shall be made only after specific prior approval of the Division of Medicaid Assistance.

(G) For rates effective October 1, 2003, the Medicaid average case-mix index calculated as of March 31, 2003 shall be used to adjust the case-mix adjusted component of the statewide direct care ceiling. For rates effective January 1, 2004 and thereafter, the prior quarters Medicaid average case-mix index shall be used to adjust the case-mix adjusted component of the statewide direct care ceiling. Example: January 1, 2004 rate shall use the Medicaid average case-mix index calculated as of September 30, 2003.

(H) The statewide direct care ceiling shall be adjusted annually using the index factor set forth in Paragraph (e) of this Rule. The facility's base year per diem neutralized case-mix adjusted cost plus the facility's base year per diem non-case-mix adjusted cost shall be adjusted annually using the index factor set forth in Paragraph (e) of this Rule.

- (A) — Nursing,
- (B) — Dietary or Food Service,
- (C) — Laundry and Linen,
- (D) — Housekeeping,
- (E) — Patient Activities,
- (F) — Social Services,
- (G) — Ancillary Services (includes several cost centers).

(2) — ~~To compute each facility's direct rate for skilled care and intermediate care, the direct base year cost per day shall be increased by adjustment factors for price changes as set forth in Rule .0102(e).~~

(A) — ~~A facility's direct rates shall not exceed the maximum rates set for skilled nursing or intermediate nursing care. However, the Division of Medical Assistance may negotiate direct rates that exceed the maximum rate for ventilator dependent patients. Ventilator direct rates shall be made only after review and approval of the Division of Medical Assistance.~~

(B) — ~~A standard per diem amount shall be added to each facility's direct rate, including facilities that are limited to the maximum rates, for the projected statewide average per diem costs of the salaries paid to replacement nurse aides for those aides in training and testing status and other costs deemed by HCFA to be facility costs related to nurse aide training and testing. The standard amount shall be based on the product of multiplying the average hourly wage, benefits, and payroll taxes of replacement nurse aides by the number of statewide hours required for training and testing of all aides divided by the projected total patient days.~~

(3) — ~~If a facility did not report any costs for either skilled or intermediate nursing care in the base year, the state average direct rate shall be assigned as determined in Rule .0102(d) of this Section for the new type of care.~~

(4) — ~~The direct maximum rates shall be developed by ranking base year per diem costs from the lowest to the highest in two separate arrays, one for skilled care and one for intermediate care. Each array shall be weighted by total patient days. The per diem cost at the 80th percentile in each array shall be selected as the base for the maximum rate. The base cost in each array shall be adjusted for price changes as set forth in Rule .0102(e) of this Section to determine the maximum statewide direct rates for skilled care and intermediate care.~~

(5) — ~~Effective October 1, 1990, the direct rates shall be adjusted as follows:~~

(A) — ~~A standard per diem amount shall be added to each facility's skilled and intermediate rate to account for the combined expected average additional costs for the continuing education of nurses aides; the residents assessments, plans of care, and charting of nursing hours for each patient; personal laundry and hygiene~~

items; and other non-nursing staffing requirements. The standard amount is equal to the sum of:

- (i) ~~the state average annual salary, benefits, and payroll taxes for one registered nurse position multiplied by the number of facilities in the state and divided by the state total of patient days;~~
- (ii) ~~the total costs of personal laundry and hygiene items divided by the total patient days as determined from the FY 1989 cost reports of a sample of nursing facilities multiplied by the annual adjustment factor described in Rule .0102(e)(4)(B) of this Section; and~~
- (iii) ~~the state average additional pharmacy consultant costs divided by 365 days and then divided by the average number of beds per facility.~~

~~(B) A standard amount shall be added to the intermediate rate of facilities that were certified only for intermediate care prior to October 1, 1990. This amount will be added to account for the additional cost of providing eight hours of RN coverage and 24 hours of licensed nursing coverage. The standard amount is equal to the state average hourly wage, benefits and payroll taxes for a registered nurse multiplied by the 16 additional hours of required licensed nursing staff divided by the state average number of beds per nursing facility. A lower amount shall be added to a facility only if it can be determined that the facility's intermediate rate prior to October 1, 1990 already includes licensed nursing coverage above eight hours per day. The add-on amount in such cases shall be equal to the exact additional amount required to meet the licensed nursing requirements.~~

~~(C) The standard amounts in Subparagraphs (2)(B), (5)(A), and (5)(B) of this Rule, will be retained in the rates of subsequent years until the year that the rates are derived from the actual cost incurred in the cost reporting year ending in 1991 which shall reflect each facility's actual cost of complying with all OBRA 87 requirements.~~

~~(6) Upon completion of any cost reporting year any funds received by a facility from the direct~~

~~patient care rates which have not been spent on direct patient care costs as defined herein shall be repaid to the State. This shall be applied by comparing a facility's total Medicaid direct costs with the combined direct rate payments received for skilled and intermediate care. Costs in excess of a facility's total prospective rate payments shall not be reimbursable.~~

- ~~(7) (3) The indirect rate is shall be intended to cover the following costs of an efficiently and economically operated facility:~~
 - ~~(A) Administrative and General,~~
 - ~~(B) Laundry and Linen,~~
 - ~~(C) Housekeeping,~~
 - ~~(B) (D) Operation of Plant and Maintenance, Maintenance/Non Capital,~~
 - ~~(C) (E) Property Ownership and Use, Capital Lease, and~~
 - ~~(D) (F) Mortgage Interest. Medical Cost of Indirect Ancillary Services.~~

~~(4) Effective for dates of service beginning October 1, 2003, the indirect rate shall be standard for all nursing facilities. Each facility's per diem indirect cost shall be the sum of:~~

- ~~(A) the facility's indirect base year cost, excluding the Medicaid cost of indirect ancillary services, divided by the facility's total base year inpatient days plus; and~~
- ~~(B) the facility's Medicaid cost of indirect ancillary services base year cost divided by the facility's total base year Medicaid resident days.~~

~~The base year per diem indirect cost, excluding property ownership and use and mortgage interest shall be trended forward using the index factor set forth in Paragraph (e) of this Rule. Each facility's base year per diem indirect cost shall be arrayed from low to high and the Medicaid-day-weighted median cost shall be determined. The indirect rate shall be established at 100 percent of the Medicaid-day-weighted median cost. The indirect rate shall be adjusted annually by the index factor set forth in Paragraph (e) of this Rule.~~

~~(c) Nursing facility assessments. An adjustment to the nursing facility payment rate calculated in accordance with Paragraph (b) of this Rule shall be established, effective October 1, 2003, to reimburse Medicaid participating nursing facilities for the providers assessment costs that shall be incurred for the care of North Carolina Medicaid residents. No adjustment shall be made for the providers assessment costs that shall be incurred for the care of privately paying residents or others who shall be not Medicaid eligible.~~

~~(d) Return on Equity. Effective October 1, 2003, the nursing facility payment rate calculated in accordance with Paragraph (b) of this Rule shall be adjusted to include a return on equity capital add-on for those proprietary providers who received a FY01 return on equity capital payment. The return on equity capital~~

add-on shall be equal to the facility's total FY01 return on equity capital payment divided by the facility's base year total Medicaid resident days.

(e) Index factor. The index factor shall be based on the Skilled Nursing Facility Market Basket without Capital Index published by Global Insight using the most current quarterly publication available annually as of August 1. The index factor shall not exceed that approved by the North Carolina General Assembly. If necessary, the Division of Medical Assistance shall adjust the annual index factor or rates in order to prevent payment rates from exceeding upper payment limits established by Federal Regulations.

(f) New Facilities and Transfer of Ownership of Existing Facilities

(1) New facilities shall be those entities whose beds have not previously been certified to participate or otherwise participated in the Medicaid program immediately prior to the operation of the new owner . A new facility's rate shall be determined as follows and shall continue to be reimbursed under this section until the incentive allowance percentage referenced in Part (b)(2)(7) of this Rule shall be equal to 100%:

(A) The direct care rate for new facilities shall be equal to the statewide Medicaid day-weighted average direct care rate that shall be calculated effective on the first day of each calendar quarter. After the second full calendar quarter of operation, the statewide Medicaid day-weighted average direct care rate in effect for the facility shall be adjusted to reflect the facility's Medicaid acuity and the facility's direct care rate shall be calculated as the sum of 65 percent of the statewide Medicaid day-weighted average direct care rate multiplied by the ratio of the facility's Medicaid average case-mix index (numerator) to the statewide Medicaid day-weighted average Medicaid case-mix index (denominator) and the statewide Medicaid day-weighted average direct care rate times 35%.

(B) The indirect rate for a new facility shall be equal to the standard indirect rate in effect at the time the facility shall be enrolled in the Medicaid Program. The indirect rate shall be adjusted annually by the index factor set forth in Paragraph (e) of this Rule.

(C) A new facility's rate shall include also the nursing assessment adjustment calculated in accordance with Paragraph (c) of this Rule.

(2) Transfer of ownership of existing facilities. Transfer of ownership means, for reimbursement purposes, a change in the

majority ownership that does not involve related parties or related entities including, but not limited to, corporations, partnerships and limited liability companies. Majority ownership shall be defined as an individual or entity that owns more than 50 percent of the entity, which shall be the subject of the transaction. The following applies to the transfer of ownership of a nursing facility:

(A) For any facility that transfers ownership, the new owner shall receive a per diem rate equal to the previous owners per diem rate less any return on equity adjustment received by the previous owner, rate adjusted quarterly to account for changes in its Medicaid average case-mix index. The old providers base year cost report shall become the new facility's base year cost report until the new owner has a cost report included in a base year rate setting.

(B) Regardless of changes in control or ownership for any facility certified for participation in the Medicaid program, the Division shall issue payments to the facility identified in the current Medicaid participation agreement. Regardless of changes in control of ownership for any facility certified for participation in Medicaid, the Division shall recover from that entity liabilities, sanctions and penalties pertaining to the Medicaid program, regardless of when the services were rendered.

~~(8) Effective for dates of service beginning October 1, 1984 and ending September 30, 1985 the indirect rates shall be fourteen dollars and sixty cents (\$14.60) for each SNF day of care and thirteen dollars and fifty cents (\$13.50) for each ICF day of care. These rates represent the first step in a two step transition process from the different SNF and ICF indirect rates paid in 1983-84 and the nearly equal indirect rates that shall be paid in subsequent years under this plan as provided in this Rule.~~

~~(9) Effective for dates of service beginning October 1, 1985 and annually thereafter per diem indirect rates shall be computed as follows:~~

~~(A) The average indirect payment to all facilities in the fiscal year ending September 30, 1983 [which is thirteen dollars and two cents (\$13.02)] shall be the base rate.~~

~~(B) The base rate shall be adjusted for estimated price level changes from fiscal year 1983 through the year in which the rates shall apply in~~

accordance with the procedure set forth in Rule .0102(e) of this Section to establish the ICF per diem indirect rate.

(C) The ICF per diem indirect rate shall be multiplied by a factor of 1.02 to establish the SNF per diem indirect rate. This adjustment shall be made to recognize the additional administrative expense incurred in the provision of SNF patient care.

(10) Effective for dates of service beginning October 1, 1989, a standard per diem amount shall be added to provide for the additional administrative costs of preparing for and complying with all nursing home reform requirements. The standard amount shall be based on the average annual salary, benefits and payroll taxes of one clerical position multiplied by the number of facilities in the state divided by the state total of patient days.

(11) Effective for dates of service beginning October 1, 1990, the indirect rate shall be standard for skilled and intermediate care for all facilities and shall be determined by applying the 1990-91 indirect cost adjustment factors in Rule .0102(c) of this Section to the indirect rate paid for SNF during the year beginning October 1, 1989. Thereafter the indirect rate shall be adjusted annually by the indirect cost adjustment factors.

(e) Adjustment factors for changes in the price level. The rate bases established in Rule .0102(b), shall be adjusted annually to reflect increases or decreases in prices that are expected to occur from the base year to the year in which the rate applies. The price level adjustment factors shall be computed using aggregate base year costs in the following manner:

(1) Costs shall be separated into direct and indirect cost categories.

(2) Costs in each category shall be accumulated into the following groups:

- (A) labor,
- (B) other,
- (C) fixed.

(3) The relative weight of each cost group shall be calculated to the second decimal point by dividing the total costs of each group (labor, other, and fixed) by the total costs for each category (direct and indirect).

(4) Price adjustment factors for each cost group shall be established as follows:

(A) Labor. The expected annual percentage change in direct labor costs as determined from a survey of nursing facilities to determine the average hourly wages for RNs, LPNs, and aides paid in the current year and projected for the rate year. The percentage change for indirect labor costs shall be based on the projected

average hourly wage of N.C. service workers.

(B) Other. The expected annual change in the implicit price deflator for the Gross National Product as provided by the North Carolina Office of State Budget and Management.

(C) Fixed. No adjustment shall be made for this category, thus making the factor zero.

(D) The weights computed in (e)(3) of this Rule shall be multiplied times the percentage change computed in (e)(4)(A),(B) and (C) of this Rule. These products shall be added separately for the direct and indirect categories.

(E) The sum computed for each category in (e)(4)(D) of this Rule shall be the price level adjustment factor for that category of rates (direct or indirect) for the coming fiscal year.

(F) However, effective October 1, 1997 for fiscal year 1998, the price level adjustment factors calculated in Part (e)(4)(E) of this Rule shall be adjusted to 2.04% for direct rates and 1% for indirect rates, in order to produce fair and reasonable reimbursement of efficient operators.

(G) Effective October 1, 2001, the price level adjustment factors calculated in Part (e)(4)(E) of this Rule shall not exceed that approved by the North Carolina General Assembly.

(d) The skilled and intermediate direct patient care rates for new facilities shall be established at the lower of the projected costs in the providers Certificate of Need application inflated to the current rate period or the average of industry base year costs and adjusted for price changes as set forth in Rule .0102(e) of this Section. A new facility receives the indirect rate in effect at the time the facility is enrolled in the Medicaid program. In the event of a change of ownership, the new owner receives the same rate of payment assigned to the previous owner.

(e) (g) Each out-of-state provider shall be reimbursed at the lower of the appropriate North Carolina maximum rate statewide Medicaid day-weighted average direct care plus the indirect rate or the providers payment rate as established by the State in which the provider is shall be located. For patients with special needs who must be placed in specialized out-of-state facilities, a payment rate that exceeds the North Carolina maximum rate statewide Medicaid day-weighted average direct care plus the indirect rate may be negotiated. A facility's negotiated rate for specialized services shall be based on budget projections of revenues, allowable costs, patient days, staffing and wages, at a level no greater than the facility's specific projected cost, and subject to review.

(f) (h) Specialized Service Rates:

- (1) Head Injury Intensive Rehabilitation Services.
 - (A) A single all-inclusive prospective per diem rate combining both the direct

and indirect cost components may be negotiated for nursing facilities that specialize in providing intensive rehabilitation services for head-injured patients. The rate may exceed the maximum rate applicable to other Nursing Facility services. A facility must specialize to the extent of staffing at least 50 percent of its Nursing Facility licensed beds for intensive head-injury rehabilitation services. The facility must also be accredited by the Commission for the Accreditation of Rehabilitation Facilities (CARF).

- (B) A facility's initial rate ~~is~~ shall be negotiated based on budget projections of revenues, allowable costs, patient days, staffing and ~~wages. wages, at a level no greater than the facility's specific projected cost, and subject to review upon the completion of an audited full year cost report. The negotiated rate shall not be less than the North Carolina statewide Medicaid day-weighted average direct care plus the indirect rate.~~ A complete description of the facility's medical program must also be provided. Rates in subsequent years ~~are~~ shall be determined by applying the index factor as set forth in Paragraph (e) of this Rule average annual skilled nursing care adjustment factors to the rate in the previous year, unless either the provider or the State requests a renegotiation of the rate within 60 days of the rate notice.
- (C) Cost reports for this service must be filed in accordance with the rules in 10A NCAC 22G .0104, but there shall not be ~~no~~ cost settlements for any differences between cost and payments. ~~Since it is appropriate to include all financial considerations in the negotiation of a rate, a provider shall not be eligible to receive separate payments for return on equity as defined in 10A NCAC 22G .0105. The negotiated rate shall be considered to provide payment for all financial considerations and shall not include return or equity adjustment as defined in this Rule. The negotiated rate shall be paid to the facility for services provided to head injured patients only. The per diem payment rate for non-head injured patients shall be the rate calculated in~~

accordance with Paragraph (b)-(e) of this Rule.

- (2) Ventilator Services.
 - (A) Ventilator services approved for nursing facilities providing intensive services for ventilator dependent patients shall be reimbursed at higher direct rates as described in Subparagraph (b)(2)(A) of this Rule. ~~Ventilator services shall be paid by combining the enhanced direct rate with the nursing facility indirect rate determined under Subparagraph (b)(11) of this Rule.~~
 - (B) A facility's initial direct rate shall be negotiated based on budget projections of revenues, allowable costs, patient days, staffing and ~~wages. wages, at a level no greater than the facility's specific projected cost, and subject to review upon the completion of an audited full year cost report. The negotiated rate shall not be less than the North Carolina statewide Medicaid day-weighted average direct care plus the indirect rate.~~ Rates in subsequent years shall be determined by applying ~~the nursing facility direct adjustment factor to the previous 12 month cost report direct cost. the index factor as set forth in Paragraph (e) of this Rule to the negotiated rate in the previous year, unless either the provider or the State requests a renegotiation of the rate within sixty days (60) of the rate notice.~~
 - (C) Cost reports ~~and settlements~~ for this service shall be filed in accordance with 10A NCAC 22G .0104 ~~and return on equity shall be allowed as defined in 10A NCAC 22G .0105. but there shall not be settlements for any difference between cost and payments.~~
 - (D) A single all-inclusive prospective per diem rate combining both the direct and indirect cost components may be negotiated for nursing facilities that specialize in providing intensive services for ventilator-dependent patients. ~~The rate may exceed the maximum rate applicable to other Nursing Facility services. For ventilator services, the only facilities that shall be eligible for a combined single rate are freestanding facilities with fewer than 21 Nursing Facility Beds and that serve only patients requiring ventilator services. Ventilator services provided in larger~~

facilities shall be reimbursed at higher direct rates as described in Subparagraph (b)(2)(A) of this Rule. The negotiated rate shall be considered to provide payment for all financial considerations and shall not include the return on equity adjustment as defined in Rule .0102. The negotiated rate shall be paid to the facility for services provided to ventilator patients only. The per diem payment rate for non-ventilator patients shall be the rate calculated in accordance with Paragraph (b)-(e) of this Rule.

~~(g) Effective October 1, 1994 the bloodborne pathogen cost required under Title 29, Part 1910, Subpart 2, Section 1910.0130 of the Code of Federal Regulations shall be included in the nursing facility's direct cost reimbursement. The initial per diem amount shall be set at the lower of the actual or eightieth percentile of bloodborne pathogen costs incurred in fiscal year 1993.~~

~~(h)~~ (i) Religious Dietary Considerations.

- (1) A standard amount may be added to a nursing facility's ~~skilled and intermediate care rates, that may exceed the maximum rates determined under Paragraph (b) of this Rule,~~ rate for special dietary need for religious reasons.
- (2) Facilities must apply to receive this special payment consideration. In applying, facilities must document the reasons for special dietary consideration for religious reasons and must submit documentation for the increased dietary costs for religious reasons. Facilities must apply for this special benefit each time rates ~~are~~ shall be determined from a new ~~data base database.~~ Fifty or more percent of the patients in total licensed beds must require religious dietary consideration in order for the facility to qualify for this special dietary rate add-on.
- (3) The special dietary add-on ~~rate~~ may not exceed more than a ~~30 percent increase in the average skilled and intermediate care dietary rates calculated for the 80th percentile of facilities determined under Subparagraph (b)(4) of this Rule and adjusted for annual inflation factors. This maximum add-on shall be 140% of the base year neutralized case-mix adjusted and non-case-mix adjusted Medicaid day-weighted median cost determined under Paragraph (b)(2)(d) of this Rule and adjusted for inflation adjusted by the direct rate inflation factor each year until a new data base database shall be used to determine rates.~~
- ~~(4) This special dietary add-on rate shall become part of the facility's direct rates to be reconciled in the annual cost report settlement.~~

~~(i) Effective October 1, 1994 nursing facilities shall provide medically necessary transportation for residents, unless ambulance transportation is needed. Reimbursement shall be~~

included in the nursing facility's direct cost. The initial amount shall be based on a per diem fee derived from estimated industry cost for transportation and associated salaries.

~~(j) This reimbursement limitation shall become effective in accordance with the provisions of G.S. 108A-55(e).~~

Authority G.S. 108A-25(b); 108A-54; 108A-55; 29 C.F.R. 1910, Subpart Z; 42 C.F.R. 447, Subpart C; S.L. 1991, c. 689, s. 95.

10A NCAC 22G .0103 REASONABLE AND NON-ALLOWABLE COSTS

(a) Providers have a responsibility to operate economically and efficiently so that their costs are reasonable. Providers are required to provide services at the lowest possible costs in compliance with Federal and State laws, regulations for licensing and certification, and standards for quality of care and patients safety. Providers are also responsible for the financial actions of their agents (e.g., management companies) in this regard.

(b) The state may publish guidelines to define reasonable costs in certain areas after study of industry-wide cost conditions.

(c) The following costs are considered non-allowable facility costs because they are not related to patient care or are specifically disallowed under the North Carolina State Plan:

- (1) bad debts;
- (2) advertising-except personnel want ads, and one line yellow page (indicating facility address);
- (3) life insurance (except for employee group plans);
- (4) interest paid to a related party;
- (5) contributions, including political or church-related, charity and courtesy allowances;
- (6) prescription drugs and insulin (available to recipients under State Medicaid Drug Program);
- (7) vending machine expenses;
- (8) personal grooming other than haircuts, shampooing (basic hair care services) and nail ~~trimming; trimming performed by either facility staff or barbers/beauticians. The facility may elect the means of service delivery. The costs of services beyond those provided by the nursing facility, are the responsibility of the patient;~~
- (9) state or federal corporate income taxes, plus any penalties and interest;
- (10) telephone, television, or radio for personal use of patient;
- (11) ~~penalties or interest on income taxes; income taxes, plus any penalties and interest;~~
- (12) dental expenses--except for consultant fees as required by law;
- ~~(13) personal income taxes, plus any penalties and interest;~~
- ~~(14)~~ (13) farm equipment and other expenses;
- ~~(15)~~ (14) retainers, unless itemized services of equal value have been rendered;

- ~~(16)~~ (15) physicians fees for other than ~~utilization review~~ or medical directors or medical consultants as required by law;
- ~~(17)~~ (16) country club dues;
- ~~(18)~~ (17) sitter services or private duty nurses;
- ~~(19)~~ (18) fines or penalties;
- ~~(20)~~ (19) guest meals;
- ~~(21)~~ (20) morgue boxes;
- ~~(22)~~ (21) leave days--except therapeutic leave;
- ~~(23)~~ (22) personal clothing;
- ~~(24)~~ (23) ancillary costs that are billable to Medicare or other third party payors.

(d) For those non-allowable expenses which generate income, such as prescription drugs, vending machines, hair care (other than basic care), etc., expense shall be identified as a non-reimbursable cost center, where determinable. If the provider cannot determine the proper actual amount of expense which is to be identified, then the income which was generated must be offset in full to the appropriate cost center. center if the income reasonably covers the cost incurred. If income generated does not reasonably cover the cost incurred, an adjustment must be made to recognize a reasonable amount of non-reimbursable cost.

(e) For combination facilities (e.g. Nursing/Adult Care Home), providers must ensure that salary and wage expense coded or allocated to each area considers minimum staffing requirements (nursing hours per patient day or census statistics as appropriate).

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C.

10A NCAC 22G .0104 COST REPORTING: AUDITING

(a) Each facility that receives payments from the North Carolina Medicaid Program must prepare and submit a an annual report of its costs and other financial ~~information~~, information to include; the facility's original working trial balance, year end adjusting journal entries, and the facility's daily midnight census records for the cost reporting period, such as the working trial balance, related to reimbursement annually. The report must include costs from the fiscal period beginning on October 1 and ending on September 30 and must be submitted to the state on or before the December 31 that immediately follows the September 30 year end. A new provider must submit a report for the period beginning with the date of certification and ending on September 30. Hospital based nursing facilities with a fiscal year ending other than September 30 and State operated facilities with a June fiscal year ending must file their cost reports within ~~90~~ 150 days after their fiscal year ends. Facilities that fail to file their cost reports by the due date are subject to payment suspension until the reports are filed. The Division of Medical Assistance may extend the deadline 30 days for filing the report if, in its view, good cause exists for the delay. A good cause is an action that is uncontrollable by the provider.

(b) Cost report format. The cost report must be submitted on forms provided by the Division of Medical Assistance. The account structure for the report is based on the chart of accounts published by the American Healthcare Association in 1979 but amended or modified to the extent necessary to meet the ~~special reimbursement~~ requirements of this plan. The Division of Medical Assistance shall make one copy of the cost report

format with detailed instructions and guidance available to each facility (combination facilities receive only one) on or before ~~July~~ September 1 of the reporting year for which the report is to be filed.

(c) Cost finding and allocation. Costs must be reported in the cost report in accordance with the following rules and in the order of priority stated.

- (1) Costs must be reported in accordance with the specific provisions of this plan as set forth in this Rule.
- (2) Costs must be reported in conformance with the Medicare Provider Reimbursement Manual, HCFA 15.
- (3) Costs must be reported in conformance with Generally Accepted Accounting Principles.

~~(d) The specific cost reporting guidelines related to this plan are set forth in the following Paragraphs. The state shall publish guidelines, consistent with the provisions of this plan, concerning the proper accounting treatment for items described in this rule as related operating expenses. A provider may request clarification in writing from the state if there is uncertainty about the proper cost center classification of any particular expense item. Clarifications may be made prior to the beginning of each cost reporting period. In no case, however, shall any clarifications be applied retroactively.~~

- (1) Nursing Cost Center includes the cost of nursing staff, medical supplies, and related operating expenses needed to provide nursing care to patients, including medical records (including forms), ~~utilization review~~, the Medical Director and the Pharmacy Consultant. The amount of nursing time provided to each patient must be recorded in order to allocate nursing cost between ~~skilled and intermediate nursing care. reimbursable and non-reimbursable cost centers. Effective October 1, 1996, Direct Patient Care Equipment shall be reported to the Nursing Cost Center and is defined as equipment which meets all of the following tests:~~
 - (A) ~~Its primary purpose is to enhance the quality, efficiency, or safety of the work of direct patient care personnel;~~
 - (B) ~~It enables direct patient care personnel to measure patients physical characteristics or to implement the plans of care (including assistance with activities of daily living) of patients with physical impairments or to promote the safety of patients with cognitive impairments;~~
 - (C) ~~It is not office or bedroom furniture; and~~
 - (D) ~~It is not a communications device or computer hardware or software.~~

~~The Division of Medical Assistance shall make available a non-all inclusive list of items which may be reported as direct patient care equipment, consistent with the provisions of this Rule. This list may be prospectively modified by the Division of Medical Assistance at any time, based on the preponderance of evidence.~~

Items reported as direct patient care equipment which are not on this list are subject to a case by case review during any audit conducted under Paragraph (e) of this Rule. Providers must demonstrate by a preponderance of evidence that such items meet the definition of direct patient care equipment as stated in this Rule. Providers are required to exercise the prudent buyer principle as set out in HCFA 15 when procuring direct patient care equipment. This provision is applicable to lease or depreciation expense incurred on or after October 1, 1996 regardless of when the equipment was initially leased or acquired. Direct patient care equipment maintenance and repair costs shall be reported in the Operation of Plant and Maintenance Cost Center. All other costs associated with direct patient care equipment shall be reported in the cost centers that would be appropriate if the costs were associated with other equipment.

- (2) Dietary Cost Center includes the cost of staff, raw food, and supplies needed to prepare and deliver food to patients.
- (3) Laundry and Linen Cost Center includes the cost of staff, bed linens (replacement mattresses and related operating expenses needed to launder facility-provided items).
- (4) Housekeeping Cost Center includes the cost of staff and supplies needed to keep the facility clean.
- (5) Patient Activities Cost Center includes the cost of staff, supplies, and related operating expenses needed to provide appropriate diversionary activities for patients.
- (6) Social Services includes the cost of social workers and related operating expenses needed to provide necessary social services to patients.
- (7) Ancillary Cost Center includes the cost of all therapy services covered by the Medicaid program and billable medical supplies. Providers must bill Medicare Part B for those ancillary services covered under the Medicare Part B program. Ancillary cost centers include: Radiology, Laboratory, Physical Therapy, Occupational Therapy, Speech Therapy, Oxygen Therapy, Intravenous Fluids, Billable Medical Supplies, Parenteral/Enteral Therapy and life sustaining equipment, such as oxygen concentrators, respirators, and ventilators and other specifically approved equipment. Effective October 1, 1996, air fluidized beds (e.g. Clinitron beds), low air loss mattresses or beds and alternating pressure mattresses may be recorded in the life sustaining equipment cost center. This program is applicable to lease or depreciation expense incurred on or after October 1, 1996 regardless of when the equipment was initially leased or acquired. Effective October 1, 1994, a separate ancillary cost center shall be established to include costs associated with medically related transportation for facility residents. Medically related transportation costs include the costs of vehicles leased or

owned by the facility, payroll costs associated with transporting residents and payments to third parties for providing these services.

- (8) Administrative and General Cost Center includes all costs needed to administer the facility including the staff costs for the administrator, assistants, billing and secretarial personnel, personnel director and pastoral expenses. It includes the costs of copy machines, dues and subscriptions, transportation, income taxes, legal and accounting fees, start-up, and other administrative costs as set forth in the Chart of Accounts. Interest expense other than that stemming from mortgages or loans to acquire physical plant items shall be reported here.

(9) Property Ownership and Use: Capital / Lease:

- (A) This cost center includes all allowable costs related to the use of the physical assets including building, fixed equipment and movable equipment, that are required to deliver patient care, except for automobiles and the special equipment, as specified in Subparagraphs (d)(1) or (d)(7) of this Rule. Except for automobiles and the special equipment noted in Subparagraphs (d)(1) and (d)(7), it includes the following items:
 - (i) ~~all equipment expense regardless of equipment nature,~~
 - (ii) ~~lease expense for all physical assets,~~
 - (iii) ~~depreciation of assets utilizing the straight line method,~~
 - (iv) ~~interest expense of asset related liabilities, (e.g., mortgage expense),~~
 - (v) ~~property taxes.~~ lease expense for all physical assets; depreciation of assets utilizing the straight line method, per AHA guidelines; and interest expense of asset related liabilities, (e.g. mortgage expense).
- (B) ~~For the purposes of computing allowable lease expense and for balance sheet presentation for Return on Equity computations (see Rule .0105 of this Section), leases shall not be capitalized.~~
- (C) (B) In establishing the allowable cost for depreciation and for interest on capital indebtedness, with respect to an asset which has undergone a change of ownership, the valuation of the asset shall be the lesser of allowable acquisition cost less

accumulated depreciation to the first owner of record on or after July 18, 1984 who received Medicaid payments for said asset or the acquisition cost to the new owner. Payment of rent by the Medicaid enrolled provider to the lessor of the facility shall constitute Medicaid payments under this plan. Depreciation recapture shall not be performed at sale. The method for establishing the allowable related capital indebtedness shall be as follows:

- (i) ~~The allowable asset value shall be divided by the actual acquisition cost.~~
- (ii) ~~The product computed in step 1 shall be multiplied times the value of any related capital indebtedness.~~
- (iii) ~~The result shall be the liability amount upon which interest may be recorded at the rate set forth in the debt instrument or such lower rate as the state may prove is reasonable. The allowable asset and liability values established through the process in this Rule shall be those used in balance sheet presentations for return on equity computation (see Rule .0105 of this Section). These procedures are established to implement the provisions of PL 98-369 Section 2314.~~

follows. The allowable asset value shall be divided by the actual acquisition cost times the value of any related capital indebtedness. The result shall be the liability amount upon which interest may be recorded at the rate set forth in the debt instrument or such lower rate as the state may prove is reasonable.

- (10) Operation of Plant and Maintenance Cost / Non-Capital Cost Center includes all costs necessary to operate or maintain the functionality and appearance of the plant. These include: ~~maintenance staff, utilities, repairs and maintenance to all equipment, building and equipment, automobile depreciation and lease expense, property taxes and property insurance.~~
- (11) Equipment Expense. Equipment is defined as an item with a useful life of more than two years and a value greater than five ~~hundred thousand~~ thousand dollars ~~(\$500.00) (\$5000.00).~~

~~Effective October 1, 1996, Direct Patient Care Equipment depreciation or lease expense incurred on or after October 1, 1996, shall be reported under the Nursing Cost Center, as noted under Subparagraph (d)(1) of this Rule. All other costs associated with direct patient care equipment shall be reported in the cost centers that would be appropriate if the costs were associated with other equipment. Other equipment ownership and use costs shall be reported in the Property Ownership and Use Cost Center. Other equipment maintenance and repair costs shall be reported in the Operation of Plant and Maintenance Cost Center. Other equipment shall not be reported elsewhere.~~

- (12) Training Expense. Training expense must be identified in the appropriate ~~benefiting~~ benefiting cost center. The costs of training nurse aides must be identified separately and may include the cost of purchasing programs and equipment that have been approved by the State for training or testing.
- (13) The costs of training nurse aides in a competency and evaluation program approved by the Division of Facility Services, as set out in 42 CFR 483.151, 483.152 and 483.154, must be separately identified on the cost report and may include the cost of purchasing programs and equipment that have been approved by the State for training or testing. These costs shall be cost-settled during the desk or field audit and shall not be included in the direct care and indirect cost centers. A copy of the Code of Federal Regulations (CFR) 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 www.gpoaccess.gov/cfr/retrieve/html.
- (14) Home Office Costs. Home office costs are generally charged to the Administrative and General Cost Centers. However, personnel costs which are direct patient care oriented may be allocated to "direct" patient care cost centers if time records are maintained to document the performance of direct patient care services. No ~~Home home~~ home office overhead may be so allocated. The basis of this allocation among facilities participating in the North Carolina Medicaid program may be:
 - (A) specific time records of work performed at each facility, or
 - (B) patient days in each facility to which the costs apply relative to the total patient days in all the facilities to which the costs apply.
- (15) Management Fees. Management fees are charged to the Administrative and General Cost Center. However, a portion of a

management fee may be allocated to a direct patient care cost center if time records are maintained to document the performance of direct patient care services. The amount so allocated may be equal only to the salary and fringe benefits of persons who are performing direct patient care services while employed by the management company. Records adequate to support these costs must be made available to staff of the Division of Medical Assistance. The basis of this allocation among facilities participating in the North Carolina Medicaid program may be:

- (A) specific time records of work performed at each facility, or
- (B) patient days in each facility to which the costs apply relative to the total patient days in all the facilities to which the costs apply.

~~(15)~~ (16) **Related Organization Costs.** A nursing facility shall demonstrate by convincing evidence to the satisfaction of the Division of Medical Assistance that the costs are reasonable. Reasonable costs of related organizations shall be identified in accordance with direct and indirect cost center categories as follows:

- (A) **Direct Cost:**
 - (i) Compensation of direct care staff such as nursing personnel (aides, orderlies, nurses), food service workers, housekeeping staff and other personnel who would normally be accounted for in a direct cost center.
 - (ii) Supplies and services that would normally be accounted for in a direct cost center.
 - (iii) Capital, rental, maintenance, supplies/repairs and utility costs (gas, water, fuel, electricity) for facilities that are not typically a part of a nursing facility. These facilities might include such items as warehouses, vehicles for delivery and offices which are totally dedicated or clearly exceed the number, size, or complexity required for a normal nursing facility, its home office, or management company.
 - (iv) Compensation of all administrative staff who perform no duties which are related to the nursing facility or its home office and who

are neither officers nor owners of the nursing facilities or its home office.

- ~~(A)~~ (B) **Indirect Cost:**
 - (i) Compensation of indirect staff such as housekeeping, laundry and linen, maintenance, and other personnel who would normally be accounted for in the indirect cost center.
 - ~~(+)~~ (ii) Capital, rental, maintenance, supplies/repairs, and utility costs which are normally or frequently a part of a nursing facility. This would include, for example, kitchen and laundry facilities.
 - ~~(+)~~ (iii) Except for salary and fringe benefits of Personnel, Accounting and Data Processing staff, home office costs which are allocated by methods approved by the Division of Medical Assistance are direct costs when the work performed is specific to the related organization that provides a direct care service or product to the provider. In determining if an allocation method is appropriate, a case-by-case review shall be made based on the preponderance of evidence. A proposed allocation method shall be denied if the review supports a determination that the associated cost either exceeds the cost of comparable products or services that could be purchased elsewhere or was for services that were not related to direct patient care or services not covered by the North Carolina Medical Assistance program.
 - ~~(+)~~ (iv) Compensation of all administrative staff who perform any duties for the nursing facility or its home office.
 - ~~(+)~~ (v) All compensation of all officers and owners of the nursing facility or its home office, or parent corporation.

A related organization must file a Medicaid Cost Statement (DMA-4083) identifying its costs, adjustments to costs,

allocation of costs, equity capital, adjustments to equity capital, and allocations of equity capital along with the nursing facilities cost report. A home office, or parent company, shall be recognized as a related organization. Auditable records to support these costs must be made available to staff of the Division of Medical Assistance and its designated contract auditors. Undocumented costs shall be disallowed. A nursing facility shall demonstrate by convincing evidence to the satisfaction of the Division of Medical Assistance that the criteria in the Medicare Provider Reimbursement Manual, Section 1010, ~~has~~ have been met in order to be recognized as an exception to the related organization principle. ~~The related party principle is stated in the Medicare Provider Reimbursement Manual, Section 1010, as follows: Costs applicable to services, facilities, and supplies furnished to the provider by organizations related to the provider by common ownership or control are includable in the allowable cost of the provider at the cost to the related organization. However, such cost must not exceed the price of comparable services, facilities, or supplies that could be purchased elsewhere. The purpose of this principle is two fold: to avoid the payment of a profit factor to the provider through the related organization (whether related by common ownership or control), and to avoid payment of artificially inflated costs which may be generated from less than arms length bargaining. When a related organization is deemed recognized as an exception; reasonable charges by the related organization to the nursing facility are recognized as allowable costs; receivable/payables from/to the nursing facility and related organization deemed recognized as an exception are not adjusted from the nursing facility's balance sheet in computing equity capital. The Medicare Provider Reimbursement Manual is often referred to as the HCFA Publication #15-1 and is hereby incorporated by reference including any subsequent amendments and editions. A copy is available for inspection at the Division of Medical Assistance, 1985 Umstead Drive, Raleigh, North Carolina. Copies may be obtained from the US Department of Commerce, National Technical Information Services, Subscription Department, 5285 Port Royal Road, Springfield, VA 22161 at a cost of one hundred forty seven dollars (\$147.00). Purchasing instructions may be received by calling (703) 487 4650. Updates are available for an additional fee.~~

(e) ~~Auditing and Settlement.~~ Auditing. All filed cost reports ~~must~~ shall be desk audited and interim reimbursement settlements made in accordance with the provision of this plan. ~~This settlement is~~ An Audit Adjustment Report shall be issued within 180 days one year of the date the cost report was filed or within 180 days one year of December 31 of the fiscal year to which the report applies, whichever is later. The state may elect to perform field audits on any filed cost reports within three years of the date of filing and issue a final settlement Audit Adjustment Report on a time schedule that conforms to Federal law and regulation. If the state decides does not to field audit a facility a final reimbursement notice Audit Adjustment Report shall may be issued based on the desk audited settlement findings. The state may reopen and field audit any cost report after the final ~~settlement notice~~ Audit Adjustment Report to comply with Federal law and regulation or to enforce laws and regulations prohibiting abuse of the Medicaid Program and particularly the provisions of this reimbursement plan.

(f) Penalties. Providers who fail to fully and accurately complete cost reports or who fail to furnish required

documentation and disclosures for cost reports required under this Plan may be subject to penalties for non-compliance. Issues which are subject to penalties include, material miscoding of cost from Indirect to Direct cost centers or from Non-Reimbursable to Reimbursable cost centers, inaccurate identification of census data or ancillary charges by payor type, and failure to disclose related parties including those deemed non-related by exception. Errors in a filed cost report which result in an adjustment greater than one percent (1%) of a providers reimbursable total cost per the filed cost report reported in the cost report shall be subject to penalty. Penalty shall be defined as the dollar value equal to five percent of the Medicaid percentage, as defined by occupancy, of the adjustment.

(f) ~~These changes to the Reimbursement for Nursing Facility Services shall become effective upon the Health Care Financing Administration approved effective date for amendment 96-05.~~

Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447, Subpart C.

10A NCAC 22G .0105 CASE-MIX INDEX CALCULATION

(a) The Resource Utilization Groups-III (RUG-III) Version 5.12b, 34 group, index maximizer model shall be used as the resident classification system to determine all case-mix indices, using data from the minimum data set (MDS) submitted by each facility to the Division of Facility Services. The following case-mix indices shall be the basis for calculating facility average case-mix indices to be used in determining the facility's direct care rate.

RUG Code	Case-Mix Index	RUG Code	Case-Mix Index	RUG Code	Case-Mix Index
SE3	2.08	CB2	1.13	PE2	0.97
SE2	1.70	CB1	1.01	PE1	0.96
SE1	1.45	CA2	1.02	PD2	0.91
RAD	1.68	CA1	0.92	PD1	0.83
RAC	1.41	IB2	0.89	PC2	0.82
RAB	1.28	IB1	0.82	PC1	0.80
RAA	1.06	IA2	0.74	PB2	0.66
SSC	1.40	IA1	0.64	PB1	0.61
SSB	1.29	BB2	0.86	PA2	0.60
SSA	1.25	BB1	0.80	PA1	0.57
CC2	1.39	BA2	0.72		
CC1	1.23	BA1	0.61		

(b) Each resident in the facility on the last day of each quarter with a completed and submitted assessment shall be assigned a RUG-III 34 group calculated on the residents most current assessment available on the last day of each calendar quarter. This RUG-III group shall be translated to the appropriate case-mix index referenced in Paragraph (a) of this Rule. If the most current assessment available on the last day of the calendar quarter is a delinquent MDS then the RUG-III code assigned shall be a BC1-delinquent and the lowest case-mix index in Paragraph (a) of this Rule shall be applied. A delinquent MDS is defined as 121 days from the R2b date of the MDS assessment (completion date). From the individual resident case-mix index, two average case-mix indices for each Medicaid nursing facility

shall be determined four times per year based on the last day of each calendar quarter.

~~(c) The facility-wide average case-mix index is the simple average, carried to four decimal places, of all resident case-mix indices. The Medicaid average case-mix index is the simple average, carried to four decimal places, of all indices for residents where Medicaid or Medicaid pending is known to be the per diem payor source on the last day of the calendar quarter.~~

~~(a) In addition to the prospective rates described in Rule .0104 of this Section, proprietary providers are eligible to receive a return on equity capital payment each year.~~

~~(b) Effective October 1, 1993, the rate of return shall equal the lower of 11.875 percent or the published interest rate for the cost report period as prepared by the Office of the Actuary, Health Care Financing Administration for Proprietary Skilled Nursing Facilities. This reimbursement limitation shall become effective in accordance with the provisions of G.S. 108A-55(c).~~

~~(c) The rate of return is calculated on a capital base determined to be the total assets of the provider, including its related home office, if any, that are required to provide nursing care less related liabilities. The value of the fixed assets is the historical cost less accumulated depreciation of buildings and improvements, all equipment, and vehicles. Leases and direct capitalized expenditures are not included in this calculation. Working capital shall not be recognized beyond a level equal to 16.5 percent of the facility's total annual cost.~~

~~(d) Liabilities must include all liabilities related to the assets of the facility regardless of nature or named payor. If the state determines that the liability has been incurred to acquire an asset named on the balance sheet that liability shall be counted.~~

~~(e) Providers have a positive obligation to identify all liabilities that may bear upon reported assets. Failure to disclose a liability later determined to be related to a reported asset shall result in a suspension of Return on Equity payments for the year(s) in which the failure occurred and up to five additional years at the discretion of the state. If the state determines that the providers failure to report a related liability was an unintentional oversight, the potential five year penalty shall not be applied.~~

~~(f) The value of assets and related capital indebtedness when asset ownership changes shall be established in conformance with the provisions of Rule .0104(e) of this Section.~~

Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447, Subpart C; S.L. 1985, c. 479, s. 86.

10A NCAC 22G .0106 RECONSIDERATION REVIEWS

(a) As required by 42 CFR 447, Subpart C, providers may submit additional evidence for determination of reimbursement amounts pursuant to the Medicaid State Plan, Attachment 4.19-D, Section .0106, which is hereby incorporated by reference, with subsequent amendments and editions. Copies of Attachment 4.19-B, Section .0106 can be obtained from the Division of Medical Assistance at a cost of two cents (\$0.02 per page). ~~twenty cents (\$0.20) a copy.~~

(b) Indirect rates shall not be adjusted on reconsideration review.

~~(c) A direct rate may be adjusted on reconsideration review if a provider can establish to the satisfaction of the state agency that such an adjustment is necessary to protect the health and safety of its patients and to sustain its financial viability. A facility is considered to be financially viable, and therefore not eligible for~~

~~a rate adjustment, if its total Medicaid rate payments and return on equity exceeded its total Medicaid cost as reported in the most recent 12 month cost report. Providers are expected to utilize all available funds to provide the services that their patients need. Once a provider has reported a loss for a 12 month period beginning October 1 and ending September 30, a direct rate of adjustment can then be negotiated for the following year at a level no greater than what is absolutely necessary for patient care and for the financial viability of the facility. The adjusted rate cannot exceed the applicable maximum direct rate as established by Rule .0102(b)(4) and (5).~~

~~(d) (c) Direct rates may also be adjusted without regard to the provisions of Paragraph (c) of this Rule for the following reasons:~~

- ~~(1) to correct erroneous data in the rate base;~~
- ~~(2) (1) to accommodate any changes in the minimum standards or minimum levels of resources required in the provision of patient care that are mandated by state or federal laws or regulation;~~
- ~~(3) to maintain services at levels commensurate with any rate adjustments that are allowed between the base year and the year in which the rates derived from that base year are first effective.~~
- ~~(2) to correct any adjustments or revisions to ensure that the payment rate is calculated in accordance with Rule .0102 of this Section.~~

~~(e) Adjustments to reimbursement settlements shall be made on the basis of the reimbursement principles set forth in this plan or incorporated here by reference [See Rule .0104(e)].~~

Authority G.S. 108A-25(b); 108A-54; 108A-55; 150B-11; 42 C.F.R. 447, Subpart C; S.L. 1985, c. 479, s. 86.

10A NCAC 22G .0107 PAYMENT ASSURANCE

(a) The state ~~will~~ shall pay each provider of nursing care services, who furnishes the services in accordance with the requirements of the State Plan and the participation agreement, the amount determined under the plan. In addition, Nursing Facilities must be enrolled in the Title XVIII Program. However, State-operated nursing facilities are not required to be enrolled in the Medicare program.

~~(b) In no case shall the payment rate for services provided under the plan exceed the facility's customary charges to the general public for such services.~~

~~(c) (b) The payment methods and standards set forth herein are designed to enlist the participation of any provider who operates a facility both economically and efficiently. Participation in the program shall be limited to providers of service who accept, as payment in full, the amounts paid in accordance with the State Plan. This reimbursement plan is effective consistent with and on upon approval of the State Plan for Medical Assistance.~~

~~(d) (c) In all circumstances involving third party payment, Medicaid is the payor of last resort. No payment will shall be made for a Medicaid recipient who is also eligible for Medicare, Part A, for the first 20 days of care rendered to skilled nursing patients. Medicaid payments for co-insurance for such patients will shall be made for the subsequent 21st through the 100th day of care. The Division of Medical Assistance will shall pay an amount for each day of Medicare Part A inpatient co-insurance,~~

the total of which ~~will~~ shall equal the facility's Medicaid per diem rate less any Medicare Part A payment, but no more than the Medicare coinsurance amount. ~~amount, effective for services beginning August 1, 1991.~~ In the case of ancillary services providers ~~are obligated to:~~ shall:

- (1) maintain detailed records or charges for all patients;
- (2) bill the appropriate Medicare Part B carrier for all services provided to Medicaid patients that may be covered under that program;
- (3) allocate an appropriate amount of ancillary costs, based on these charge records adjusted to reflect Medicare denials of coverage, to Medicare Part B in the annual cost ~~report; and~~ report. For failure to comply with this requirement, the state may charge a penalty of up to five percent of a providers indirect patient care rate for each day of care that is provided during the fiscal year in which the failure occurs. This penalty shall not be considered an allowable cost for cost reporting purposes.
- (4) properly bill Medicare or other third-party payors or have disallowance of any related cost claimed as Medicaid cost.

(e) ~~(d)~~ The state may withhold payments to providers under the following circumstances:

- ~~(1) If the state has a reasonable expectation that the provider will not expend its direct rate for reasonable and allowable direct patient care costs, the state may, at its discretion, withhold a portion of each payment so as to avoid a large amount due back to the state upon reimbursement settlement pursuant to the provision of Paragraph .0104(e) of this Section.~~
- ~~(2) Upon provider termination the state may withhold a sum of money from provider payments that it reasonably expects will be due when final reimbursement settlements for all previous periods, including the period in which the termination occurred, are completed.~~
- ~~(3)~~ (1) Upon determination of any sum due the Medicaid Program or upon instruction from a legally authorized agent of the State or Federal Government the state may withhold sums to meet the obligations identified.
- ~~(4)~~ (2) The state may arrange repayment schedules within the limits set forth in federal regulations in lieu of withholding funds.
- ~~(5)~~ (3) The state may charge reasonable interest ~~or on~~ overpayments from the date that the overpayment occurred.
- ~~(6)~~ (4) The state may withhold up to 20 percent per month of a providers payment for failure to file a timely cost ~~report; report and associated~~ accounting records. These funds will shall be released to the provider after a cost report is acceptably filed. The provider will shall experience delayed payment while the check is

routed to the state and split for the amount withheld.

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; S.L. 1991; c. 689, s. 95; 42 C.F.R. 447, Subpart C.

10A NCAC 22G .0108 REIMBURSEMENT METHODS FOR STATE-OPERATED FACILITIES

(a) A certified State-operated nursing facility is reimbursed for the reasonable costs that are necessary to efficiently meet the needs of its patients and to comply with federal and state laws and regulations. The costs are determined in accordance with Rules .0103 and .0104 of this Section, except that annual cost reports are required for the fiscal year beginning on July 1 and ending on the following June 30 and must be submitted to the Division of Medical Assistance ~~on or before the September 30 that immediately follows the June 30~~ within 150 days after their fiscal year end. Payments ~~will~~ shall be suspended if reports are not filed. The Division of Medical Assistance may extend the deadline for filing the report if the Division determines good cause. "Good cause" is an action uncontrollable by the provider, as provided in the Medicaid State Plan, Attachment 4.19-D, which is hereby incorporated by reference according to G.S. 150B 21.6, which includes all subsequent amendments and editions to the referenced material. [A copy of the Medicaid State Plan is available for public inspection at the Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603. A copy of Attachment 4.19-D may be obtained at the same address upon written request at a charge of twenty (\$.20) per page.] The Medicare principles for the reimbursement of skilled nursing facilities will shall be utilized for the cost principles that are not specifically addressed in ~~the State Plan.~~ this Section.

(b) A per diem rate based on the providers estimated annual cost divided by patient days will shall be used to make interim payments. A desk audit and a tentative settlement will shall be performed on each annual cost report to determine the amount of Medicaid reasonable cost and the amount of interim payments received by the provider.

(c) Any payments in excess of costs will shall be refunded to the Division. Any costs in excess of payments will shall be paid to the provider. An annual field audit will shall be performed by a qualified independent auditor to determine the final settlement amounts.

Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447, Subpart C; S.L. 1985, c. 479, s. 86.

10A NCAC 22G .0109 PROVIDER ASSESSMENT

(a) In accordance with 42 USC § 1396b(w) and 42 CFR, Part 433, Subpart B; and consistent with the CMS Federal Waiver approved April 5, 2004 with an effective date of October 1, 2003 including subsequent amendments and revisions, a monthly nursing facility assessment based on all occupied nursing facility bed days of service is imposed on all nursing bed days in licensed nursing facilities, except:

- (1) Any nursing facility bed day of service provided by a Continuing Care Retirement Community (CCRC), as defined by G.S. 58-64 and licensed by the North Carolina Department of Insurance;

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- (2) Any nursing facility bed day of service paid for under the Medicare program established under Title XVIII of the Social Security Act.

A copy of the Waiver may be obtained by contacting the Division of Medical Assistance, 2501 Mail Service Center, Raleigh, North Carolina 27699-2501, (919) 857-4016.

(b) Effective October 1, 2003, the assessment is payable monthly and due to the Department of Health and Human Services or designee of the Department within 15 days of the last day of the reporting month. Facilities shall submit payment and an account of all actual patient days during the month. Failure to provide accurate and timely reporting of days and payment of assessment shall result in a 10% reduction in facility rates for Medicaid participating facilities and recoupment per the Department Cash Management Plan.

Authority G.S. 108A-25(b); 108A-54; 108A-55; CMS Waiver approved April 5, 2004; 42 CFR Part 433, Subpart B; S.L. 2003-284, s. 10.28.

10A NCAC 22G .0110 DEFINITIONS

"Public nursing facility", as used in this Subchapter, means any nursing facility that is:

- (1) Owned or operated by the State or any department or instrumentality of the State or by county, city, hospital district, or hospital authority; or
(2) Is operated by a nonprofit corporation or association, a majority of whose board of directors or trustees are appointed by the State or any department or instrumentality of the State or by the governing body of a county, city, hospital district, or hospital authority; or
(3) Is operated by a hospital that is a "public hospital" under G.S. 159-39(a); or
(4) Is operated by a hospital that has verified its status by certifying State, local, hospital district or authority governmental control on the most recent version of the Form CMS 1514; or
(5) Is a facility to which the State or any department or instrumentality of the State or a city or a county makes current appropriations (other than appropriations for the cost of medical care to prisoners or indigents).

Authority G.S. 108A-25(b); 108A-54; 108A-55; 159-39(a).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to adopt the rule cited as 10A NCAC 41A .0105.

Proposed Effective Date: January 1, 2005

Public Hearing:

Date: October 7, 2004

Time: 2:00 p.m.

Location: Room G1A, 1330 St. Marys St., Raleigh, NC

Reason for Proposed Action: It is necessary to adopt this Rule to establish a syndromic surveillance program for hospital emergency departments in order to detect and investigate public health threats that may result from (1) a terrorist incident using nuclear, biological, or chemical agents, or (2) an epidemic or infectious, communicable, or other disease.

Procedure by which a person can object to the agency on a proposed rule: Objections may be submitted in writing to Chris G. Hoke, JD, the Rule-making Coordinator, during the public comment period. Additionally, objections may be made verbally and in writing at the public hearing for this Rule.

Written comments may be submitted to: Chris G. Hoke, JD, 1915 Mail Service Center, Raleigh, NC 27699-1915, phone (919) 715-4168 and email chris.hoke@ncmail.net.

Comment period ends: November 1, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, 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 day following the day the Commission approves the rule. 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 41 – HEALTH: EPIDEMIOLOGY

SUBCHAPTER 41A – COMMUNICABLE DISEASE CONTROL

SECTION .0100 – REPORTING OF COMMUNICABLE DISEASES

10A NCAC 41A .0105 HOSPITAL EMERGENCY DEPARTMENT DATA REPORTING

Hospitals, as defined in G.S. 130A-480(d), shall submit electronically to the Division of Public Health the following electronically available emergency department data elements for all emergency department visits:

- (1) Masked or converted patient record number or other unique identification number;
(2) Patient date of birth and age;
(3) Patient's sex;
(4) City of residence;
(5) County of residence;

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- (6) Five digit ZIP code;
(7) Alpha numeric patient control number assigned by the hospital for each record;
(8) Emergency department facility identification number;
(9) Projected payor source;
(10) Date and time of emergency department visit (first documented time);
(11) Mode of transport to the emergency department;
(12) Converted or masked PreMIS identification number, if transported by EMS;
(13) Chief complaint;
(14) Initial temperature reading and route;
(15) Initial systolic and initial diastolic blood pressure;
(16) Triage Note (brief description of patient's illness episode, including symptoms, duration of symptoms, and reasons for visit [in addition to Chief Complaint] as presented by the patient to the triage nurse upon arrival at the emergency department) - this element is optional;
(17) Initial emergency department acuity assessment;
(18) Coded cause of injury (ICDM-9, if injury related to diagnosis);
(19) Emergency department Procedure (CPT with ICDM-9-CM or -10-CM);
(20) Emergency department disposition;
(21) Emergency department disposition diagnosis description; and
(22) Emergency department disposition diagnosis codes (ICDM-9-CM or -10-CM).

certificate based upon the fee change established pursuant to G. S. 130A-118(d).
10A NCAC 41H .0704 - This amendment is necessary to specify current fees charged for preparing new certificates of birth for adoptions and legitimations based upon the fee change established pursuant to G. S. 130A-118(d).
10A NCAC 41H .1301 - Prior to legislative action in 2001, a marriage license was issued in the county where the marriage was to be solemnized and the executed license was returned to the Register of Deeds for filing after the ceremony occurred. The law was changed (G.S. 51-16) that year to allow licenses issued in any county authorized a marriage to be performed anywhere in the state. This amendment is necessary because of that change in the law. The previous wording of the rule in question provided for those seeking a copy of their marriage license to provide information about the "place of marriage". The place of marriage is no longer related to any manner to the county where the license is on file and hence the need for the rule changes.

Procedure by which a person can object to the agency on a proposed rule: Objections may be submitted in writing to Chris G. Hoke, JD, the Rule-Making Coordinator, during the public comment period. Additionally, objections may be made verbally and in writing at the public hearing for this rule.

Written comments may be submitted to: Chris G. Hoke, JD, 1915 Mail Service Center, Raleigh, NC 27699-1915, Phone (919)715-4168, email chris.hoke@ncmail.net.

Comment period ends: November 1, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, 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 day following the day the Commission approves the rule. 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)
[X] None

CHAPTER 41 - HEALTH: EPIDEMIOLOGY
SUBCHAPTER 41H - VITAL RECORDS
SECTION .0700 - FEES AND REFUNDS

10A NCAC 41H .0701 ROUTINE REQUESTS FOR

Authority G.S. 130A-480.

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Registrar intends to amend the rules cited as 10A NCAC 41H .0701-.0704, .1301.

Proposed Effective Date: January 1, 2005

Public Hearing:

Date: September 22, 2004

Time: 2:00 p.m.

Location: Room G1A, 1330 St. Marys Street, Raleigh, NC

Reason for Proposed Action:

10A NCAC 41H .0701 - This amendment is necessary to specify current fees charged for searching and providing vital records (birth, death, marriage and divorce) based upon the fee change established pursuant to G. S. 130A-93.1.

10A NCAC 41H .0702 - This amendment is necessary to specify current fees charged for searching and providing copies of vital records for medical research purposes based upon the fee change established pursuant to G. S. 130A-93.1.

10A NCAC 41H .0703 - This amendment is necessary to specify current fees for correcting or amending a birth or death

CERTIFIED COPIES

The fee for searching for a certificate of birth, death, marriage or divorce shall be ~~ten~~ fifteen dollars ~~(\$10.00)~~ (\$15.00), which shall include the cost of a search of the year indicated and if necessary the year immediately prior to and subsequent to the indicated year. This fee also covers issuance of a copy if the record is found. If the record is not located, the fee shall be retained for providing the search.

Authority G.S. 130A-92(7); 130A-93.

10A NCAC 41H .0702 RESEARCH REQUESTS

(a) The State Registrar may permit the use of data from vital records for research purposes. The State Registrar shall require the applicant to specify in writing the conditions under which the records or data will be used, stored, and disposed of; the purpose of the research; the research protocol; access limitations; and security precautions.

(b) The State Registrar may determine fees charged for preparing, searching or providing information from, or non-certified copies of the vital records based on the estimated cost of rendering the service. An hourly rate or charge per name searched may be imposed. The fee shall ~~not exceed ten~~ be fifteen dollars ~~(\$10.00)~~ (\$15.00) per name searched. If expedited service is specifically requested, an additional fee of ~~ten~~ fifteen dollars ~~(\$10.00)~~ (\$15.00), in addition to all shipping and commercial charges, shall be charged in accordance with G.S. 130A-93.1(a)(2).

(c) Vital records or data provided under this Rule shall be used only for the purposes described in the application.

Authority G.S. 130A-92(7); 130A-93.

10A NCAC 41H .0703 FEES FOR CORRECTIONS AND AMENDMENTS

The fee for correcting or amending a birth or death certificate shall be ~~seven~~ fifteen dollars ~~and fifty cents (\$7.50)~~ (\$15.00) per request. No fee shall be charged for amending a cause of death on a death certificate.

Authority G.S. 130A-92(7); 130A-118.

10A NCAC 41H .0704 FEES FOR PREPARING NEW CERTIFICATE: ADOPTION AND LEGITIMATION

A fee of ~~seven~~ fifteen dollars ~~and fifty cents (\$7.50)~~ (\$15.00) shall be charged for preparing a new birth certificate for adoptions and legitimations.

Authority G.S. 48-29; 130A-92(7); 130A-118.

SECTION .1300 - ACCESS TO RECORDS

10A NCAC 41H .1301 INFORMATION NEEDED FOR LOCATING RECORDS

A person wishing to obtain a copy of a vital record or obtain a copy therefrom shall be required to furnish at least the minimum amount of information needed to locate the record. The following minimum amount of information is required to locate a record:

- (1) Births. Registrants name, fathers name (if born in wedlock), mothers full maiden name, approximate date of birth and place of birth;
- (2) Deaths. Name of deceased, approximate age, approximate date of death and place of death;
- (3) Marriages. Name of bride or groom, approximate date of marriage and ~~place of marriage~~ county where license was issued;
- (4) Divorces. Name of plaintiff or defendant, approximate date of divorce and place of divorce.

Authority G.S. 130A-92(7).

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 12 - LICENSING BOARD FOR GENERAL CONTRACTORS

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Licensing Board for General Contractors intends to amend the rules cited as 21 NCAC 12 .0204, .0903.

Proposed Effective Date: *January 1, 2005*

Public Hearing:

Date: *October 13, 2004*

Time: *10:00 a.m.*

Location: *N.C. Licensing Board for General Contractors, 3739 National Drive, Suite 225, Raleigh, NC*

Reason for Proposed Action: *To require an applicant for a limited license to provide to the Board an audited financial statement as part of the application if the applicant is in bankruptcy to ensure that limited license holders are financially responsible and fiscally stable.*

To require that applicants claiming against the estate of a deceased general contractor to submit a statement from the administrator of the estate certifying that the applicant won't receive payment from the estate to allow such applicants to proceed against the Homeowners' Recovery Fund without needless delay.

Procedure by which a person can object to the agency on a proposed rule: *Persons may submit objections regarding the proposed amendments to Mark Selph, N.C. Licensing Board for General Contractors, P.O. Box 17187, Raleigh, NC 27619.*

Written comments may be submitted to: *Mark Selph, N.C. Licensing Board for General Contractors, P.O. Box 17187, Raleigh, NC 27619*

Comment period ends: *November 1, 2004*

Procedure for Subjecting a Proposed Rule to Legislative Review: *If an objection is not resolved prior to the adoption of the rule, 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 day following the day the Commission approves the rule. 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) 21 NCAC 12 .0204
- None 21 NCAC 12 .0903

SECTION .0200 - LICENSING REQUIREMENTS

21 NCAC 12 .0204 ELIGIBILITY

- (a) Limited License. The applicant for such a license must:
- (1) Be entitled to be admitted to the examination given by the Board in light of the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
 - (2) Be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least seventeen thousand dollars (\$17,000.00); ~~and~~
 - (3) Successfully complete 70 percent of the examination given the applicant by the Board dealing with the specified contracting classification chosen by the ~~applicant~~ applicant; and
 - (4) Provide to the Board an audited financial statement with a classified balance sheet as part of the application, if the applicant or any owner, principal, or qualifier is in bankruptcy.
- (b) Intermediate License. The applicant for such a license must:
- (1) Be entitled to be admitted to the examination given by the Board in light of the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
 - (2) Be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least seventy-five thousand dollars (\$75,000.00) as reflected in an audited financial statement prepared by a certified public accountant or an independent accountant who is engaged in the public practice of accountancy; and
 - (3) Successfully complete 70 percent of the examination given the applicant by the Board dealing with the specified contracting classification chosen by the applicant.
- (c) Unlimited License. The applicant for such a license must:
- (1) Be entitled to be admitted to the examination given by the Board in light of the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;

- (2) Be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least one hundred fifty thousand dollars (\$150,000.00) as reflected in an audited financial statement prepared by a certified public accountant or an independent accountant who is engaged in the public practice of accountancy;
 - (3) Successfully complete 70 percent of the examination given the applicant by the Board dealing with the specified contracting classification chosen by the applicant.
- (d) In lieu of demonstrating the required level of working capital, an applicant may obtain a surety bond from a surety authorized to transact surety business in North Carolina pursuant to G.S. 58 Articles 7, 16, 21, or 22. The surety shall maintain a rating from A.M. Best, or its successor rating organization, of either Superior (A++ or A+) or Excellent (A or A-). The bond shall be continuous in form and shall be maintained in effect for as long as the applicant maintains a license to practice general contracting in North Carolina or until the applicant demonstrates the required level of working capital. The application form and subsequent annual license renewal forms shall require proof of a surety bond meeting the requirements of this Rule. The applicant shall maintain the bond in the amount of two hundred fifty thousand dollars (\$250,000) for a limited license, seven hundred fifty thousand dollars (\$750,000) for an intermediate license, and one million five hundred thousand dollars (\$1,500,000) for an unlimited license. The bond shall list State of North Carolina as obligee and be for the benefit of any person who is damaged by an act or omission of the applicant constituting breach of a construction contract or breach of a contract for the furnishing of labor, materials, or professional services to construction undertaken by the applicant, or by an unlawful act or omission of the applicant in the performance of a construction contract. The bond required by this Rule shall be in addition to and not in lieu of any other bond required of the applicant by law, regulation, or any party to a contract with the applicant. Should the surety cancel the bond, the surety and the applicant both shall notify the Board immediately in writing. If the applicant fails to provide written proof of financial responsibility in compliance with this Rule within 30 days of the bond's cancellation, then the applicant's license shall be suspended until written proof of compliance is provided. After a suspension of two years, the applicant shall fulfill all requirements of a new applicant for licensure. The practice of general contracting by an applicant whose license has been suspended pursuant to this Rule will subject the applicant to additional disciplinary action by the Board.
- (e) Reciprocity. If an applicant is licensed as a general contractor in another state, the Board, in its discretion, need not require the applicant to successfully complete the written examination as provided by G.S.87-15.1. However, the applicant must comply with all other requirements of these rules to be eligible to be licensed in North Carolina as a general contractor.
- (f) Accounting and reporting standards. Working capital, balance sheet with current and fixed assets, current and long term liabilities, and other financial terminologies used herein

shall be construed in accordance with those standards referred to as "generally accepted accounting principles" as promulgated by the Financial Accounting Standards Board, the American Institute of Certified Public Accountants, and, if applicable, through pronouncements of the Governmental Accounting Standards Board, or their predecessor organizations. An audited financial statement, an unqualified opinion, and other financial reporting terminologies used herein shall be construed in accordance with those standards referred to as "generally accepted auditing standards" as promulgated by the American Institute of Certified Public Accountants through pronouncements of the Auditing Standards Board.

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

SECTION .0900 – HOMEOWNERS RECOVERY FUND

21 NCAC 12 .0903 APPLICATION FOR PAYMENT

(a) Applicants desiring to obtain payment from the fund shall file a verified application with the Board on a prescribed form. The form shall require information concerning the applicant and the claim including, but not limited to, the applicant's name and address, the amount of the claim, a description of the acts of the general contractor which constitute the grounds for the claim and a statement that all court proceedings are concluded or the general contractor has filed for bankruptcy. If the applicant has

exhausted all civil remedies pursuant to G.S. 87-15.8(3), the application shall include certified copies from the civil action of the complaint, judgment and return of execution marked as unsatisfied. If the general contractor was a corporation which was dissolved no later than one year after the date of discovery by the applicant of the facts constituting the dishonest or incompetent conduct, and the applicant did not commence a civil action against the general contractor, then the applicant shall include certified copies of documents evidencing the dissolution. If the applicant has been precluded from filing suit, obtaining a judgment or otherwise proceeding due to the bankruptcy of the general contractor, then the applicant shall submit a certified copy of the bankruptcy petition and any proof of claim, and documents from the bankruptcy court or trustee certifying that the applicant has not and will not receive any payment from the bankruptcy proceeding. If the applicant is claiming against the estate of a deceased general contractor, then the applicant shall submit a statement from the administrator of the estate certifying that the applicant has not and will not receive any payment from the estate.

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

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

APPROVED RULES

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

These rules have been entered into the North Carolina Administrative Code

APPROVED RULE CITATION			REGISTER CITATION TO THE NOTICE OF TEXT
01	NCAC 41B	.0301*	18:17 NCR
01	NCAC 41B	.0306*	18:17 NCR
01	NCAC 41B	.0401-.0402*	18:17 NCR
01	NCAC 41B	.0502	18:17 NCR
01	NCAC 41B	.0504*	18:17 NCR
01	NCAC 41C	.0203-.0206*	18:19 NCR
01	NCAC 41C	.0207	18:19 NCR
01	NCAC 41C	.0208*	18:19 NCR
01	NCAC 41C	.0210	18:19 NCR
01	NCAC 41C	.0211*	18:19 NCR
02	NCAC 34	.0605*	18:07 NCR
04	NCAC 03B	.0101-.0102	18:20 NCR
04	NCAC 03B	.0105*	18:20 NCR
04	NCAC 03B	.0201-.0206	18:20 NCR
04	NCAC 03B	.0209-.0218	18:20 NCR
04	NCAC 03B	.0219-.0224	18:20 NCR
04	NCAC 03B	.0225-.0227*	18:20 NCR
04	NCAC 03B	.0228	18:20 NCR
04	NCAC 03B	.0301-.0304	18:20 NCR
10A	NCAC 14C	.0203	18:19 NCR
10A	NCAC 14C	.3801*	18:19 NCR
10A	NCAC 14C	.3802-.3805	18:19 NCR
11	NCAC 01	.0403*	18:20 NCR
11	NCAC 01	.0416	18:20 NCR
11	NCAC 01	.0418	18:20 NCR
11	NCAC 01	.0427*	18:20 NCR
11	NCAC 01	.0429*	18:20 NCR
11	NCAC 11F	.0301*	18:20 NCR
11	NCAC 11F	.0302	18:20 NCR
11	NCAC 11F	.0303*	18:20 NCR
11	NCAC 11F	.0304-.0305	18:20 NCR
11	NCAC 11F	.0306-.0307*	18:20 NCR
11	NCAC 11F	.0308	18:20 NCR
11	NCAC 12	.0447	18:20 NCR
12	NCAC 07D	.0901*	18:15 NCR
12	NCAC 07D	.0911*	18:15 NCR
15A	NCAC 01N	.0201*	18:20 NCR
15A	NCAC 01N	.0304	18:20 NCR
15A	NCAC 01N	.0606*	18:20 NCR
15A	NCAC 01N	.0701*	18:20 NCR
15A	NCAC 02D	.0902*	18:08 NCR
15A	NCAC 02D	.1904*	18:08 NCR
15A	NCAC 07K	.0209	18:13 NCR
15A	NCAC 18D	.0206*	18:19 NCR
15A	NCAC 18D	.0301*	18:19 NCR
15A	NCAC 18D	.0302-.0303	18:19 NCR
15A	NCAC 18D	.0304*	18:19 NCR (eff. date delayed until consultation pursuant to G.S. 12-3.1)
15A	NCAC 18D	.0307-.0308*	18:19 NCR

15A	NCAC	18D	.0309	18:19	NCR
15A	NCAC	18D	.0403	18:19	NCR
21	NCAC	10	.0202*	18:16	NCR
21	NCAC	14G	.0111	18:19	NCR
21	NCAC	34A	.0102-.0104*	18:15	NCR
21	NCAC	34A	.0117-.0118*	18:15	NCR
21	NCAC	34A	.0122-.0123*	18:15	NCR
21	NCAC	34C	.0103-.0105*	18:15	NCR
21	NCAC	34C	.0302-.0303*	18:15	NCR
21	NCAC	46	.2201*	18:20	NCR

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

15A	NCAC	02D	.1104*	18:08	NCR
15A	NCAC	02Q	.0706*	18:08	NCR
15A	NCAC	02Q	.0714*	18:08	NCR

TITLE 1 - DEPARTMENT OF ADMINISTRATION

01 NCAC 41B .0301 NORTH CAROLINA PRODUCTS

A preference for North Carolina products and services provided by North Carolina residents pursuant to G.S. 143-59 shall apply to Guaranteed Energy Savings Contracts.

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

01 NCAC 41B .0306 ADVERTISEMENT REQUIREMENTS

In addition to advertising requirements stated in G.S. 143-64.17A(a), agencies shall send a copy to the State Energy Office at MSC 1340, Raleigh, NC 27699 and shall include in the notification instructions on how to obtain the complete solicitation.

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

01 NCAC 41B .0401 INFORMATION REQUIRED FOR PRECERTIFICATION

Organizations may establish capability to provide services under performance contracts with state agencies by providing the following information to the State Energy Office:

- (1) past experience with energy performance contracting with a minimum of three years operation and completed installation of a minimum of three projects;
- (2) performance contracting experience and resumes of individuals expected to work on North Carolina projects including a minimum of one professional engineer licensed in North Carolina;
- (3) summary information, with client contact information, on all performance contracting

- (4) projects in North Carolina during the previous five years listing only completed projects with at least one year in repayment; summary information, with client contact information, on all performance contracts with any state government agencies in the United States with a maximum of five projects for each of the previous five years;
- (5) summary information, with client contact information, on any performance contracting projects which resulted in the company paying energy costs to clients;
- (6) summary of the history and operation of the business and organization, including volume, bonding capacity and type of clients; and
- (7) financial statements of the performance contracting organization and (if applicable) parent company for the previous two years.

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

01 NCAC 41B .0402 PRECERTIFICATION EVALUATION

Organizations shall present information required for precertification to the State Energy Office with a request for consideration for inclusion as a precertified entity. The State Energy Office shall offer a precertification period for providers at three-year intervals.

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

01 NCAC 41B .0504 BASIS FOR REJECTION

In soliciting offers, any and all offers received may be rejected. Bases for rejection shall include, but are not limited to, the offer being deemed unsatisfactory as to the quantity, quality, delivery, price or service offered; the offer not complying with conditions in the RFP or with the intent of the proposed contract; lack of

competitiveness by reason of collusion; error(s) in specifications or indication that revision(s) would be to the state's advantage; cancellation of or changes in the intended project or other determination that the proposed requirement is no longer needed; limitation or lack of available funds; circumstances which prevent determination of the lowest responsible or most advantageous offer; or any determination that rejection would be to the best interest of the state.

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

01 NCAC 41C .0203 CONDITIONS AND LIMITATIONS

Loans are made subject to the following conditions and limitations:

- (1) Interest shall be charged at the rate of three percent per annum and one percent for renewable and recycling projects;
- (2) The amount of the loan shall not exceed allowable costs;
- (3) The repayment schedule shall be based on the estimated payback as shown in the Technical Analysis report;
- (4) Payments shall be made at a frequency of not less than once per month;
- (5) The total amount of the loan, or any portion thereof may be repaid at any time without penalty;
- (6) Rebates received through other program offerings of the State Energy Office for projects undertaken from loan proceeds shall be used to reduce the amount of principal;
- (7) The borrower shall warrant that all work or construction done with the proceeds of a loan under this program shall comply with all building codes and standards;
- (8) Project implementation shall begin within 90 days after approval of the application. If delays are encountered following loan closing, any arbitrage profits will be repaid to the revolving fund;
- (9) Loans shall not be used to replace an existing loan;
- (10) Loan payments or drafts shall be sent or delivered to the DOA Fiscal Department at its current address as stated in the loan agreement;
- (11) A letter of credit from a bank approved to do business in North Carolina shall secure the loan against non-payment and also serve as a quarterly drafting mechanism for loan repayment from the bank; and
- (12) No loans shall be forgiven.

*History Note: Authority G.S. 143-345.18(b)(2a);
143-345.18(b)(3);
Eff. August 1, 2004.*

01 NCAC 41C .0204 PRE-APPLICATION CONFERENCE

- (a) At least one week prior to submission of a project application the State Energy Office shall convene a pre-application conference by email, telephone or office visit.
- (b) Parties present at the pre-application conference shall include representatives from the DOA Fiscal Division, the State Energy Office, the applicant or the applicant's engineer.
- (c) The purpose of the conference is to help ensure the application procedures are understood and that the application and technical analysis, when accepted, shall be complete.
- (d) The applicant shall offer verbal, and if available, written project descriptions.
- (e) The applicant shall address environmental impact of the project.
- (f) When final, copies of water and air permits shall be provided by the applicant in addition to the technical analysis.
- (g) Another purpose of this conference shall be to reach an understanding among all parties that the project is of the type that may be considered for approval.

*History Note: Authority G.S. 143-345.18(b)(2a);
143-345.18(b)(3);
Eff. August 1, 2004.*

01 NCAC 41C .0205 APPLICATION PROCEDURES

The applicant shall complete an application on a form provided by the DOA Fiscal Department. The application shall contain the following information:

- (1) The name and complete mailing address, including the county, of the applicant;
- (2) The address, building name (where applicable) or site description including photographs to locate where the energy conservation measure(s) will be installed;
- (3) The name of a contact person, including title and telephone number;
- (4) The amount of the loan requested;
- (5) The estimated dates of start and completion of the project;
- (6) A copy of the Technical Analysis approved by the State Energy Office as fulfilling the energy aspects of the proposed energy conservation measures;
- (7) Identification of the commercial lending institution that is providing letter of credit, depository and repayment services;
- (8) All applicants shall provide financial data on which to base a determination of the applicant's creditworthiness. Documentation shall include the following:
 - (a) Financial statements from the last five years; and
 - (b) Profit and loss statements.

*History Note: Authority G.S. 143-345.18(b)(2a);
143-345.18(b)(3);
Eff. August 1, 2004.*

01 NCAC 41C .0206 APPLICATION REVIEW

Application review shall consist of the following phases:

- (1) The administrative review shall be conducted by the DOA Fiscal Department and may include any data or information needed to complete that review.
- (2) The technical review shall be conducted of the Technical Analysis by the State Energy Office.
- (3) The technical review may occur concurrently with application submittal to the DOA Fiscal Department.
- (4) The technical review shall consider each energy conservation measure for which funding is requested and shall include the accuracy and sufficiency of calculations, engineering principles considered, and labor and material costs relative to the current local market.
- (5) Following acceptance, the State Energy Office will approve those Energy Conservation Measures that were found to meet the energy aspects of the Program.
- (6) No application shall be accepted for consideration by the DOA Fiscal Department without the acceptance of the Technical Analysis by the State Energy Office.

History Note: Authority G.S. 143-345.18(b)(2a); 143-345.18(b)(3); Eff. August 1, 2004.

01 NCAC 41C .0208 LOAN AGREEMENT AND PROMISSORY NOTE

After an application for a loan is approved, a loan agreement shall be executed between the DOA Fiscal Department and the borrower. The loan agreement shall include a promissory note and other necessary documents including, but not limited to, security agreements, mortgages, recordings; and shall contain the covenants and representations as to the borrower's qualification to borrow for the loan, intended use of the loan proceeds, conditions under which the loan will be repaid and events requiring the acceleration, rights and responsibilities of the parties and the terms and conditions of the loan. The requirements to secure the loan shall be included in the loan agreement. Loans shall be secured through bank Letter of Credit.

History Note: Authority G.S. 143-345.18(b)(2a); 143-345.18(b)(3); Eff. August 1, 2004.

01 NCAC 41C .0211 DEFAULT

If the borrower violates any of the terms of the loan agreement, the DOA Fiscal Department may place the borrower in default. Borrowers determined to be in default shall be notified by certified mail and the letter of credit provided as security shall be used to protect the interest of the State of North Carolina.

History Note: Authority G.S. 143-345.18(b)(2a); 143-345.18(b)(3); Eff. August 1, 2004.

TITLE 2 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

02 NCAC 34 .0605 CONTRACTUAL AGREEMENTS FOR WOOD-DESTROYING ORGANISMS

(a) All agreements for the control or prevention of wood-destroying organisms in existing structures shall be in writing and shall include the following:

- (1) Date property was inspected and full name of the inspector;
- (2) Exact location of property inspected or treated;
- (3) Name and address of the property owner or his authorized agent;
- (4) Name and address of the company proposing or performing the treatment;
- (5) License number and phase(s) of the licensee and under whose license the work is to be performed;
- (6) Signature of licensee or his authorized agent;
- (7) A foundation diagram or, if required or recommended by the label of the pesticide used, a site plan of the structure(s) or portions of such structure(s) inspected. The diagram or site plan shall indicate:
 - (A) The location of individual water sources;
 - (B) Any visible evidence of wood-destroying organism infestation;
 - (C) Whether the infestation is active or inactive;
 - (D) The location of any visibly damaged timbers;
 - (E) Portions of the structure treated and not treated;
 - (F) The approximate number and proposed location(s) of bait or monitoring device placements, if applicable. Upon completion of the installation the property owner or agent shall be provided with a diagram or site plan showing the actual number and locations of all stations; and
 - (G) For treatment of wood-decay fungus infestations, the location and result of all moisture meter readings obtained pursuant to 02 NCAC 34 .0508;
- (8) The date upon which the written agreement is entered into and the period of time covered by the written agreement;
- (9) The wood-destroying organism(s) to be controlled or prevented and the terms of the service agreement or warranty to be issued, if any;
- (10) Whether or not reinspections are to be made and, if so, approximate time interval between, and renewal fees for same;

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| <ul style="list-style-type: none"> (11) Conditions under which retreatments will be made; (12) Total price to be charged for treatment service and for repairs or excavations, where such are to be performed; (13) The written agreement, waiver (if applicable), and Wood-Destroying Insect Report or Wood-Destroying Organism Report, shall not show or include the address and telephone number of any licensee's representative or employee other than the address and telephone number of those specified in Subparagraphs (a)(4) and (5) of this Rule; (14) Any licensee or business entity advertising to be bonded shall advise each customer, in writing, in the proposal, whether or not the warranty or written agreement will be covered by a bond of any type; (15) If the performance of the work is guaranteed by a bond, the agreement shall set forth those performance guarantees in wording identical to that in the bond itself; (16) 02 NCAC 34 .0501(a) shall also be followed; (17) Whether the written agreement or warranty may be transferred to subsequent owners of the property and the terms of any such transfer. | <ul style="list-style-type: none"> (8) Whether or not reinspections are to be made and, if so, approximate time interval between, and renewal fees, if any, for same; (9) Conditions under which retreatments will be made; (10) Total price to be charged for treatment service; (11) Any licensee or business entity advertising to be bonded shall advise each customer, in writing, in the proposal, whether or not the warranty or written agreement will be covered by a bond of any type; (12) If the performance of the work is guaranteed by a bond, the agreement shall set forth those performance guarantees in wording identical to that in the bond itself; (13) 02 NCAC 34 .0604(a) shall also be followed; (14) Whether the written agreement or warranty may be transferred to subsequent owners of the property and the terms of any such transfer; (15) If a warranty is issued on a treatment for prevention of subterranean termites in new construction, the licensee shall provide to the builder (or owner, if known at time of treatment) a one-year transferable warranty, which contains, as a minimum, the following terms and conditions: <ul style="list-style-type: none"> (A) The warranty shall cover retreatment of the structure; (B) The warranty period shall begin on or after the day the pretreatment is completed; (C) The PCO must offer the homeowner the opportunity to renew the warranty on the same terms and conditions the licensee offers renewals of the regular termite treatment contracts for four consecutive years; (D) The warranty must be transferable to any owner within either the original one-year warranty period, or within any of the four years specified in Part (d)(15)(C) of this Rule, by notification from the new or the old owner to the licensee or his agent. Failure of the homeowner to renew any one year relieves the PCO of any future responsibility for renewal based upon Parts (d)(15)(C) and (D) of this Rule. The renewal warranty must, as a minimum, extend retreatment, but may by mutual agreement, be extended or enlarged; and (E) Neither the licensee's original warranty nor any extension thereof shall extend to: <ul style="list-style-type: none"> (i) Violations of the Standard Builder's Code by the owner/builder which occur |
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(b) A structure or structures covered by a written agreement or warranty for wood-destroying organism(s) treatment shall not knowingly be placed under an additional written agreement or warranty for the same treatment while the first written agreement or warranty is still in effect without first obtaining a separate written acknowledgment of such signed by the property owner or authorized agent.

(c) When periodic reinspections or retreatments are specified in written agreements for the control or prevention of wood-destroying organisms, the licensee shall issue to the property owner or his authorized agent, after each reinspection or retreatment, a signed report of each reinspection or retreatment showing the condition of the property with respect to the presence or absence of wood-destroying organisms. A record of such reinspections and retreatments shall be kept in the file of the licensee. Such reports shall be subject to inspection by the enforcement agency or committee.

(d) All agreements for the control or prevention of wood-destroying organisms in buildings under construction shall be in writing and shall include the following:

- (1) Date of final treatment and period of time covered by the written agreement;
- (2) Exact location of the treated property;
- (3) Name and address of the property owner or his authorized agent;
- (4) Name and address of the licensee;
- (5) License number and phase(s) of the licensee and full name of company licensee represents;
- (6) Signature of licensee or his authorized agent;
- (7) The wood-destroying organism(s) to be controlled or prevented and the terms of the warranty to be issued, if any;

- after the completion of the pretreatment;
- (ii) Additions not treated by the licensee or his representative;
- (iii) Infestations originating or thriving as a result of remodeling, landscaping or other alteration which occurs after pretreatment is complete and which entails considerable disturbance of the treated soil area or would otherwise enable termites to avoid or circumvent the treatment; and
- (iv) Infestations originating or thriving as a result of building defects, including but not limited to water leaks, excessive moisture or structural defects, of which the property has been notified and given the opportunity to correct.

(e) If the licensee provides preventive treatment(s) for subterranean termites to a structure(s) for someone such as a builder or construction company who is constructing the building(s) for someone else or with the purpose of offering the building(s) for sale, the licensee may enter into a single master agreement with the builder to provide the preventive treatment(s) for subterranean termites. This single master agreement shall include the following:

- (1) Name and address of the builder or his authorized agent;
- (2) That information required in Subparagraphs (d)(4) through (15) of this Rule.

(f) When a structure is treated under an agreement with a builder, the licensee shall:

- (1) Following completion of the treatment and upon notification by the builder or buyer, issue a written agreement to the initial buyer. The written agreement issued to the buyer shall include the following:
 - (A) Name and address of the builder or his authorized agent as it appears on the builder's agreement;
 - (B) That information required in Subparagraphs (d)(1) through (9), (11), (14), and (15) of this Rule. The builder shall be issued a copy of any written agreement issued the buyer.
- (2) Maintain a record of each treatment performed on each structure to include the following information:
 - (A) Location of the structure treated;
 - (B) Date each treatment was performed;
 - (C) The portion(s) of the structure treated.

Eff. July 1, 1976;
Readopted Eff. November 22, 1977;
Amended Eff. August 20, 1980; August 1, 1980;
Temporary Amendment Eff. October 15, 1987 for a period of 180 days to expire on April 12, 1988;
Temporary Amendment Expired Eff. January 19, 1988;
Amended Eff. August 3, 1992; January 1, 1991;
January 1, 1989;
Temporary Amendment Eff. January 10, 1997;
Temporary Amendment Expired Eff. October 31, 1997;
Amended Eff. August 1, 2004; August 1, 2002; July 1, 1998.

TITLE 4 – DEPARTMENT OF COMMERCE

04 NCAC 03B .0105 DECLARATORY RULINGS

(a) Any person substantially affected by a statute administered or rule promulgated by the Commissioner of Banks or the Banking Commission may request a declaratory ruling as to:

- (1) whether, and if so how, the statute or rule applies to a given factual situation, or
- (2) whether a particular agency rule is valid.

All decisions of the Commissioner of Banks relative to declaratory rulings shall be subject to review by the Banking Commission upon written application of any aggrieved party.

(b) The Commissioner of Banks shall have the sole power to make such declaratory rulings. All requests for declaratory rulings shall be written and mailed to:

Office of The Commissioner of Banks
 4309 Mail Service Center
 Raleigh, North Carolina 27699-4309.
 Attention: Legal Division

(c) All requests for a declaratory ruling must include the following information:

- (1) name and address of petitioner;
- (2) statute or rule to which petition relates;
- (3) concise statement of the manner in which petitioner is aggrieved by the rule or statute or its potential application to him;
- (4) a statement of whether an oral hearing is desired, and if so the reasons for such an oral hearing.

(d) Whenever the Commissioner of Banks believes for good cause that the issuance of a declaratory ruling is undesirable, he may refuse to do so. When good cause for refusing to issue a declaratory ruling is deemed to exist, the Commissioner of Banks shall notify the petitioner of his decision in writing, stating reasons for the denial of a declaratory ruling.

(e) Where a declaratory ruling is deemed appropriate, the Commissioner of Banks shall issue the ruling within 60 days of receipt of the petition.

(f) A declaratory ruling procedure may consist of written submissions, oral hearings, or such other procedures as may be appropriate in a particular case.

History Note: Authority G.S. 53-92; 150B-17;
Eff. February 1, 1976;
Amended Eff. August 1, 2004.

History Note: Authority G.S. 106-65.29;

04 NCAC 03B .0225 MOTIONS

(a) Any party may file any motion which would be permitted under the Rules of Civil Procedure if the contested case was pending in a Court.

(b) The opposing party may file such response as is permitted by the Rules of Civil Procedure to any such motion within five days of the date that it is filed with the Commissioner.

(c) The hearing officer shall rule on any such motion. The hearing officer may rule on any motion with or without oral argument. If the hearing officer determines that oral argument is appropriate, he shall notify the parties of the date for such argument. The notice shall indicate whether the argument is to be conducted in person or by conference call.

History Note: Authority G.S. 53-93; 150B-38(h); Eff. August 1, 2004.

04 NCAC 03B .0226 PRE-HEARING CONFERENCE

(a) If the hearing officer determines that to do so would aid in the prompt and efficient resolution of any contested case, the hearing officer may order that the parties attend a pre-hearing conference. The notice of the conference shall either be included in the document referred to in Rule .0224(a) of this Section or in a separate written order. The purpose of a pre-hearing conference is to:

- (1) explore any grounds upon which a contested case may be resolved without the need for a hearing;
- (2) determine the scope of discovery each party wishes to pursue;
- (3) exchange exhibits and other evidence;
- (4) reach stipulations or other agreements; and
- (5) pursue any other matters which will reduce the cost, save time, simplify the issues to be heard, or otherwise aid in the expeditious disposition of the matters to be addressed by the hearing.

(b) The pre-hearing conference may be conducted informally between the parties. At the request of either party, the pre-hearing conference may be conducted by a member of the Commissioner's legal staff.

History Note: Authority G.S. 53-93; 150B-38(h); 150B-41(c); Eff. August 1, 2004.

04 NCAC 03B .0227 HEARINGS

(a) Prior to the commencement of a hearing, the hearing officer shall rule on any outstanding motions.

(b) Once a hearing has begun the hearing officer, may adjourn the hearing and reconvene the same at a later time or date.

(c) Hearings are open to the public, except as to any testimony or other evidence regarding matters made confidential by law.

(d) Hearings shall be conducted in a manner which conforms to the Rules of Civil Procedure and the Rules of Evidence. The order of evidence shall be determined by the hearing officer.

(e) Persons permitted to intervene pursuant to the Rules of Civil Procedure shall be permitted to participate in the hearing only to the extent the hearing officer determines is necessary for a full and fair adjudication of the case.

History Note: Authority G.S. 53-92(d); 53-93; 150B-38(h);

Eff. August 1, 2004.

TITLE 10A - DEPARTMENT OF HEALTH & HUMAN SERVICES

10A NCAC 14C .3801 DEFINITIONS

The following definitions shall apply to all Rules in this Section:

- (1) "Acute care beds" means acute care beds licensed by the Division of Facility Services in accordance with standards in 10A NCAC 13B .6200, and located in hospitals licensed pursuant to G.S. 131E-79.
- (2) "Average daily census" means the number of days of inpatient acute care provided in licensed acute care beds in a given year divided by 365 days.
- (3) "Campus" shall have the same meaning as defined in G.S. 131E-176(2c).
- (4) "Service Area" means the single or multi-county area as used in the development of the acute care bed need determination in the applicable State Medical Facilities Plan.

History Note: Authority G.S. 131E-177(1); 131E-183; Temporary Adoption Eff. January 1, 2004; Eff. August 1, 2004.

TITLE 11 - DEPARTMENT OF INSURANCE

11 NCAC 01 .0403 REQUEST FOR HEARING

(a) A request for an administrative hearing under 11 NCAC 01 .0401 must be in writing and shall contain the following information:

- (1) name and address of the person requesting the hearing,
- (2) a statement of the departmental action being challenged,
- (3) a statement of the manner in which the petitioner is aggrieved, and
- (4) a specific demand for a public hearing.

(b) The request for hearing shall be filed with: General Counsel, N.C. Department of Insurance, 1201 Mail Service Center, Raleigh, NC 27699-1201.

History Note: Authority G.S. 58-2-40; 150B-38; Eff. February 1, 1976; Readopted Eff. May 12, 1978; Amended Eff. August 1, 2004; December 1, 1994; July 1, 1992; October 1, 1988; June 1, 1985.

11 NCAC 01 .0427 RIGHTS AND RESPONSIBILITIES OF PARTIES

(a) A party may present evidence, rebuttal testimony, and argument with respect to the issues of law and policy, and cross-examine witnesses, including the author of a document prepared by, on behalf of, or for use of the Department and offered in evidence.

(b) A party shall have all evidence to be presented, both oral and written, available on the date for hearing. Requests for subpoenas, depositions, or continuances shall be made within a reasonable time after their needs become evident to the requesting party. In cases when the hearing time is expected to exceed one day, the parties shall be prepared to present their evidence at the date and time ordered by the hearing officer or agreed upon at a prehearing conference.

(c) The hearing officer shall send copies of all orders or decisions to all parties simultaneously. Any party sending a letter, exhibit, brief, memorandum, or other document to the hearing officer shall simultaneously send a copy to all other parties.

(d) All parties have the continuing responsibility to notify the hearing officer of their current addresses and telephone numbers.

(e) A party need not be represented by an attorney unless the party is a corporate entity. A corporate entity shall not be represented by its President or other officers. If a party has notified other parties of that party's representation by an attorney, all communications shall be directed to that attorney.

(f) With the approval of the hearing officer, any person may offer testimony or other evidence relevant to the case. Any nonparty offering testimony or other evidence may be questioned by parties to the case and by the hearing officer.

(g) Before issuing a recommended decision, the hearing officer may order any party to submit proposed findings of fact and written arguments. Before issuing a final decision, the Commissioner may order any party to submit proposed findings of fact and written arguments.

History Note: Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h); Eff. July 1, 1992; Amended Eff. August 1, 2004.

11 NCAC 01 .0429 EVIDENCE

(a) The North Carolina Rules of Evidence as found in Chapter 8C of the General Statutes govern in all contested case proceedings, except as provided otherwise in this Section and G.S. 150B-41.

(b) The hearing officer may admit all evidence that has probative value. Irrelevant, incompetent, immaterial, or unduly repetitious evidence shall be excluded. In accordance with Rule 403 of the N.C. Rules of Evidence, the hearing officer may, in his discretion, exclude any evidence if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

(c) Contemporaneous objections by a party or a party's attorney are required in the course of a hearing to preserve the right to object to the consideration of evidence by the hearing officer in reaching a decision or by the court upon judicial review.

(d) All evidence to be considered in the case, including all records and documents or true and accurate photocopies thereof, shall be offered and made a part of the record in the case. Except as provided in Paragraph (f) of this Rule, factual information or evidence that is not offered shall not be considered in the determination of the case. Documentary evidence incorporated by reference may be admitted only if the

materials so incorporated are available for examination by the parties.

(e) Documentary evidence in the form of copies or excerpts may be received in the discretion of the hearing officer or upon agreement of the parties. Copies of a document shall be received to the same extent as the original document unless a genuine question is raised about the accuracy or authenticity of the copy or, under the circumstances, it would be unfair to admit the copy instead of the original.

(f) The hearing officer may take notice of judicially cognizable facts by entering a statement of the noticed fact and its source into the record. Upon a timely request, any party shall be given the opportunity to contest the facts so noticed through submission of evidence and argument.

(g) A party may call an adverse party; or an officer, director, managing agent, or employee of the State or any local government, of a public or private corporation, or of a partnership or association or body politic that is an adverse party; and may interrogate that party by leading questions and may contradict and impeach that party on material matters in all respects as if that party had been called by the adverse party.

The adverse party may be examined by that party's counsel upon the subject matter of that party's examination in chief under the rules applicable to direct examination, and may be cross-examined, contradicted, and impeached by any other party adversely affected by the testimony.

History Note: Authority G.S. 58-2-40(1); 58-2-50; 58-2-55; 58-2-70; 150B-38(h); Eff. July 1, 1992; Amended Eff. August 1, 2004.

11 NCAC 11F .0301 APPLICABILITY AND SCOPE

(a) This Section applies to all life insurance companies and fraternal benefit societies doing business in this State and to all life insurance companies and fraternal benefit societies that are authorized to reinsure life insurance, annuities, or accident and health insurance business in this State. This Section shall be applied in a manner that allows the appointed actuary to utilize his or her professional judgment in performing the asset analysis and developing the actuarial opinion and supporting memoranda, consistent with relevant Actuarial Standards of Practice. However, the Commissioner may require specific methods of actuarial analysis and actuarial assumptions when these specifications are necessary for an acceptable opinion to be rendered relative to the adequacy of reserves and related items. All cross references to rule numbers are to rules within this Section.

(b) This Section applies to all annual statements filed with the Commissioner after December 31, 2004. A statement of opinion on the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with Rule .0306 of this Section and a supporting memorandum in accordance with Rule .0307 of this Section are required each year.

History Note: Authority G.S. 58-2-40; 58-24-120; 58-58-50(i); 58-58-50(j); Eff. December 1, 1994; Amended Eff. August 1, 2004.

11 NCAC 11F .0303 GENERAL REQUIREMENTS

(a) Submission of Opinion:

- (1) There shall be included on or attached to page 1 of the annual statement for each year beginning with calendar year 2004, the statement of an appointed actuary, entitled "Statement of Actuarial Opinion," setting forth an opinion relating to reserves and related actuarial items held in support of policies and contracts, in accordance with Rule .0306 of this Section.
- (2) Upon written request by the company the Commissioner shall grant a 45-day extension of the date for submission of the opinion. In the written request, the company shall state the reason that such extension is needed.

(b) A "qualified actuary" is an individual who:

- (1) Is a member in good standing of the American Academy of Actuaries;
- (2) Is qualified to sign opinions for life and health insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing such opinions;
- (3) Is familiar with the valuation requirements applicable to life and health insurance companies;
- (4) Has not been found by the Commissioner (or if so found has subsequently been reinstated as a qualified actuary), to have:
 - (A) Violated any provision of, or any obligation imposed by, any law or rule in the course of his or her dealings as a qualified actuary;
 - (B) Been found by a court of competent jurisdiction to be guilty of a fraudulent or dishonest practice;
 - (C) Failed to comply with the Code of Professional Conduct as published by the Board;
 - (D) Submitted to the Commissioner during the past five years, under this Section, an opinion or memorandum that the Commissioner rejected because it did not meet the provisions of this Section, including standards set by the Board; or
 - (E) Resigned or been removed as an actuary within the past five years as a result of acts or omissions indicated in any adverse report on an examination or as a result of failure to adhere to generally acceptable actuarial standards; and
- (5) Has not failed to notify the Commissioner of any action taken by any insurance regulator of any other state similar to that under Subparagraph (b)(4) of this Rule.

(c) An "appointed actuary" is a qualified actuary who is appointed or retained to prepare the opinion required by this

Section, either directly by or by the authority of the board of directors through an executive officer of the company. The company shall, within 45 days after the date of the appointment, give the Commissioner written notice of the name, title (and, in the case of a consulting actuary, the name of the firm), and manner of appointment or retention of each person appointed or retained by the company as an appointed actuary and shall state in such notice that the person meets the requirements of Paragraph (b) of this Rule. Once notice is furnished, no further notice is required for the actuary, provided that the company gives the Commissioner written notice if the actuary ceases to be appointed or retained as an appointed actuary or no longer meets the requirements of Paragraph (b) of this Rule. If any person appointed or retained as an appointed actuary replaces a previously appointed actuary, the notice shall so state and give the reasons for replacement.

(d) The asset adequacy analysis required by this Section:

- (1) Shall conform to the standards of practice as promulgated from time to time by the Board and on any additional standards under this Section, which standards are to form the basis of the opinion in accordance with Rule .0306 of this Section; and
- (2) Shall be based on methods of analysis that are consistent with Actuarial Standards of Practice adopted by the Board.

(e) Liabilities to be Covered:

- (1) The opinion shall apply to all in force business on the annual statement date regardless of when or where issued, e.g., aggregate reserves for life insurance and annuity policies and contracts, aggregate reserves for accident and health contracts, aggregate reserves for deposit-type contracts, and policy and contract claims liabilities for life and accident and health policies and contracts, and equivalent items in the separate account statement or statements.
- (2) If the appointed actuary determines as the result of asset adequacy analysis that a reserve should be held in addition to the aggregate reserve held by the company and calculated in accordance with methods set forth in G.S. 58-58-50(d), 58-58-50(d-1), 58-58-50(g), 58-58-50(h), and 58-58-50(k), the company shall establish such additional reserve.
- (3) Additional reserves established under Subparagraph (e)(2) of this Rule and deemed by a qualified actuary to be unnecessary in later years may be released. Any amounts released must be disclosed in the opinion for the applicable year. The release of such reserves is not an adoption of a lower standard of valuation.

History Note: Authority G.S. 58-2-40; 58-58-50(i); 58-58-50(j); Eff. December 1, 1994; Amended Eff. August 1, 2004.

11 NCAC 11F .0306 OPINION BASED ON ASSET ADEQUACY ANALYSIS

(a) The opinion submitted in accordance with this Rule shall consist of:

- (1) A paragraph identifying the appointed actuary and his or her qualifications as prescribed by Subparagraph (b)(1) of this Rule;
- (2) A scope paragraph identifying the subjects on which an opinion is to be expressed and describing the scope of the appointed actuary's work, including a tabulation delineating the reserves and related actuarial items that have been analyzed for asset adequacy and the method of analysis, as prescribed by Subparagraph (b)(2) of this Rule and identifying the reserves and related actuarial items covered by the opinion that have not been so analyzed;
- (3) A reliance paragraph describing those areas, if any, where the appointed actuary has deferred to other experts in developing data, procedures or assumptions, (for example, anticipated cash flows from currently owned assets, including variation in cash flows according to economic scenarios as prescribed by Subparagraph (b)(3) of this Rule), supported by a statement of each such expert in the form prescribed by Paragraph (e) of this Rule; and
- (4) An opinion paragraph expressing the appointed actuary's opinion with respect to the adequacy of the supporting assets to mature the liabilities as prescribed by Subparagraph (b)(6) of this Rule;
- (5) One or more additional paragraphs shall be needed in individual company cases if the appointed actuary:
 - (A) Considers it necessary to state a qualification of his or her opinion;
 - (B) Must disclose an inconsistency in the method of analysis or basis of asset allocation used at the prior opinion date with that used for this opinion.
 - (C) Must disclose whether additional reserves of the prior opinion date are released as of this opinion date, and the extent of the release.
 - (D) Chooses to add a paragraph briefly describing the assumptions that form the basis for the actuarial opinion.

(b) The following paragraphs are to be included in the opinion in accordance with this Rule. The appointed actuary shall use language that expresses his or her own professional judgment. The opinion shall retain all pertinent aspects of the language provided in this Section.

- (1) The opening paragraph shall indicate the appointed actuary's relationship to the company and his or her qualifications to sign the opinion.

(A) For a company actuary, the opening paragraph of the actuarial opinion shall read as follows:

"I [name], am [title] of [insurance company name] and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of the insurer to render this opinion as stated in the letter to the Commissioner dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

(B) For a consulting actuary, the opening paragraph shall contain a sentence similar to the following:

"I, [name], a member of the American Academy of Actuaries, am associated with the firm of [name of consulting firm]. I have been appointed by, or by the authority of, the Board of Directors of [name of company] to render this opinion as stated in the letter to the Commissioner dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

(2) The scope paragraph shall include a statement similar to the following:

"I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, [year]. Tabulated below are those reserves and related actuarial items that have been subjected to asset adequacy analysis.

(Include reserves and related actuarial items that correspond to the Asset Adequacy Tested Amounts Reserves and Liabilities Table listed in the NAIC Model Regulation titled, "Actuarial Opinion and Memorandum Regulation," and any subsequent amendments and editions. A copy of the Table may be obtained from the North Carolina Department of Insurance at a cost prescribed in G.S. 58-6-5(3)).

(3) If the appointed actuary has relied on other experts to develop certain portions of the analysis, the reliance paragraph shall include a statement similar to one of the following:

(A) "I have relied on [name], [title] for [e.g., anticipated cash flows from currently owned assets, including variations in cash flows according to economic scenarios] as certified in the attached statement. I have reviewed the information relied upon for reasonableness....", or

(B) "I have relied on personnel as cited in the supporting memorandum for certain critical aspects of the analysis in reference to the accompanying statement. I have reviewed the information relied upon for reasonableness."

Such a statement of reliance on other experts shall be accompanied by a statement by each of such experts of the form prescribed by Paragraph (e) of this Rule.

(4) If the appointed actuary has examined the underlying asset and liability records, the reliance paragraph shall also include the following:

"My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic asset and liability records and such tests of the actuarial calculations as I considered necessary. I also reconciled the underlying basic asset and liability records to [exhibits and schedules listed as applicable] of the company's current annual statement. "

(5) If the appointed actuary has not examined the underlying records, but has relied upon data (e.g., listings and summaries of policies in force or asset records) prepared by the company or a third party, the reliance paragraph shall include a statement similar to the following:

"In forming my opinion on [specify types of reserves] I relied upon data prepared by [name and title of company officer certifying in-force records or other data] as certified in the attached statement. I evaluated that data for reasonableness and consistency. I also reconciled that data to [exhibits and schedules to be listed as applicable] of the company's current annual statement. In other respects my examination included such review of the actuarial assumptions and actuarial methods used and such tests of the actuarial calculations as I considered necessary."

Such a sentence must be accompanied by a statement by each person relied upon of the form prescribed by Paragraph (e) of this Rule.

(6) The opinion paragraph of an unqualified opinion shall include the following:

(A) "In my opinion the reserves and related actuarial values concerning the statement items identified above:

1. Are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated, in accordance with sound actuarial principles;
2. Are based on actuarial assumptions that produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;
3. Meet the requirements of the insurance laws and rules of the state of [state of domicile] and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed;
4. Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end (with any exceptions noted below); and
5. Include provision for all actuarial reserves and related statement items that ought to be established.

The reserves and related items, when considered in light of the assets held by the company with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts, make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company.

The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Standards of Practice as promulgated

by the Actuarial Standards Board, which standards form the basis of this statement of opinion."

(B) Select one of the following two paragraphs:

- (i) "This opinion is updated annually as required by law. To the best of my knowledge, there have been no material changes from the applicable date of the annual statement to the date of the rendering of this opinion that should be considered in reviewing this opinion;" or
- (ii) "The following material change(s) that occurred between the date of the statement for which this opinion is applicable and the date of this opinion should be considered in reviewing this opinion." (Describe the change or changes.)

(C) "The effect of unanticipated events after the date of this opinion is beyond the scope of this opinion. The analysis of asset adequacy portion of this opinion should be viewed recognizing that the company's future experience may not follow all the assumptions used in the analysis.

of this Section as made necessary by the reason or reasons for the qualified opinion, and shall label the opinion paragraph with the words "Qualified Opinion."

(e) If the appointed actuary relies on the certification of others on matters concerning the accuracy or completeness of any data underlying the opinion, or the appropriateness of any other information used by the appointed actuary in forming the opinion, the opinion shall so indicate the persons the actuary is relying upon and a precise identification of the items subject to reliance. In addition, the persons on whom the appointed actuary relies shall provide a certification that precisely identifies the items on which the person is providing information and a statement as to the accuracy, completeness or reasonableness, as applicable, of the items. This certification shall include the signature, title, company, address, and telephone number of the person rendering the certification, as well as the date on which it is signed.

History Note: Authority G.S. 58-2-40; 58-58-50(i); 58-58-50(j); Eff. December 1, 1994; Amended Eff. August 1, 2004.

11 NCAC 11F .0307 ACTUARIAL MEMORANDUM WITH ASSET ADEQUACY ANALYSIS

(a) General:

- (1) In accordance with G.S. 58-58-50(i) and (j), the appointed actuary shall prepare a memorandum to the company describing the analysis done in support of his or her opinion regarding the reserves under an opinion prescribed by Rule .0306 of this Section. The memorandum shall be made available for examination by the Commissioner upon request and shall be returned to the company after the examination and shall not be subject to automatic filing with the Commissioner.
- (2) In preparing the memorandum, the appointed actuary may rely on, and include as a part of his or her own memorandum, memoranda prepared and signed by other actuaries who are qualified within the meaning of Rule .0303(b) of this Section, with respect to the areas covered in such memoranda, and so state in their memoranda.
- (3) If the Commissioner requests a memorandum and no such memorandum exists or if the Commissioner finds that the analysis described in the memorandum fails to meet the standards of the Board or the standards and requirements of this Section, the Commissioner shall designate a qualified actuary to review the opinion and prepare such supporting memorandum as is required for review. The reasonable and necessary expense of the independent review shall be paid by the company but shall be directed and controlled by the Commissioner.
- (4) The reviewing actuary shall have the same status as an examiner for purposes of obtaining

Signature of Appointed Actuary

Address of Appointed Actuary

Telephone Number of Appointed Actuary

Date"

(c) The adoption for new issues or new claims or other new liabilities of an actuarial assumption that differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this Rule.

(d) If the appointed actuary is unable to form an opinion, then he or she shall refuse to issue an opinion. If the appointed actuary's opinion is adverse or qualified, then he or she shall issue an adverse or qualified opinion explicitly stating the reason or reasons for such opinion. This statement shall follow the scope paragraph and precede the opinion paragraph. If the appointed actuary's opinion is adverse or qualified, the appointed actuary shall modify the language prescribed in Rule .0306(b)(6)

data from the company and the work papers and documentation of the reviewing actuary shall be retained by the Commissioner; provided, however, that any information provided by the company to the reviewing actuary and included in the work papers shall be considered as material provided by the company to the Commissioner and shall be kept confidential to the same extent as is prescribed by law with respect to other material provided by the company to the Commissioner under G.S. 58-58-50(j). The reviewing actuary shall not be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the company under this Section for any one of the current year or the preceding three years.

- (5) In accordance with G.S. 58-58-50(j), the appointed actuary shall prepare a regulatory asset adequacy issues summary, the contents of which are specified in Paragraph (c) of this Rule. The regulatory asset adequacy issues summary shall be submitted no later than March 15 of the year following the year for which a statement of actuarial opinion based on asset adequacy is required. The regulatory asset adequacy issues summary shall be kept confidential to the same extent and under the same conditions as the actuarial memorandum.

(b) When an actuarial opinion under Rule .0306 of this Section is provided, the memorandum shall demonstrate that the analysis has been done in accordance with the standards for asset adequacy referred to in Rule .0303(d) of this Section and any additional standards under this Section. It shall specify:

- (1) For reserves:
- (A) Product descriptions, including market description, underwriting, and other aspects of a risk profile, and the specific risks the appointed actuary deems to be significant;
 - (B) Source of liability in force;
 - (C) Reserve method and basis;
 - (D) Investment reserves;
 - (E) Reinsurance arrangements;
 - (F) Identification of any explicit or implied guarantees made by the general account in support of benefits provided through a separate account or under a separate account policy or contract and the methods used by the appointed actuary to provide for the guarantees in the asset adequacy analysis;
 - (G) Documentation of assumptions to test reserves for the following:
 - (i) Lapse rates (both base and excess);
 - (ii) Interest crediting rate strategy;
 - (iii) Mortality;

- (iv) Policyholder dividend strategy;
- (v) Competitor or market interest rate;
- (vi) Annuitization rates;
- (vii) Commissions and expenses; and
- (viii) Morbidity.

The documentation of assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumptions.

- (2) For assets:
- (A) Portfolio descriptions, including a risk profile disclosing the quality, distribution, and types of assets;
 - (B) Investment and disinvestment assumptions;
 - (C) Source of asset data;
 - (D) Asset valuation bases; and
 - (E) Documentation of assumptions made for:
 - (i) Default costs;
 - (ii) Bond call function;
 - (iii) Mortgage prepayment function;
 - (iv) Determining market value for assets sold due to disinvestment strategy; and
 - (v) Determining yield on assets acquired through the investment strategy.

The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumptions.

- (3) For the analysis basis:
- (A) Methodology;
 - (B) Rationale for inclusion or exclusion of different blocks of business and how pertinent risks were analyzed;
 - (C) Rationale for degree of rigor in analyzing different blocks of business(including in the rationale the level of "materiality" that was used in determining how rigorously to analyze different blocks of business);
 - (D) Criteria for determining asset adequacy(including in the criteria the precise basis for determining if assets are adequate to cover reserves under "moderately adverse conditions" or other conditions as specified in relevant actuarial standards of practice); and

- (E) Effect of federal income taxes, reinsurance, and other actuarially or financially relevant factors.
- (4) Summary of any changes in methods, procedures, or assumptions from the prior year's asset adequacy analysis which the appointed actuary considers to be material.
- (5) Summary of results.
- (6) Conclusions.
- (c) The regulatory asset adequacy issues summary shall include:
 - (1) Descriptions of the scenarios tested (including whether those scenarios are stochastic or deterministic) and the sensitivity testing done relative to those scenarios. If negative ending surplus results under any tests in the aggregate, the actuary shall describe those tests and the amount of additional reserve as of the valuation date that, if held, would eliminate the negative aggregate surplus values. Ending surplus values shall be determined by either extending the projection period until the in force and associated assets and liabilities at the end of the projection period are considered by the appointed actuary to be immaterial or by adjusting the surplus amount at the end of the projection period by an amount that appropriately estimates the value that can reasonably be expected to arise from the assets and liabilities remaining in force;
 - (2) The extent to which the appointed actuary uses assumptions in the asset adequacy analysis that are considered by the appointed actuary to be materially different than the assumptions used in the previous asset adequacy analysis;
 - (3) The amount of reserves and the identity of the product lines that had been subjected to asset adequacy analysis in the prior opinion but were not subject to analysis for the current opinion;
 - (4) Comments on any interim results that may be of concern to the appointed actuary;
 - (5) The methods used by the actuary to recognize the impact of reinsurance on the company's cash flows, including both assets and liabilities, under each of the scenarios tested; and
 - (6) Whether the actuary has been satisfied that all options whether explicit or embedded, in any asset or liability (including those affecting cash flows embedded in fixed income securities) and equity-like features in any investments have been appropriately considered in the asset adequacy analysis.
- (d) The regulatory asset adequacy issues summary shall contain the name of the company for which the regulatory asset adequacy issues summary is being supplied, and shall be signed and dated by the appointed actuary rendering the actuarial opinion.
- (e) The memorandum shall include a statement:

"Actuarial methods, considerations and analyses used in the preparation of this memorandum conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis for this memorandum."

- (f) An appropriate allocation of assets in the amount of the interest maintenance reserve (IMR), whether positive or negative, shall be used in any asset adequacy analysis. Analysis of risks regarding asset default may include an appropriate allocation of assets supporting the asset valuation reserve (AVR); these AVR assets may not be applied for any other risks with respect to reserve adequacy. Analysis of these and other risks may include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support. The amount of the assets used for the AVR shall be disclosed in the table of reserves and liabilities of the opinion and in the memorandum. The method used for selecting particular assets or allocated portions of assets shall be disclosed in the memorandum.
- (g) The appointed actuary shall retain on file, for at least seven years, all documentation necessary to determine the procedures followed, the analyses performed, the bases for the assumptions, and the results obtained.

History Note: Authority G.S. 58-2-40; 58-58-50(i); 58-58-50(j); Eff. December 1, 1994; Amended Eff. August 1, 2004.

TITLE 12 – DEPARTMENT OF JUSTICE

12 NCAC 07D .0901 REQUIREMENTS FOR A FIREARMS TRAINER CERTIFICATE

Firearms trainer applicants shall:

- (1) meet the minimum standards established by 12 NCAC 07D .0703;
- (2) have a minimum of one year supervisory experience in security with a contract security company or proprietary security organization, or one year experience with any federal, U.S. military, state, county or municipal law enforcement agency;
- (3) attain a 90 percent score on a firearm's course approved by the Board and the Attorney General, with a copy of the firearm's course certificate to be kept on file in the administrator's office;
- (4) successfully complete a training course approved by the Board and the Attorney General which shall consist of a minimum of 40 hours of classroom and practical range training in handgun and shotgun safety and maintenance, range operations, night firearm training, control and safety procedures, and methods of handgun and shotgun firing;
- (5) pay the certified trainer application fee established in 12 NCAC 07D .0903(a)(1); and

- (6) successfully complete the requirements of a Unarmed Trainer Certificate established by 12 NCAC 07D .0909.

History Note: Authority G.S. 74C-5; 74C-13; Eff. June 1, 1984; Amended Eff. August 1, 2004; November 1, 1991.

12 NCAC 07D .0911 RENEWAL OF AN UNARMED GUARD TRAINER CERTIFICATE

Each applicant for renewal of an unarmed guard trainer certificate shall complete a board renewal form. This form shall be submitted not less than 30 days prior to the expiration of the applicant's current certificate. In additions, the applicant shall include the following:

- (1) the renewal fee set forth in 12 NCAC 07D .0903(a)(3);
- (2) certification of a minimum of eight hours of instruction performed during past one year; and
- (3) statement verifying the classes taught for the prior year on a form prescribed by the Board.

History Note: Authority G.S. 74C-8; 74C-9; 74C-11; 74C-13; Eff. August 1, 2004.

TITLE 15A - DEPARTMENT OF ENVIRONMENT & NATURAL RESOURCES

15A NCAC 01N .0201 AVAILABILITY OF LOANS

- (a) Loans shall be available only for projects that appear on the state approved intended use plan submitted to the U.S. Environmental Protection Agency and that comply with the requirements of this Subchapter.
- (b) An intended use plan may be amended at any time to add projects addressing an emergency situation and submitted to the U.S. Environmental Protection Agency for approval. All Rules in 15A NCAC 01N shall be applicable to such projects. Such projects include those where some type of failure was unanticipated and requires immediate attention to protect public health.
- (c) During any fiscal year 15 percent of the annual allocation shall be available solely for providing assistance to public water systems which regularly serve fewer than 10,000 persons to the extent such funds can be obligated for eligible projects.
- (d) During any fiscal year a maximum of five percent of the annual allocation may be used for loans for project planning purposes only.

History Note: Authority G.S. 159G-5; 159G-15; Temporary Adoption Eff. January 31, 1998; Eff. April 1, 1999; Amended Eff. August 1, 2004.

15A NCAC 01N .0606 SOURCE PROTECTION AND MANAGEMENT

The maximum value to be given for source protection and management categorical elements is 150 points. Points shall

only be awarded for existing activities or programs that efficiently protect the public health, as follows:

- (1) Participation in source water protection activities; points may be awarded in Sub-Items (a) and (b) of this Item up to the maximum, as follows:
 - (a) Voluntary water supply watershed protection program approved by the Division, pursuant to the Safe Drinking Water Act, Section 1453 five points, or
 - (b) Voluntary wellhead protection program approved by the Division, pursuant to the Safe Drinking Water Act, Section 1428 five points.
- (2) Efficient water use, as shown by the applicant's establishment and administration of the described programs; points may be awarded in Sub-Items (a), (b), and (c) of this Item up to the maximum, as follows:
 - (a) Water loss reduction program which includes water audits, comprehensive metering, and hidden leak detection, three points;
 - (b) Cross-connection control program, three points;
 - (c) Demand management strategies, such as a water conservation incentive rate structure, incentives for new or replacement installation of low flow faucets, showerheads and toilets, or a water reclamation or reuse system, three points per strategy.

History Note: Authority G.S. 159G-5; 159G-15; Temporary Adoption Eff. January 31, 1998; Eff. April 1, 1999; Amended Eff. August 1, 2004.

15A NCAC 01N .0701 DETERMINATION OF AWARDS AND BYPASS PROCEDURES

- (a) All funds appropriated for a fiscal year and all other funds accruing from loan principal repayments, interest payments, interest earned on funds, excess funds not awarded in the previous priority review period, and any other source shall be available for loans during the priority review period.
- (b) The funds available in a priority review period shall be awarded in the form of a binding commitment in descending order of priority rating upon EPA approval of that IUP considering Paragraph .0201(b) of this Subchapter to those eligible projects that are ready to proceed. A project is defined as ready to proceed when the following conditions have been met:
 - (1) Project plans and specifications are approved by the Division;
 - (2) Any environmental review required is complete;
 - (3) One hundred percent funding necessary for the project is committed; and
 - (4) Authorization To Construct is issued by the Division.

(c) Except as provided in Paragraph (d) of this Rule, the maximum principal amount of loan commitment from any fiscal year's allocation made to an applicant shall be three million dollars (\$3,000,000), except that the maximum amount of loan commitment from any fiscal year's allocation for a project planning purposes only loan shall be twenty-five thousand dollars (\$25,000).

(d) Any funds remaining after the initial allocation of Paragraphs (b) and (c) of this Rule shall be awarded in descending order of priority rating to those eligible projects in any approved IUP that are ready to proceed subject to the limitation of Paragraph (c) of this Rule for each 'pass' through the remaining available funding.

History Note: Authority G.S. 159G-5; 159G-15; Temporary Adoption Eff. January 31, 1998; Eff. April 1, 1999; Amended Eff. August 1, 2004.

15A NCAC 02D .0902 APPLICABILITY

(a) The rules in this Section do not apply except as specifically set out in this Rule.

(b) Regardless of any other statement of applicability of this Section, this Section does not apply to:

- (1) sources whose emissions of volatile organic compounds are not more than 15 pounds per day, except that this Section does apply to the manufacture and use of cutback asphalt and to gasoline service stations or gasoline dispensing facilities regardless of levels of emissions of volatile organic compounds;
- (2) sources whose emissions do not exceed 800 pounds of volatile organic compounds per calendar month and that are:
 - (A) bench-scale, on-site equipment used exclusively for chemical or physical analysis for quality control purposes, staff instruction, water or wastewater analyses, or non-production environmental compliance assessments;
 - (B) bench-scale experimentation, chemical or physical analyses, training or instruction from not-for-profit, non-production educational laboratories;
 - (C) bench-scale experimentation, chemical or physical analyses, training or instruction from hospitals or health laboratories pursuant to the determination or diagnoses of illness; or
 - (D) research and development laboratory activities provided the activity produces no commercial product or feedstock material; or
- (3) emissions of volatile organic compounds during startup or shutdown operations from sources which use incineration or other types of combustion to control emissions of volatile

organic compounds whenever the off-gas contains an explosive mixture during the startup or shutdown operation if the exemption is approved by the Director as meeting the requirements of this Subparagraph.

(c) The following Rules of this Section apply statewide:

- (1) .0925, Petroleum Liquid Storage in Fixed Roof Tanks, for fixed roof tanks at gasoline bulk plants and gasoline bulk terminals;
- (2) .0926, Bulk Gasoline Plants;
- (3) .0927, Bulk Gasoline Terminals;
- (4) .0928, Gasoline Service Stations Stage I;
- (5) .0932, Gasoline Truck Tanks and Vapor Collection Systems;
- (6) 0933, Petroleum Liquid Storage in External Floating Roof Tanks, for external floating roof tanks at bulk gasoline plants and bulk gasoline terminals;
- (7) .0948, VOC Emissions from Transfer Operations;
- (8) .0949, Storage of Miscellaneous Volatile Organic Compounds; and
- (9) .0958, Work Practices for Sources of Volatile Organic Compounds.

(d) Rule .0953, Vapor Return Piping for Stage II Vapor Recovery, of this Section applies in Davidson, Durham, Forsyth, Gaston, Guilford, Mecklenburg, Wake, Dutchville Township in Granville County, and that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River in accordance with provisions set out in that Rule.

(e) All sources located in Mecklenburg County that were required to comply with any of these Rules:

- (1) .0917 through .0937 of this Section, or
- (2) .0943 through .0945 of this Section, before July 5, 1995, shall continue to comply with those Rules.

(f) If a violation of the ambient air quality standard for ozone is measured in accordance with 40 CFR 50.9 in Cabarrus, Gaston, Iredell, Lincoln, Mecklenburg, Rowan, or Union County, North Carolina or York County, South Carolina, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as being necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Gaston or Mecklenburg County or in both counties. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. (For

Mecklenburg County, "Director" means for the purpose of notifying permitted facilities in Mecklenburg County, the Director of the Mecklenburg County local air pollution control program.) Compliance shall be in accordance with Rule .0909 of this Section.

(g) If a violation of the ambient air quality standard for ozone is measured in accordance with 40 CFR 50.9 in Davidson, Forsyth, or Guilford County or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as being necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Davidson, Forsyth, or Guilford County or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River or any combination thereof. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. (For Forsyth County, "Director" means for the purpose of notifying permitted facilities in Forsyth County, the Director of the Forsyth County local air pollution control program.) Compliance shall be in accordance with Rule .0909 of this Section.

(h) If a violation of the ambient air quality standard for ozone is measured in accordance with 40 CFR 50.9 in Durham or Wake County or Dutchville Township in Granville County, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures

contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as being necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Durham or Wake County or Dutchville Township in Granville County or any combination thereof. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. Compliance shall be in accordance with Rule .0909 of this Section.

(i) Sources whose emissions of volatile organic compounds are not subject to limitation under this Section may still be subject to emission limits on volatile organic compounds in Rules .0518, .0524, .1110, or .1111 of this Subchapter.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. July 1, 1979; Amended Eff. August 1, 2004; July 1, 2000; April 1, 1997; July 1, 1996; July 1, 1995; May 1, 1995; July 1, 1994.

15A NCAC 02D .1104 TOXIC AIR POLLUTANT GUIDELINES

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

Pollutant (CAS Number)	Annual (Carcinogens)	24-hour (Chronic Toxicants)	1-hour (Acute Systemic Toxicants)	1-hour (Acute Irritants)
acetaldehyde (75-07-0)				27
acetic acid (64-19-7)				3.7
acrolein (107-02-8)				0.08
acrylonitrile (107-13-1)	1.5 x 10 ⁻⁴			
ammonia (7664-41-7)				2.7
aniline (62-53-3)			1	
arsenic and inorganic arsenic compounds	2.3 x 10 ⁻⁷			
asbestos (1332-21-4)	2.8 x 10 ⁻¹¹ fibers/ml			

APPROVED RULES

Pollutant (CAS Number)	Annual (Carcinogens)	24-hour (Chronic Toxicants)	1-hour (Acute Systemic Toxicants)	1-hour (Acute Irritants)
aziridine (151-56-4)		0.006		
benzene (71-43-2)	1.2×10^{-4}			
benzidine and salts (92-87-5)	1.5×10^{-8}			
benzo(a)pyrene (50-32-8)	3.3×10^{-5}			
benzyl chloride (100-44-7)			0.5	
beryllium (7440-41-7)	4.1×10^{-6}			
beryllium chloride (7787-47-5)	4.1×10^{-6}			
beryllium fluoride (7787-49-7)	4.1×10^{-6}			
beryllium nitrate (13597-99-4)	4.1×10^{-6}			
bioavailable chromate pigments, as chromium (VI) equivalent	8.3×10^{-8}			
bis-chloromethyl ether (542-88-1)	3.7×10^{-7}			
bromine (7726-95-6)				0.2
1,3-butadiene (106-99-0)	1.7×10^{-4}			
cadmium (7440-43-9)	5.5×10^{-6}			
cadmium acetate (543-90-8)	5.5×10^{-6}			
cadmium bromide (7789-42-6)	5.5×10^{-6}			
carbon disulfide (75-15-0)		0.186		
carbon tetrachloride (56-23-5)	6.7×10^{-3}			
chlorine (7782-50-5)		0.0375		0.9
chlorobenzene (108-90-7)		2.2		
chloroform (67-66-3)	4.3×10^{-3}			
chloroprene (126-99-8)		0.44	3.5	
cresol (1319-77-3)			2.2	
p-dichlorobenzene (106-46-7)				66
dichlorodifluoromethane (75-71-8)		248		
dichlorofluoromethane (75-43-4)		0.5		
di(2-ethylhexyl)phthalate (117-81-7)		0.03		
dimethyl sulfate (77-78-1)		0.003		
1,4-dioxane (123-91-1)		0.56		
epichlorohydrin (106-89-8)	8.3×10^{-2}			
ethyl acetate (141-78-6)			140	
ethylenediamine (107-15-3)		0.3	2.5	
ethylene dibromide (106-93-4)	4.0×10^{-4}			
ethylene dichloride (107-06-2)	3.8×10^{-3}			
ethylene glycol monoethyl ether (110-80-5)		0.12	1.9	
ethylene oxide (75-21-8)	2.7×10^{-5}			
ethyl mercaptan (75-08-1)			0.1	
fluorides		0.016	0.25	
formaldehyde (50-00-0)				0.15
hexachlorocyclopentadiene (77-47-4)		0.0006	0.01	
hexachlorodibenzo-p-dioxin (57653-85-7)	7.6×10^{-8}			
n-hexane (110-54-3)		1.1		
hexane isomers except n-hexane				360
hydrazine (302-01-2)		0.0006		
hydrogen chloride (7647-01-0)				0.7

APPROVED RULES

Pollutant (CAS Number)	Annual (Carcinogens)	24-hour (Chronic Toxicants)	1-hour (Acute Systemic Toxicants)	1-hour (Acute Irritants)
hydrogen cyanide (74-90-8)		0.14	1.1	
hydrogen fluoride (7664-39-3)		0.03		0.25
hydrogen sulfide (7783-06-4)		0.12		
maleic anhydride (108-31-6)		0.012	0.1	
manganese and compounds		0.031		
manganese cyclopentadienyl tricarbonyl (12079-65-1)		0.0006		
manganese tetroxide (1317-35-7)		0.0062		
mercury, alkyl		0.00006		
mercury, aryl and inorganic compounds		0.0006		
mercury, vapor (7439-97-6)		0.0006		
methyl chloroform (71-55-6)		12		245
methylene chloride (75-09-2)	2.4×10^{-2}		1.7	
methyl ethyl ketone (78-93-3)		3.7		88.5
methyl isobutyl ketone (108-10-1)		2.56		30
methyl mercaptan (74-93-1)			0.05	
nickel carbonyl (13463-39-3)		0.0006		
nickel metal (7440-02-0)		0.006		
nickel, soluble compounds, as nickel		0.0006		
nickel subsulfide (12035-72-2)	2.1×10^{-6}			
nitric acid (7697-37-2)				1
nitrobenzene (98-95-3)		0.06	0.5	
n-nitrosodimethylamine (62-75-9)	5.0×10^{-5}			
non-specific chromium (VI) compounds, as chromium (VI) equivalent	8.3×10^{-8}			
pentachlorophenol (87-86-5)		0.003	0.025	
perchloroethylene (127-18-4)	1.9×10^{-1}			
phenol (108-95-2)			0.95	
phosgene (75-44-5)		0.0025		
phosphine (7803-51-2)				0.13
polychlorinated biphenyls (1336- 36-3)	8.3×10^{-5}			
soluble chromate compounds, as chromium (VI) equivalent		6.2×10^{-4}		
styrene (100-42-5)			10.6	
sulfuric acid (7664-93-9)		0.012	0.1	
tetrachlorodibenzo-p-dioxin (1746- 01-6)	3.0×10^{-9}			
1,1,1,2-tetrachloro-2,2,- difluoroethane (76-11-9)		52		
1,1,2,2-tetrachloro-1,2- difluoroethane (76-12-0)		52		
1,1,2,2-tetrachloroethane (79-34-5)	6.3×10^{-3}			
toluene (108-88-3)		4.7		56
toluene diisocyanate, 2,4- (584-84- 9) and 2,6- (91-08-7) isomers		0.0002		
trichloroethylene (79-01-6)	5.9×10^{-2}			
trichlorofluoromethane (75-69-4)			560	
1,1,2-trichloro-1,2,2-				950

Pollutant (CAS Number)	Annual (Carcinogens)	24-hour (Chronic Toxicants)	1-hour (Acute Systemic Toxicants)	1-hour (Acute Irritants)
trifluoroethane (76-13-1)				
vinyl chloride (75-01-4)	3.8 x 10 ⁻⁴			
vinylidene chloride (75-35-4)		0.12		
xylene (1330-20-7)		2.7		65

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3),(4),(5); 143B-282; S.L. 1989, c. 168, s. 45; Eff. May 1, 1990; Amended Eff. September 1, 1992; March 1, 1992; Temporary Amendment Eff. July 20, 1997; Amended Eff. April 1, 2005; April 1, 2001; July 1, 1998.

15A NCAC 02D .1904 AIR CURTAIN BURNERS

(a) Air quality permits shall be required for air curtain burners subject to 40 CFR 60.2245 through 60.2265 or located at permanent sites or where materials are transported in from another site. Air quality permits shall not be required for air curtain burners located at temporary land clearing or right-of-way maintenance sites for less than nine months if they are not subject to 40 CFR 60.2245 through 60.2265. The operation of air curtain burners in particulate and ozone nonattainment areas shall cease in any area that has been forecasted by the Department, or the Forsyth County Environmental Affairs Department for the Triad ozone forecast area, to be in an Ozone Action Day Code "Orange" as defined in 40 CFR Part 58, Appendix G status or above during the time period covered by that forecast.

(b) Air curtain burners described in Paragraph (a) of this Rule shall comply with the following conditions and stipulations:

- (1) The wind direction at the time of that the burning is initiated and the wind direction as forecasted by the National Weather Service during the time of the burning shall be away from any area, including public road within 250 feet of the burning as measured from the edge of the pavement or other roadway surface, which may be affected by smoke, ash, or other air pollutants from the burning;
- (2) Only collected land clearing and yard waste materials may be burned. Heavy oils, asphaltic materials, items containing natural or synthetic rubber, tires, grass clippings, collected leaves, paper products, plastics, general trash, garbage, or any materials containing painted or treated wood materials shall not be burned. Leaves still on trees or brush may be burned;
- (3) No fires shall be started or material added to existing fires when the Division of Forest Resources has banned burning for that area;
- (4) Burning shall be conducted only between the hours of 8:00 a.m. and 6:00 p.m.;
- (5) The air curtain burner shall not be operated more than the maximum source operating hours-per-day and days-per-week. The

maximum source operating hours-per-day and days-per-week shall be set to protect the ambient air quality standard and prevention of significant deterioration (PSD) increment for particulate. The maximum source operating hours-per-day and days-per-week shall be determined using the modeling procedures in Rule .1106(b), (c), and (f) of this Subchapter. This Subparagraph shall not apply to temporary air curtain burners;

- (6) An air curtain burner with an air quality permit shall have onsite at all times during operation of the burner a visible emissions reader certified according to 40 CFR Part 60, Method 9 to read visible emissions, and the facility shall test for visible emissions within 90 five days after initial operation and within 90 days before permit expiration;
- (7) Air curtain burners shall meet manufacturer's specifications for operation and upkeep to ensure complete burning of material charged into the pit. Manufacturer's specifications shall be kept on site and be available for inspection by Division staff;
- (8) Except during start-up, visible emissions shall not exceed 10 percent opacity when averaged over a six-minute period except that one six-minute period with an average opacity of more than 10 percent but no more than 35 percent shall be allowed for any one-hour period. During start-up, the visible emissions shall not exceed 35 percent opacity when averaged over a six-minute period. Start-up shall not last for more than 45 minutes, and there shall be no more than one start-up per day. Air curtain burners subject to 40 CFR 60.2245 through 60.2265 shall comply with the opacity standards in 40 CFR 60.2250 instead of the opacity standards in this Subparagraph;
- (9) The owner or operator of an air curtain burner shall not allow ash to build up in the pit to a depth higher than one-third of the depth of the pit or to the point where the ash begins to impede combustion, whichever occurs first. The owner or operator of an air curtain burner shall allow the ashes to cool and water the ash prior to its removal to prevent the ash from becoming airborne;
- (10) The owner or operator of an air curtain burner shall not load material into the air curtain

burner such that it will protrude above the air curtain;

- (11) Only distillate oil, kerosene, diesel fuel, natural gas, or liquefied petroleum gas may be used to start the fire; and
- (12) The location of the burning shall be at least 500 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted. The regional office supervisor shall grant exceptions to the setback requirements if a signed, written statement waiving objections to the air curtain burning is obtained from a resident or an owner of each dwelling, commercial or institutional establishment, or other occupied structure within 500 feet of the burning site. In case of a lease or rental agreement, the lessee or renter, and the property owner shall sign the statement waiving objections to the burning. The statement shall be submitted to and approved by the regional office supervisor before initiation of the burn.

Compliance with this Rule does not relieve any owner or operator of an air curtain burner from the necessity of complying with other rules in this Section or any other air quality rules.

(c) Recordkeeping Requirements. The owner or operator of an air curtain burner at a permanent site shall keep a daily log of specific materials burned and amounts of material burned in pounds per hour and tons per year. The logs at a permanent air curtain burner site shall be maintained on site for a minimum of two years and shall be available at all times for inspection by the Division of Air Quality. The owner or operator of an air curtain burner at a temporary site shall keep a log of total number of tons burned per temporary site. The owner or operator of air curtain burner subject to 40 CFR 60.2245 through 60.2265 shall comply with the monitoring, recordkeeping, and reporting requirements in 40 CFR 60.2245 through 60.2265.

(d) Title V Considerations. Burners that have the potential to burn 8,100 tons of material or more per year may be subject to Section 15A NCAC 2Q .0500, Title V Procedures.

(e) Prevention of Significant Deterioration Consideration. Burners that burn 16,200 tons per year or more may be subject to 15A NCAC 2D .0530, Prevention of Significant Deterioration.

(f) A person may use a burner using a different technology or method of operation than an air curtain burner as defined under Rule .1902 of this Section if he demonstrates to the Director that the burner is at least as effective as an air curtain burner in reducing emissions and if the Director approves the use of the burner. The Director shall approve the burner if he finds that it is at least as effective as an air curtain burner. This burner shall comply with all the requirements of this Rule.

(g) In addition to complying with the requirements of this Rule, an air curtain burner that commenced construction after November 30, 1999, or that commenced reconstruction or modification on or after June 1, 2001, shall also comply with 40 CFR 60.2245 through 60.2265 in addition to the requirements of this Rule.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.66; 143-215.107(a)(5),(10); 143-215.108; Eff. July 1, 1996; Amended Eff. August 1, 2004.

15A NCAC 02Q .0706 MODIFICATIONS

(a) For modification of any facility undertaken after September 30, 1993, that:

- (1) is required to have a permit because of applicability of a Section in Subchapter 2D of this Chapter other than Section .1100 of Subchapter 2D of this Chapter except for facilities whose emissions of toxic air pollutants result only from insignificant activities as defined in 15A NCAC 2Q .0101(19) or sources exempted under Rule .0102 of this Subchapter;
- (2) has one or more sources subject to a MACT or GACT standard that has previously been promulgated under Section 112(d) of the federal Clean Air Act or established under Section 112(e) or 112(j) of the Clean Air Act; or
- (3) has a standard industrial classification code that has previously been called under Rule .0705 of this Section; the owner or operator of the facility shall comply with Paragraphs (b) and (c) of this Rule.

(b) The owner or operator of the facility shall submit a permit application to comply with 15A NCAC 2D .1100 if:

- (1) The modification results in:
 - (A) a net increase in emissions of any toxic air pollutant that the facility was emitting before the modification; or
 - (B) emissions of any toxic air pollutant that the facility was not emitting before the modification if such emissions exceed the levels contained in Rule .0711 of this Section; or
- (2) The Director finds that the modification of the facility will cause an acceptable ambient level in 15A NCAC 2D .1104 to be exceeded. The Director shall provide the findings to the owner or operator of the facility. The Director may require the owner or operator of a facility subject to this Subparagraph to provide an evaluation showing what the resultant emissions and impacts on ambient levels for air toxics from the modified facility will be.

(c) The permit application filed pursuant to this Rule shall include an evaluation for all toxic air pollutants covered under 15A NCAC 2D .1104 for which there is:

- (1) a net increase in emissions of any toxic air pollutant that the facility was emitting before the modification; and
- (2) emission of any toxic air pollutant that the facility was not emitting before the modification if such emissions exceed the levels contained in Rule .0711 of this Section.

All sources at the facility, excluding sources exempt from evaluation in Rule .0702 of this Section, emitting these toxic air pollutants shall be included in the evaluation. A permit application filed pursuant to Subparagraph (b)(2) of this Rule shall include an evaluation for all toxic air pollutants identified by the Director as causing an acceptable ambient level in 15A NCAC 2D .1104 to be exceeded.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282; S. L. 1989, c. 168, s. 45; Rule originally codified as part of 15A NCAC 2H .0610; Eff. July 1, 1998; Amended Eff. April 1, 2005.

15A NCAC 02Q .0714 WASTEWATER TREATMENT SYSTEMS AT PULP AND PAPER MILLS

(a) This Rule applies to wastewater collection and treatment systems at pulp and paper mills that are exempted under Rule .0702 of this Section.

(b) Except for facilities that employ activated sludge type wastewater treatment systems, the owner or operator of a wastewater collection and treatment system covered under this Rule shall:

- (1) submit to the Director estimates of hydrogen sulfide, total reduced sulfur, and methyl mercaptan emissions from wastewater collection and treatment systems and components using estimation methods or factors developed through industry testing and analytical studies and approved by the Director by November 1, 2005. In deciding approval of the estimation methods and factors, the Director shall consider field validation procedures including the number of valid samples taken, when measurements are made, laboratory and field measurement quality assurance procedures, and other information necessary in producing accurate and precise measurements. The Director shall report to the Environmental Management Commission the information submitted under this Subparagraph by January 1, 2006;
- (2) using the emission estimates developed under Subparagraph (b)(1), perform air dispersion modeling of all hydrogen sulfide emission sources, including all emissions associated with the wastewater collection and treatment system, as described in 15A NCAC 2D .1106 (a) through (i). If the modeling analysis demonstrates that predicted concentrations of hydrogen sulfide are below the acceptable ambient levels outlined in 15A NCAC 2D .1104, no further plan development, measurement or monitoring action is required to maintain the exemption provided by this Rule. The results of the favorable modeling demonstration must be submitted to the Director by July 1, 2006. The Director shall report to the Environmental Management

- (3) Commission the information submitted under this Subparagraph by September 1, 2006; if the dispersion modeling performed under Subparagraph (b)(2) of this rule shows that the acceptable ambient level for hydrogen sulfide is exceeded, submit to the Director, on or before September 30, 2006, for approval by the Director, an ambient air quality monitoring plan designed to assess actual ambient levels of hydrogen sulfide typical of pulp and paper mill operations. The monitoring plan may be undertaken at each of the individual mill sites or, at the option of the affected mill sites, it may be undertaken at a single North Carolina mill site that the Director determines to be representative of the industry. The Director shall complete review and make the decision regarding approval of the monitoring plan by December 31, 2006;
- (4) by June 30, 2007, implement the ambient monitoring study plan required in Subparagraph (b)(3) to determine the actual ambient levels of hydrogen sulfide near pulp and paper mills;
- (5) complete the ambient hydrogen sulfide monitoring plan and report the results to the Director and to the Chairperson of the Environmental Management Commission by December 31, 2008 and the Director shall report to the Environmental Management Commission the information submitted under this Subparagraph by February 28, 2009 for further consideration.

(c) To perform ambient monitoring for hydrogen sulfide under Subparagraph (b)(3) of this Rule, the owner or operator shall use monitoring methods and procedures approved by the Director. The Director shall approve the monitoring methods and procedures if he determines that they are an appropriate measure of ambient air concentrations of hydrogen sulfide.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143B-282; Eff. April 1, 2005.

15A NCAC 18D .0206 CERTIFIED OPERATOR REQUIRED

(a) All public water systems shall have a certified operator in responsible charge for each water treatment facility that alters the physical, chemical, or microbiological characteristics of the water; has approved plans for such alterations; or has equipment installed for such alterations. Upon vacancy of a position resulting in noncompliance with this requirement each facility shall notify the Board Office and Division of Environmental Health Public Water Supply Section Regional Office, in writing, within 10 days.

(b) There shall be an operator holding at least a Grade C-Surface certification or above assigned to be on duty on the premises when a surface water treatment facility is treating water. Implementation of this requirement is subject to the following provisions:

- (1) Upon vacancy of a position resulting in noncompliance with this requirement each facility shall notify the Board Office within 24 hours or at the start of the next regular business day of such vacancy;
- (2) Upon such vacancy the facility shall have 90 days to fill the position with a certified grade C-Surface operator or an operator with a temporary C-Surface certification.

(c) There shall be an operator in responsible charge for the distribution portion of the community and non-transient non-community public water systems. This operator shall possess a valid certificate issued by the Board equivalent to or exceeding the distribution classification of the facility for which he or she is designated. A system serving 100 or fewer service connections is exempt from this requirement if it has an operator in responsible charge as required in Paragraph (a) of this Rule.

(d) Effective July 1, 2003 there shall be an operator in responsible charge for the cross-connection-control facilities of the distribution system for all public water systems required by 15A NCAC 18C to have five or more testable backflow prevention assemblies. This operator shall possess a valid Grade Cross-Connection-Control certificate issued by the Board.

(e) All operators of community and non-transient non-community public water systems shall follow the standard operating procedures established by the operator in responsible charge. Any decisions about water quality or quantity that affect public health which have not been defined in the standard operating procedures shall be referred to the operator in responsible charge or to the certified operator on duty.

History Note: Authority G.S. 90A-20; 90A-28; 90A-29; 90A-32; Eff. July 1, 1991; Amended Eff. August 1, 2004; August 1, 2002; August 1, 2000; May 1, 1994; May 3, 1993.

15A NCAC 18D .0301 APPLICATION FOR EXAM

(a) All applicants for regular exams shall file an application on a form available from: Chairman, North Carolina Water Treatment Facility Operators Certification Board, 1635 Mail Service Center, Raleigh, North Carolina 27699-1635.

(b) Applications for certification must be submitted to the Board at least 30 days prior to the date of the examination.

(c) The applicant shall certify that the information given is correct to the best of his/her knowledge. In addition, the applicant's supervisor shall certify that he/she has reviewed the application and recommends that the applicant be considered for certification by the Board.

(d) Applicants shall take the examination at the place and date specified on the application.

History Note: Authority G.S. 90A-21(c); 90A-24; Eff. February 1, 1976; Amended Eff. September 1, 1977; Readopted Eff. March 1, 1979; Amended Eff. August 1, 2004; February 1, 2002; August 3, 1992; September 1, 1990.

15A NCAC 18D .0304 FEE SCHEDULE

(a) The cost of examination and certification shall be fifty dollars (\$50.00).

(b) The cost of a temporary certificate shall be fifty dollars (\$50.00).

(c) The examination and certification fee must be paid to the Board when the application is submitted.

(d) The cost of the annual certification renewal shall be thirty dollars (\$30.00). Renewal fees shall be due December 31 of each calendar year and shall be delinquent on the first day of February. Delinquent certifications shall be charged an additional fee of thirty dollars (\$30.00).

(e) The operator shall notify the Board, in writing, within 30 days of any change in his/her address.

History Note: Authority G.S. 90A-27; Eff. February 1, 1976; Amended Eff. July 1, 1977; Readopted Eff. March 1, 1979; Amended Eff. Pending consultation for fees; August 1, 2000; August 3, 1992; December 1, 1990; December 1, 1989; June 30, 1981.

15A NCAC 18D .0307 EXPIRATION AND REVOCATION OF CERTIFICATE

(a) If the operator fails to pay the renewal fee or meet the continuing education requirements of Rule .0308(a) of this Section, the certificate shall expire.

(b) If an operator in responsible charge fails to meet the requirements of 15A NCAC 18D .0701, his/her certificate may be revoked.

(c) An individual who has had certification revoked by the Board shall petition the Board for any new certification sought and may not petition the Board for such new certification sooner than two years after the effective date of the revocation.

History Note: Authority G.S. 90A-25.1; 90A-26; Eff. August 3, 1992; Amended Eff. August 1, 2004; August 1, 2002; August 1, 2000; August 1, 1998.

15A NCAC 18D .0308 PROFESSIONAL GROWTH HOURS

(a) All certified operators who have held a certificate for the calendar year shall complete six contact hours of instruction during the year immediately preceding annual certification renewal for each certification renewed. The same contact hours may be credited to all certifications for which the training is relevant. The instruction shall be related to system operation or professional development. Proof of continuing education shall be submitted to the Board with the annual certification renewal form.

(b) The organization providing the instruction shall give each participant a certificate or other proof of successful completion which includes the name of the provider, the provider's address, and contact person with telephone number. The proof of completion shall identify the name of the participant, the number of contact hours completed, the course name, the instructor's name, and the date of the instruction received. For in-house training, an instructor from outside of the organization shall provide the instruction. If an operator fails to provide proof of

the required six contact hours of instruction at the time of annual certification renewal, the certification shall be expired.

History Note: Authority G.S. 90A-25.1; 90A-26; Eff. August 1, 1998; Amended Eff. August 1, 2004; August 1, 2000.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 10 - BOARD OF CHIROPRACTIC EXAMINERS

21 NCAC 10 .0202 APPLICATION FOR LICENSURE

(a) General. Application for licensure shall be made in writing upon forms provided by the Board. The secretary shall furnish the necessary forms to prospective applicants upon request.

(b) Description of Forms. The written application shall consist of two forms, the Application Form and the Character Reference Form. The following information shall be required to complete each form:

- (1) Application Form: personal background of the applicant; his educational history; a recent photograph; and a statement confirming that he has read, understands and will abide by the General Statutes and administrative rules governing chiropractic.
- (2) Character Reference Form: the statements of three persons not related to the applicant attesting to his good moral character.

(c) Deadlines for Filing Applications. Applications for the North Carolina examination must be received at the office of the Board no later than 15 days before the scheduled examination dates as provided in 21 NCAC 10 .0203(b).

(d) Application Fee. An application fee of three hundred dollars (\$300.00) must accompany each application. This fee shall be paid in cash, or by certified check, cashier's check or money order made payable to the North Carolina Board of Chiropractic Examiners. Personal checks shall not be accepted.

History Note: Authority G.S. 90-142; 90-143; 90-143.1; 90-145; 90-146; 90-149; Eff. February 1, 1976; Readopted Eff. January 27, 1978; Amended Eff. October 17, 1980; Legislative Objection Lodged Eff. December 17, 1982; Curative Amendment Eff. December 30, 1982; Amended Eff. January 1, 1983; Legislative Objection Lodged Eff. January 31, 1983; Curative Amendment Eff. February 28, 1983; Amended Eff. January 1, 1989; Temporary Amendment Eff. January 1, 2003; Temporary Amendment Expired October 31, 2003; Amended Eff. August 1, 2004; February 1, 2004.

CHAPTER 34 - BOARD OF FUNERAL SERVICE

21 NCAC 34A .0102 PURPOSE OF BOARD

The purpose and function of the Board are to examine, license and regulate the practice of funeral service, the operation of crematories, the sale of preneed funeral contracts in North Carolina, and the operation of Mutual Burial Associations, pursuant to the authority granted by Articles 13A, 13D, 13E, and 13F, Chapter 90, General Statutes of North Carolina.

History Note: Authority G.S. 90-210.23(a); 90-210.69(a); 90-210.134(a); Eff. February 1, 1976; Readopted Eff. September 27, 1977; Amended Eff. August 1, 2004; May 1, 1993; July 1, 1991.

21 NCAC 34A .0103 PETITION FOR NOMINATION

(a) All petitions for nomination of a person to the Board of Funeral Service must be submitted on forms provided by the Board. The nominee shall furnish the name of the nominee, the seat to which he or she is nominated, and the signatures of 20 persons licensed to practice embalming, funeral directing or funeral service.

(b) All petitions for nomination of a person to the North Carolina Crematory Authority must be submitted on forms provided by the Board. The nominee shall furnish the name of the nominee and the signatures of three crematory managers or crematory technicians.

History Note: Authority G.S. 90-210.23(a); 90-210.18(c)(4); 90-210.122(c); Eff. February 1, 1976; Readopted Eff. September 27, 1977; Amended Eff. August 1, 2004; July 1, 1991.

21 NCAC 34A .0104 VOTING RECORDS

(a) The Board shall maintain records for demonstrating that a ballot has been mailed to a licensee and to show whether a ballot-enclosing envelope has been returned. Voting records shall include the name, address, and license number of the licensee, record of whether and when a ballot has been mailed, and a record of whether and when the return of the ballot-enclosing envelope has been returned.

(b) The Board shall maintain records for elections to the North Carolina Crematory Authority to show that a ballot was mailed to each crematory licensee and to show whether a ballot-enclosing envelope has been returned. Voting records shall include the name, address, and license number of the crematory operator, a record of whether and when the ballot has been mailed, and a record of whether and when the ballot-enclosing envelope has been returned.

History Note: Authority G.S. 90-210.23(a); 90-210.18(c)(6); 90-210.122(c); Eff. February 1, 1976; Readopted Eff. September 27, 1977; Amended Eff. August 1, 2004; July 1, 1991; September 1, 1979.

21 NCAC 34A .0117 FORM OF SUBPOENA

All subpoenas shall be issued on forms provided by the Board. The subpoena shall furnish the name of the contested case; the name of the person subpoenaed; the date, time, and place to appear; the name of the person or persons applying for the

subpoena; and any other information the Board deems necessary as determined by law. The form shall be signed and dated by an authorized representative of the Board and the party serving the subpoena, if applicable.

History Note: Authority G.S. 90-210.23(a);
 Eff. February 1, 1976;
 Readopted Eff. September 27, 1977;
 Amended Eff. August 1, 2004; August 1, 1988.

21 NCAC 34A .0118 FORM OF SUBPOENA TO PRODUCE DOCUMENT OR OBJECT

All subpoenas to produce documents or objects shall be issued on forms provided by the Board. The subpoena shall furnish name of the contested case; the name of the person subpoenaed; the date, time, and place to appear; a description of the documents or objects to bring; the name of the person or persons applying for the subpoena; and any other information the Board deems necessary as required by law. The subpoena shall be signed and dated by an authorized representative of the Board and the party serving the subpoena, if applicable.

History Note: Authority G.S. 90-210.23(a);
 Eff. February 1, 1976;
 Readopted Eff. September 27, 1977;
 Amended Eff. August 1, 2004; August 1, 1988.

21 NCAC 34A .0122 CHARACTER AFFIDAVIT FORM

Affidavits of good moral character shall be furnished on forms provided by the Board. The affiant shall furnish the name and address of the affiant, the name of the applicant, the length of time the affiant has been acquainted with the applicant, an affirmation of the good moral character of the applicant, certification by a notary public, and other information the Board deems necessary as required by law.

History Note: Authority G.S. 90-210.23(a); 90-210.26;
 Eff. September 1, 1979;
 Amended Eff. August 1, 2004.

21 NCAC 34A .0123 CONSUMER COMPLAINT FORM

The Board may provide consumer complaint forms. The complainant shall furnish the names and addresses of all parties involved, a description of the complaint, the signature of the complainant, and other information that the Board deems necessary as required by law.

History Note: Authority G.S. 90-210.23(a); 90-210.18(a);
 90-210.25(e); 90-210.134(a);
 Eff. September 1, 1979;
 Recodified from 21 NCAC 34 .0124 Eff. February 7, 1991;
 Amended Eff. August 1, 2004.

21 NCAC 34C .0103 APPLICATION FORM FOR CREMATORY LICENSE

All applications for a crematory license shall be made on forms provided by the Board. The application shall state the name of the applicant; address; type of business entity; location of

crematory; description of crematory, facilities and equipment; name and address of each crematory technician; name and address of the crematory manager; any criminal convictions of the applicant and manager; and other information the Board deems necessary as required by law. Three affidavits of the moral character of the owners, partners, or officers and of the manager in compliance with G.S. 90-210.26 shall accompany the application.

History Note: Authority G.S. 90-210.123; 90-210.134(a);
 Eff. July 1, 1991;
 Amended Eff. August 1, 2004.

21 NCAC 34C .0104 CREMATORY LICENSE CERTIFICATE

The Board shall issue each crematory licensee a certificate for a crematory upon demonstrating that all requirements for a crematory license have been satisfied. All crematory license certificates shall be issued on certificate forms provided by the Board.

History Note: Authority G.S. 90-210.123; 90-210.134(a);
 Eff. July 1, 1991;
 Amended Eff. August 1, 2004.

21 NCAC 34C .0105 CREMATORY INSPECTION FORM

The findings of all crematory inspections shall be recorded and filed on report forms provided by the Board. The crematory licensee shall furnish the name and address of the crematory, names of the owner and manager, acknowledgement of the findings of the inspector, the date for compliance, verification by the crematory licensee that any violations have been corrected, the date of the verification, and other information the Board deems necessary as required by law. Verifications by the crematory licensee that any violations have been corrected must be received by the Board no later than seven days after the date for compliance.

History Note: Authority G.S. 90-210.123; 90-210.134(a);
 Eff. July 1, 1991;
 Amended Eff. August 1, 2004.

21 NCAC 34C .0302 WAIVER FORM

All waivers of the waiting period of cremation required by G.S. 90-210.129(e) shall be recorded on forms provided by the Board. The form shall require the official authorized to waive the waiting period for cremation to furnish the statutory basis for the waiver, the signature of the official authorized to waive the waiting period, and any other information the Board deems necessary as required by law.

History Note: Authority G.S. 90-210.123; 90-210.127;
 90-210.134(a);
 Eff. July 1, 1991;
 Amended Eff. August 1, 2004.

21 NCAC 34C .0303 RECORDS OF CREMATION AND DELIVERY

(a) All crematory licensees shall complete receipts for human remains on Board forms. The crematory licensee shall furnish the name of the crematory licensee, full name of the decedent, date and time of death, date and time the human remains was delivered to the crematory licensee, any affiliation by the person delivering remains with a funeral establishment or crematory, the name and signature of the employee or agent of the crematory who received the human remains, and any other information the Board deems necessary as required by law. Every crematory licensee shall furnish this receipt to the person who delivers the human remains to the crematory licensee.

(b) All records documenting the release of human remains from a crematory licensee to the person who receives the cremated remains shall be completed on Board forms. The crematory licensee shall furnish the name of the crematory licensee, the full name of the decedent, the date and time of release, the name of the person who received the cremated remains, the place where cremated remains were received, any affiliation by the person receiving remains with a funeral establishment or other entity, the signatures of the person delivering the remains and the recipient of remains, any mailing or handling instructions, and any other information the Board deems necessary as required by law. Crematory licensees must provide evidence by signature, postal receipt or its equivalent, of the receipt of the cremated remains.

(c) All records documenting the release of human remains from a funeral establishment to the person who receives the cremated remains shall be completed on Board forms. The funeral establishment shall furnish the name of the funeral establishment, the full name of the decedent, the date and time of release, the person to whom the remains were released, the type of container in which the remains were released, the signatures of the parties delivering and receiving remains, any shipping or special handling instructions, and any other information the Board deems necessary as required by law. Funeral establishments must provide evidence by signature, postal receipt or its equivalent, of the receipt of the cremated remains.

(d) In order to track the human remains through the cremation process from the time the remains are received at the crematory until the cremated remains are delivered, all crematory licensees shall keep records on Board forms. The crematory licensee shall furnish the name of the crematory licensee, full name of the decedent, description of the cremation container used, time and date the decedent was placed into the crematory, person who placed the deceased in the crematory, time and date the cremated remains were removed from the crematory, type of container the cremated remains in which the cremated remains were placed, time and date the cremated remains were processed, the name and signature of the person who processed the cremated remains and placed them into a container, and any other information the Board deems necessary as required by law.

(e) The crematory licensee shall retain the completed forms in Paragraphs (a), (b), and (d) of this Rule and shall make them available for inspection or copying by the Board or its agents upon request. The funeral establishment shall retain the

completed form in Paragraph (c) of this Rule and shall make it available for inspection or copying to the Board or its agents upon request.

History Note: Authority G.S. 90-210.127; 90-10.134(a); Eff. July 1, 1991; Amended Eff. August 1, 2004.

CHAPTER 46 - BOARD OF PHARMACY

21 NCAC 46 .2201 HOURS: RECORDS: PROVIDERS: CORRESPONDENCE: RECIPROCITY

(a) As a condition of license renewal, each practicing pharmacist holding an active license shall report on renewal forms the hours of continuing education obtained during the preceding year. Annual accumulation of ten hours is considered satisfactory to meet the quantitative requirement of this Rule.

(b) All records, reports of accredited hours and certificates of credit shall be kept at the pharmacist's regular place of practice for verification by inspectors during regular or other visits. The Board may require submission of such documentation on a random basis. Pharmacists who do not practice regularly at one location shall produce such records within 24 hours of a request from Board authorized personnel. All records of hours and certificates of credit shall be preserved for at least three years.

(c) All continuing education shall be obtained from a provider approved by the Board. In order to receive credit, continuing education courses shall have the purpose of increasing the participant's professional competence and proficiency as a pharmacist. At least five hours of the continuing education credits must be obtained through contact programs in any calendar year. Contact programs are those programs in which there is an opportunity for live two-way communication between the presenter and attendee.

(d) Continuing education shall not serve as a barrier to reciprocity; however all licensees by reciprocity must observe the continuing education standards specified in (a), (b) and (c) of this Rule within the first renewal period after licensure in this state.

(e) Pharmacists who list their status as "Inactive" on the annual application for license renewal and who certify that they are no longer engaged in the practice of pharmacy are not required to obtain the continuing education hours required by this Rule. Pharmacists on inactive status are prohibited from practicing pharmacy in this State. Should a pharmacist on inactive status wish to return to active status, then all continuing education hours for the period of inactive status must be obtained, and the pharmacist shall be treated the same as an applicant for reinstatement.

History Note: Authority G.S. 90-85.6; 90-85.17; 90-85.18; Eff. January 1, 1985; Amended Eff. August 1, 2004; August 1, 1998; September 1, 1993; May 1, 1989.

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>
<u>ABC COMMISSION</u>				
ABC Commission v. Richard Martin Falls, Jr., T/A Falls Quick Stop	04 ABC 0341	Mann	07/16/04	
ABC Commission v. Red Lion Manestream, Inc., T/A Red Lion Manestream	04 ABC 0695	Wade	07/20/04	
<u>VICTIMS COMPENSATION</u>				
Lonnie Jones v. Dept. Crime Control & Public Safety, Victims Compensation	03 CPS 2320	Conner	07/23/04	
Angelique M. Jones on behalf of a juvenile victim, her son, Jaquial Jones v. Victims Compensation Commission	03 CPS 2353	Conner	07/12/04	
<u>DEPARTMENT OF AGRICULTURE</u>				
NC Spring Water Assoc, Inc., Wiley Fogleman (President) v. DOA, David McLeod and Table Rock Spring Water Co.	04 DAG 0110	Gray	07/21/04	
<u>DEPARTMENT OF ADMINISTRATION</u>				
Larry Yancey v. GACPD, DOA	04 DOA 0896	Morrison	07/28/04	
<u>HEALTH AND HUMAN SERVICES</u>				
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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	
Lativia L. Gibbs v. DHHS, Div. of Child Development	03 DHR 1746	Smith	07/23/04	
Rebecca Stephens Short v. DHHS, Div of Facility Services	03 DHR 1806	Conner	06/11/04	
Pamela Narron (Legal Guardian for) Benjamin Chad Pierce v. DHHS, Div of Mental Health – DD-SA	03 DHR 2377	Conner	07/19/04	
Mooresville 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	
John Michael Thompson v. DHHS, DFS	04 DHR 0046	Lassiter	07/27/04	
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CONTESTED CASE DECISIONS

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Martha Williams, Kidzt Town v Div of Child Development	04 DHR 0200	Elkins	06/11/04
Mary P. Daniels v. DHHS	04 DHR 0232	Gray	08/09/04
Eula P. Street v. DHHS, DFS	04 DHR 0332	Elkins	07/14/04
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
Phyllis S. Weaver v. DHHS	04 DHR 0457	Conner	07/19/04
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Fox's Tot, Inc., Connie Fox v. DHHS	04 DHR 0881	Elkins	07/20/04
Kids Kingdon Christian Learning Center, Inc., v. Div. of Child Development, Regulatory Services Section	04 DHR 0974	Conner	08/10/04

A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions.

DEPARTMENT OF JUSTICE

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Steve A. Matthews v. Sheriff's Education & Traning Standards Commission	03 DOJ 1702	Conner	05/10/04
Tony M. Evans and Kristopher D. Harris v. Criminal Justice Educ. & Training Standards Commission	03 DOJ 2354	Mann	07/19/04
Tony M. Evans and Kristopher D. Harris v. Criminal Justice Educ. & Training Standards Commission	03 DOJ 2355	Mann	07/19/04
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Mary Pender v. DOT, Retirement Systems Division	04 DST 0027	Conner	07/23/04
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Raymond Wallace, The Golden Mirror vs. Div of Radiation Protection	01 EHR 1558	Mann	06/17/04
Old Beau Golf Club v. DENR	03 EHR 1260	Conner	07/28/04
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
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Phyllis Holt v. UNC Chapel Hill	04 OSP 0486	Chess	06/01/04
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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
James A. Ray v. UNC at Greensboro, Facility Services	04 OSP 0751	Elkins	07/14/04
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Carrie Ann Sykes v. Chapel Hill Hospital	04 UNC 0245	Elkins	06/25/04
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Rex A. Coughenour v. UNC Hospitals	04 UNC 0306	Elkins	06/22/04
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P. Nettles v. UNC Hospitals	04 UNC 0393	Morrison	07/23/04
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Joe Hatcher v. UNC Hospitals	04 UNC 0480	Morrison	07/23/04
Tammy Bottoms v. UNC Hospitals	04 UNC 0502	Elkins	07/21/04
Thomas Sherman Tate v. UNC Hospitals	04 UNC 0538	Chess	06/15/04
Tracy Lane v. UNC Hospitals	04 UNC 0601	Gray	07/23/04
Chris Oduok v. UNC Hospitals	04 UNC 0760	Morrison	07/26/04
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