

NORTH CAROLINA

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

NORTH CAROLINA REGISTER
 Publication Schedule for January 2005 – December 2005

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
19:13	01/03/05	12/08/04	01/18/05	03/04/05	03/21/05	05/01/05	05/06	09/30/05
19:14	01/18/05	12/22/04	02/02/05	03/21/05	04/20/05	06/01/05	05/06	10/15/05
19:15	02/01/05	01/10/05	02/16/05	04/04/05	04/20/05	06/01/05	05/06	10/29/05
19:16	02/15/05	01/25/05	03/02/05	04/18/05	04/20/05	06/01/05	05/06	11/12/05
19:17	03/01/05	02/08/05	03/16/05	05/02/05	05/20/05	07/01/05	05/06	11/26/05
19:18	03/15/05	02/22/05	03/30/05	05/16/05	05/20/05	07/01/05	05/06	12/10/05
19:19	04/01/05	03/10/05	04/16/05	05/31/05	06/20/05	08/01/05	05/06	12/27/05
19:20	04/15/05	03/24/05	04/30/05	06/14/05	06/20/05	08/01/05	05/06	01/10/06
19:21	05/02/05	04/11/05	05/17/05	07/01/05	07/20/05	09/01/05	05/06	01/27/06
19:22	05/16/05	04/25/05	05/31/05	07/15/05	07/20/05	09/01/05	05/06	02/10/06
19:23	06/01/05	05/10/05	06/16/05	08/01/05	08/22/05	10/01/05	05/06	02/26/06
19:24	06/15/05	05/24/05	06/30/05	08/15/05	08/22/05	10/01/05	05/06	03/12/06
20:01	07/01/05	06/10/05	07/16/05	08/30/05	09/20/05	11/01/05	05/06	03/28/06
20:02	07/15/05	06/23/05	07/30/05	09/13/05	09/20/05	11/01/05	05/06	04/11/06
20:03	08/01/05	07/11/05	08/16/05	09/30/05	10/20/05	12/01/05	05/06	04/28/06
20:04	08/15/05	07/25/05	08/30/05	10/14/05	10/20/05	12/01/05	05/06	05/12/06
20:05	09/01/05	08/11/05	09/16/05	10/31/05	11/21/05	01/01/06	05/06	05/29/06
20:06	09/15/05	08/25/05	09/30/05	11/14/05	11/21/05	01/01/06	05/06	06/12/06
20:07	10/03/05	09/12/05	10/18/05	12/02/05	12/20/05	02/01/06	05/06	06/30/06
20:08	10/17/05	09/26/05	11/01/05	12/16/05	12/20/05	02/01/06	05/06	07/14/06
20:09	11/01/05	10/11/05	11/16/05	01/03/06	01/20/06	03/01/06	05/06	07/29/06
20:10	11/15/05	10/24/05	11/30/05	01/17/06	01/20/06	03/01/06	05/06	08/12/06
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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.

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 – DEPARTMENT OF AGRICULTURE & CONSUMER SERVICES

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

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 52A .0112 and amend the rules cited as 02 NCAC 43H .0103; 52A .0101-.0103; 52B .0601.

Proposed Effective Date: May 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 January 18, 2005 to David S. McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

Reason for Proposed Action: To update Federal standards incorporated by reference relating to livestock and poultry disease and egg grading.

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 objections 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, ext 249; fax 919-716-0105, email david.mcleod@ncmail.net.

Comment period ends: March 4, 2005

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

CHAPTER 43 - MARKETS

SUBCHAPTER 43H - MARKETING OF SHELL EGGS

SECTION .0100 - DEFINITIONS AND STANDARDS

02 NCAC 43H .0103 STANDARDS FOR SHELL EGGS
(a) The United States Standards, Grades, and Weight Classes for Shell Eggs, ~~7 C.F.R. Sections 56.200 to 56.218 (1987), adopted by the Agricultural Marketing Service of the United States Department of Agriculture as AMS-56, are hereby adopted incorporated by reference in accordance with G.S. 150B-14(e), reference, including subsequent amendments and editions,~~ and shall apply to all shell eggs sold, offered for sale, or advertised for sale in the state except the term "ungraded eggs" may be used to designate eggs purchased from eligible persons.
(b) Title 9, Code of Federal Regulations, Part 590, Inspection of Eggs and Egg Products, is incorporated by reference, including subsequent amendments and editions.
~~(b)(c) Cracked or checked eggs may be sold by producers or processors to a consumer for his or her personal use (except use, except an "institutional consumer"). consumer." Said sales shall be made only at the premises of production or processing.~~
~~(e)(d) Cracked or checked eggs may also be sold to a processing plant by a producer or processor for further processing.~~
~~(d)(e) It shall be unlawful for cracked or checked eggs to be displayed, sold, or offered for sale in a retail outlet [except except as permitted by 2 02 NCAC 43H .0004(4) .0101(4) and 2 NCAC 43H .0003(a)]. Paragraph (a) of this Rule.~~

Authority G.S. 106-245.16; 106-245.21.

CHAPTER 52 - VETERINARY DIVISION

SUBCHAPTER 52A - RULES AND REGULATIONS ADOPTED BY REFERENCE

SECTION .0100 - ADOPTIONS BY REFERENCE

02 NCAC 52A .0101 UNIFORM RULES AND METHODS: TUBERCULOSIS
The ~~Veterinary Division of the North Carolina Department of Agriculture adopts by reference the document entitled "Uniform Methods and Rules for Bovine Tuberculosis Eradication" as published by the United States Department of Agriculture, Veterinary Services Section, Animal and Plant Health Inspection Service, as amended January 4, 1982. Agriculture is incorporated by reference, including subsequent amendments~~

and editions. Copies may be obtained at no charge from the United States Department of Agriculture website at <http://www.aphis.usda.gov/vs/naahps/tb/tb-umr.pdf>.

Authority G.S. 106-348; 150B-14.

02 NCAC 52A .0102 POULTRY

~~(a) The Veterinary Division adopts by reference the "National Poultry Improvement Plan and Auxiliary Provisions," codified as published by the United States Department of Agriculture, Veterinary Services Section, Animal Title 9, Code of Federal Regulations, Parts 145 and Plant Health Inspection Service, as amended May, 1982. 147, is incorporated by reference, including subsequent amendments and editions. Copies of these materials may be obtained at no charge from the United States Government Printing Office at <http://www.gpoaccess.gov/cfr/index.html>.~~

~~(b) The document entitled "Prevention and Control of H5 and H7 Low Pathogenicity Avian Influenza in the Live Bird Market System," published by the United States Department of Agriculture, is incorporated by reference, including subsequent amendments and editions. Copies of this document may be obtained at no charge from the office of the State Veterinarian in the North Carolina Department of Agriculture and Consumer Services.~~

Authority G.S. 106-539; 150B-14.

02 NCAC 52A .0103 UNIFORM METHODS AND RULES: BRUCELLOSIS

~~The Veterinary Division adopts by reference the document entitled "Uniform Methods and Rules for the Eradication of Brucellosis" (UMR), pamphlet number APHIS 91-1, as published by the United States Department of Agriculture, Animal and Plant Health Inspection Service, as amended August 15, 1983. Agriculture is incorporated by reference, including subsequent amendments and editions. Copies may be obtained at no charge from the United States Department of Agriculture website at http://www.aphis.usda.gov/vs/naahps/brucellosis/umr_bovine_bruc.pdf.~~

Authority G.S. 106-396; 150B-14.

02 NCAC 52A .0112 UNIFORM METHODS AND RULES: SCRAPIE

~~The document entitled "Scrapie Eradication Uniform Methods and Rules," as published by the United States Department of Agriculture, is incorporated by reference, including subsequent amendments and editions. Copies of this material may be obtained at no cost from the USDA website at <http://www.aphis.usda.gov/vs/naahps/scrapie/umr-scrapie-erad.pdf>.~~

Authority G.S. 106-307.5; 106-317.

SUBCHAPTER 52B - ANIMAL DISEASE

SECTION .0600 - POULTRY: HATCHERIES: PULLORUM DISEASE

02 NCAC 52B .0601 NATIONAL POULTRY IMPROVEMENT PLAN

(a) All provisions for the recognition, classification, control, and eradication of pullorum disease, fowl typhoid, and Mycoplasma Gallisepticum (MG) as contained in the United States Department of Agriculture National Poultry Improvement Plan and Auxiliary Provisions (APHIS 91-40: 44 Federal Register 61586, October 26, 1979), are hereby adopted Provisions, as incorporated by reference; provided that all references in the National Poultry Plan as herein adopted pertaining to "participating hatcheries" reference at 02 NCAC 52A .0102, shall apply to all hatcheries in this State state and provided further that egg type chicken flocks shall be treated as egg type chicken breeding flocks for determining compliance with the provisions of this Rule.

(b) All poultry and poultry products produced, sold, offered for sale, shipped into this State, state, or transported within this State state shall originate from flocks that meet the minimum requirements for the control of pullorum, fowl typhoid and Mycoplasma Gallisepticum as expressed in the National Poultry Improvement Plan and Auxiliary Auxiliary Provisions except that birds enroute to or from a show or exhibition approved by the North Carolina Department of Agriculture and Consumer Services need not comply with (b) of this Rule and that prior to January 1, 1988, consignments of less than 500 birds may be imported from sources approved by the State Veterinarian without complying with (b) of this Rule. Paragraph.

(c) Poultry that does not meet the standards prescribed in Paragraph (b) of this Rule shall be subject to the provisions of 2 02 NCAC 52B .0501 as applicable.

(d) Poultry slaughtered within 24 hours after entering the state need not comply with the provisions of this Rule, unless the poultry originates from a quarantined flock. Poultry originating from a quarantined flock shall be accompanied by a permit from the State Veterinarian.

Authority G.S. 106-539; 106-540; 106-543.

TITLE 10A – DEPARTMENT OF HEALTH & HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Medical Care Commission intends to amend the rule cited as 10A NCAC 13B .3103.

Proposed Effective Date: May 1, 2005

Public Hearing:

Date: March 4, 2005

Time: 10:00 a.m.

Location: Division of Facility Services, Dorothea Dix Campus, Council Building, Room 201, 701 Barbour Drive, Raleigh, NC

Reason for Proposed Action: The Division of Facility Services is responsible for issuing licenses to medical facilities on the basis of specialized facilities and services available. This Rule

is requested to be amended to accurately reflect the four medical types of hospitals that are currently licensed by the Division.

Procedure by which a person can object to the agency on a proposed rule: An individual may object to the agency on the proposed rule by submitting written comments on the proposed rule. They may also object by attending the public hearing and personally voice their objection during that time.

Written comments may be submitted to: The person to whom written comments may be submitted on the proposed rule is Mercidee Benton, NC Division of Facility Services, 2701 Mail Service Center, Raleigh, North Carolina 27699-2701, phone, 919-855-3750, fax (919) 733-2757 and email mercidee.benton@ncmail.net.

Comment period ends: March 4, 2005

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 13 – NC MEDICAL CARE COMMISSION

SUBCHAPTER 13B – MEDICAL CARE COMMISSION

SECTION .3100 - PROCEDURE

10A NCAC 13B .3103 CLASSIFICATION OF EDICAL FACILITIES

(a) The classification of "hospital" shall be restricted to facilities that provide as their primary functions diagnostic services and medical and nursing care in the treatment of acute stages of illness. On the basis of specialized facilities and services available, the Division shall license each such hospital according to the following medical types:

- (1) general acute care hospital;
- (2) rehabilitation hospital;
- (3) ~~designated primary care hospital~~ critical access hospital; or

- (4) ~~federally certified primary care hospital~~ long term acute care hospital which is a hospital that has been classified and certified as a long term care hospital pursuant to 42 CFR Part 412.

(b) All other inpatient medical facilities accepting patients requiring skilled nursing services but which are not operated as a part of any hospital within the above meaning shall be considered to be operating as a nursing home and, therefore, are not subject to hospital licensure.

Authority G.S. 131E-79.

TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Manufactured Housing Board intends to amend the rules cited as 11 NCAC 08 .0902-.0904, .0910-.0911.

Proposed Effective Date: May 1, 2005

Public Hearing:

Date: January 18, 2005

Time: 9:00 a.m.

Location: Manufactured Building Division, 322 Chapanoke Road, Suite 200, Raleigh, NC

Reason for Proposed Action: Pursuant to G.S. 143-143.10A, establish guidelines for criminal history record check for new manufactured housing applicants, and make clarifying and technical changes.

Procedure by which a person can object to the agency on a proposed rule: The Manufactured Housing Board/NC Department of Insurance will accept written objections to the amendments of these rules until the expiration of the comment period on March 4, 2005.

Written comments may be submitted to: Pat Walker – Manufactured Housing Board, Department of Insurance, 322 Chapanoke Road, Suite 200, Raleigh, NC 27603, phone (919)661-5880, email pwalker@ncdoi.net.

Comment period ends: March 4, 2005

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 8 - ENGINEERING AND BUILDING
CODES DIVISION**

SECTION .0900 - MANUFACTURED HOUSING BOARD

11 NCAC 08 .0902 ADDRESS

The mailing address for the North Carolina Manufactured Housing Board is: North Carolina Manufactured Housing Board, c/o Office of Insurance Commissioner, Post Office Box 26387, Raleigh, North Carolina 27611. North Carolina Department of Insurance, 1202 Mail Service Center, Raleigh, NC 27699-1202.

Authority G.S. 143-143.8; 143-143.10; 143-143.17.

11 NCAC 08 .0903 RULE-MAKING AND HEARING PROCEDURES

(a) Unless otherwise provided for in the North Carolina General Statutes, rulemaking and contested case hearing procedures shall be those set forth in NCGS 150B, G.S. 150B.

(b) Copies of Standards adopted by the Manufactured Housing Board or the Commissioner of Insurance may be obtained by writing or calling:

North Carolina Manufactured Housing Board
Engineering Division
P.O. Box 26387
1202 Mail Service Center
Raleigh, North Carolina ~~27611~~ 27699-1202
Phone (919) ~~733-3904~~ 661-5880

The Engineering Division is located at:

~~410 N. Boylan Avenue~~
322 Chapanoke Road, Suite 200
Raleigh, North Carolina 27603.

Authority G.S. 143-143.10 through 143-143.14; 143-143.19; 150B-1; 150B-11; 150B-14.

11 NCAC 08 .0904 FORMS

(a) The application for license as a manufactured housing manufacturer, dealer, and set-up contractor shall include the following:

- (1) The name of the person or business applicant;
- (2) The business address of applicant;
- (3) The state under whose laws the applicant firm or corporation is organized or incorporated;
- (4) ~~In order to establish the reputation of the applicant, a~~ A resume' of each owner, partner, or officer of the corporation. Each resume' shall include education and a complete job

history, as well as a listing of residences for the last seven years;

- (5) Type of license applied for;
 - (6) Signature of the person with authority to legally obligate the applicant;
 - (7) A statement that the appropriate bond is ~~attached.~~ attached; and
 - (8) A criminal history record check consent form signed by each owner, partner and officer of the corporation, and any other documentation or materials required by G.S. 143-143.10A.
- (b) The application for license as a manufactured housing salesperson shall include the following:
- (1) The name of the applicant;
 - (2) The applicant's address;
 - (3) The name and business address of the dealer employing the applicant;
 - (4) The name and address of previous employers of applicant for the past three years;
 - (5) Three personal references;
 - (6) A recent wallet size ~~photograph.~~ photograph; and
 - (7) A criminal history record check consent form signed by each applicant, and any other documentation or materials required by G.S. 143-143.10A.

(c) Corporate surety bonds shall include the name of the applicant, the name of the surety, the amount of the bond, and the terms of cancellation specified in 11 NCAC 8 .0905.

(d) All license forms shall include the name and address of the licensee, the type of license being issued, the date of issuance, the date of expiration, the amount of the license fee, and the terms of the license.

(e) All applications for renewal of licenses shall include the name and address of the applicant, the type of license, the date the license expires, the amount of the license renewal fee, and instructions for completion.

(f) A request for cancellation of license shall include the name and address of the licensee, the effective date of the cancellation, the specific reason for the cancellation, and the signature of the person with authority to legally obligate the licensee.

(g) Each application form and criminal history record check form required by Paragraphs (a) and (b) of this Rule can be obtained from the North Carolina Manufactured Housing Board, c/o North Carolina Department of Insurance, 1202 Mail Service Center, Raleigh, NC 27699-1202.

Authority G.S. 143-143.10 through 143-143.12.

11 NCAC 08 .0910 COMPLAINT HANDLING AND INSPECTION PROCEDURE

(a) Complaints received by telephone shall be confirmed in writing over the signature of the owner or his or her agent; however, this shall not delay any action to resolve the complaint. Complaints shall be processed as follows:

- (1) ~~The Mobile Home Section—~~ Manufactured Building Division shall forward complaints to the manufactured housing manufacturer, dealer, or set-up contractor as appropriate.

- (2) If the complaint is not resolved, the ~~Mobile Home Section~~ Manufactured Building Division shall schedule an on-site inspection or the deputy commissioner ~~may~~ shall arrange a conference to discuss the problem. Unless otherwise agreed, concerned parties will be given at least 72 hours notice, ~~verbal or otherwise, orally, in writing, or electronically,~~ of the time and place of the inspection or conference and the opportunity to attend the inspection or conference.
- (3) If the complaint is not resolved, the deputy commissioner shall refer the complaint to the Board. The secretary of the ~~board~~ Board may recommend ~~appropriate~~ legal action be taken to ensure compliance with the ~~appropriate~~ applicable statutes and administrative rules. Such action may include the convening of a public hearing.

(b) The ~~Mobile Home Section~~ Manufactured Building Division shall not knowingly attempt to resolve the complaint which is also the subject matter of a pending lawsuit filed by an attorney representing the ~~complainant~~ complainant except as otherwise provided in this Paragraph. The Board ~~may~~ shall authorize an attempt to resolve the ~~complaint~~ complaint, with the Upon mutual assent of all parties to the ~~lawsuit~~. ~~If lawsuit, if a lawsuit~~ has not been filed but the complainant has retained an attorney, the ~~Mobile Home Section~~ Manufactured Building Division shall, upon written request by the complainant or the complainant's attorney, investigate the ~~complaint~~ according to its normal procedures provided it has first obtained the attorney's written consent. complaint.

Authority G.S. 143-143.10; 143-143.13; 143-143.14; 143-143.17.

11 NCAC 08 .0911 SALESMAN EXAM; TEMPORARY LICENSE; LICENSE TRANSFER; FEES

(a) A salesman's license shall be issued to any applicant after the Board has approved the applicant's criminal history record check upon receipt by the Board of a properly executed application, receipt of the applicant of a passing grade (70 percent of a possible 100 percent) on a written examination administered by the Board, and qualification of the applicant for licensure, except as follows:

- (1) Those persons holding a Registered Housing Specialist certification from the North Carolina Manufactured Housing Institute on or before June 30, 1992, are exempt from the examination requirement.
- (2) Any person holding a valid salesman's license on or before June 30, 1992, may renew his license each year until July 1, 1994, without examination, if he meets the requirements for license renewal and his renewal application is properly executed. If he allows his license to lapse, he must apply for a license under new license application requirements.

(3) Any salesman who has been tested and licensed under this Section and whose license has lapsed is not required to be re-tested if he re-applies for licensing within 12 months after the expiration of the lapsed license.

(b) A temporary salesman's license will be issued prior to the Board's approval of the applicant's criminal history record check for a period of 90 days to a person upon request of the employing dealer. The holder of a valid salesman's or temporary salesman's license is authorized to sell manufactured homes only for the dealer with whom he is employed as shown on the application. A temporary salesman's license shall not be renewed.

(c) A salesman's license is valid only as long as the person remains employed with the dealer shown on the application. A salesman must apply for a new salesman's license if he changes or transfers from one dealer to another. In lieu of applying for a new license, the salesman may transfer his license from one dealership to another upon application from the new dealer and the salesman and approval of the Board. When a salesman leaves employment with a dealer, the dealer shall report this fact to the Board within 10 days thereafter.

(d) The fee for a salesman's or temporary salesman's license shall be twenty five dollars (\$25.00). The temporary salesman's license fee shall apply toward the salesman's license fee if both licenses are issued in the same license year. The fee for a salesman's license transfer application shall be fifteen dollars (\$15.00).

(e) A criminal history record check fee in the amount of fifty five-dollars (\$55.00) shall be submitted with each applicant application.

Authority G.S. 143-143.10, 143-143.11.

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Private Protective Services Board intends to amend rules cited as 12 NCAC 07D .0707, .0807.

Proposed Effective Date: May 1, 2005

Public Hearing:

Date: January 18, 2005

Time: 2:00 p.m.

Location: Conference Room, 1631 Midtown Place, Suite 104, Raleigh, NC

Reason for Proposed Action:

12 NCAC 07D .0707 – The Board has been implementing new training procedures for unarmed security officers. The Board finds that it is the interest of the public health, safety, and welfare to require all temporary unarmed security guards to complete a basic four hour course prior to being placed on duty.

12 NCAC 07D .0807 – The Board has implemented new training procedures for individuals to carry firearms in the State. The Board finds that it is the interest of the public health, safety, and welfare to require private investigators to complete a basic four

hour course prior to carrying a firearm. The Board has further determined that it is not necessary to require a private investigator to complete the additional training requirements imposed on armed security guards; therefore, private investigators are exempt from certain specified training.

Procedure by which a person can object to the agency on a proposed rule: Comments may be submitted to the Board in writing and addressed to W. Wayne Woodard, Private Protective Services Board, 1631 Midtown Place, Suite 104, Raleigh, NC 27609.

Written comments may be submitted to: W. Wayne Woodard, Director, 1631 Midtown Place, Suite 104, Raleigh, NC 27609

Comment period ends: March 4, 2005

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 07 - PRIVATE PROTECTIVE SERVICES BOARD

SUBCHAPTER 07D - PRIVATE PROTECTIVE SERVICES BOARD

SECTION .0700 - SECURITY GUARD REGISTRATION (UNARMED)

12 NCAC 07D .0707 TRAINING REQUIREMENTS FOR UNARMED SECURITY GUARDS

(a) Applicants for an unarmed security guard registration shall complete a basic training course for unarmed security guards within 30 days from hire. The course shall consist of a minimum of 16 hours of classroom instruction including:

- (1) The Security Officer in North Carolina -- (minimum of one hour);
- (2) Legal Issues for Security Officers -- (minimum of three hours);

- (3) Emergency Response -- (minimum of three hours);
- (4) Communications -- (minimum of two hours);
- (5) Patrol Procedures -- (minimum of three hours);
- (6) Note Taking and Report Writing -- (minimum of three hours);
- (7) Department -- (minimum of one hour).

A minimum of 4 hours of classroom instruction shall be completed prior to a security guard being placed on a duty station. These four hours shall include The Security Officer in North Carolina and Legal Issues for Security Officers.

(b) Licensees shall submit the name and resume for a proposed certified unarmed security guard trainer to the Director for Board Approval.

(c) Training shall be conducted by a Board certified unarmed security guard trainer. A Board approved lesson plan covering the training requirements in 12 NCAC 7D .0707(a) shall be made available to each trainer. The Board shall approve other media training materials that deliver the training requirements of 12 NCAC 7D .0707(a).

~~(d) These provisions shall not apply to:~~

- (1) temporary unarmed security guards as defined by G.S. 74C-11(f); and
- (2) any unarmed security guard registered with the Board on January 1, 1990.

(d) A temporary unarmed security guard, as defined by G.S. 74C-11(f), shall be required to complete a minimum of four hours of classroom instruction prior to being placed on duty. The four hours of instruction shall include The Security Officer in North Carolina and Legal Issues for Security Officers.

Authority G.S. 74C-5; 74C-11; 74C-13.

12 NCAC 07D .0807 TRAINING REQUIREMENTS FOR ARMED SECURITY GUARDS

(a) Applicants for an armed security guard firearm registration permit shall first complete the basic unarmed security guard training course set forth in 12 NCAC 07D .0707. Private Investigator Licensees applying for an armed security guard firearm registration permit shall first complete a four hour training course consisting of blocks of instruction "The Security Officer in North Carolina" and "Legal Issues for Security Officers" as set forth in 12 NCAC 07D .0707(a). Private Investigator Licensees applying for an armed security guard firearm registration permit shall not be required to complete the following training blocks found in the basic training course referenced in 12 NCAC 07D .0707(a): "Emergency Response", "Communications", "Patrol Procedures", "Note Taking and Report Writing", and "Department". A Private Investigator Licensee applying for an armed security guard firearm registration permit shall be required to meet all additional training requirements set forth in 12 NCAC 07D .0707 as well as the training requirements set forth in this Rule.

(b) Applicants for an armed security guard firearm registration permit shall complete a basic training course for armed security guards which consists of at least 20 hours of classroom instruction including:

- (1) legal limitations on the use of handguns and on the powers and authority of an armed security

- (2) guard, including but not limited to, familiarity with rules and regulations relating to armed security guards (minimum of four hours);
- (2) handgun safety, including but not limited to, range firing procedures (minimum of one hour);
- (3) handgun operation and maintenance (minimum of three hours);
- (4) handgun fundamentals (minimum of eight hours); and
- (5) night firing (minimum of four hours).

(c) In addition to the requirements set forth in Paragraphs (a) and (b) of this Rule and prior to being issued a permit, applicants shall attain a score of at least 80 percent accuracy on a firearms range qualification course adopted by the Board and the Attorney General, a copy of which is on file in the Director's office.

(d) All armed security guard training required by 12 NCAC 07D shall be administered by a certified trainer and shall be successfully completed no more than 90 days prior to the date of issuance of the armed security guard firearm registration permit.

(e) All applicants for an armed security guard firearm registration permit must obtain training under the provisions of this Section using their duty weapon and their duty ammunition.

(f) No more than six new or renewal armed security guard applicants per one instructor shall be placed on the firing line at any one time during firearms range training.

(g) Applicants for re-certification of an armed security guard firearm registration permit shall complete a basic recertification training course for armed security guards which consists of at least four hours of classroom instruction and shall be a review of the requirements set forth in Paragraphs (b)(1)-(b)(5) of this Rule. Applicants for recertification of an armed security guard firearm registration permit shall also complete the requirements of Paragraph (c) of this Rule.

(h) To be authorized to carry a standard 12 gauge shotgun in the performance of his duties as an armed security guard, an applicant shall complete, in addition to the requirements of Paragraphs (a), (b) and (c) of this Rule, four hours of classroom training which shall include the following:

- (1) legal limitations on the use of shotguns;
- (2) shotgun safety, including but not limited to, range firing procedures;
- (3) shotgun operation and maintenance; and
- (4) shotgun fundamentals.

An applicant may take the additional shotgun training at a time after the initial training in this Rule. If the shotgun training is completed at a later time, the shotgun certification shall run concurrent with the armed registration permit.

(i) In addition to the requirements set forth in Paragraph (h) of this Rule, applicants shall attain a score of at least 80 percent accuracy on a shotgun range qualification course adopted by the Board and the Attorney General, a copy of which is on file in the Director's office.

(j) Applicants for shotgun recertification shall complete an additional one hour of classroom training as set forth in Paragraphs (h)(1)-(h)(4) of this Rule and shall also complete the requirements of Paragraph (i) of this Rule.

(k) Applicants for an armed security guard firearm registration permit who possess a current firearms trainer certificate shall be given, upon their written request, a firearms registration permit that will run concurrent with the trainer certificate upon completion of an annual qualification with their duty weapons as set forth in Paragraph (c) of this Rule.

Authority G.S. 74C-5; 74C-13.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Alarm Systems Licensing Board intends to amend the rule cited as 12 NCAC 11 .0209.

Proposed Effective Date: *May 1, 2005*

Public Hearing:

Date: *January 18, 2005*

Time: *2:00 p.m.*

Location: *Conference Room, 1631 Midtown Place, Suite 104, Raleigh, NC*

Reason for Proposed Action: *Pursuant to a request from the industry, the Board is proposing to allow the use of a deceased licensee's license number in company advertisements as long as the current licensee's number is printed adjacent to the deceased licensee's number.*

Procedure by which a person can object to the agency on a proposed rule: *Comments may be submitted to the Board in writing and addressed to W. Wayne Woodard, Alarm Systems Licensing Board, 1631 Midtown Place, Suite 104, Raleigh, NC 27609.*

Written comments may be submitted to: *W. Wayne Woodard, Director, 1631 Midtown Place, #104, Raleigh, NC 27609, Phone (919)875-3611.*

Comment period ends: *March 4, 2005*

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 11 - NORTH CAROLINA ALARM SYSTEMS LICENSING BOARD

SECTION .0200 - PROVISIONS FOR LICENSEES

12 NCAC 11 .0209 COMPANY BUSINESS LICENSE

(a) Any firm, association, or corporation required to be licensed pursuant to G.S. 74D-2(a) shall submit an application for a company business license on a form provided by the Board. A sole proprietorship that is owned and operated by an individual holding a current alarm systems business license shall be exempt from this Rule. This application for license shall call for such information as the firm, association, or corporation name; the address of its principal office within the State; any past conviction for criminal offenses of any company director or officer; information concerning the past revocation, suspension or denial of a business or professional license to any director or officer; a list of all directors and officers of the firm, association, or corporation; a list of all persons, firms, associations, corporations or other entities owning 10 percent or more of the outstanding shares of any class of stock; and the name and address of the qualifying agent.

(b) In addition to the items required in Paragraph (a) of this Rule, an out-of-state company shall further qualify by filing with its application for a license, a copy of its certificate of authority to transact business in this state issued by the North Carolina Secretary of State in accordance with G.S. 55-15-01 and a consent to service of process and pleadings which shall be authenticated by its company seal and accompanied by a duly certified copy of the resolution of the board of directors authorizing the proper officer or officers to execute said consent.

(c) After filing a completed written application with the Board, the Board shall conduct a background investigation to ascertain if the qualifying agent is in a management position. The Board shall also determine if the directors or officers have the requisite

good moral character as defined in G.S. 74D-6(3). It shall be prima facie evidence of good moral character if a director or officer has not been convicted by any local, State, federal, or military court of any crime involving the use, carrying, or possession of a firearm; conviction of any crime involving the use, possession, sale, manufacture, distribution, or transportation of a controlled substance, drug, narcotic, or alcoholic beverage; conviction of a crime involving assault or an act of violence; conviction of a crime involving breaking or entering, burglary, larceny, or any offense involving moral turpitude; or does not have a history of addiction to alcohol or a narcotic drug; provided that, for purposes of this Section, "conviction" means and includes the entry of a plea of guilty or no contest or a verdict rendered in open court by a judge or jury.

(d) Upon satisfactory completion of the background investigation, a company business license may be issued. This license shall be conspicuously displayed at the principle place of business within the State of North Carolina.

(e) The company business license shall be issued only to the corporation and shall not be construed to extend to the licensing of its directors, officers, or employees.

(f) The issuance of the company business license is issued to the firm, association, or corporation in addition to the license issued to the qualifying agent. Therefore, the qualifying agent for the firm, association, or corporation which has been issued the company business license shall be responsible for assuring compliance with G.S. 74D.

(g) Within 90 days of the death of a licensee and/or qualifying agent, a substitute licensee/qualifying agent, as defined by G.S. 74D-2(c)(3), may submit a written request to the Board, asking that the deceased licensee's license number remain on company advertisements. The Board shall permit the use of the deceased licensee's license number only if the current qualifying agent's license number is printed immediately adjacent to and in the same size print as the deceased licensee's license number.

Authority G.S. 74D-2(a); 74D-5.

*This Section includes the Register Notice citation to rules approved by the Rules Review Commission (RRC) at its meeting November 18, 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
12	NCAC	09B	.0304	n/a G.S. 150B-21.5 – Eff. December 1, 2004
13	NCAC	07F	.0601-.0604*	19:03 NCR
13	NCAC	07F	.0608-.0609*	19:03 NCR
13	NCAC	15	.0101	19:03 NCR
13	NCAC	15	.0103	19:03 NCR
13	NCAC	15	.0201*	19:03 NCR
13	NCAC	15	.0203-.0207*	19:03 NCR
13	NCAC	15	.0307*	19:03 NCR
13	NCAC	15	.0402*	19:03 NCR
13	NCAC	15	.0410	19:03 NCR
15A	NCAC	02D	.0519*	19:02 NCR
15A	NCAC	02D	.0521*	19:02 NCR
15A	NCAC	02D	.0606*	19:02 NCR
15A	NCAC	02D	.0608	19:02 NCR
15A	NCAC	02D	.1009*	19:03 NCR
15A	NCAC	02D	.1208*	19:02 NCR
15A	NCAC	02D	.1210*	19:02 NCR
15A	NCAC	02D	.1404	19:02 NCR
15A	NCAC	02Q	.0901-.0902*	19:02 NCR
16	NCAC	06C	.0312*	19:01 NCR
16	NCAC	06C	.0406	19:01 NCR
21	NCAC	14A	.0101*	19:04 NCR
21	NCAC	14G	.0102	19:04 NCR
21	NCAC	14H	.0108	19:04 NCR
21	NCAC	14H	.0121*	19:04 NCR
21	NCAC	14I	.0105	19:04 NCR
21	NCAC	14J	.0102*	19:04 NCR
21	NCAC	14K	.0101*	19:04 NCR
21	NCAC	14L	.0210	19:04 NCR
21	NCAC	14R	.0101*	19:04 NCR
21	NCAC	14R	.0104*	19:04 NCR
21	NCAC	34B	.0102*	18:24 NCR
21	NCAC	34B	.0104*	18:24 NCR
21	NCAC	34B	.0408-.0409*	18:24 NCR
21	NCAC	34B	.0411-.0414*	18:24 NCR
21	NCAC	34B	.0415	18:24 NCR
21	NCAC	34B	.0608*	18:24 NCR
21	NCAC	34B	.0610*	18:24 NCR
21	NCAC	36	.0211*	19:03 NCR
21	NCAC	36	.0221	19:03 NCR
21	NCAC	64	.0214*	19:02 NCR
23	NCAC	02C	.0109*	18:24 NCR
23	NCAC	02D	.0101*	18:24 NCR
23	NCAC	02D	.0312	18:24 NCR
23	NCAC	02E	.0204*	18:24 NCR
23	NCAC	03A	.0101-.0102*	18:24 NCR

23	NCAC	03A	.0103	18:24 NCR
23	NCAC	03A	.0104-.0109*	18:24 NCR
23	NCAC	03A	.0110-.0112	18:24 NCR
23	NCAC	03A	.0113*	18:24 NCR
23	NCAC	03A	.0114	18:24 NCR
23	NCAC	03A	.0115*	18:24 NCR
23	NCAC	03A	.0201-.0214	18:24 NCR

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

21	NCAC	30	.0102*	18:15 NCR
21	NCAC	30	.0203-.0206*	18:15 NCR
21	NCAC	30	.0301	18:15 NCR
21	NCAC	30	.0302-.0303*	18:15 NCR
21	NCAC	30	.0404	18:15 NCR
21	NCAC	30	.0501-.0507*	18:15 NCR
21	NCAC	30	.0508	18:15 NCR
21	NCAC	30	.0509-.0515*	18:15 NCR
21	NCAC	30	.0604*	18:15 NCR
21	NCAC	30	.0701-.0702*	18:15 NCR
21	NCAC	30	.0901-.0902	18:15 NCR
21	NCAC	30	.0903*	18:15 NCR
21	NCAC	30	.0904	18:15 NCR
21	NCAC	30	.0905*	18:15 NCR

TITLE 13 – DEPARTMENT OF LABOR

SUBCHAPTER 07F - STANDARDS

13 NCAC 07F .0601 SCOPE AND APPLICATION

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

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

(c) The rules in this Section shall not apply to communication towers that are mounted on motor vehicles.

*History Note: Authority G.S. 95-131;
Eff. February 1, 2005.*

13 NCAC 07F .0602 DEFINITIONS

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

(1) Acceptable Conditions for Access mean the conditions that must exist before the employer

grants permission for construction, alteration, repair or maintenance work to be performed on a communication tower. These conditions include the following:

- (a) Work under the control of a work safety program meeting the requirements of the Rules in this Section; and
- (b) Work where an accumulation of snow, ice or other slippery material is not present, except as necessary for the inspection or removal of such material;
- (c) Notwithstanding the prohibitions outlined in Sub-item (1)(b) of this Rule, if tower emergency maintenance work must be performed where there is an accumulation of snow, ice or other slippery material, the employer shall implement safe work practices (equipment, practices and procedures) that address the hazards known to be associated with tower work to minimize the associated risk to employees while working on the tower structure and the support structure to which it is affixed, where applicable.

(2) Climbing Facility means a component specifically designed or provided to permit access to the tower structure, such as a fixed ladder, step bolt, or other structural member.

- (3) Competent Person means a person who is trained to identify existing and predictable hazards in the surroundings or working conditions that are hazardous or dangerous to employees, and who has authorization from his employer to take prompt corrective measures to eliminate them, including halting the work as required by the rules in this Section.
- (4) Elevated (High Angle) Rescue means the process by which methods and equipment are utilized in order to gain access to and egress from the location of an injured employee(s) on the tower structure, and lower both the injured employee(s) and the rescuer(s) to the ground safely.
- (5) Fall Protection Equipment means the personal equipment that employees utilize in conjunction with 100% fall protection systems, including connectors, body belts or body harnesses, lanyards and deceleration devices.
- (6) Ladder Safety System means an assembly of components whose function is to arrest the fall of a user, including the carrier and its associated attachment elements (e.g., brackets, fasteners), the safety sleeve, and the body support and connectors, wherein the carrier is permanently attached to the climbing face of the ladder or immediately adjacent to the structure.
- (7) One-Hundred Percent (100%) Fall Protection means each employee exposed to fall hazards above six feet while ascending, descending, or moving point to point, must be protected by fall protection, as described in 13 NCAC 07F .0606(c), at all times.
- (8) Qualified Climber means a person who has, by virtue of knowledge, training, and experience, been deemed qualified in writing by his employer to perform tower work.
- (9) Qualified Person means a person possessing a degree, certificate, professional standing, or knowledge, training, and experience in the field of communication tower work, and who has demonstrated to his employer his ability to resolve problems relating to the subject matter, the work, or the project.
- (10) Safety Sleeve means the part of a ladder safety system consisting of the moving component with locking mechanism that travels on the carrier and makes the connection between the carrier and the body support.
- (11) Site means the communication tower and the surrounding land or property where tower work is being performed.
- (12) Step Bolt means a bolt or rung attached at intervals along a structural member and used for foot placement during climbing or standing.

- (13) Tower Construction means the building of a new tower or structure, or the installation of new equipment on an existing tower or structure.
- (14) Tower Emergency Maintenance Work means the repair, restoration or replacement of any pre-existing device installed on the tower in the interest of public safety, such as, aviation signaling devices and equipment used to transmit or receive broadcast signals.
- (15) Tower Inspection means the procedure in which an employee(s) climb(s) or ride(s) the structure's elevator to visually inspect the tower for potential problems, and test for tower plumbness and guy cable tension.
- (16) Tower Maintenance Work means the replacement in kind of any device on an existing tower, the repair of existing equipment, and painting.

History Note: Authority G.S. 95-131; Eff. February 1, 2005.

13 NCAC 07F .0603 EMPLOYER RESPONSIBILITIES

- (a) The employer shall require employees to adhere to acceptable conditions for access, as defined by 13 NCAC 07F .0602(1), prior to climbing the tower at heights above six feet.
- (b) The employer shall ensure that at least two employees, including at least one competent person, are on site at all times when employees are exposed to fall hazards above six feet, provided however, an employer shall not be required to have more than two employees on site at any given time.
- (c) A competent person shall visually inspect the tower base for damage, deterioration, structural deficiencies and functionality of safety features and anchorages before employees are allowed to climb the tower at heights above six feet. Additionally, the employer shall ensure that the tower is visually inspected for these items, as it is ascended, to the elevation point where work is being performed.

History Note: Authority G.S. 95-131; Eff. February 1, 2005.

13 NCAC 07F .0604 HAZARD IDENTIFICATION AND ASSESSMENT

- (a) In addition to the inspections required by 13 NCAC 07F .0603(c) and 13 NCAC 07F .0605(b), the employer shall conduct a hazard assessment to identify, assess, and control employee exposure to hazards as required by the rules in this Section and any other applicable state or federal statutes, rules or regulations.
- (b) The employer shall perform and document the hazard assessments required by this Rule:
 - (1) Initially and daily for each site prior to permitting employees to climb the structure; and

- (2) When safety and health information or change in workplace conditions indicates that a new or increased hazard may be present.
- (c) The hazard assessments required by this Rule shall:
 - (1) Be performed by a competent person;
 - (2) Evaluate new equipment, materials, and processes for hazards before they are introduced into the workplace; and
 - (3) Identify meteorological conditions that could affect work at heights above six feet on a tower, such as wind, rain, snow or ice.
- (d) If hazards are identified, the employer shall assess the severity of identified hazards and implement means to control such hazards, including providing employees with personal protective equipment (PPE) designed to control the identified hazards and ensuring the proper use of the PPE by the employees.

History Note: Authority G.S. 95-131; Eff. February 1, 2005.

13 NCAC 07F .0608 RECORD KEEPING

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

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

History Note: Authority G.S. 95-131; Eff. February 1, 2005.

13 NCAC 07F .0609 TRAINING

- (a) In order for employees to work at heights above six feet on a communication tower, they must be approved for such work by a qualified person.
- (b) Competency of the Trainer. Training of employees in communication tower work shall be performed by or under the supervision of a qualified person.
- (c) Written Work Procedures.
 - (1) The employer's written work procedures shall be provided to employees as part of their training.
 - (2) Pictures and symbols may be used as a means of instruction if employee understanding is improved using this method.
 - (3) Manufacturers' operating manuals for personnel hoisting systems satisfy the

requirement for operating procedures for the respective equipment, or can serve as the basis for these procedures.

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

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

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

- (g) RF Training.
 - (1) All employees exposed in excess of the general population/uncontrolled MPE limits stated in 47 CFR 1.1310 shall receive RF hazard awareness training by or under the supervision of a qualified person in the following areas:
 - (A) MPE Limits for occupational/controlled exposure;

- (B) Recognition of RF exposure sources in communication tower work;
- (C) Proper use and interpretation of RF exposure;
- (D) Work procedures to avoid excessive RF exposure;
- (E) Proper use of RF protective clothing and other related PPE;
- (F) Symptoms and health issues related to RF exposure; and,
- (G) RF exposure first-aid procedures.

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

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

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

(i) Training Records.

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

employer verifies that all training and knowledge is current and applicable to the new employee's job duties.

History Note: Authority G.S. 95-131; Eff. February 1, 2005.

SECTION .0200 – CODES AND STANDARDS

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

(a) The design, construction, installation, inspection, and operation of all new installations of elevators, dumbwaiters, escalators, and moving walks, shall conform to the rules in this Section and the A17.1 - American National Standard Safety Code for Elevators and Escalators, which is incorporated by reference subject to the modifications provided in Paragraph (b) of this Rule. This incorporation includes subsequent amendments and editions of the Code.

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

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

prescribed by 8.11.3.2.1, and the cylinder test prescribed by 8.11.3.2.2, are each performed two times per year; and

- (ii) After each of the tests referred to Subpart (i) of this Part, have been performed successfully, the test tag prescribed by 8.11.1.6 shall be installed in the machine room.

- (C) A safety bulkhead shall not be required where a double cylinder is used and where both inner and outer cylinders conform to 3.18.3.

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

(d) Copies of the A17.1 - American National Standard Safety Code for Elevators and Escalators are available for public inspection in the office of the Division, and may be obtained from the American Society of Mechanical Engineers (ASME), via U.S. Mail at United Engineering Center, 345 East 47th Street, New York, New York 10017, via telephone at (800) 843-2763, or via the internet at www.asme.org. The cost is one-hundred ninety-five dollars (\$195.00) per copy.

History Note: Authority G.S. 95-110.5; Eff. August 1, 1987; Amended Eff. May 1, 1992; Temporary Amendment Eff. January 1, 2000; Amended Eff. December 1, 2004; July 1, 2003; April 1, 2001.

13 NCAC 15 .0203 SAFETY STANDARD FOR MANLIFTS

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

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

(c) Copies of the A90.1 - American National Standard Safety Standard for Manlifts are available for inspection at the offices of the Division and may be obtained from the American Society of Mechanical Engineers (ASME), via U.S. Mail at United Engineering Center, 345 East 47th Street, New York, New York 10017, via telephone at (800) 843-2763, or via the internet at www.asme.org. The cost if fifty dollars (\$50.00) per copy.

History Note: Authority G.S. 95-110.5; Eff. August 1, 1987; Amended Eff. December 1, 2004; May 1, 1992.

13 NCAC 15 .0204 PERSONNEL HOISTS CODE

(a) The design, construction, installation, alteration, repair, replacement, inspection and operation of all personnel hoists shall conform to the rules in this Section and the A10.4 - American National Standard Safety Requirements for Personnel Hoists, which is hereby incorporated by reference. This incorporation includes subsequent amendments and editions of this Code.

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

(c) Copies of the A10.4 - American National Standard Safety Requirements for Personnel Hoists are available for inspection at the offices of the Division and may be obtained from the American National Standards Institute (ANSI), via U.S. Mail at 11 West 42nd Street, New York, New York 10036, via telephone at (212) 642-4980, or via the internet at www.ansi.org. The cost is fifty-three dollars (\$53.00) per copy.

History Note: Authority G.S. 95-110.5; Eff. August 1, 1987; Amended Eff. December 1, 2004; May 1, 1992.

13 NCAC 15 .0205 TRAMWAY REQUIREMENTS

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

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

(c) Copies of the B77.1 - American National Standards Safety Requirements for Aerial Passenger Tramways are available for inspection at the offices of the Division and may be obtained from the American National Standards Institute (ANSI), via U.S. Mail at 11 West 42nd Street, New York, New York 10036, via telephone at (212) 642-4980, or via the internet at www.ansi.org. The cost is ninety-four dollars (\$94.00) per copy.

History Note: Authority G.S. 95-120; Eff. August 1, 1987; Amended Eff. December 1, 2004; May 1, 1992.

13 NCAC 15 .0206 NATIONAL ELECTRICAL CODE

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

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

(c) Copies of the NFPA 70 - National Electrical Code are available for inspection in the offices of the Division and may be

obtained from the North Carolina State Board of Examiners of Electrical Contractors, via U.S. Mail at P. O. Box 18727, Raleigh, North Carolina 27619-8727, via telephone at (919) 733-4092, or via the internet at www.ncbeec.org. The cost is fifty-nine dollars (\$59.00) per copy.

History Note: Authority G.S. 95-110.5; 95-111.4; 95-120; Eff. August 1, 1987; Amended Eff. December 1, 2004; May 1, 1992.

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

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

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

(c) Copies of the A18.1 - American National Standard Safety Code for Platform Lifts and Stairway Chairlifts are available for inspection at the offices of the Division, and may be obtained from the American Society of Mechanical Engineers (ASME), via U.S. Mail at United Engineering Center, 345 East 47th Street, New York, New York 10017, via telephone at (800) 843-2763, or via the internet at www.asme.org. The cost is seventy-five dollars (\$75.00) per copy.

History Note: Authority G.S. 95-110.5; Eff. December 1, 2004.

13 NCAC 15 .0307 MAINTENANCE AND PERIODIC INSPECTIONS AND TESTS

(a) Inspections and Tests. Devices and equipment shall be subject to maintenance and periodic inspections and tests in accordance with the requirements of the applicable code as adopted in Section 2.23 of the A17.1 - American National Standard Safety Code for Elevators and Escalators. Special equipment shall be subject to periodic and to maintenance inspections and tests as may be required by the Director to ensure safe operation.

(b) Inspections.

(1) Advance Notice. Inspections shall be accomplished without advance notice, except where the Director determines that advance notice of an inspection is necessary to complete the inspection.

(2) Inspection Report Forms. The inspector shall note findings of his inspection and tests on the inspection report form.

(c) Certificate of Operation Issuance.

(1) Closing Conference. After the inspections and tests of the equipment prescribed in this Rule, the inspector shall, when possible, hold a

closing conference with the owner or his representative.

(2) Approval. When the inspector has determined that the equipment is in compliance with the rules in this Section and all applicable law, the inspector may reissue the certificate of operation.

(3) Denial. When the inspector has determined the equipment is not in compliance with the regulations of this Chapter and all applicable law, the inspector shall provide the owner or his representative with a description of all violations and necessary repairs.

(4) Abatement. In the event of a reissuance denial, the inspector may issue an abatement permit which shall be valid for a period not exceeding 60 days.

(5) Notice. When the equipment is brought into compliance, the owner or his representative shall notify the Division in writing.

(6) Reinspection. After a certificate reissuance denial, an inspector shall always reinspect to determine if the equipment is in compliance.

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

History Note: Authority G.S. 95-110.5; Eff. August 1, 1987; Amended Eff. December 1, 2004.

13 NCAC 15 .0402 RESPONSIBILITY FOR COMPLIANCE

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

(b) Designers and manufacturers of amusement devices shall follow the procedures of the ASTM F1159 – Standard Practice for Design and Manufacture of Patron Directed, Artificial Climbing Walls, Dry Slide, Coin Operated and Purposeful Water Immersion Amusement Rides and Devices and Air-Supported Structures, which is hereby incorporated by reference. This incorporation includes subsequent amendments and editions of this Code.

(c) Copies of the ASTM F1159 – Standard Practice for Design and Manufacture of Patron Directed, Artificial Climbing Walls, Dry Slide, Coin Operated and Purposeful Water Immersion Amusement Rides and Devices and Air-Supported Structures may be obtained from the American Society of Testing and Materials (ASTM), via U.S. Mail at 100 Barr Harbor Drive West, Conshohocken, Pennsylvania 19428-2959, via telephone at (610) 832-9585, or via the internet at www.astm.org. The cost is twenty-seven dollars (\$27.00) per copy.

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

*History Note: Authority G.S. 95-111.4;
Eff. August 1, 1987;
Amended Eff. December 1, 2004; June 1, 1992.*

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

**15A NCAC 02D .0519 CONTROL OF NITROGEN
DIOXIDE AND NITROGEN OXIDES EMISSIONS**

- (a) The emissions of nitrogen dioxide shall not exceed:
 - (1) 5.8 pounds per ton of acid produced from any nitric acid manufacturing plants;
 - (2) 5.8 pounds per ton of acid produced from any sulfuric acid manufacturing plant.
- (b) The emissions of nitrogen oxides shall not exceed:
 - (1) 0.8 pounds per million BTU of heat input from any oil or gas-fired boiler with a capacity of 250 million BTU per hour or more;
 - (2) 1.8 pounds per million BTU of heat input from any coal-fired boiler with a capacity of 250 million BTU per hour or more.
- (c) The emission limit for a boiler that burns both coal and oil or gas in combination shall be calculated by the equation $E = [(Ec)(Qc) + (Eo)(Qo)] / Qt$.
 - (1) E = the emission limit for combination in pounds per million BTU.
 - (2) Ec = emission limit for coal only as determined by Paragraph (b) of this Rule in pounds per million BTU.
 - (3) Eo = emission limit for oil or gas as determined by Paragraph (b) of this Rule in pounds per million BTU.
 - (4) Qc = the actual coal heat input to the combination in BTU per hour.
 - (5) Qo = the actual oil and gas heat input to the combination in BTU per hour.
 - (6) Qt = Qc + Qo and is the actual total heat input to the combination in BTU per hour.

*History Note: Authority G.S. 143-215.3(a)(1);
143-215.107(a)(5);
Eff. February 1, 1976;
Amended Eff. January 1, 2005; July 1, 1996; October 1, 1989;
January 1, 1985.*

**15A NCAC 02D .0521 CONTROL OF VISIBLE
EMISSIONS**

(a) Purpose. The intent of this Rule is to prevent, abate and control emissions generated from fuel burning operations and industrial processes where an emission can reasonably be expected to occur, except during startup, shutdowns, and malfunctions approved according to procedures set out in Rule .0535 of this Section.

(b) Scope. This Rule shall apply to all fuel burning sources and to other processes that may have a visible emission. However, sources subject to a visible emission standard in Rules .0506, .0508, .0524, .0543, .0544, .1110, .1111, .1205, .1206, or .1210 of this Subchapter shall meet that standard instead of the standard contained in this Rule. This Rule does not apply to engine maintenance, rebuild, and testing activities where controls are infeasible, except it does apply to the testing of peak shaving and emergency generators. (In deciding if controls are infeasible, the Director shall consider emissions, capital cost of compliance, annual incremental compliance cost, and environmental and health impacts.)

(c) For sources manufactured as of July 1, 1971, visible emissions shall not be more than 40 percent opacity when averaged over a six-minute period. However, except for sources required to comply with Paragraph (g) of this Rule, six-minute averaging periods may exceed 40 percent opacity if:

- (1) No six-minute period exceeds 90 percent opacity;
- (2) No more than one six-minute period exceeds 40 percent opacity in any hour; and
- (3) No more than four six-minute periods exceed 40 percent opacity in any 24-hour period.

(d) For sources manufactured after July 1, 1971, visible emissions shall not be more than 20 percent opacity when averaged over a six-minute period. However, except for sources required to comply with Paragraph (g) of this Rule, six-minute averaging periods may exceed 20 percent opacity if:

- (1) No six-minute period exceeds 87 percent opacity;
- (2) No more than one six-minute period exceeds 20 percent opacity in any hour; and
- (3) No more than four six-minute periods exceed 20 percent opacity in any 24-hour period.

(e) Where the presence of uncombined water is the only reason for failure of an emission to meet the limitations of Paragraph (c) or (d) of this Rule, those requirements shall not apply.

(f) Exception from Opacity Standard in Paragraph (d) of this Rule. Sources subject to Paragraph (d) of this Rule shall be allowed to comply with Paragraph (c) of this Rule if:

- (1) The owner or operator of the source demonstrates compliance with applicable particulate mass emissions standards; and
- (2) The owner or operator of the source submits data necessary to show that emissions up to those allowed by Paragraph (c) of this Rule shall not violate any national ambient air quality standard.

The burden of proving these conditions shall be on the owner or operator of the source and shall be approached in the following manner. The owner or operator of a source seeking an exception shall apply to the Director requesting this modification in its permit. The applicant shall submit the results of a source test within 90 days of application. Source testing shall be by the appropriate procedure as designated by rules in this Subchapter. During this 90-day period the applicant shall submit data necessary to show that emissions up to those allowed by Paragraph (c) of this Rule will not contravene ambient air quality standards. This evidence shall include an inventory of

past and projected emissions from the facility. In its review of ambient air quality, the Division may require additional information that it considers necessary to assess the resulting ambient air quality. If the applicant can thus show that it will be in compliance both with particulate mass emissions standards and ambient air quality standards, the Director shall modify the permit to allow emissions up to those allowed by Paragraph (c) of this Rule.

(g) For sources required to install, operate, and maintain continuous opacity monitoring systems (COMS), compliance with the numerical opacity limits in this Rule shall be determined as follows excluding startups, shutdowns, maintenance periods when fuel is not being combusted, and malfunctions approved as such according to procedures approved under Rule .0535 of this Section:

- (1) No more than four six-minute periods shall exceed the opacity standard in any one day; and
- (2) The percent of excess emissions (defined as the percentage of monitored operating time in a calendar quarter above the opacity limit) shall not exceed 0.8 percent of the total operating hours. If a source operates less than 500 hours during a calendar quarter, the percent of excess emissions shall be calculated by including hours operated immediately previous to this quarter until 500 operational hours are obtained.

In no instance shall excess emissions exempted under this Paragraph cause or contribute to a violation of any emission standard in this Subchapter or 40 CFR Part 60, 61, or 63 or any ambient air quality standard in Section 15A NCAC 02D .0400 or 40 CFR Part 50.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. February 1, 1976; Amended Eff. January 1, 2005; June 1, 2004; April 1, 2003; April 1, 2001; July 1, 1998; July 1, 1996; December 1, 1992; August 1, 1987; January 1, 1985; May 30, 1978.

15A NCAC 02D .0606 SOURCES COVERED BY APPENDIX P OF 40 CFR PART 51

(a) The following sources shall be monitored as described in Paragraph 2 of Appendix P of 40 CFR Part 51:

- (1) fossil fuel-fired steam generators,
- (2) nitric acid plants,
- (3) sulfuric acid plants, and
- (4) petroleum refineries.

Sources covered by Rule .0524 of this Subchapter are exempt from this Rule.

(b) The monitoring systems required under Paragraph (a) of this Rule shall meet the minimum specifications described in Paragraphs 3.3 through 3.8 of Appendix P of 40 CFR Part 51.

(c) The excess emissions recorded by the monitoring systems required to be installed under this Rule shall be reported no later than 30 days after the end of the quarter to the Division in the manner described in Paragraphs 4 and 5.1 through 5.3.3 of Appendix P of 40 CFR Part 51 except that a six-minute time

period shall be deemed as an appropriate alternative opacity averaging period as described in Paragraph 4.2 of Appendix P of 40 CFR Part 51. The owner or operators of any sources subject to this Rule that are required to monitor emissions of sulfur dioxide or nitrogen oxides under any other state or federal rule with continuous emission monitoring systems shall monitor compliance with the sulfur dioxide emission standard in Rule .0516 of this Subchapter and the nitrogen oxide emission standard in Rule .0519 or Section .1400 of this Subchapter with a continuous emission monitoring system. Compliance with sulfur dioxide and nitrogen oxide emission standards shall be determined by averaging hourly continuous emission monitoring system values over a 24-hour block period beginning at midnight. To compute the 24-hour block average, the average hourly values shall be summed, and the sum shall be divided by 24. A minimum of four data points, equally spaced, is required to determine a valid hour value unless the continuous emission monitoring system is installed to meet the provisions of 40 CFR Part 75. If a continuous emission monitoring system is installed to meet the provisions of 40 CFR Part 75, the minimum number of data points shall be determined by 40 CFR Part 75.

(d) For emissions of sulfur dioxide, fuel analysis may be used in place of a continuous emissions monitoring system if the source is not required to monitor emissions of sulfur dioxide using a continuous emissions monitoring system under another state or federal rule. If fuel analysis is used as an alternative method to determine emissions of sulfur dioxide, the test methods described in Parts (c)(4)(A) and (B) of Rule .0501 of this Subchapter shall be used except that gross or composite samples, gross caloric value, moisture content, and sulfur content shall be determined per shipment. Alternatively, gross or composite samples, gross caloric value, moisture content, and sulfur content may be determined sampling the fuel as fired if the owner or operator demonstrates to the Director that sampling as fired provides a more accurate estimation of sulfur dioxide emissions than sampling each shipment. If sulfur dioxide emissions are determined sampling fuel as fired, then a fuel sample shall be taken every four hours. These four-hour samples shall be composited into a daily sample, and the daily sample shall be composited into a weekly sample. This weekly sample shall be analyzed using the procedures in Parts (c)(4)(A) and (B) of Rule .0501 of this Subchapter. The sulfur dioxide emission rate shall also be determined using fuel analysis data. Sulfur retention credit shall be granted and used for computing sulfur dioxide emission rates if a source, on a case-by-case basis, quantitatively and empirically demonstrates the sulfur retention.

(e) Wherever the language of the referenced portion of Appendix P of 40 CFR Part 51 speaks of the "state" or "state plan", the requirements described in Appendix P of 40 CFR Part 51 shall apply to those sources to which the requirements pertain.

(f) The owner or operator of the source shall conduct a daily zero and span check of the continuous opacity monitoring system following the manufacturer's recommendations and shall comply with the requirements of Rule .0613 of this Section.

(g) The owner or operator of the source may request to use a different procedure or methodology than that required by this Rule if one of the conditions identified in 40 CFR Part 51, Appendix P, Section 3.9 exists. The person requesting to use a

different procedure or methodology shall submit the request to the Director along with a description of the different procedure or methodology proposed to be used, an explanation of why the procedure or methodology required by this Rule will not work, and a showing that the proposed procedure or methodology is equivalent to the procedure or methodology being replaced. The Director shall approve the use of this procedure or methodology if he finds that one of the conditions identified in 40 CFR Part 51, Appendix P, Section 3.9 exists, that the procedure or methodology required by this Rule will not work, and that the proposed procedure or methodology is equivalent to the procedure or methodology that it will replace.

(h) The owner or operator of the source shall report to the Director no later than 30 days following the end of the quarter the following information:

- (1) for fuel analysis per shipment:
 - (A) the quantity and type of fuels burned,
 - (B) the BTU value,
 - (C) the sulfur content in percent by weight, and
 - (D) the calculated sulfur dioxide emission rates expressed in the same units as the applicable standard.
- (2) for continuous monitoring of emissions:
 - (A) the daily calculated sulfur dioxide and nitrogen oxide emission rates expressed in the same units as the applicable standard for each day, and
 - (B) other information required under Appendix P of 40 CFR Part 51.

(i) If emission testing for compliance with the sulfur dioxide emission standard is required, the testing shall be done according to 40 CFR Part 60, Appendix A, Method 6.

(j) If emission testing for compliance with the nitrogen oxide emission standard is required, the testing shall be done according to 40 CFR Part 60, Appendix A, Method 7.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(4); Eff. February 1, 1976; Amended Eff. January 1, 2005; April 1, 2003; April 1, 1999; May 1, 1985; July 1, 1983; December 1, 1976; June 18, 1976.

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

(a) Applicability. This Rule applies to model year 2008 and subsequent model years heavy-duty diesel vehicles.

(b) Definitions. For the purposes of this Rule the following definitions shall apply.

- (1) "Heavy-duty diesel vehicle" means a motor vehicle (excluding trailer(s)) with a gross vehicle weight rating (as certified by the manufacturer) of 14,001 pounds or greater that is propelled by a diesel engine.
- (2) "Motor vehicle dealer" means motor vehicle dealer as defined in G.S. 20-286(11) and includes "new motor vehicle dealer" as defined

in G.S. 20-286(13) and "used motor vehicle dealer" as defined in G.S. 20-286(16).

- (3) "New motor vehicle" means new motor vehicle as defined in G.S. 20-286(10)(a).
- (4) "Used motor vehicle" means used motor vehicle as defined in G.S. 20-286(10)(b).

(c) Exemptions. For the purposes of this Rule the exemption of military tactical vehicles and equipment as specified in Title 13 of the California Code of Regulations, Section 1905 shall apply.

(d) Requirement. No model year 2008 or subsequent model year heavy-duty diesel vehicle that is a

- (1) used heavy-duty diesel vehicle sold by a motor vehicle dealer; or
- (2) new motor vehicle, however it is sold,

may be leased or registered within North Carolina unless the vehicle or its engine has been certified by the California Air Resources Board as meeting the applicable model year requirements of Title 13 of the California Code of Regulations, Section 1956.8, California Exhaust Emission Standards and Test Procedures for 1985 and Subsequent Model Heavy-Duty Diesel Engines and Vehicles.

(e) Referenced Regulation. The California Code of Regulations Title 13, Division 3, Chapter 1, Article 1, Section 1905 and Article 2, Section 1956.8 are incorporated by reference in this Rule and include any later amendments thereto. A copy of the referenced materials may be obtained free of charge via the internet from the Office of Administrative Law California Code of Regulations website at <http://ccr.oal.ca.gov/>, or a hard copy may be obtained at a cost of \$5.00 from the Public Information Office, California Air Resources Board, P.O. Box 2815, Sacramento, CA, 95812.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(6)-(7); Eff. December 1, 2004.

15A NCAC 02D .1208 OTHER INCINERATORS

(a) Applicability.

- (1) This Rule applies to any incinerator not covered under Rules .1203 through .1207 or .1210 of this Section.
- (2) If any incinerator subject to this Rule:
 - (A) is used solely to cremate pets; or
 - (B) if the emissions of all toxic air pollutants from an incinerator subject to this Rule and associated waste handling and storage are less than the levels listed in 15A NCAC 02Q .0711;

the incinerator shall be exempt from Subparagraphs (b)(6) through (b)(9) and Paragraph (c) of this Rule.

(b) Emission Standards.

- (1) The emission standards in this Rule apply to any incinerator subject to this Rule except where Rules .0524, .1110, or .1111 of this Subchapter apply. However, when Subparagraphs (8) or (9) of this Paragraph and Rules .0524, .1110, or .1111 of this Subchapter

- regulate the same pollutant, the more restrictive provision for each pollutant shall apply, notwithstanding provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary.
- (2) Particulate Matter. Any incinerator subject to this Rule shall comply with one of the following emission standards for particulate matter:
 - (A) For refuse charge rates between 100 and 2000 pounds per hour, the allowable emissions rate for particulate matter from any stack or chimney of any incinerator subject to this Rule shall not exceed the level calculated with the equation $E=0.002P$ calculated to two significant figures, where "E" equals the allowable emission rate for particulate matter in pounds per hour and "P" equals the refuse charge rate in pounds per hour. For refuse charge rates of 0 to 100 pounds per hour the allowable emission rate in 0.2 pounds per hour. For refuse charge rates of 2000 pounds per hour or greater the allowable emission rate shall be 4.0 pounds per hour. Compliance with this Part shall be determined by averaging emissions over a three-hour block period.
 - (B) Instead of meeting the standards in Part (A) of this Subparagraph, the owner or operator of any incinerator subject to this Rule may choose to limit particulate emissions from the incinerator to 0.08 grains per dry standard cubic foot corrected to 12 percent carbon dioxide. In order to choose this option, the owner or operator of the incinerator shall demonstrate that the particulate ambient air quality standards will not be violated. To correct to 12 percent carbon dioxide, the measured concentration of particulate matter is multiplied by 12 and divided by the measured percent carbon dioxide. Compliance with this Part shall be determined by averaging emissions over a three-hour block period.
 - (3) Visible Emissions. Any incinerator subject to this Rule shall comply with Rule .0521 of this Subchapter for the control of visible emissions.
 - (4) Sulfur Dioxide. Any incinerator subject to this Rule shall comply with Rule .0516 of this Subchapter for the control of sulfur dioxide emissions.
 - (5) Odorous Emissions. Any incinerator subject to this Rule shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.
 - (6) Hydrogen Chloride. Any incinerator subject to this Rule shall control emissions of hydrogen chloride such that they do not exceed four pounds per hour unless they are reduced by at least 90 percent by weight or to no more than 50 parts per million by volume corrected to seven percent oxygen (dry basis). Compliance with this Subparagraph shall be determined by averaging emissions over a one-hour period.
 - (7) Mercury Emissions. Emissions of mercury and mercury compounds from the stack or chimney of any incinerator subject to this Rule shall not exceed 0.032 pounds per hour. Compliance with this Subparagraph shall be determined by averaging emissions over a one-hour period.
 - (8) Toxic Emissions. The owner or operator of any incinerator subject to this Rule shall demonstrate compliance with Section .1100 of this Subchapter according to 15A NCAC 02Q .0700.
 - (9) Ambient Standards.
 - (A) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following ambient air quality standards, which are an annual average, in milligrams per cubic meter at 77 degrees F (25 degrees C) and 29.92 inches (760 mm) of mercury pressure, and which are increments above background concentrations, shall apply aggregately to all incinerators at a facility subject to this Rule:
 - (i) arsenic and its compounds 2.3×10^{-7}
 - (ii) beryllium and its compounds 4.1×10^{-6}
 - (iii) cadmium and its compounds 5.5×10^{-6}
 - (iv) chromium (VI) and its compounds 8.3×10^{-8}
 - (B) The owner or operator of a facility with incinerators subject to this Rule shall demonstrate compliance with the ambient standards in Subparts (i) through (iv) of Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the requirements of Rule .0533 of this Subchapter.
 - (C) The emission rates computed or used under Part (B) of this Subparagraph

that demonstrate compliance with the ambient standards under Part (A) of this Subparagraph shall be specified as a permit condition for the facility with incinerators subject to this Rule as their allowable emission limits unless Rule .0524, .1110 or .1111 of this Subchapter requires more restrictive rates.

(c) Operational Standards.

- (1) The operational standards in this Rule do not apply to any incinerator subject to this Rule when applicable operational standards in Rule .0524, .1110, or .1111 of this Subchapter apply.
- (2) Crematory Incinerators. Gases generated by the combustion shall be subjected to a minimum temperature of 1600 degrees F for a period of not less than one second.
- (3) Other Incinerators. All incinerators not subject to any other rule in this Section shall meet the following requirement: Gases generated by the combustion shall be subjected to a minimum temperature of 1800 degrees F for a period of not less than one second. The temperature of 1800 degrees F shall be maintained at least 55 minutes out of each 60-minute period, but at no time shall the temperature go below 1600 degrees F.
- (4) Except during start-up where the procedure has been approved according to Rule .0535(g) of this Subchapter, waste material shall not be loaded into any incinerator subject to this Rule when the temperature is below the minimum required temperature. Start-up procedures may be determined on a case-by-case basis according to Rule .0535(g) of this Subchapter. Any incinerator subject to this Rule shall have automatic auxiliary burners that are capable of maintaining the required minimum temperature in the secondary chamber excluding the heat content of the wastes.

(d) Test Methods and Procedures.

- (1) The test methods and procedures described in Rule .0501 of this Subchapter and in 40 CFR Part 60 Appendix A and 40 CFR Part 61 Appendix B shall be used to determine compliance with emission rates. Method 29 of 40 CFR Part 60 shall be used to determine emission rates for metals. However, Method 29 shall be used to sample for chromium (VI), and SW 846 Method 0060 shall be used for the analysis.
- (2) The Director shall require the owner or operator to test his incinerator to demonstrate compliance with the emission standards listed in Paragraph (b) of this Rule if necessary to determine compliance with the emission standards of Paragraph (b) of this Rule.

(e) Monitoring, Recordkeeping, and Reporting.

- (1) The owner or operator of an incinerator subject to the requirements of this Rule shall comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter.
- (2) The owner or operator of an incinerator, except an incinerator meeting the requirements of Parts .1201(c)(4)(A) through (D) of this Section, shall maintain and operate a continuous temperature monitoring and recording device for the primary chamber and, where there is a secondary chamber, for the secondary chamber. The Director shall require a temperature monitoring device for incinerators meeting the requirements of Parts .1201(c)(4)(A) through (D) of this Section if the incinerator is in violation of the requirements of Part .1201(c)(4)(D) of this Section. The owner or operator of an incinerator that has installed air pollution abatement equipment to reduce emissions of hydrogen chloride shall install, operate, and maintain continuous monitoring equipment to measure pH for wet scrubber systems and rate of alkaline injection for dry scrubber systems. The Director shall require the owner or operator of an incinerator with a permitted charge rate of 750 pounds per hour or more to install, operate, and maintain continuous monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the incinerator. The Director shall require the owner or operator of an incinerator with a permitted charge rate of less than 750 pounds per hour to install, operate, and maintain monitors for oxygen or for carbon monoxide or both if necessary to determine proper operation of the incinerator.

(f) Excess Emissions and Start-up and Shut-down. Any incinerator subject to this Rule shall comply with Rule .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); Eff. July 1, 1998; Amended Eff. January 1, 2005; August 1, 2002; July 1, 2000; July 1, 1999.

15A NCAC 02D .1210 COMMERCIAL AND INDUSTRIAL SOLID WASTE INCINERATION UNITS

(a) Applicability. With the exceptions in Paragraph (b) of this Rule, this Rule applies to the commercial and industrial solid waste incinerators (CISWI).

(b) Exemptions. The following types of incineration units are exempted from this Rule:

- (1) incineration units covered under Rules .1203 through .1206 of this Section;

- (2) units, burning 90 percent or more by weight on a calendar-quarter basis, excluding the weight of auxiliary fuel and combustion air, of agricultural waste, pathological waste, low-level radioactive waste, or chemotherapeutic waste, if the owner or operator of the unit:
 - (A) notifies the Director that the unit qualifies for this exemption; and
 - (B) keeps records on a calendar-quarter basis of the weight of agricultural waste, pathological waste, low level radioactive waste, or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit;
- (3) small power production or cogeneration units if:
 - (A) the unit qualifies as a small power-production facility under Section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)) or as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B));
 - (B) the unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity; and
 - (C) the owner or operator of the unit notifies the Director that the unit qualifies for this exemption;
- (4) units that combust waste for the primary purpose of recovering metals;
- (5) cyclonic barrel burners;
- (6) rack, part, and drum reclamation units that burn the coatings off racks used to hold small items for application of a coating;
- (7) cement kilns;
- (8) chemical recovery units burning materials to recover chemical constituents or to produce chemical compounds as listed in 40 CFR 60.2555(n)(1) through (7);
- (9) laboratory analysis units that burn samples of materials for the purpose of chemical or physical analysis;
- (10) air curtain burners covered under Rule .1904 of this Subchapter.

(c) The owner or operator of a chemical recovery unit not listed under 40 CFR 60.2555(n) may petition the Director to be exempted. The petition shall include all the information specified under 40 CFR 60.2559(a). The Director shall approve the exemption if he finds that all the requirements of 40 CFR 60.2555(n) are satisfied and that the unit burns materials to recover chemical constituents or to produce chemical compounds where there is an existing market for such recovered chemical constituents or compounds.

(d) Definitions. For the purpose of this Rule, the definitions contained in 40 CFR 60.2875 shall apply in addition to the definitions in Rule .1202 of this Section.

(e) Emission Standards. The emission standards in this Rule apply to all incinerators subject to this Rule except where Rules .0524, .1110, or .1111 of this Subchapter applies. When Subparagraphs (12) or (13) of this Paragraph and Rules .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant shall apply, notwithstanding provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary.

- (1) Particulate Matter. Emissions of particulate matter from a CISWI unit shall not exceed 70 milligrams per dry standard cubic meter corrected to seven percent oxygen (dry basis).
- (2) Opacity. Visible emissions from the stack of a CISWI unit shall not exceed 10 percent opacity (6-minute block average).
- (3) Sulfur Dioxide. Emissions of sulfur dioxide from a CISWI unit shall not exceed 20 parts per million by volume corrected to seven percent oxygen (dry basis).
- (4) Nitrogen Oxides. Emissions of nitrogen oxides from a CISWI unit shall not exceed 368 parts per million by volume corrected to seven percent oxygen (dry basis).
- (5) Carbon Monoxide. Emissions of carbon monoxide from a CIWI unit shall not exceed 157 parts per million by volume, corrected to seven percent oxygen (dry basis).
- (6) Odorous Emissions. Any incinerator subject to this Rule shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.
- (7) Hydrogen Chloride. Emissions of hydrogen chloride from a CISWI unit shall not exceed 62 parts per million by volume, corrected to seven percent oxygen (dry basis).
- (8) Mercury Emissions. Emissions of mercury from a CISWI unit shall not exceed 0.47 milligrams per dry standard cubic meter, corrected to seven percent oxygen.
- (9) Lead Emissions. Emissions of lead from a CISWI unit shall not exceed 0.04 milligrams per dry standard cubic meter, corrected to seven percent oxygen.
- (10) Cadmium Emissions. Emissions of cadmium from a CISWI unit shall not exceed 0.004 milligrams per dry standard cubic meter, corrected to seven percent oxygen.
- (11) Dioxins and Furans. Emissions of dioxins and furans from a CISWI unit shall not exceed 0.41 nanograms per dry standard cubic meter (toxic equivalency basis), corrected to seven percent oxygen. Toxic equivalency is given in Table 4 of 40 CFR part 60, Subpart DDDD.
- (12) Toxic Emissions. The owner or operator of any incinerator subject to this Rule shall demonstrate compliance with Section .1100 of this Subchapter according to 15A NCAC 02Q .0700.
- (13) Ambient Standards.

- (A) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following ambient air quality standards, which are an annual average, in milligrams per cubic meter at 77 degrees F (25 degrees C) and 29.92 inches (760 mm) of mercury pressure, and which are increments above background concentrations, shall apply aggregately to all incinerators at a facility subject to this Rule:
 - (i) arsenic and its compounds
 2.3×10^{-7}
 - (ii) beryllium and its compounds
 4.1×10^{-6}
 - (iii) cadmium and its compounds
 5.5×10^{-6}
 - (iv) chromium (VI) and its compounds
 8.3×10^{-8}
 - (B) The owner or operator of a facility with incinerators subject to this Rule shall demonstrate compliance with the ambient standards in Subparts (i) through (iv) of Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the requirements of Rule .0533 of this Subchapter.
 - (C) The emission rates computed or used under Part (B) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of this Subparagraph shall be specified as a permit condition for the facility with incinerators as their allowable emission limits unless Rules .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.
- (f) Operational Standards.
- (1) The operational standards in this Rule do not apply to any incinerator subject to this Rule when applicable operational standards in Rules .0524, .1110, or .1111 of this Subchapter apply.
 - (2) If a wet scrubber is used to comply with emission limitations:
 - (A) operating limits for the following operating parameters shall be established:
 - (i) maximum charge rate, which shall be measured continuously, recorded every hour, and calculated using one of the following procedures:
 - (I) for continuous and intermittent units, the maximum charge rate is 110 percent of the average charge rate measured during the most recent compliance test demonstrating compliance with all applicable emission limitations; or
 - (II) for batch units, the maximum charge rate is 110 percent of the daily charge rate measured during the most recent compliance test demonstrating compliance with all applicable emission limitations;
 - (ii) minimum pressure drop across the wet scrubber, which shall be measured continuously, recorded every 15 minutes, and calculated as 90 percent of:
 - (I) the average pressure drop across the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations, or
 - (II) the average amperage to the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations;
 - (iii) minimum scrubber liquor flow rate, which shall be measured continuously, recorded every 15 minutes, and calculated as 90 percent of the average liquor flow rate at the inlet to the wet scrubber measured during

- the most recent compliance test demonstrating compliance with all applicable emission limitations; and
- (iv) minimum scrubber liquor pH, which shall be measured continuously, recorded every 15 minutes, and calculated as 90 percent of the average liquor pH at the inlet to the wet scrubber measured during the most recent compliance test demonstrating compliance with all applicable emission limitations.
- (B) A three hour rolling average shall be used to determine if operating parameters in Subparts (A)(i) through (A)(iv) of this Subparagraph have been met.
 - (C) The owner or operator of the CISWI unit shall meet the operating limits established during the initial performance test on the date the initial performance test is required or completed.
- (3) If a fabric filter is used to comply with the emission limitations, then it shall be operated as specified in 40 CFR 60.2675(c);
 - (4) If an air pollution control device other than a wet scrubber is used or if emissions are limited in some other manner to comply with the emission standards of Paragraph (e) of this Rule, the owner or operator shall petition the Director for specific operating limits that shall be established during the initial performance test and continuously monitored thereafter. The initial performance test shall not be conducted until after the Director approves the petition. The petition shall include:
 - (A) identification of the specific parameters to be used as additional operating limits;
 - (B) explanation of the relationship between these parameters and emissions of regulated pollutants, identifying how emissions of regulated pollutants change with changes in these parameters, and how limits on these parameters will serve to limit emissions of regulated pollutants;
 - (C) explanation of establishing the upper and lower limits for these parameters, which will establish the operating limits on these parameters;
 - (D) explanation of the methods and instruments used to measure and monitor these parameters, as well as the relative accuracy and precision of these methods and instruments;
 - (E) identification of the frequency and methods for recalibrating the instruments used for monitoring these parameters.
- The Director shall approve the petition if he finds that the requirements of this Subparagraph have been satisfied and that the proposed operating limits will ensure compliance with the emission standards in Paragraph (e) of this Rule.
- (g) Test Methods and Procedures.
 - (1) For the purposes of this Paragraph, "Administrator" in 40 CFR 60.8 means "Director".
 - (2) The test methods and procedures described in Rule .0501 of this Subchapter, in 40 CFR Part 60 Appendix A, 40 CFR Part 61 Appendix B, and 40 CFR 60.2690 shall be used to determine compliance with emission standards in Paragraph (e) this Rule. Method 29 of 40 CFR Part 60 shall be used to determine emission standards for metals. However, Method 29 shall be used to sample for chromium (VI), and SW 846 Method 0060 shall be used for the analysis.
 - (3) All performance tests shall consist of a minimum of three test runs conducted under conditions representative of normal operations. Compliance with emissions standards under Subparagraph (e)(1), (3) through (5), and (7) through (11) of this Rule shall be determined by averaging three one-hour emission tests. These tests shall be conducted within 12 months following the initial performance test and within every twelve month following the previous annual performance test after that.
 - (4) The owner or operator of CISWI shall conduct an initial performance test as specified in 40 CFR 60.8 to determine compliance with the emission standards in Paragraph (e) of this Rule and to establish operating standards using the procedure in Paragraph (f) of this Rule. The initial performance test must be conducted no later than June 1, 2006.
 - (5) The owner or operator of the CISWI unit shall conduct an annual performance test for particulate matter, hydrogen chloride, and opacity as specified in 40 CFR 60.8 to determine compliance with the emission standards for the pollutants in Paragraph (e) of this Rule.
 - (6) If the owner or operator of CISWI unit has shown, using performance tests, compliance with particulate matter, hydrogen chloride, and

opacity for three consecutive years, the Director shall allow the owner or operator of CISWI unit to conduct performance tests for these three pollutants every third year. However, each test shall be within 36 months of the previous performance test. If the CISWI unit continues to meet the emission standards for these three pollutants the Director shall allow the owner or operator of CISWI unit to continue to conduct performance tests for these three pollutants every three years.

- (7) If a performance test shows a deviation from the emission standards for particulate matter, hydrogen chloride, or opacity, the owner or operator of the CISWI unit shall conduct annual performance tests for these three pollutants until all performance tests for three consecutive years show compliance for particulate matter, hydrogen chloride, or opacity.
- (8) The owner or operator of CISWI unit may conduct a repeat performance test at any time to establish new values for the operating limits.
- (9) The owner or operator of the CISWI unit shall repeat the performance test if the feed stream is different than the feed streams used during any performance test used to demonstrate compliance.
- (10) If the Director has evidence that an incinerator is violating a standard in Paragraph (e) or (f) of this Rule or that the feed stream or other operating conditions have changed since the last performance test, the Director may require the owner or operator to test the incinerator to demonstrate compliance with the emission standards listed in Paragraph (e) of this Rule at any time.

(h) Monitoring.

- (1) The owner or operator of an incinerator subject to the requirements of this Rule shall comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter.
- (2) The owner or operator of an incinerator subject to the requirements of this Rule shall establish, install, calibrate to manufacturers specifications, maintain, and operate;
 - (A) devices or methods for continuous temperature monitoring and recording for the primary chamber and, where there is a secondary chamber, for the secondary chamber;
 - (B) devices or methods for monitoring the value of the operating parameters used to determine compliance with the operating parameters established under Paragraph (f)(2) of this Rule;

(C) a bag leak detection system that meets the requirements of 40 CFR 60.2730(b) if a fabric filter is used to comply with the requirements of the emission standards in Paragraph (e) of this Rule; and

(D) Equipment necessary to monitor compliance with the cite-specific operating parameters established under Paragraph (f)(4) of this Rule.

- (3) The Director shall require the owner or operator of a CISWI unit with a permitted charge rate of 750 pounds per hour or more to install, operate, and maintain continuous monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the CISWI unit.
- (4) The Director shall require the owner or operator of a CISWI unit with a permitted charge rate of 750 pounds per hour or less to install, operate, and maintain continuous monitors for oxygen or for carbon monoxide or both if necessary to determine proper operation of the CISWI unit.
- (5) The owner or operator of the CISWI unit shall conduct all monitoring at all times the CISWI unit is operating, except;
 - (A) malfunctions and associated repairs;
 - (B) required quality assurance or quality control activities including calibrations checks and required zero and span adjustments of the monitoring system.
- (6) The data recorded during monitoring malfunctions, associated repairs, and required quality assurance or quality control activities shall not be used in assessing compliance with the operating standards in Paragraph (f) of this Rule.

(i) Recordkeeping, and Reporting.

- (1) The owner or operator of CISWI unit shall maintain records required by this Rule on site in either paper copy or electronic format that can be printed upon request for a period of at least five years.
- (2) The owner or operator of CISWI unit shall maintain all records required under 40 CFR 60.2740.
- (3) The owner or operator of CISWI unit shall submit as specified in Table 5 of 40 CFR 60, Subpart DDDD the following reports:
 - (A) Waste Management Plan;
 - (B) initial test report, as specified in 40 CFR 60.2760;
 - (C) annual report as specified in 40 CFR 60.2770;
 - (D) emission limitation or operating limit deviation report as specified in 40 CFR 60.2780;

- (E) qualified operator deviation notification as specified in 40 CFR 60.2785(a)(1);
 - (F) qualified operator deviation status report, as specified in 40 CFR 60.2785(a)(2);
 - (G) qualified operator deviation notification of resuming operation as specified in 40 CFR 60.2785(b).
- (4) The owner or operator of the CISWI unit shall submit a deviation report if:
- (A) any recorded three-hour average parameter level is above the maximum operating limit or below the minimum operating limit established under Paragraph (f) of this Rule;
 - (B) the bag leak detection system alarm sounds for more than five percent of the operating time for the six-month reporting period; or
 - (C) a performance test was conducted that deviated from any emission standards in Paragraph (e) of this Rule.
- The deviation report shall be submitted by August 1 of the year for data collected during the first half of the calendar year (January 1 to June 30), and by February 1 of the following year for data collected during the second half of the calendar year (July 1 to December 31).
- (5) The owner or operator of the CISWI unit may request changing semiannual or annual reporting dates as specified in this Paragraph, and the Director may approve the request change using the procedures specified in 40 CFR 60.19(c).
- (6) Reports required under this Rule shall be submitted electronically or in paper format, postmarked on or before the submittal due dates.
- (7) If the CISWI unit has been shut down by the Director under the provisions of 40 CFR 60.2665(b)(2), due to failure to provide an accessible qualified operator, the owner or operator shall notify the Director that the operations are resumed once a qualified operator is accessible.
- (j) Excess Emissions and Start-up and Shut-down. All incinerators subject to this Rule shall comply with 15A NCAC 2D .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter.
- (k) Operator Training and Certification.
- (1) The owner or operator of the CISWI unit shall not allow the CISWI unit to operate at any time unless a fully trained and qualified CISWI unit operator is accessible, either at the facility or available within one hour. The trained and qualified CISWI unit operator may operate the CISWI unit directly or be the direct supervisor of one or more CISWI unit operators.
- (2) Operator training and qualification shall be obtained by completing the requirements of 40 CFR 60.2635(c) by the later of:
- (A) December 1, 2005;
 - (B) six month after CISWI unit startup; or
 - (C) six month after an employee assumes responsibility for operating the CISWI unit or assumes responsibility for supervising the operation of the CISWI unit.
- (3) Operator qualification shall be valid from the date on which the training course is completed and the operator successfully passes the examination required in 40 CFR 60.2635(c)(2).
- (4) Operator qualification shall be maintained by completing an annual review or refresher course covering, at a minimum:
- (A) update of regulations;
 - (B) incinerator operation, including startup and shutdown procedures, waste charging, and ash handling;
 - (C) inspection and maintenance;
 - (D) responses to malfunctions or conditions that may lead to malfunction;
 - (E) discussion of operating problems encountered by attendees.
- (5) Lapsed operator qualification shall be renewed by:
- (A) completing a standard annual refresher course as specified in Subparagraph (4) of this Paragraph for a lapse less than three years, and
 - (B) repeating the initial qualification requirements as specified in Subparagraph (2) of this Paragraph for a lapse of three years or more.
- (6) The owner or operator of the CISWI unit shall:
- (A) have documentation specified in 40 CFR 60.2660(a)(1) through (10) and (c)(1) through (c)(3) available at the facility and accessible for all CISWI unit operators and are suitable for inspection upon request;
 - (B) establish a program for reviewing the documentation specified in Part (A) of this Subparagraph with each CISWI unit operator:
 - (i) the initial review of the documentation specified in Part (A) of this Subparagraph shall be conducted by the later of the three dates:
 - (I) December 1, 2005;

- (II) six month after CISWI unit startup; or
 - (III) six month after an employee assumes responsibility for operating the CISWI unit or assumes responsibility for supervising the operation of the CISWI unit; and
 - (ii) subsequent annual reviews of the documentation specified in Part (A) of this Subparagraph shall be conducted no later than twelve month following the previous review
- (7) The owner or operator of the CISWI unit shall meet one of the two criteria specified in 40 CFR 60.2665(a) and (b), depending on the length of time, if all qualified operators are temporarily not at the facility and not able to be at the facility within one hour.
- (l) Prohibited waste. The owner or operator of a CISWI shall not incinerate any of the wastes listed in G.S. 130A-309.10(f1).
- (m) Waste Management Plan.
- (1) The owner or operator of the CISWI unit shall submit a waste management plan that identifies in writing the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream in order to reduce or eliminate toxic emissions from incinerated waste. A waste management plan shall be submitted to the Director before December 1, 2003.
 - (2) The waste management plan shall include:
 - (A) consideration of the reduction or separation of waste-stream elements such as paper, cardboard, plastics, glass, batteries, or metals; and the use of recyclable materials;
 - (B) a description of how the materials listed in G.S. 130A-309.10(f1) are to be segregated from the waste stream for recycling or proper disposal;
 - (C) identification of any additional waste management measures; and
 - (D) implementation of those measures considered practical and feasible, based on the effectiveness of waste management measures already in place, the costs of additional measures and the emissions reductions expected to be achieved and the environmental or energy impacts that the measures may have.
 - (n) Compliance Schedule.
 - (1) The owner or operator of the CISWI unit, which plans to achieve compliance after November 30, 2003, shall submit before December 1, 2003, along with the permit application, the final control plan for the CISWI unit. The final compliance shall be achieved no later than December 1, 2005.
 - (2) The final control plan shall contain the information specified in 40 CFR 60.2600(a)(1) through (5), and a copy shall be maintained on site.
 - (3) The owner or operator of the CISWI unit shall notify the Director within five days after the CISWI unit is to be in final compliance whether the final compliance have been achieved. The final compliance is achieved by completing all process changes and retrofitting construction of control devices, as specified in the final control plan, so that, if the affected CISWI unit is brought on line, all necessary process changes and air pollution control devices would operate as designed. If the final compliance has not been achieved, the owner or operator of the CISWI unit shall submit a notification informing the Director that the final compliance has not been met and submit reports each subsequent calendar month until the final compliance is achieved.
 - (4) The owner or operator of the CISWI unit, that closes the CISWI unit and restarts it:
 - (A) before December 1, 2005, shall submit along with the permit application, the final control plan for the CISWI unit, and the final compliance shall be achieved by December 1, 2005.
 - (B) after December 1, 2005 shall complete emission control retrofits and meet the emission limitations and operating limits on the date the CISWI unit restarts operation.
 - (5) The owner or operator of the CISWI unit that plans to close it rather than comply with the requirements of this Rule shall submit a closure notification including the date of closure to the Director by December 1, 2003, and shall cease operation by December 1, 2005.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(4),(5); 40 CFR 60.215(a)(4); Eff. August 1, 2002; Amended Eff. January 1, 2005.

SECTION .0900 – PERMIT EXEMPTIONS

15A NCAC 02Q .0901 PURPOSE AND SCOPE

- (a) The purpose of this Section is to define categories of facilities or sources that are exempted from needing a permit under Section .0300 of this Subchapter.
- (b) Sources at a facility required to have a permit under Section .0500 of this Subchapter shall not be eligible for exemption under this Section.
- (c) This Section does not apply to activities exempted from permitting under Rule .0102 of this Section.
- (d) Coverage under this Section is voluntary. If the owner or operator of a facility or source qualified to be covered under a rule in this Section does not want to be covered under that rule, he shall notify the Director in writing that he does not want his facility or source covered under this Section. Along with the notification, he shall submit a permit application according the procedures in Section .0300 of this Section, and the Director shall act on that application following the procedures in Section .0300 of this Subchapter.
- (e) To qualify for exemption under this Section, the facility or source shall comply with all the requirements in the applicable rule in this Section.
- (f) If the Director finds that a facility or source covered under this Section is in violation of the requirements of this Section, he shall require that facility or source to be permitted under Section .0300 of this Subchapter if necessary to obtain or maintain compliance.

History Note: Authority G.S. 143-215.3(a); 143-215.107(a)(10); 143-215.108; Eff. January 1, 2005.

15A NCAC 02Q .0902 PORTABLE CRUSHERS

- (a) This rule applies to portable crushers that:
 - (1) crush no more than 300,000 tons during any 12 months;
 - (2) burn no more than 17,000 gallons of diesel fuel during any 12 months if it uses:
 - (A) a diesel-fired generator, or
 - (B) a diesel engine to drive the crusher;
 - (3) do not operate at any one facility or site more than 12 months;
 - (4) do not operate at quarry that has an air permit issued under this Subchapter; and
 - (5) continuously use water spray to control emissions from the crushers.
- (b) The owner or operator of a portable crusher and any associated generators shall comply with 15A NCAC 02D .0510 (particulates from sand, gravel, or crushed stone operations), .0516 (sulfur dioxide emissions from combustion sources), .0521 (control of visible emissions), .0524 (new source performance standards, 40 CFR Part 60, Subpart OOO), .0535 (excess emissions reporting and malfunctions), .0540 (particulates from fugitive non-process dust emission sources), and .1806 (control and prohibition of odorous emissions).
- (c) The owner or operator of a portable crusher shall not cause or allow any material to be produced, handled, transported, or stockpiled without taking measures to reduce to a minimum any particulate matter from becoming airborne to prevent exceeding the ambient air quality standards beyond the property line for

- particulate matter (PM2.5, PM10, and total suspended particulates).
- (d) The owner or operator of a portable crusher shall maintain records of the amount of material crushed and the quantity of fuel burned in the diesel-fired generator or engine so that the Division can determine upon review of these records that the crusher qualifies to be covered under this Rule.
- (e) The owner or operator of a portable crusher shall label each crusher, hopper, feeder, screen, conveyor, elevator, and generator with a permanent and unique identification number.
- (f) If a source is covered under 15A NCAC 02D .0524 (40 CFR Part 60, Subpart OOO), the owner or operator of a portable crusher shall submit to the Director notifications are required under 15A NCAC 02D .0524 (40 CFR Part 60, Subpart OOO).
- (g) If the Director or his authorized representative requests copies of notifications or testing records required under 15A NCAC 02D .0524 (40 CFR Part 60, Subpart OOO), the owner or operator of a portable crusher shall submit the requested notifications or testing records within two business days of such a request.

History Note: Authority G.S. 143-215.3(a); 143-215.107(a)(10); 143-215.108; Eff. January 1, 2005.

TITLE 16 – DEPARTMENT OF PUBLIC EDUCATION

16 NCAC 06C .0312 LICENSE SUSPENSION AND REVOCATION

- (a) Except for automatic revocations taken pursuant to G.S. 115C-296(d)(2), the SBE may deny an application for a license or may suspend or revoke a license issued by the department only for the following reasons:
 - (1) fraud, material misrepresentation or concealment in the application for the license;
 - (2) changes in or corrections of the license documentation that make the individual ineligible to hold a license;
 - (3) conviction or entry of a plea of no contest, as an adult, of a crime if there is a reasonable and adverse relationship between the underlying crime and the continuing ability of the person to perform any of his/her professional functions in an effective manner;
 - (4) final dismissal of a person by a local board pursuant to G.S. 115C-325(e)(1)b., if there is a reasonable and adverse relationship between the underlying misconduct and the continuing ability of the person to perform any of his/her professional functions effectively;
 - (5) final dismissal of a person by a LEA under G.S. 115C-325(e)(1)e.;
 - (6) resignation from employment with a LEA without thirty work days' notice, except with the prior consent of the local superintendent;
 - (7) revocation of a license by another state;

- (8) any other illegal, unethical or lascivious conduct by a person, if there is a reasonable and adverse relationship between the underlying conduct and the continuing ability of the person to perform any of his/her professional functions in an effective manner; and
- (9) failure to report revocable conduct as required under Paragraph (b) of this Rule.

(b) In addition to any duty to report suspected child abuse under G.S. 7B-301, any superintendent, assistant superintendent, associate superintendent, personnel administrator or principal who knows or has reason to believe that a licensed employee of the LEA has engaged in behavior that would justify revocation of the employee's license under Subparagraphs (3), (4) or (8) of Paragraph (a) of this Rule and which behavior involves physical or sexual abuse of a child shall report that information to the Superintendent of Public Instruction no later than five working days after the date of a dismissal or other disciplinary action or the acceptance of a resignation based upon that conduct. For purposes of this section, the term "physical abuse" shall mean the infliction of physical injury other than by accidental means and other than in self-defense. The term "sexual abuse" shall mean the commission of any sexual act upon a student or causing a student to commit a sexual act, regardless of the age of the student and regardless of the presence or absence of consent. This paragraph shall apply to acts that occur on or after October 1, 1993.

(c) Upon the receipt of a written request and substantiating information from any LEA, local superintendent or other person in a position to present information as a basis for the suspension or revocation of a person's license, the Superintendent of Public Instruction shall conduct an investigation sufficient to determine whether reasonable cause exists to believe that the person's license should be suspended or revoked. If the Superintendent determines that reasonable cause exists to believe that the person's license should be suspended or revoked on one or more of the grounds specified in Paragraph (a) of this Rule, the Superintendent shall prepare and file written charges with the SBE. The SBE shall review the written charges and determine whether the person's license should be suspended or revoked based on the information contained in the written charges. If the SBE determines that the written charges constitute grounds for suspension or revocation, it shall provide the person with a copy of the written charges, and notify the person that it shall revoke the person's license unless the person, within 60 days of receipt of notice, initiates administrative proceedings under G.S. 150B-3. The notice shall be sent certified mail, return receipt requested. If the person initiates administrative proceedings the SBE shall defer final action on the matter until receipt of a proposed decision as provided for in G.S. 150B-34. If the person does not initiate administrative proceedings within 60 days of receipt of notice, the SBE may suspend or revoke the person's license at its next meeting.

(d) The SBE may suspend an individual's license for a stated period of time or may permanently revoke the license, except as limited by G.S. 115C-325(o).

(e) The SBE may accept the voluntary surrender of a license in lieu of seeking revocation of the license. Before it accepts a

voluntary surrender the SBE shall make findings of fact regarding the circumstances surrounding the voluntary surrender to demonstrate that grounds existed under which the SBE could have initiated license revocation proceedings. The SBE shall treat a voluntary surrender the same as a revocation.

(f) The SBE may reinstate a suspended or revoked license or may grant a new license after denial of a license under Paragraph (a) of this Rule upon an individual's application submitted no sooner than six months after the suspension, revocation, or denial, and a showing that:

- (1) the action that resulted in suspension, revocation or denial of the license did not involve abuse of minors; moral turpitude or grounds listed in G.S. 115C-325(e)(1)b;
- (2) the person has no record of subsequent behavior that could have resulted in license revocation; and
- (3) there is no court order or judicial determination that would prohibit the person from returning to or holding a licensed position.

(g) The SBE shall notify all other states of all actions which involve the, suspension, revocation, surrender, or reinstatement of a certificate.

History Note: Authority G.S. 115C-12(9)a.; N.C. Constitution, Article IX, s. 5; Eff. July 1, 1986; Amended Eff. January 1, 1988; ARRC Objection Lodged Eff. February 22, 1990; ARRC Objection Removed Eff. March 15, 1990; Amended Eff. December 1, 2004; August 1, 2000; October 1, 1993; November 1, 1990; August 1, 1990.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 14 – COSMETIC ART EXAMINERS

SUBCHAPTER 14A – DEPARTMENTAL RULES

SECTION .0100 – ORGANIZATION RULES

21 NCAC 14A .0101 DEFINITIONS

The following definitions apply in this Chapter:

- (1) "Beauty Establishment" refers to both cosmetic art schools and cosmetic art shops.
- (2) "Cosmetology School" is any cosmetic art school that teaches cosmetic art as defined by, G.S. 88B-2(5), but is not solely a manicurist or an esthetics school.
- (3) "Cosmetology Student" is a student in any cosmetic art school whose study is the full curriculum.
- (4) "Manicurist School" is a cosmetic art school that teaches only the cosmetic arts of manicuring.
- (5) "Manicurist Student" is a student in any cosmetic art school whose study is limited to

- the manicurist curriculum set forth in 21 NCAC 14K .0102.
- (6) "Successful Completion" is the completion of an approved cosmetic art curriculum with a minimum grade of "C" or 70%, whichever is deemed as passing by the cosmetic art school.
- (7) "Esthetician School" is any cosmetic art school that teaches only the cosmetic arts of skin care.
- (8) "Esthetician Student" is a student in any cosmetic art school whose study is limited to the esthetician curriculum set forth in 21 NCAC 14O. 0102.
- (9) "Esthetics" refers to any of the following practices: giving facials; applying makeup; performing skin care; removing superfluous hair from the body of any person by the use of depilatories, tweezers or waxing; applying eyelashes to any person (this is to include brow and lash color); beautifying the face, neck, arms or upper part of the human body by use of cosmetic preparations, antiseptics, tonic, lotions or creams; massaging with cosmetic preparation, antiseptics, tonics, lotion, or cream; or cleaning or stimulating the face, neck, ears, arms, hands, bust, torso, legs, or feet by means of the hands, devices, apparatus, or appliances.
- (10) "Natural hair braiding" is a service that results in tension on hair strands or roots by twisting, wrapping, weaving, extending, locking, or braiding by hand or mechanical device, is not subject to regulation pursuant to G.S. 88B, provided that the service does not include hair cutting or the application of dyes, reactive chemicals, or other preparations to alter the color of the hair or to straighten, curl, or alter the structure of the hair.
- (11) "Natural hair styling" is the provision of natural hair braiding services together with any of the other services or procedures included within the regulated practice of cosmetic art, and is subject to regulation pursuant to G.S. 88B, and those persons practicing natural hair styling shall obtain and maintain a cosmetologist license as applicable to the services offered or performed. Establishments offering natural hair styling services shall be licensed as cosmetic art shops.
- (12) "Licensing cycle" for cosmetologists is the three-year period beginning on the first day of October 2004 and ending on the 30th day of September 2007, and continuing thereafter in three year intervals. For estheticians and manicurists the licensing cycle is one year in length beginning on the first day of October and ending on the 30th day of September. For teachers, the licensing cycle is the two-year period beginning on the first day of October of

- an even-numbered year and ending on the 30th day of September of an even-numbered year.
- (13) "Provider" is a nonprofit professional cosmetic art association, community college, high school, vocational school, postsecondary proprietary school of cosmetic art licensed by the Board, manufacturer of supplies or equipment used in the practice of cosmetic art, the State Board or an agent of the State Board, or any individual or entity that owns and operates five or more licensed salons or that employs at least 50 licensees.

History Note: Authority G.S. 88B-2; 88B-4; Eff. February 1, 1976; Amended Eff. June 1, 1993; October 1, 1991; May 1, 1991; January 1, 1989; Temporary Amendment Eff. January 1, 1999; Amended Eff. December 1, 2004; May 1, 2004; February 1, 2004; April 1, 2001; August 1, 2000.

21 NCAC 14H .0121 PROHIBITED PRACTICES
Licensed cosmetologists, estheticians, and manicurists shall not use or possess in a shop any of the following products:

- (1) Methyl Methacrylate Liquid Monomer a.k.a. MMA; and
- (2) Razor-type callus shavers designed and intended to cut growths of skin such as corns and calluses.

History Note: Authority G.S. 88B-4; Eff. April 1, 2004; Amended Eff. December 1, 2004.

21 NCAC 14J .0102 UNIFORM
All students must wear a clean washable uniform or professional attire and nametag identifying academic status.

History Note: Authority G.S. 88-23; 88-26(1); Eff. February 1, 1976; Amended Eff. December 1, 2004; August 1, 1998; January 1, 1989.

SUBCHAPTER 14K - MANICURIST CURRICULUM

SECTION .0100 - MANICURIST CURRICULUM

21 NCAC 14K .0101 UNIFORMS
All students must wear a clean washable uniform or professional attire and nametag identifying academic status.

History Note: Authority G.S. 88-8; 88-23; Eff. February 1, 1976; Amended Eff. December 1, 2004; August 1, 1998.

SUBCHAPTER 14R – CONTINUING EDUCATION

21 NCAC 14R .0101 CONTINUING EDUCATION REQUIREMENTS

- (a) The continuing education requirement for all licensees is eight hours per year. Cosmetologists may complete the 24 hours of continuing education any time within the cosmetologist's three-year licensing cycle. No licensee shall receive credit for course duplication completed during the licensing cycle. Course instructors shall not receive credit for any course taught by them.
- (b) Courses completed prior to an individual being licensed by the Board shall not qualify for continuing education credit. A licensee shall not receive continuing education credit for any course given in North Carolina that does not have the prior approval of the Board.
- (c) Estheticians and manicurists must complete courses in their subject area. Only licensed teachers may complete courses in teacher training techniques.
- (d) All providers shall allow any representative or employee of the Board entrance into any Board approved continuing education requirement course at no cost to the Board.
- (e) The Board shall keep a current roster of approved continuing education courses. Copies of the roster shall be posted to the Board's website and updated monthly. Additional copies of the roster shall be available to licensees and the public upon request to the Board. Requesting individuals shall provide stamped, self-addressed envelopes.
- (f) Out-of-state continuing education hours shall be submitted for approval to the Board within 30 days of completing the course in order to be acceptable in meeting the annual requirements.

History Note: Authority G.S. 88B-4; 88B-21(e); Eff. May 1, 2004; Amended Eff. December 1, 2004.

21 NCAC 14R .0104 LICENSE RENEWAL PROCEDURES

After completion of the continuing education requirements for any licensing cycle the licensee shall forward only the license renewal application and the license renewal fee. The Board shall maintain all continuing education attendance information.

History Note: Authority G.S. 88B-4; 88B-21(e); Eff. May 1, 2004; Amended Eff. December 1, 2004.

CHAPTER 30 - NC BOARD OF MASSAGE AND BODYWORK THERAPY

SECTION .0100 - ORGANIZATION AND GENERAL PROVISIONS

21 NCAC 30 .0102 DEFINITIONS

In addition to the definitions set forth in G.S. 90-622(1) through (5), the following definitions apply:

- (1) Practice Act. -- Article 36, Chapter 90 of the North Carolina General Statutes: The North Carolina Massage and Bodywork Therapy Practice Act.
- (2) Licensee. -- A person who holds a valid license issued by the Board to engage in the practice of massage and bodywork therapy.

- (3) Reciprocity. -- Pursuant to G.S. 90-630, a provision which shall apply to practitioners of massage and bodywork therapy qualified pursuant to Rule .0304 who reside outside the State.
- (4) Place of business. -- The primary street location where the licensee provides massage and bodywork therapy. If the licensee provides massage and bodywork therapy only at the location of clients, then it shall be the residence street address of the licensee.
- (5) Malpractice. -- Conduct in variance with the Standards of Practice set forth in Section .0500 that results in harm to a client or that endangers the health or safety of a client.
- (6) Gross negligence. -- The intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another.
- (7) Incompetency. -- Conduct that evidences a lack of ability, fitness or knowledge to apply principles or skills of the profession of massage and bodywork therapy.
- (8) Therapeutic, educational, or relaxation purposes. -- Pursuant to G.S. 90-622(3), that which is intended to positively affect the health and well-being of the client, and that does not include sexual activity, as defined in Rule .0508.

History Note: Authority G.S. 90-622; 90-626(9); Temporary Adoption Eff. February 15, 2000; Eff. April 1, 2001; Amended Eff. April 1, 2005.

21 NCAC 30 .0203 EXEMPTIONS FROM LICENSURE

(a) Persons who are utilizing certain therapeutic techniques may claim exemption from licensure pursuant to G.S. 90-624 (6) or (7) only by meeting one of the following criteria:

- (1) Such persons are practicing techniques that are defined by national organizations that meet the criteria for exemption set forth in either G.S. 90-624 (6) or (7); or
- (2) Such persons are practicing techniques that do not involve any contact with the body of the client; or
- (3) Such persons are practicing techniques that involve resting the hands on the surface of the client's body without delivering pressure to or manipulation of the soft tissues.

(b) Persons who are utilizing exempt techniques along with techniques that are not exempt and constitute the practice of massage or bodywork therapy, as defined in G.S. 90-622(3), are not considered to be exempt and will be required to be licensed.

(c) Pursuant to G.S. 90-623, such exempted practitioners may not hold themselves out to be a massage and bodywork therapist; they may not utilize or promote themselves or their services using such terms as "massage, massage therapy, bodywork,

bodywork therapy," or any other derivative term that implies a soft tissue technique or method.

(d) Services such as herbal body wraps, skin exfoliating treatments or the topical application of products to the skin for beautification purposes are not considered to be the practice of massage and bodywork therapy, as long as such services do not involve direct manipulation of the soft tissues of the body. Those who are utilizing such techniques along with techniques that are not exempt and constitute the practice of massage or bodywork therapy are not considered exempt and will be required to be licensed.

History Note: Authority G.S. 90-624; 90-626; Temporary Adoption Eff. February 15, 2000; Eff. April 1, 2001; Amended Eff. April 1, 2005.

21 NCAC 30 .0204 FEES

(a) Fees are as follows:

- | | | |
|-----|---|----------|
| (1) | Application for Examination of Requirements for License | \$ 20.00 |
| (2) | License fee | 150.00 |
| (3) | License renewal | 100.00 |
| (4) | Late renewal penalty | 75.00 |
| (5) | Duplicate license | 25.00 |
| (6) | Application for Additional Examination of Moral Character | 150.00 |

(b) Fees shall be nonrefundable and shall be paid in the form of a cashier's check, certified check or money order made payable to the North Carolina Board of Massage and Bodywork Therapy.

History Note: Authority G.S. 90-626(8); 90-628; Temporary Adoption Eff. February 15, 2000; Eff. April 1, 2001; Amended Eff. April 1, 2005.

21 NCAC 30 .0205 TERM OF LICENSE

(a) Initial applications for licensure submitted between October 1 and December 31 shall be granted for two full years, plus the additional period of up to three months. Initial applications submitted between January 1 and September 30 shall pay the full fee, but the initial license period shall be two years, minus the period following January 1.

(b) Pursuant to G.S. 90-632, a license shall be renewed for a term of two years, beginning on January 1 following the initial expiration date.

History Note: Authority G.S. 90-626(9); 90-632; Eff. April 1, 2005.

21 NCAC 30 .0206 BACKGROUND INVESTIGATION REQUIRED FOR APPLICANT

- (a) If the Board determines that an applicant for licensure has:
- (1) a pending charge or conviction of a criminal offense or domestic violence, or disciplinary action regarding another occupational license or certification; or
 - (2) a civil judgment, termination from employment or dismissal from an educational

institution related to criminal behavior, assault or the massage and bodywork therapy or other health care profession, the Board shall investigate the applicant's background.

(b) At the request of the Board, the applicant shall provide all documentation related to the event(s), and shall pay the additional fee set forth in Rule .0204(6) to cover the Board's costs of such investigation.

History Note: Authority G.S. 90-626(2); 90-629(3); Eff. April 1, 2005.

21 NCAC 30 .0302 DISPLAY OF LICENSE

A licensee shall display the license in a prominent place at the licensee's primary place of business so as to be visible for inspection. Licensees providing massage and bodywork therapy outside their primary business location, or at the location of clients, shall have a copy of their license available for inspection upon request.

History Note: Authority G.S. 90-626(9); Temporary Adoption Eff. February 15, 2000; Eff. April 1, 2001; Amended Eff. April 1, 2005.

21 NCAC 30 .0303 LICENSE RENEWAL

(a) Any licensee desiring the renewal of a license shall comply with all continuing education requirements, shall apply for renewal and shall submit the required fee.

(b) A license that has not been renewed prior to its expiration date is considered expired. An expired license may be reinstated within the first 24 months. All required continuing education for license renewal must be completed before the license is reinstated.

(c) Licenses expired in excess of 24 months are not renewable. Persons whose licenses have been expired for more than 24 months must apply for a new license.

(d) Any person whose license has expired and who engages in any massage and bodywork therapy activities governed by the Practice Act will be subject to the penalties prescribed in G.S. 90-634 and G.S. 90-634.1.

History Note: Authority G.S. 90-626(3); Temporary Adoption Eff. February 15, 2000; Eff. April 1, 2001; Amended Eff. April 1, 2005.

SECTION .0500 - STANDARDS OF PROFESSIONAL CONDUCT

21 NCAC 30 .0501 PURPOSE

The standards set forth in Section .0500 establish requirements for the safe and effective practice of massage and bodywork therapy. They are intended to protect the public, to preserve the integrity of the profession, and to allow for the provision of massage and bodywork therapy services.

History Note: Authority G.S. 90-621; 90-626(9); Temporary Adoption Eff. February 15, 2000;

Eff. April 1, 2001;
Amended Eff. April 1, 2005.

21 NCAC 30 .0502 GENERAL REQUIREMENTS

In the practice of massage and bodywork therapy, licensees shall:

- (1) provide only those services that they have the training and practical experience to perform, and that are designed to benefit the health and well-being of the client;
- (2) deliver treatment that ensures each client's safety, comfort and privacy;
- (3) inform clients of the scope and limitations of massage and bodywork therapy.

*History Note: Authority G.S. 90-626(9);
Temporary Adoption Eff. February 15, 2000;
Eff. April 1, 2001;
Amended Eff. April 1, 2005.*

21 NCAC 30 .0503 CLIENT ASSESSMENT AND INFORMED CONSENT

Before providing treatment, licensees shall:

- (1) inquire as to the health history and current health status of each client to determine the indications and contraindications for the application of massage and bodywork therapy;
- (2) assess the needs and expectations of the client and designate a treatment;
- (3) obtain the written consent of the client. For the purposes of this Section, "consent" means the therapist has informed the client as to the nature and purpose of the service to be provided, and the client acknowledges that he or she understands the terms under which the treatment is being provided and voluntarily agrees to receive such treatment. The treatment shall be modified only with the consent of the client;
- (4) respect the client's right to refuse, modify or terminate treatment regardless of prior consent given.

*History Note: Authority G.S. 90-626(9);
Temporary Adoption Eff. February 15, 2000;
Eff. April 1, 2001;
Amended Eff. April 1, 2005.*

21 NCAC 30 .0504 DOCUMENTATION; REFERRALS

On an ongoing basis, the licensee shall:

- (1) maintain documentation for each session, when practicable, including the date of service, needs assessment, plan of care, observations made and actions taken by the licensee;
- (2) refer the client to other health care practitioners or other professional service providers when in the best interest of the client or licensee;

- (3) follow recommendations for the plan of care when receiving a client referral from a medical care provider. Questions or concerns regarding such referrals shall be directed to the referring provider.

*History Note: Authority G.S. 90-626(9);
Temporary Adoption Eff. February 15, 2000;
Eff. April 1, 2001;
Amended Eff. April 1, 2005.*

21 NCAC 30 .0505 CONFIDENTIALITY, ROLES AND BOUNDARIES

In managing the client/therapist relationship, licensees shall:

- (1) maintain the confidentiality of all client information, unless written disclosure is consented to by the client, or required by law or by court order; this shall include protecting the client's identity in all social conversations, advertisements, and in any other manner;
- (2) maintain client files for at least four years after the termination of the client/therapist relationship and store and dispose of client records in a secure manner;
- (3) protect the interests of clients who are minors or who are unable to give informed consent by securing permission from an authorized third party or guardian;
- (4) avoid relationships with the client that could impair professional judgment or result in exploitation of the client.

*History Note: Authority G.S. 90-626(9);
Temporary Adoption Eff. February 15, 2000;
Eff. April 1, 2001;
Amended Eff. April 1, 2005.*

21 NCAC 30 .0506 DRAPING REQUIREMENTS

Licensees shall adhere to the following requirements, except in the case of treatments where the client remains fully clothed:

- (1) provide draping in a manner that ensures the safety, comfort and privacy of the client;
- (2) maintain a supply of clean drapes, such as towels, sheets, gowns or other coverings, for the purpose of draping the client's body during treatment;
- (3) explain expected draping procedures to the client before treatment; and
- (4) ensure that the following areas are draped during treatment: the gluteal and genital areas for male and female clients, and the breast area for female clients. With voluntary and informed consent of the client, the gluteal and breast drapes may be temporarily moved in order to perform therapeutic treatment to structures in those areas.

*History Note: Authority G.S. 90-626(9);
Temporary Adoption Eff. February 15, 2000;*

*Eff. April 1, 2001;
Amended Eff. April 1, 2005.*

21 NCAC 30 .0507 HYGIENE

To maintain a professional standard of hygiene in their practice, licensees shall:

- (1) cleanse their exposed body part used for applying treatment, e.g. hands, elbows, forearms, or feet, before and after each treatment, using a lavatory with hot water or a chemical germicidal product;
- (2) maintain a barrier of unbroken skin on their exposed body part used for applying treatment during each treatment; in the case of broken skin, licensees shall use a finger cot, glove or chemical barrier product to cover the affected area during treatment;
- (3) wear clothing that is clean and professional; maintain personal hygiene;
- (4) maintain all equipment used in the practice of massage and bodywork therapy in a safe and sanitary condition; and
- (5) utilize only those materials furnished for the personal use of the client, including towels, linens, or gowns, that have been laundered or sanitized before reuse, or that are single-use items disposed of after treatment.

*History Note: Authority G.S. 90-626(9);
Eff. April 1, 2005.*

**21 NCAC 30 .0509 SEXUAL ACTIVITY
PROHIBITED**

To preserve the safety and integrity of the therapeutic relationship, the following requirements shall apply during the period from the beginning of the client/therapist relationship, and continue for six months after the termination of such relationship. Licensees shall:

- (1) not engage in sexual activity, as defined in Rule .0508, between the licensee and the client, whether such activity is consensual or otherwise;
- (2) not engage in or permit any person or persons to engage in sexual activity with a client in a location where the practice of massage and bodywork therapy is conducted;
- (3) not use such location to make arrangements to engage in sexual activity with a client in any other place; and
- (4) define the boundaries of the professional relationship in the event that the client initiates or asks the licensee to engage in sexual activity.

*History Note: Authority G.S. 90-626(9);
Eff. April 1, 2005.*

**21 NCAC 30 .0510 PROVIDING OR TERMINATING
SERVICE**

(a) Licensees shall have the right to provide therapeutic services to whom they choose.

(b) Licensees shall also have the right to refuse treatment, or to terminate a treatment in progress to protect their own safety and well-being, including situations such as:

- (1) a client who is abusive; under the influence of alcohol, drugs, or any illegal substance; or otherwise impaired; or
- (2) A client who has violated the boundaries of the professional relationship by initiating or asking the licensee to engage in sexual activity; or
- (3) A client who does not disclose all health issues and information.

*History Note: Authority G.S. 90-626(9);
Eff. April 1, 2005.*

**21 NCAC 30 .0511 BUSINESS AND ETHICAL
REQUIREMENTS**

In the management and promotion of their practices, licensees shall:

- (1) represent their qualifications, credentials and professional affiliations accurately and completely;
- (2) conduct their business affairs with integrity and avoid actual or potential conflicts of interest;
- (3) refuse any gifts or benefits that are intended to influence a referral, decision or treatment;
- (4) adhere to the advertising requirements of Rule .0404, and promote their practices accurately, avoiding language or images that are misleading;
- (5) provide the client with information on their business policies before commencing treatment, including a list of services available, payment arrangements, appointment scheduling and cancellation requirements; discuss and resolve any questions the client may have about such policies;
- (6) maintain accurate financial records, client records, appointment records, contracts, and legal obligations for at least four years; and
- (7) comply with all applicable municipal, state, and federal laws.

*History Note: Authority G.S. 90-626(9);
Eff. April 1, 2005.*

21 NCAC 30 .0512 IMPAIRMENT

In the practice of massage and bodywork therapy, licensees shall not provide therapeutic services to clients when the licensee is under the influence of alcohol, drugs, or any illegal substance, with the exception of prescribed dosage of a prescription medication that does not impair the cognitive, psychological, or motor capacity of the licensee.

History Note: Authority G.S. 90-626(9);

Eff. April 1, 2005.

21 NCAC 30 .0513 FACILITY REQUIREMENTS

The practice of massage and bodywork therapy shall be conducted in facilities that are safe and sanitary. With the exception of treatments that are given at the location of a client, or treatments given at a temporary location lasting not more than 14 days such as a trade show, sporting event or community festival, licensees shall assure that the facility in which they practice:

- (1) is in compliance with all local building code requirements, state fire safety codes, and state health inspection codes;
- (2) provides toilet and lavatory facilities with hot and cold running water; and
- (3) provides clean shower facilities on the premises, if equipped with a whirlpool bath, sauna, steam cabinet, or steam room.

History Note: Authority G.S. 90-626(9); Eff. April 1, 2005.

21 NCAC 30 .0514 INFORMING BOARD OF VIOLATIONS

Licensees with actual knowledge shall inform the Board within 15 days of:

- (1) any person practicing without a license; or
- (2) any violation of the Practice Act when there is a potential for malpractice as defined in Rule .0102(4).

History Note: Authority G.S. 90-626(9); Eff. April 1, 2005.

21 NCAC 30 .0515 CONTINUING DUTY TO REPORT CERTAIN CRIMES AND CIVIL SUITS

(a) Licensees with actual knowledge shall report to the Board any and all charges of the following criminal offenses, whether committed by themselves or by other licensees:

- (1) Felonies;
- (2) Crimes that involve moral turpitude;
- (3) Alcohol or drug-related offenses;
- (4) Sexual-related offenses; and
- (5) Assault.

(b) Licensees with actual knowledge shall report to the Board any and all convictions of, or pleas of guilty or no contest to the following criminal offenses, whether committed by themselves or by other licensees:

- (1) Felonies;
- (2) Crimes that involve moral turpitude;
- (3) Alcohol or drug-related offenses;
- (4) Sexual-related offenses; and
- (5) Assault.

(c) Licensees are under a duty to report to the Board if they are named as a defendant in a civil suit arising out of a licensee's practice of massage and bodywork therapy.

(d) Licensees shall report a charge, conviction, plea in a criminal case, or involvement as a defendant in a civil suit, as set

forth in Paragraphs (a), (b), or (c) of this Rule, within 30 days after it occurs.

History Note: Authority G.S. 90-626(9); Eff. April 1, 2005.

21 NCAC 30 .0604 APPROVAL DESIGNATION

(a) A school that is approved by the Board may utilize the designation, "Approved by the North Carolina Board of Massage and Bodywork Therapy," or "N.C. Board Approved." An approved school may utilize this designation only to promote a program in massage and bodywork therapy, and shall not utilize this designation to promote any other program.

(b) A school that is in the application process for approval, and that has not been granted approval by the Board, shall not make, publish or promote misleading statements about its approval status.

History Note: Authority G.S. 90-626(9); 90-631; Temporary Adoption Eff. February 15, 2000; Eff. April 1, 2001; Amended Eff. April 1, 2005.

SECTION .0700 - CONTINUING EDUCATION

21 NCAC 30 .0701 CONTINUING EDUCATION REQUIREMENTS

(a) Pursuant to G.S. 90-632, a licensee, when renewing a license, shall document that they have completed at least 25 contact hours of approved continuing education during the immediately preceding licensure period, provided the licensure period is two years or more. If the licensure period is less than two years, but more than one year, the licensee shall document that they have completed at least 12 contact hours of approved continuing education.

(b) For the purposes of this Section, "approved continuing education" means a course offered as follows:

- (1) by an approved provider as defined in Rule .0702;
- (2) or a course approved by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM); or
- (3) a course in anatomy, physiology, pathology or business management taken at a post secondary institution of higher learning.

(c) Distance learning, as defined in Rule .0702 of this Section, shall not comprise more than 12 hours of the required continuing education hours per licensure period.

(d) Licensees shall document that they have completed at least three contact hours of continuing education in professional ethics as defined in Rule .0702 of this Section, out of the minimum of 25 hours of approved continuing education required for license renewal. This may be obtained through supervised classroom instruction or distance learning.

(e) Business management, as defined in Rule .0702 of this Section, shall not comprise more than three hours of the minimum 25 hours of approved continuing education required for license renewal.

- (f) Licensees shall ensure that each continuing education course for which they claim credit on their application for renewal of licensure is consistent with the definitions and requirements set forth in this Section.
- (g) The Board may audit licensees at random to assure compliance with these requirements.

History Note: Authority G.S. 90-26(9); 90-32; Temporary Adoption Eff. February 15, 2000; Eff. April 1, 2001; Amended Eff. April 1, 2005.

21 NCAC 30 .0702 CONTINUING EDUCATION DEFINITIONS

The following definitions apply to this Section:

- (1) Continuing education. -- Learning experiences that enhance and expand the skills, knowledge, and attitudes of massage and bodywork therapists that enable them to render competent professional service to clients, the profession and the public.
- (2) Distance learning. -- Courses taken by home study that are produced by an approved provider, whether delivered by videotape, audiotape, printed materials, or computer-based means. The licensee shall demonstrate achievement of learning objectives and completion of course requirements to the provider before credit is given.
- (3) One "contact hour" of continuing education. -- At least 50 minutes of any one clock hour during which the student participates in a learning activity in the physical presence of an instructor, or in a distance learning activity designed by an approved provider. One semester credit hour at a post-secondary institution shall be equivalent to 16 contact hours.
- (4) Professional ethics. -- A system of conduct guided by principles which are intended to ensure the safe and effective practice of massage and bodywork therapy. Acceptable subject matter for required professional ethics courses may include: compliance with Practice Act and Rules of the Board, management of the client/therapist relationship, boundary functions, professional communication skills, conflict resolution, cultural diversity issues, and standards of practice.
- (5) Business management. -- Courses that enable the licensee to learn and apply business skills to create a successful professional practice.
- (6) Post secondary institution of higher learning – A degree granting institution accredited by an accrediting agency recognized by the United States Department of Education.
- (7) Approved provider. -- One that has been granted the designation of "Approved Provider for Continuing Education" by the National

Certification Board for Therapeutic Massage and Bodywork (NCBTMB). The provider shall have this designation when the course begins and shall maintain this designation continuously until the course is completed. The Board does not recognize any retroactive designation of provider approval. Except as herein stated, the provider shall follow all regulations set forth by its accrediting agency. The Board may also recognize a verifiable continuing education provider outside the United States or its territories that is a post-secondary institution of higher learning approved by the educational regulation authority of that foreign country.

History Note: Authority G.S. 90-626(9); 90-632; Temporary Adoption Eff. February 15, 2000; Eff. April 1, 2001; Amended Eff. April 1, 2005.

21 NCAC 30 .0903 ACTION ON A COMPLAINT

Action on a complaint consists of the following:

- (1) The Board shall receive and acknowledge complaints, open a file and initiate complaint tracking.
- (2) Complaints shall be screened to determine jurisdiction and the type of response appropriate for the complaint.
- (3) Investigation:
 - (a) If the facts indicate a Practice Act violation that cannot be verified and the complaint can be handled without an investigation, the Board may request that the licensee or school cease conduct that could result in a Practice Act violation.
 - (b) If the facts indicate a Practice Act violation, the Board shall commence an investigation. The Board may utilize additional personnel such as licensees, law enforcement officials, or other technical personnel that may be required in a particular case. If a Board member is utilized in the investigation, due process must be observed by separating
 - (i) investigation;
 - (ii) prosecution; and
 - (iii) hearings and final decision-making.
- (c) A confidential report of each investigation shall be prepared for the Board's review.
- (4) Formal and Informal Hearings:

No Board member shall participate in more than one of these three steps in the enforcement process.

- (a) The Board, after review of an investigative file, may schedule an informal meeting.
- (b) If the matter cannot be resolved informally, then a formal hearing shall be held.
- (c) Members of the Board shall not make ex parte communication with parties to a hearing.
- (5) Final Orders: Within 60 days, the Board will issue its final decision in writing specifying the date on which it will take effect. The Board will serve one copy of the decision on each party to the hearing.
- (6) Compliance: The Board Chair will cause a follow-up inquiry to determine that the orders of the Board are being obeyed.

*History Note: Authority G.S. 90-626(5), (6), (7), (13);
Temporary Adoption Eff. February 15, 2000;
Eff. April 1, 2001;
Amended Eff. April 1, 2005.*

21 NCAC 30 .0905 DISCIPLINARY SANCTIONS

(a) The following types of disciplinary sanctions regarding massage and bodywork therapists may, among others, be utilized by the Board:

- (1) Denial of Application: Refusal to license the applicant;
- (2) Letter of Reprimand: An expression of displeasure. The mildest form of administrative action. This formal expression of disapproval will be retained in the licensee's file but shall not be publicly announced. It is not published, but is released upon request;
- (3) Probation: A period of time where restrictions or conditions are imposed on a licensee. Continued licensure is subject to fulfillment of specified conditions;
- (4) Suspension of license: A condition of probation. Loss of license for a period after which the individual shall be required to reapply for licensure or remain on probation;
- (5) Refusal of License Renewal: A refusal to reinstate or renew a license;
- (6) Revocation of license: An involuntary termination of a license;
- (7) Injunction: A court action prohibiting or compelling conduct by a licensee; and
- (8) Assessment of a civil penalty.

(b) The following types of disciplinary sanctions regarding schools of massage and bodywork therapy may, among others, be utilized by the Board:

- (1) Denial of Application: Refusal to grant approval to the applicant school;
- (2) Letter of Reprimand: An expression of displeasure. A formal expression of disapproval will be retained in the school's file

- (3) but shall not be publicly announced. It is not published, but is released upon request;
- Probation: A period of time where restrictions or conditions are imposed on an approved school. Continued approval is subject to fulfillment of specified conditions;
- (4) Suspension of approval: A condition of probation. Loss of approval status for a period after which the school shall be required to reapply for approval or remain on probation;
- (5) Refusal of Approval: A refusal to reinstate or renew a school's approval status;
- (6) Revocation of Approval: An involuntary termination of school's approval status;
- (7) Injunction: A court action prohibiting or compelling conduct by a school; and
- (8) Assessment of a civil penalty.

(c) The Board may request information from professional associations, professional review organizations (PROs), hospitals, clinics or other institutions in which a licensee performs professional services, regarding chemical abuse, or incompetent or unethical behavior.

(d) The Board may request information from state regulatory agencies, accrediting commissions, or other institutions that oversee the activities of a school.

(e) The Board shall provide notice of sanction taken by it to other public entities as necessary to ensure that other state boards, national certification boards, professional associations, enforcement authorities, and accrediting agencies receive the names of licensees and schools disciplined.

*History Note: Authority G.S. 90-626(4), (14); 90-634.1;
Temporary Adoption Eff. February 15, 2000;
Eff. April 1, 2001;
Amended Eff. April 1, 2005.*

CHAPTER 34 - BOARD OF FUNERAL SERVICE

SUBCHAPTER 34B - FUNERAL SERVICE

SECTION .0100 - RESIDENT TRAINEES

21 NCAC 34B .0102 TRAINEESHIP

Each trainee must work at least 2,000 hours during the trainee's resident traineeship. Daytime and nighttime employment shall be acceptable so long as the trainee receives training in all aspects of the license sought, as defined in G.S. 90-210.20(e), (f), and (k).

*History Note: Authority G.S. 90-210.23(a), (f);
90-210.25(a)(1)d., (2)d., (3)d., (4);
Eff. February 1, 1976;
Readopted Eff. September 27, 1997;
Amended Eff. December 1, 2004; August 1, 1998;
August 1, 1988; October 1, 1983; September 1, 1979.*

21 NCAC 34B .0104 CHANGE IN EMPLOYMENT

Each resident trainee shall complete an application form prescribed by the Board prior to making any change in

employment during the resident traineeship. The form shall require the applicant to furnish the name of the trainee, the former funeral establishment and supervisor, the dates of services with the former funeral establishment, the proposed funeral establishment and supervisor, the proposed effective date of the change, and any other information the Board deems necessary as determined by law.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(4)c.;

Eff. February 1, 1976;

Readopted Eff. September 27, 1977;

Amended Eff. December 1, 2004; September 27, 1979.

21 NCAC 34B .0408 CONTINUING EDUCATION PROGRAM

(a) For licensees required to complete CE as a prerequisite to annual license renewal, the five hours of approved CE shall meet the following requirements:

- (1) Up to two hours may be in courses required by the Board. If the Board requires licensees to take a particular required course or courses, the Board shall notify licensees no later than October 1 of the year preceding the calendar year in which the course(s) will be required.
- (2) Licensees may take up to one hour of continuing education each year by computer-based CE approved by the Board as set forth in 21 NCAC 34B .0414.
- (3) Licensees may not receive more than two hours of credit for continuing education courses in preneed each year.
- (4) Licensees may not receive credit hours for taking the same CE course within two years.

(b) A newly admitted active licensee may include as credit hours, which may be carried over to the next succeeding year, any approved continuing education hours earned after that licensee's graduation from mortuary science college.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5); Eff. July 1, 2005.

21 NCAC 34B .0409 COURSE ACCREDITATION STANDARDS

(a) The content of a CE activity must have intellectual or practical content designed to increase the participant's professional competence and proficiency as a licensee. The activity shall constitute an organized program of learning dealing with matters directly related to the practice of funeral directing, embalming, or funeral service. The activity shall include an opportunity for the participants to ask questions of the presenter about its content. Programs that cross academic lines, such as insurance seminars, may be considered for approval by the Board. However, the Board must be satisfied that the content of the activity is directly related to preneed or would otherwise enhance funeral directing and funeral service skills.

(b) Credit may be given for continuing education activities where live instruction is used or mechanically or electronically recorded or reproduced material is used, including videotape or

satellite transmitted programs. Subject to the limitations set forth in 21 NCAC 34B .0408(b)(3) and 21 NCAC 34B .0414, credit may also be given for continuing education activities on CD-ROM and on a computer website accessed via the Internet.

(c) Continuing education materials shall be prepared, and activities conducted, by an individual or group able to lead the CE activity and to answer questions from the participants about its content. Examples of individuals and groups able to lead the CE activity and to answer questions from the participants about its content include:

- (1) Funeral professionals licensed by the Board or by the authority of another jurisdiction who are actively engaged full time in a capacity consistent with the individual's license designation for at least three years immediately preceding the date of the CE activity.
- (2) Instructors employed by a program or college of mortuary science in a capacity consistent with the courses of study required as a prerequisite to licensing, as defined in G.S. 90-210.25(a)(1)(e)1., (a)(2)(e)1., and (a)(3)(e)1. and 2.
- (3) Instructors employed by academic institutions in a capacity consistent with the instruction of the courses of study required as a prerequisite to licensing, as defined by G.S. 90-210.25(a)(1)(e)1., (a)(2)(e)1., and (a)(3)(e)1. and 2.

(d) Continuing education activities shall be conducted in a setting physically suitable to the educational activity of the program and equipped with suitable writing surfaces and sufficient space for taking notes.

(e) Thorough, high quality, and carefully prepared, written materials must be distributed to all attendees at or before the time the course is presented. As used in this Paragraph, "thorough, high quality, and carefully prepared written materials" means materials that correspond to the content of the CE activity and are free from errors, including written materials printed from a computer website or CD-ROM, but excluding any materials that refer to a product of a specific manufacturer or to a service offered by a specific provider. The Board may waive the requirement that written materials be provided if written materials would not be suitable or readily available for the CE activity.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5); Eff. July 1, 2005.

21 NCAC 34B .0411 GENERAL COURSE APPROVAL

(a) Mortuary Science College Courses – Courses covering subjects required by G.S. 90-210.25(a)(1)(e)1., (2)(e)1), and (3)(e)1) and (2) that are offered for academic credit by a mortuary science college approved by the Board or accredited by the American Board of Funeral Service Education shall be approved activities unless the course is taken to obtain a funeral director, embalmer, or funeral service license. Computation of CE credit for such courses shall be as prescribed in 21 NCAC 34B .0415. No more than five CE hours in any year may be

earned by such courses; except in the case of an inactive licensee who is seeking to earn enough CE credit to return to active status. No credit is available for mortuary science college courses attended prior to becoming an active licensee of the North Carolina Board of Funeral Service, except in the case of an inactive licensee who is seeking to earn enough CE credits to return to an active status.

(b) Approval – CE activities shall be approved upon the written application of a sponsor, other than an accredited sponsor, or of an active licensee on an individual program basis. An application for such CE course approval shall meet the following requirements:

- (1) If advance approval is requested by a sponsor, the application and supporting documentation, including two complete sets of the written materials to be distributed at the course or program, shall be submitted at least 30 days prior to the date on which the course or program is scheduled.
- (2) In all other cases, the application and supporting documentation shall be submitted not later than 30 days after the date the course or program was presented or prior to the end of the calendar year in which the course or program was presented, whichever is earlier.
- (3) The application shall be submitted on a form furnished by the Board. The form shall require the applicant to furnish the name and address of the course sponsor, the title, date, length, and location of the course, and any other information the Board deems necessary as required by law.
- (4) The application shall be accompanied by a course outline or brochure that describes the content, identifies the teachers, lists the time devoted to each topic and shows each date and location at which the program will be offered.
- (5) The application shall include a detailed calculation of the total CE hours.

(c) Course Quality – The application and written materials provided shall reflect that the program to be offered meets the requirements of 21 NCAC 34B .0409. Written materials consisting merely of an outline without citation or explanatory notations shall not be sufficient for approval. Any sponsor, including an accredited sponsor, who expects to conduct a CE activity for which suitable written materials will not be made available to all attendees may obtain approval for that activity only by application to the Board at least 30 days in advance of the presentation showing why written materials are not suitable or readily available for such a program.

(d) Records – Sponsors, including accredited sponsors, shall within 30 days after the course is concluded:

- (1) furnish to the Board a list in alphabetical order, on magnetic tape if available, of the names of all North Carolina attendees and their North Carolina Board of Funeral Service license numbers;

- (2) furnish to the Board a complete set of all written materials distributed to attendees at the course or program.

(e) Announcement – Accredited sponsors and sponsors who have advance approval for courses may include in their brochures or other course descriptions the information contained in the following illustration:

This course [or seminar or program] has been approved by the North Carolina Board of Funeral Service for continuing education credit in the amount of ____ hours. This course is not sponsored by the Board.

(f) Notice - Sponsors not having advance approval shall make no representation concerning the approval of the course for CE credit by the Board. The Board shall mail a notice of its decision on CE activity approval requests within 15 days of their receipt when the request for approval is submitted before the program and within 30 days when the request is submitted after the program. Approval thereof shall be deemed if the notice is not mailed within 30 days. This automatic approval will not operate if the sponsor contributes to the delay by failing to provide the complete information requested by the Board or if the Board notifies the sponsor that the matter has been tabled and the reason therefore.

(g) Facilities - Sponsors must provide a facility conducive to learning with sufficient space for taking notes. Sponsors must also ensure the following requirements are met:

- (1) Access to the facility shall be controlled so that attendees actually attend the entire program or portion of the program for which they are seeking credit. Attendees who are late or who leave early shall not be given credit for the portion of the program that they missed.
- (2) All licensees who attend a program and desire credit for attendance must present their license pocket card to gain admission to the program.
- (3) The individual or organization conducting the continuing education program must pass out sign-up sheets at least once per hour of instruction to ensure continued attendance by all participants.
- (4) The reading of outside material, such as newspapers and magazines, is prohibited during a CE program.
- (5) Cell phones and other disruptive devices must be turned off during instructional periods of the CE program.

(h) Course Materials - In addition to the requirements of Paragraph (d) and (f) of this Rule, sponsors, including accredited sponsors, and active licensees seeking credit for an approved activity shall furnish upon request of the Board a copy of all materials presented and distributed at a CE course or program.

(i) Non-funeral service Educational Activities - Approval of courses shall not be given for general and personal educational activities. For example, the following types of courses shall not receive approval:

- (1) courses within the normal college curriculum such as English, history, and social studies;

- (2) courses that deal with sales and advertising only and would not further educate a licensee as to his or her product knowledge and development of funeral procedures and management models designed to increase the level of service provided to the consumer.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5); Eff. July 1, 2005.

21 NCAC 34B .0412 ACCREDITED SPONSORS

In order to receive designation as an accredited sponsor of courses, programs or other continuing education activities under 21 NCAC 34B .0410(a), the application of the sponsor must meet the following requirements:

- (1) The application for accredited sponsor status shall be submitted on a form prescribed by the Board. The form shall require the applicant to furnish the name and address of the sponsor, the contact person within the organization, and any other information the Board deems necessary as required by law.
- (2) The application shall be accompanied by course outlines or brochures that describe the content, identify the instructors, list the time devoted to each topic, show each date and location at which three programs have been sponsored in each of the last three consecutive years, and enclose the actual course materials.
- (3) The application shall include a detailed calculation of the total CE hours specified in each of the programs sponsored by the organization.
- (4) The application shall reflect that the previous programs offered by the organization in continuing education would have met the standards set forth in 21 NCAC 34B .0409.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5); Eff. July 1, 2005.

21 NCAC 34B .0413 ACCREDITATION OF PRERECORDED PROGRAMS AND LIVE PROGRAMS BROADCAST TO REMOTE LOCATIONS BY TELEPHONE, SATELLITE, OR VIDEO CONFERENCING EQUIPMENT

- (a) A licensee may receive up to one hour of CE credit each year for attendance at, or participation in, a presentation where prerecorded material is used.
- (b) A licensee may receive credit for participation in a live presentation which is simultaneously broadcast by telephone, satellite, or video conferencing equipment. The licensee may participate in the presentation by listening to or viewing the broadcast from a location that is remote from the origin of the broadcast.
- (c) A licensee attending a prerecorded presentation is entitled to credit hours if

- (1) the presentation from which the program is recorded would, if attended by an active licensee, be an accredited course;
- (2) all other conditions imposed by the rules in this Subchapter are met.

(d) A licensee attending a presentation broadcast by telephone, satellite, or video conferencing equipment is entitled to credit if:

- (1) the live presentation of the program would, if attended by a licensee, be an accredited course;
- (2) there is a question and answer session with the presenter or presenters subject to the limitations set forth in 21 NCAC 34B .0415(b)(5); and
- (3) all other conditions imposed by the rules in this Subchapter are met.

(e) To receive approval for attendance at programs described in Paragraphs (a) and (b) of this Rule, the following conditions must be met:

- (1) Unless the entire program was produced by an accredited sponsor, the person or organization sponsoring the program must receive advance approval and accreditation from the Board.
- (2) The person or organization sponsoring the program must have a method for recording and verifying attendance. Attendance at a telephone broadcast may be verified by assigning a personal identification number to a licensee. If attendance is recorded by a person, the person may not earn credit hours by virtue of attendance at that presentation. The person or organization sponsoring the program must forward a copy of the record of attendance of active licensees to the Board within 30 days after the presentation of the program is completed. Proof of attendance may be made by the verifying person on a form provided by the Board.
- (3) Unless inappropriate for the particular course, detailed papers, manuals, study materials, or written outlines are presented to the persons attending the program which only pertain to the subject matter of the program. Any materials made available to persons attending the original or live program must be made available to those persons attending the prerecorded or broadcast program who desire to receive credit under the rules in this Section.
- (4) A room suitable for viewing the program and taking notes must be available.

(f) A minimum of five licensees must physically attend the presentation of a prerecorded program. This requirement does not apply to participation from a remote location in the presentation of a live broadcast by telephone, satellite, or video conferencing equipment.

(g) EXAMPLES:

EXAMPLE (1): Licensee X attends a videotape seminar sponsored by an accredited sponsor. If a person attending the program from which the videotape is made would receive credit,

Licensee X is also entitled to receive credit, if the additional conditions under this Rule are also met.

EXAMPLE (2): Licensee Y desires to attend a videotape program. However, the proposed videotape program (a) is not presented by an accredited sponsor, and (b) has not received individual course approval from the Board. Licensee Y may not receive any credit hours for attending that videotape presentation.

EXAMPLE (3): Licensee Z attends a videotape program. The presentation of the program from which the videotape was made has already been held and approved by the Board for credit. However, no person is present at the videotape program to record attendance. Licensee Z may not obtain credit for viewing the videotape program unless it is viewed in the presence of a person who is not attending the videotape program for credit and who verifies the attendance of Licensee Z and of other licensees at the program. All other conditions of this Rule must also be met.

EXAMPLE (4): Licensee A listens to a live telephone seminar using the telephone in the conference room of her funeral establishment. To record her attendance, Licensee A was assigned a person identification number (PIN) by the seminar sponsor. Once connected, Licensee A punched in the PIN number on her touch tone phone and her attendance was recorded. The seminar received individual course approval from the Board. Licensee A shall receive credit if the additional conditions under this Rule are also met.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5); Eff. July 1, 2005.

21 NCAC 34B .0414 ACCREDITATION OF COMPUTER-BASED CE

(a) Effective for courses attended on or after July 1, 2004, a licensee may receive up to one hour of credit each year for participation in a course on CD-ROM or on-line. A CD-ROM course is an educational seminar on a compact disk that is accessed through the CD-ROM drive of the user's personal computer. An on-line course is an educational seminar available on a provider's website reached via the Internet.

(b) A licensee may apply up to one credit hour of computer-based CE to a CE deficit from a preceding calendar year. A computer-based CE credit hour applied to a deficit from a preceding year will be included in calculating the maximum of one hour of computer-based CE allowed in the preceding calendar year. A licensee may carry over to the next calendar year no more than one credit hour of computer-based CE pursuant to 21 NCAC 34B .0408(b)(2). A credit hour carried-over pursuant to 21 NCAC 34B .0408(b)(2) shall not be included in calculating the one hour of computer-based CE allowed in any one calendar year.

(c) To be accredited, a computer-based CE course must meet all of the conditions imposed by the rules in this Subchapter, except where otherwise noted, and be interactive, permitting the participant to communicate, via telephone, electronic mail, or a website bulletin board, with the presenter or other participants.

(d) The sponsor of an on-line course must have a reliable method for recording and verifying attendance. The sponsor of a CD-ROM course must demonstrate that there is a reliable

method for the user or the sponsor to record and verify participation in the course. A participant may log on and off of a computer-based CE course provided the total time spent participating in the course is equal to or exceeds the credit hours assigned to the program. A copy of the record of attendance must be forwarded to the Board within 30 days after a licensee completes his or her participation in the course.

History Note: Authority G.S. 90-210.23(a); 90-210.25(a)(5); Eff. July 1, 2005.

21 NCAC 34B .0608 APPLICATION FORM FOR FUNERAL ESTABLISHMENT PERMIT

Applications for a new funeral establishment permit shall be made on forms provided by the Board. The applicant shall furnish the name and address of the establishment; the name or names of the owner or owners; the ownership of the stock if it is owned by a corporation; a description of the preparation room; size of the reposing room; names and license numbers of all part-time and full-time licensees employed by the establishment; the name and license number of the manager; verification by the manager; and any other information the Board deems necessary as required by law.

History Note: Authority G.S. 90-210.23(a),(d),(e); 90-210.25(d); 90-210.27A; Eff. February 1, 1976; Readopted Eff. September 27, 1977; Amended Eff. December 1, 2004; August 1, 1988; September 1, 1979.

21 NCAC 34B .0610 FUNERAL ESTABLISHMENT PERMIT RENEWAL FORM

All funeral establishments holding a funeral establishment permit shall annually submit a renewal application on forms provided by the Board. The applicant shall furnish the name and address of the establishment; ownership of the establishment; license numbers of any owner, partner, officers of the business entity owning establishment; licensees employed by the funeral establishment; name and license number of the manager of the funeral establishment; and any other information the Board deems necessary as required by law. The form must be filed no later than February 1 of each year.

History Note: Authority G.S. 90-210.23(a); 90-210.25(d)(3); Eff. February 1, 1976; Readopted Eff. September 27, 1977; Amended Eff. December 1, 2004; September 1, 1979.

CHAPTER 36 - BOARD OF NURSING

SECTION .0200 - LICENSURE

21 NCAC 36 .0211 LICENSURE BY EXAMINATION

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

- (1) graduating from a Board approved nursing program (21 NCAC 36 .0300) designed to

- prepare a person for registered nurse licensure;
or
- (2) graduating from a nursing program outside the United States that is designed to provide graduates with comparable education preparation as required in 21 NCAC 36 .0321(b) through (d) for licensure as a registered nurse, and submitting evidence from an evaluation agency of the required educational qualifications and evidence of English proficiency. The evaluation agency(s) for educational qualifications shall be selected from a list of evaluation agencies published by the National Council of State Boards of Nursing Inc., which is hereby incorporated by Reference, including subsequent amendments of the referenced materials. The list of such agencies is available, at no cost, from the North Carolina Board of Nursing. The evidence of English proficiency shall be the Test of English as a Foreign Language or a test determined by the Board to be equivalent to the Test of English as a Foreign Language;
- (b) An applicant shall meet the educational qualifications to take the examination for licensure to practice as a licensed practical nurse by:
- (1) graduating from a Board approved nursing program (21 NCAC 36 .0300) designed to prepare a person for practical nurse licensure;
- (2) graduating from a nursing program outside the United States that is designed to provide graduates with comparable preparation for licensure as a licensed practical nurse, and submitting evidence from an evaluation agency of the required educational qualifications and evidence of English proficiency. The evaluation agency(s) for educational qualifications shall be selected from a list of evaluation agencies published by the National Council of State Boards of Nursing, Inc., which is hereby incorporated by Reference, including subsequent amendments of the referenced materials. The list of such agencies is available, at no cost, from the North Carolina Board of Nursing. The evidence of English proficiency shall be passing the Test of English as a Foreign Language or a test determined by the Board to be equivalent to the Test of English as a Foreign Language;
- (3) graduating from a Board approved nursing program designed to prepare graduates for registered nurse licensure, and failing to pass the examination for registered nurse licensure; or
- (4) graduating from a nursing program outside the United States that is designed to prepare graduates with comparable preparation for licensure as a registered nurse, and submitting the evidence as described in Subparagraph (a)(2) of this Rule of the required educational qualifications, and failing to pass the examination for registered nurse licensure in any jurisdiction.
- (c) An application shall be submitted to the Board of Nursing and a registration form to the testing service. The applicant shall meet all requirements of the National Council of State Boards of Nursing, Inc.
- (d) The initial application shall be held active until the applicant passes the examination or one year, whichever occurs first. The time begins on the date the applicant is determined to be eligible for the licensure examination.
- (e) The examinations for licensure developed by the National Council of State Boards of Nursing, Inc. shall be the examinations for licensure as a registered nurse or as a licensed practical nurse in North Carolina.
- (1) These examinations shall be administered in accordance with the contract between the Board of Nursing and the National Council of State Boards of Nursing, Inc.
- (2) The examinations for licensure shall be administered at least twice a year.
- (3) Results for the examination shall be reported to the individual applicant and to the director of the program from which the applicant was graduated. Aggregate results from the examination(s) may be published by the Board.
- (4) The passing standard score for each of the five tests comprising the examination for registered nurse licensure, up to and including the February 1982 examination was 350. For the examination offered in July 1982 and through July 1988, the passing score was 1600. Beginning February 1989, the results for registered nurse licensure is reported as "PASS" or "FAIL".
- (5) The passing score for the examination for practical nurse licensure, up to and including the April 1988 was 350. Beginning October 1988, the results for practical nurse licensure is reported as "PASS" or "FAIL".
- (f) Applicants who meet the qualifications for licensure by examination shall be issued a certificate of registration and a license to practice nursing for the remainder of the biennial period. The qualifications include:
- (1) a "PASS" result on the licensure examination;
- (2) evidence of unencumbered license in all jurisdictions in which a license is or has ever been held;
- (3) evidence of completion of all court conditions resulting from any misdemeanor or felony convictions; and
- (4) a written explanation and all related documents if the nurse has ever been listed as a Nurse Aide and if there have ever been any substantiated findings pursuant to G.S. 131E-255. The Board may take these findings into

consideration when determining if a license should be denied pursuant to G.S. 90-171.37. In the event findings are pending, the Board may withhold taking any action until the investigation is completed.

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

History Note: Authority G.S. 90-171.23(15); 90-171.29; 90-171.30; 90-171.37(1); 90-171.48; Eff. February 1, 1976; Amended Eff. December 1, 2004; April 1, 2003; January 1, 1996; July 1, 1994; February 1, 1994; August 3, 1992.

CHAPTER 64 - BOARD OF EXAMINERS OF SPEECH AND LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

SECTION .0200 - INTERPRETATIVE RULES

21 NCAC 64 .0214 AUDIOLOGY ADVERTISING

The Board of Examiners for Speech and Language Pathologists and Audiologists interprets the word "misleading" used in G.S. 90-301A(3) as including any representation that uses the term "audiology" or "audiologist" in describing services offered at a particular location unless a North Carolina licensed audiologist provides said services at that location during operational hours.

History Note: Authority G.S. 90-304(a)(3); Eff. December 1, 2004.

TITLE 23 – DEPARTMENT OF COMMUNITY COLLEGES

23 NCAC 02C .0109 WITHHOLDING OF STATE FUNDS OR ADMINISTRATIVE SUPPORT

(a) Institutions shall be operated in compliance with G.S. 115D and all rules in this Title. In order for an institution to continue receiving state financial and administrative support, the institution shall:

- (1) Maintain accreditation with the Southern Association of Colleges and Schools and acquire and maintain accreditation or licenses for each program offered which has an individual accreditation or licensure requirement in accordance with G.S. 115D-4.1 and 23 NCAC 02C .0603.
- (2) Employ faculty, assign teaching and non-teaching loads, and provide technical assistance to faculty consistent with the criteria of the Southern Association of Colleges and Schools in accordance with 23 NCAC 02C .0202.
- (3) Submit required data to the System Office on each of the 12 performance measures and publish the ratings on each measure in

- (4) Complete and submit to the System Office all reports conditioned upon receipt of federal funds in accordance with the North Carolina Community College System Annual Reporting Plan.
- (5) Manage institutional operations and resources consistent with program and revenue audit policies. An institution that receives four program or revenue audit exceptions per year for two consecutive years shall be in violation of this Rule.
- (6) Report the damage, theft, embezzlement, or misuse of any state-owned personal or real property by institutional officials or employees to the Director of the State Bureau of Investigation in accordance with G.S.114-15.1.
- (7) Adopt and publish personnel policies addressing the issues listed in Rule 23 NCAC 02C .0210, and submit them to the System President's office.
- (8) Terminate employment of institutional officials or employees for participation in activities involving moral turpitude.
- (9) Comply with any request for information, documents, or any other request of the State Board.

(b) The State Board may withhold funds for the president's salary or terminate state financial and administrative support of any institution that fails to comply with any provision of Paragraph (a) of this Rule.

(c) In addition, the State financial and administrative support of an institution may be as set out in G.S. 115D-6.

History Note: Authority G.S. 114-15.1; 115D-4.1; 115D-5; 115D-6; 115D-31.3; 115D-32; Eff. December 1, 2004.

SUBCHAPTER 02D - COMMUNITY COLLEGES: FISCAL AFFAIRS

SECTION .0100 - SALARIES

23 NCAC 02D .0101 ESTABLISHING PAY RATES

(a) The monthly and annual salaries or hourly rates of pay from state funds for full-time and part-time personnel in community colleges shall be established by the college president and approved by the board of trustees within the budget approved for the college by the State Board and in accordance with the regulations approved by the State Board, except that the state-funded portion of the president's salary shall be approved by the System President in accordance with the state salary schedule for presidents. Salary increases shall be granted annually or upon promotion to a higher position. Legislative increases shall be granted according to requirements set forth by the General Assembly. The State Board shall adopt a minimum and maximum amount of state funds which may be paid to any individual working in a college. Individuals shall be paid no less

than the minimum and not more than the maximum amounts at a level determined by the salary approving authority at the college.

(b) All hourly, monthly, and annual salaries for full-time or part-time personnel shall be certified by the president of the college and reported to the System Office.

(c) The State Board shall adopt a state salary schedule for presidents in the system. The System President shall determine the proper placement of a newly-hired president on the state salary schedule based on the size of the college and the individual's years of eligible experience in accordance with the following provisions:

- (1) For the purpose of this Paragraph, an increment is defined as an additional year of experience on the State salary schedule adopted by the State Board.
- (2) College size shall be determined by the total FTE served and reported in the enrollment reports furnished the System Office.
- (3) A president of a post-secondary education institution shall be allowed increments for prior experience on a year-for-year basis for a maximum of 10 years.
- (4) An executive vice president, vice president, other senior administrator of a post-secondary institution, a state-level administrative department, or a superintendent of a public school system may be given increment experience on the president salary schedule upon recommendation of the board of trustees and approval of the System President as follows:
 - one increment for three years of actual experience;
 - two increments for five years of actual experience;
 - three increments for seven years of actual experience;
 - four increments for 10 or more years of actual experience.

A president, chief operating officer or chief financial officer of a business or industry may be granted increment experience as provided in this Part.

- (A) Progression from the minimum or "0" step to the midpoint or step "10" shall be based on additional years of experience;
- (B) Advancement toward grade maximum after attaining the midpoint of the grade shall be based on merit increases as recommended by the local boards and within state allocations available;
- (C) Newly-hired presidents shall not receive salary increments for any years in which a salary freeze was in effect for community college presidents.
- (5) Changes in grade levels:

(A) Presidents with 0 to 10 years of eligible experience moving to another grade shall be placed in the new grade's range at the current experience level; and

(B) Presidents with greater than 10 years of experience moving to a lower grade will receive a salary adjustment only if the current salary exceeds the new salary grade's maximum salary limit, in which case, the salary will be adjusted to the maximum of the new grade.

(6) Total salary compensation from all sources shall not exceed the maximum for the salary grade as determined by the college's size. Salary compensation is defined as those monies paid from whatever source for which no documentation or expense is required, or which is treated as salary for retirement benefit purposes.

(7) An interim or acting president's salary will be set at the step of the salary grade for the respective college. Years of eligible experience will be awarded up to 10 years for placement on the appropriate step. However, a board of trustees may grant a college employee appointed interim or acting president a 10 percent salary increase instead of placing the employee on the president's salary schedule.

(8) Presidential salary grades shall reflect the following:

FTE Midpoint	Minimum Maximum
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These data shall be increased annually based on legislative action and reviewed no less than every three years to assure their continued national competitiveness.

(d) Post-secondary institution as used in this Rule means a junior college, community college or four-year institution of higher education.

History Note: Authority G.S. 115D-5; 115D-54; Eff. February 1, 1976; Amended Eff. December 1, 2004; September 1, 1993; December 1, 1989; July 1, 1984; August 1, 1981.

23 NCAC 02E .0204 COURSES AND STANDARDS FOR CURRICULUM PROGRAMS

A common course library and curriculum standards for associate degree, diploma, and certificate programs shall be as follows:

- (1) Common Course Library.
 - (a) The Common Course Library shall contain the following elements for all curriculum program credit and developmental courses approved for the North Carolina Community College System.
 - (i) Course prefix;

- (ii) Course number;
 - (iii) Course title;
 - (iv) Classroom hours and laboratory, clinical, and work experience contact hours, if applicable;
 - (v) Credit hours;
 - (vi) Prerequisites and corequisites, if applicable; and
 - (vii) Course description consisting of three sentences.
- (b) A numbering system for the Common Course Library is as follows:
- (i) The numbers 050-099 shall be assigned to developmental courses.
 - (ii) The numbers 100-109 and 200-209 shall be assigned to courses approved only at the certificate and diploma level. These courses shall not be included in associate degree programs.
 - (iii) The numbers 110-199 and 210-299 shall be used for courses approved at the associate degree level. These courses may also be included in certificate and diploma programs.
- (c) The college shall use the course information (prefix, number, title, and classroom, laboratory, clinical, work experience, and credit hours; prerequisites and corequisites; and course description) as listed in the Common Course Library.
- (i) The college may add a fourth sentence to the course description to clarify content or instructional methodology.
 - (ii) A college may divide courses into incremental units for greater flexibility in providing instruction to part-time students or to provide shorter units of study for abbreviated calendars. The following criteria shall apply to courses divided into incremental units:
 - (A) A curriculum program course may be divided into two or three units, which are
 - (B) designated with an additional suffix following the course prefix and number.
 - (C) The units shall equal the entire course of instruction, without omitting any competencies.
 - (D) The combined contact and credit hours for the units shall equal the contact and credit hours for the course.
 - (E) If the course is a prerequisite to another course, the student shall complete all component parts before enrolling in the next course.
 - (F) The components of a split curriculum program course shall not be used to supplant training for occupational extension.
- (d) The Community College System Office shall revise and maintain courses in the Common Course Library.
- (2) Development of Curriculum Standards. The standards for each curriculum program title shall be established jointly by the Community College System Office and the institution(s) proposing to offer the curriculum program based on criteria established by the State Board of Community Colleges. Changes in curriculum standards shall be approved by the State Board of Community Colleges. Requests for changes in the standards shall be made to the State Board of Community Colleges under the following conditions:
- (a) A request is made to the Community College System Office to change the standards for a curriculum program title; and
 - (b) A two-thirds majority of institutions approved to offer the curriculum program title concur with the request.
- (3) Criteria for Curriculum Standards. The standards for each curriculum program title shall be based on the following criteria

established by the State Board of Community Colleges for the awarding of degrees, diplomas, and certificates.

(a) Associate in Applied Science Degree. The Associate in Applied Science Degree shall be granted for a planned program of study consisting of a minimum of 64 and a maximum of 76 semester hours of credit from courses at the 110-199 and 210-299 levels. Within the degree program, the institution shall include opportunities for the achievement of competence in reading, writing, oral communication, fundamental mathematical skills, and the basic use of computers.

(i) The associate in applied science degree curriculum program shall include a minimum of 15 semester hours of credit from general education courses selected from the Common Course Library, including six hours in communications, three hours in humanities or fine arts, three hours in social or behavioral sciences, and three hours in natural sciences or mathematics.

(ii) The associate in applied science degree curriculum program shall include a minimum of 49 semester hours of credit from major courses selected from the Common Course Library. Major courses are those which offer specific job knowledge or skills.

(A) The major hours category shall be comprised of identified core courses or subject areas or both which are required for each curriculum program. Subject areas or core courses shall be based on curriculum competencies and shall teach essential skills and knowledge necessary for employment. The

number of credit hours required for the core shall not be less than 12 semester hours of credit.

(B) The major hours category may also include hours required for a concentration of study. A concentration of study is a group of courses required beyond the core for a specific related employment field. A concentration shall include a minimum of 12 semester hours, and the majority of the course credit hours shall be unique to the concentration.

(C) Other major hours shall be selected from prefixes identified on the curriculum standard. A maximum of nine semester hours of credit may be selected from any prefix listed, with the exception of prefixes listed in the core or concentration.

(D) Work experience, including cooperative education, practicums, and internships, may be included in an associate in applied science degree curriculum program up to a maximum of eight semester hours of credit. Under a curriculum standard specifically designed for select associate degree

programs, work experience shall be included in a curriculum up to a maximum of 16 semester hours of credit. The select associate degree programs shall be based on a program of studies registered under the North Carolina Department of Labor Apprenticeship programs. Only eight semester hours of credit of work experience shall earn budget FTE. The Community College System Office shall implement the Pilot Work Experience Project and shall submit to the State Board of Community Colleges a report, including the number of students involved and associated costs, one year after this Rule as revised is effective.

- (iii) An associate in applied science degree curriculum program may include a maximum of seven other required hours to complete college graduation requirements. These courses shall be selected from the Common Course Library.
- (iv) Selected topics or seminar courses may be included in an associate in applied science degree program up to a maximum of three semester hours of credit. Selected topics or seminar courses shall not substitute for required general education or major core courses.

(b) Associate in Arts Degree. The Associate in Arts Degree shall be granted for planned programs of study consisting of a minimum of 64 and a maximum of 65 semester hours of credit from approved college transfer courses at the 110-199 and 210-299 levels. Within the degree program, the institution shall include opportunities for the achievement of competence in reading, writing, oral communication, fundamental mathematical skills, and the basic use of computers. Diplomas and certificates are not allowed under this degree program.

- (i) The associate in arts degree programs shall include a minimum of 44 semester hours of general education core courses selected from the Common Course Library and approved for transfer to the University of North Carolina constituent institutions. The general education core shall include:
 - (A) six semester hours of English composition.
 - (B) 12 semester hours of humanities or fine arts, with four courses to be selected from at least three of the following disciplines: music, art, drama, dance, foreign languages, interdisciplinary humanities, literature, philosophy, and religion. At least one course shall be a literature course. Three semester hours credit in speech or communication may be substituted for three semester hours credit in humanities or fine arts, but may not substitute as the literature requirement.

- (C) 12 semester hours of social or behavioral sciences, with four courses to be selected from at least three of the following disciplines: anthropology, economics, geography, history, political science, psychology, and sociology. At least one course shall be a history course.
- (D) 14 semester hours of natural sciences or mathematics; six hours shall be mathematics courses; eight hours shall be natural sciences courses, including accompanying laboratory work, selected from among the biological and physical science disciplines.
- (ii) The associate in arts degree programs shall include a minimum of 20 and a maximum of 21 additional semester hours of credit selected from courses in the Common Course Library which have been approved for transfer to the University of North Carolina constituent institutions. A non-college transfer course of one semester hour of credit may be included in a 65 semester hour credit associate in arts program. This course will receive transfer evaluation by the receiving institution.
- (c) Associate in Science Degree. The Associate in Science Degree shall be granted for planned programs of study consisting of a minimum of 64 and a maximum of 65 semester hours of credit from approved college transfer courses at the 110-199 and 210-299 levels. Within the degree program, the institution shall include opportunities for the achievement of competence in reading, writing, oral communication, fundamental mathematical skills, and the basic use of computers. Diplomas and certificates are not allowed under this degree program.
 - (i) The associate in science degree program shall include a minimum of 44 semester hours of general education core courses selected from the Common Course Library and approved for transfer to the University of North Carolina constituent institutions. The general education core shall include:
 - (A) six semester hours of English composition.
 - (B) nine semester hours of humanities or fine arts, to be selected from three of the following disciplines: music, art, drama, dance, foreign languages, interdisciplinary humanities, literature, philosophy, and religion. At least one course shall be a literature course. Three semester hours credit in speech or communication may be substituted for three semester hours credit in humanities or fine arts, but may not substitute as the literature requirement.
 - (C) nine semester hours of social or behavioral sciences to be selected from three of the following disciplines: anthropology, economics, geography, history,

- political science, psychology, and sociology. At least one course shall be a history course.
- (D) 20 semester hours of natural sciences or mathematics: a minimum of six hours shall be mathematics courses; a minimum of eight hours shall be a two-course sequence in general biology, general chemistry or general physics.
- (ii) The associate in science degree program shall include a minimum of 20 and a maximum of 21 additional semester hours of credit selected from courses in the Common Course Library which have been approved for transfer to the University of North Carolina constituent institutions. A minimum of 14 semester hours of credit of these courses must be from mathematics, science or computer science courses which have been approved for transfer. A non-college transfer course of one semester hour of credit may be included in a 65 semester hour credit associate in science program. This course will receive transfer evaluation by the receiving institution.
- (d) Associate in Fine Arts Degree. The Associate in Fine Arts Degree shall be granted for planned programs of study consisting of a minimum of 64 and a maximum of 65 semester hours of credit from approved college transfer courses at the 110-199 and 210-299 levels. Within the degree program, the institution shall include opportunities for the achievement of competence in reading, writing, oral communication, fundamental mathematical skills, and the basic use of computers.
- (i) The associate in fine arts degree programs shall include a minimum of 28 semester hours of general education core courses selected from the Common Course Library and approved for transfer to the University of North Carolina constituent institutions. The general education core shall include:
 - (A) six semester hours of English composition.
 - (B) six semester hours of humanities or fine arts, with two courses to be selected from two of the following disciplines: music, art, drama, dance, foreign languages, interdisciplinary humanities, literature, philosophy, and religion. At least one course shall be a literature course. Three semester hours credit in speech or communication may be substituted for three semester hours credit in humanities or fine arts.
 - (C) nine semester hours of social or behavioral sciences, with three courses to be selected from three of the following disciplines: anthropology, economics, geography, history, political science, psychology, and sociology. At least one course shall be a history course.
 - (D) three semester hours of

- introductory mathematics.
- (E) four semester hours from the natural sciences, including accompanying laboratory work.
- (ii) The associate in fine arts degree programs shall include a minimum of 36 and a maximum of 37 additional semester hours of credit from courses in the Common Course Library which have been approved for transfer to the University of North Carolina constituent institutions. Courses in health, physical education, college orientation, or study skills may be included. Selected topics or seminar courses up to a maximum of three semester hours credit may be included. Work experience, including cooperative education, practicums, and internships, may be included up to a maximum of one semester hour of credit for career exploration.
- (e) Associate in Engineering Degree. The associate in engineering degree shall be granted for a planned program of study consisting of a minimum of 64 and a maximum of 65 semester hours of credit from approved college transfer courses at the 110-199 and 210-299 levels. Diplomas and certificates are not allowed under this degree program. Within the degree program, the college shall include opportunities for the achievement of competence in reading, writing, oral communication, fundamental mathematical skills, and the basic use of computers.
 - (i) The associate in engineering degree program shall include a minimum of 45 semester hours of general education core courses selected from the Common Course Library and which have been approved for transfer to the University of North Carolina constituent institutions. The
 - general education cores shall include:
 - (A) 6 semester hours of English composition;
 - (B) 6 semester hours of humanities or fine arts;
 - (C) 6 semester hours of social or behavioral sciences; and
 - (D) 27 semester hours of mathematics and natural sciences.
 - (ii) The associate in engineering degree program shall include a minimum of 19 and a maximum of 20 additional semester hours of credit from courses in the Common Course Library which have been approved for transfer to the University of North Carolina constituent institutions. Courses in college orientation, study skills, and work experience, may be included up to one semester hour credit, but may not transfer to the receiving institution.
 - (f) Associate in General Education. The Associate in General Education shall be granted for a planned program of study consisting of a minimum of 64 and a maximum of 65 semester hours of credit from courses at the 110-199 and 210-299 levels. Within the degree program, the institution shall include opportunities for the achievement of competence in reading, writing, oral communication, fundamental mathematical skills, and the basic use of computers.
 - (i) The associate in general education degree curriculum program shall include a minimum of 15 semester hours of credit from general education courses selected from the Common Course Library, including six hours in communications, three hours in humanities or fine arts, three hours in social or behavioral sciences, and three hours in natural sciences or mathematics.

- (ii) The remaining hours in the associate in general education degree curriculum program shall consist of additional general education courses selected from the Common Course Library. A maximum of seven semester hours of credit in health, physical education, and college orientation or study skills courses may be included. Selected topics or seminar courses may be included in a program of study up to a maximum of three semester hours credit.
- (g) Diploma. The Diploma shall be granted for a planned program of study consisting of a minimum of 36 and a maximum of 48 semester hours of credit from courses at the 100-299 level.
 - (i) Diploma curricula shall include a minimum of six semester hours of general education courses selected from the Common Course Library. A minimum of three semester hours of credit shall be in communications, and a minimum of three semester hours of credit shall be selected from courses in humanities and fine arts, social and behavioral sciences, or natural sciences and mathematics.
 - (ii) Diploma curricula shall include a minimum of 30 semester hours of major courses selected from the Common Course Library.
 - (A) A diploma curriculum program which is a stand-alone curriculum program title shall include identified core courses or subject areas or both within the major hours category.
 - (B) Courses for other major hours in a stand-alone diploma curriculum program title shall be selected from prefixes identified on the curriculum standard. A maximum of nine semester hours of credit may be selected from any prefix listed, with the exception of prefixes listed in the core or concentration.
- (C) Work experience, including cooperative education, practicums, and internships, may be included in a diploma curriculum program up to a maximum of eight semester hours of credit.
- (iii) A diploma curriculum program may include a maximum of four other required hours to complete college graduation requirements. These courses shall be selected from the Common Course Library.
- (iv) An institution may award a diploma under an approved associate in applied science degree curriculum program for a series of courses taken from the approved associate degree curriculum program of study.
 - (A) A diploma curriculum program offered under an approved associate degree curriculum program shall meet the standard general education and major course requirements for the diploma credential.
 - (B) A college may substitute general education courses at the 100-109 level for the associate-

- degree level general education courses in a diploma curriculum program offered under an approved degree program.
- (C) The diploma curriculum program offered under an approved associate degree curriculum program shall require a minimum of 12 semester hours of credit from courses extracted from the required core courses and subject areas of the respective associate in applied science degree curriculum program.
- (v) Selected topics or seminar courses may be included in a diploma program up to a maximum of three semester hours of credit. Selected topics and seminar courses shall not substitute for required general education or major core courses.
- (h) Certificate Programs. The Certificate shall be granted for a planned program of study consisting of a minimum of 12 and a maximum of 18 semester hours of credit from courses at the 100-299 level.
 - (i) General education is optional in certificate curricula.
 - (ii) Certificate curricula shall include a minimum of 12 semester hours of major courses selected from the Common Course Library.
 - (A) A certificate curriculum program which is a stand-alone curriculum program title or which is the highest credential level awarded under an approved associate in applied science degree or diploma program shall
 - include 12 semester hours of credit from core courses or subject areas or both within the major hours category.
 - (B) Courses for other major hours in a stand-alone certificate curriculum program shall be selected from prefixes identified on the curriculum standard. A maximum of nine semester hours of credit may be selected from any prefix listed, with the exception of prefixes listed in the core or concentration.
 - (C) Work experience, including cooperative education, practicums, and internships, may be included in a certificate program up to a maximum of two semester hours of credit.
 - (iii) A certificate curriculum program may include a maximum of one other required hour of credit to complete college graduation requirements. This course shall be selected from the Common Course Library.
 - (iv) An institution may award a certificate under an approved degree or diploma curriculum program for a series of courses totaling a minimum of 12 semester hours of credit and a maximum of 18 semester hours of credit taken from the approved associate degree or diploma curriculum program of study.

- (v) Selected topics or seminar courses may be included in a certificate program up to a maximum of three semester hours of credit.
- (4) Curriculum Standards Compliance. Each institution shall select curriculum program courses from the Common Course Library to comply with the standards for each curriculum program title the institution is approved to offer. The selected courses shall comprise the college's program of study for that curriculum program.
 - (a) Each institution shall maintain on file with Community College System Office a copy of the official program of study approved by the institution's board of trustees.
 - (b) When requesting approval to offer a curriculum program title, an institution shall submit a program of study for that curriculum program title.
 - (c) A copy of each revised program of study shall be filed with and approved by the Community College System Office prior to implementation at the institution.

- (B) and educate an individual for employment; and,
- (B) has any physical presence within the State of North Carolina; and,
- (C) is privately owned and operated by an owner, partnership or corporation.
- (2) "Classes or schools" as stated in G.S. 115D-88(4a) means classes or schools, which are offered by the seller of the equipment or the seller's agent.
- (3) "Equipment" as stated in G.S. 115D-88 includes software.
- (4) "Classes or schools" conducted by employers for their own employees are exempt. Employers may contract with third part agencies to provide training for their employees. Schools or classes conducted by third party agencies for an employer to train his employees are exempt.
- (5) "Users" as defined in G.S. 115D-88(4a) means employees or agents of purchasers.
- (6) "Five or fewer students" as stated in G.S. 115D-88(4b) means total number of students at the time of maximum enrollment during any term.
- (7) "Remote sites" means approved instructional environments in the same county that do not have any administrative staff or administrative functions such as recruiting, accounting and record keeping taking place.

History Note: Authority G.S. 115D-5; S.L. 1995, c. 625; Temporary Adoption Eff. June 1, 1997; Eff. July 1, 1998; Amended Eff: December 1, 2004; August 15, 2004; August 1, 2004.

(b) Application for an Initial License:

- (1) Any person or persons operating a proprietary school with an enrollment of more than five persons in a school in the State of North Carolina shall obtain a license from the North Carolina State Board of Community Colleges except as exempt by G.S. 115D-88.
- (2) A preliminary application shall be submitted setting forth the proposed location of the school, the qualifications of the Chief Administrator of the school, a description of the facilities available, courses to be offered, and financial resources available to equip and maintain the school. Upon approval of the preliminary application, a final application may be submitted. This application shall be verified and accompanied by the following:
 - (A) A certified check or money order in the amount of seven hundred and fifty dollars (\$750.00) made payable to the North Carolina State Treasurer;
 - (B) A guaranty bond or alternative to a guaranty bond as set forth in G.S. 115D-95. Except as otherwise provided herein, the bond amount for a proprietary school shall be at least equal to the maximum amount of prepaid tuition held at any time during the fiscal year. During the

CHAPTER O3 - MISCELLANEOUS PROGRAMS

SUBCHAPTER O3A - PROPRIETARY SCHOOLS

SECTION .0100 - BUSINESS, TRADE AND TECHNICAL SCHOOLS

23 NCAC 03A .0101 DEFINITIONS AND APPLICATION FOR INITIAL LICENSE

(a) The following terms shall have the following meaning in this Subchapter unless the context of a specific rule requires a different interpretation.

- (1) "Proprietary school" means any proprietary business school, proprietary trade school, proprietary technical school, or correspondence school which:
 - (A) offers postsecondary education or training for profit or for a tuition charge or offers classes for the purpose of teaching, for profit or for a tuition charge, any program of study or teaching one or more of the courses or subjects needed to train

- initial year of operation, the bond amount shall be based on the projected maximum amount of prepaid tuition that will be held at any time during that year. In any event, the minimum surety bond shall be ten thousand dollars (\$10,000);
- (C) A copy of the school's catalog or bulletin. The catalog shall include a statement addressing each item listed in G.S. 115D-90(b)(7);
 - (D) A financial statement showing capital investment, assets and liabilities, and the proposed operating budget which demonstrates financial stability or a financial statement and an accompanying opinion of the school's financial stability by either an accountant, using generally accepted accounting principles, or a lending institution;
 - (E) A detail of ownership; (This must show stock distribution if the school is a corporation, or partnership agreement if the school will be operated as a partnership.)
 - (F) Information on all administrative and instructor personnel who will be active in the operation of the school, either in full- or part-time capacity; (This information must be submitted on forms provided for this purpose.)
 - (G) Enrollment application or student contract form;
 - (H) School floor plan showing doors, windows, halls, and seating arrangement; also offices, rest rooms, and storage space; the size of each room and seating capacity shall be clearly marked for each classroom; lighting showing kind and intensity shall be indicated for each room; the type of heating and cooling system used for the space occupied shall be stated;
 - (I) Photostatic copies of inspection reports or letters from proper officials to show that the building is safe and sanitary and meets all local city, county, municipal, state, and federal regulations such as fire, building, and sanitation codes;
 - (J) If building is not owned by the school, a photostatic copy of the lease held by the school for the space occupied.
- (3) A person or persons purchasing a proprietary school already operating as a licensed school shall comply with all of the requirements for

- securing an original license. A license is not transferable to a new owner. All application forms and other data shall be submitted in full. Such terms as "previously submitted" when referring to a former owner's file are not acceptable. If a proprietary school offers classes in more than one county, the school's operations in each such county constitutes a separate school requiring a separate license. Classes conducted by the school in separate locations shall be reported and approved prior to advertising and commencement of classes.
- (4) Remote sites shall not have any administrative staff or any administrative functions such as recruiting, accounting or record keeping. Each remote site shall have an initial site visit and a visit during each annual audit. Classes conducted at remote sites by licensed schools shall be approved prior to advertising and commencement of classes. Any course offered at a remote site shall be a part of an approved program of study for that licensed school.
 - (5) Changes in application information presented for licensure or relicensure relating to mission, programs, location or stock distribution require prior approval and licensure amendment by the State Board of Community Colleges.
 - (A) Program additions require curriculum reviews and program or course approvals prior to initiation. A check or money order in the amount of one hundred dollars (\$100.00) made payable to the North Carolina State Treasurer shall accompany each additional program approval request.
 - (B) Single course additions or revisions may be individually approved when schools submit a request for license amendment. Course additions or revisions requiring curriculum review, instructor evaluation, and equipment site assessment are subject to the curriculum review fee of one hundred dollars (\$100.00).
 - (C) School relocations require site visits and approvals prior to use. A check or money order in the amount of two hundred dollars (\$200.00) made payable to the North Carolina State Treasurer shall accompany each site relocation approval request.

History Note: Authority G.S. 115D-88; 115D-89; 115D-90; 115D-91; Eff. September 1, 1993; Amended Eff. December 1, 2004.

23 NCAC 03A .0102 APPLICATION FOR RENEWAL

OF LICENSE

- (a) Schools shall be licensed annually, and the licensure shall extend from July 1 through June 30, inclusive.
- (b) Schools desiring the renewal of their license shall submit an application on or before April 1 of each year. The application shall be accompanied by the following:
 - (1) All information required of schools applying for an original license that has not been previously submitted;
 - (2) Copy of current catalog containing all information required of schools applying for original license;
 - (3) Any supplementary information necessary to bring information on the school up to date.
- (c) A check in the amount of five hundred dollars (\$500.00) made payable to the North Carolina State Treasurer shall be received on or before April 1.

History Note: Authority G.S. 115D-91; 115D-92; Eff. September 1, 1993; Amended Eff. December 1, 2004.

23 NCAC 03A .0104 ADMINISTRATION

- (a) One person shall be designated as the chief administrator of the school or branch thereof. The chief administrator shall be qualified in accordance with the requirements listed in Paragraph (c) of this Rule.
- (b) The chief administrator is defined as the person directly responsible for the school's program, the methods of instruction, the employment of instructors, the organization of classes, the maintenance of the school plant and the equipment, the advertising used, and the maintenance of proper administrative records and all other procedures related to the administration of the school or class.
- (c) The chief administrator shall have the following qualifications:
 - (1) Be a person of good moral character;
 - (2) Be a graduate of an accredited college or university accredited by an agency that is recognized by the U.S. Department of Education; and,
 - (3) Have the experience, competency, and capacity to lead the school.
- (d) Chief administrators and other administrative personnel who possess qualifications which are equivalent to the requirements prescribed herein for chief administrators may be approved individually by the North Carolina Community College System President or designee.

History Note: Authority G.S. 115D-87; 115D-89; 115D-90; Eff. September 1, 1993; Amended Eff. December 1, 2004.

23 NCAC 03A .0105 ADVERTISING

- (a) A licensed school shall not advertise through any media that it offers courses that the school has not been licensed to offer.
- (b) Printed catalogs, bulletins, or prospectus information shall be specific with respect to prerequisite training required for admission to the school courses, the curricula, the contents of

- courses, graduation requirements, tuition and other fees, refunds and allowances for withdrawals and unavoidable or extended absences.
- (c) Schools shall not use any name, title, or other designation, by way of advertising or otherwise, that is misleading or deceptive as to character of the institution, or its influence in training and employment for students.
- (d) Schools shall not use a photograph, cut, engraving, or illustration in catalogs, sales literature, or otherwise in such a manner as to convey a false impression as to the size, importance, or location of the school's equipment.
- (e) Schools shall not use endorsements, commendations, or recommendations by students in favor of a school unless it is with the consent of the writer and without financial compensation or offer of financial compensation. These materials shall be kept on file by the school.
- (f) Schools shall publish tuition rates, payment methods, and refund policies in their catalogs or as a catalog addendum and shall not deviate from these rates and policies. All catalog addenda shall show an effective date and be readily available to the student.
- (g) Schools shall not make, cause, permit to be made, or publish any false, untrue, or deceptive statement or representation by way of advertising or otherwise concerning other proprietary schools or their activities in attempting to enroll students or concerning the character, nature, quality, value, or scope of any course of instruction or educational service offered or in any other material respect.
- (h) A school or class shall not solicit students to enroll by means of "blind" advertisements or advertisements in the "help wanted" or other employment columns of newspapers, publications, and Internet job banks.
- (i) Schools shall not make false, untrue, or deceptive statements of representatives regarding the opportunities in any vocation or field of activity as a result of the completion of any given course of instruction or educational service.
- (j) Advertisement shall not use salary-related terms or phrasing such as, "up to", "top", or "high salary".
- (k) Any salary claims shall show comparisons between local and national employment data and shall be for entry-level positions.
- (l) Any salary claims shall be documented and on file at the institution for public viewing.
- (m) Advertisements shall not offer promotions or special inducements to prospective students or enrollees.
- (n) Advertisements and school representatives shall not guarantee or imply positions or employment to prospective students.
- (o) If a licensed proprietary school, in any of its advertisements, printed materials or media, use the phrase or a similar phrase "Licensed by the North Carolina State Board of Community Colleges" then that phrase must be immediately succeeded by the following disclaimer: "The North Carolina State Board of Community Colleges is not an accrediting agency."

History Note: Authority G.S. 115D-89; 115D-90; Eff. September 1, 1993; Amended Eff. December 1, 2004.

23 NCAC 03A .0106 ADMISSION REQUIREMENTS

(a) The admission requirements for schools licensed under Article 8 of Chapter 115D of the General Statutes of North Carolina shall be made available to the public and administered as written.

(b) The school shall require graduation from a public or private or a state registered home high school as a prerequisite to enrollment in a certificate or diploma course offered by the school. A copy of the high school transcript shall be on file for each student enrolled. Exceptions to this requirement may be made for students who hold a certificate of high school equivalency or for non-high school graduates who are 18 years of age or older who have demonstrated the ability to benefit as determined by accepted test instruments. A copy of the high school equivalency certificate or test results shall be kept in each student's record. The school shall not permit students of high school age to attend the school during the time that high schools are in regular session, except in individual cases approved by the student's high school principal. A copy of the approved form shall be included in the student's record.

(c) The school may admit students to special courses or subjects which are part of the approved curriculum offered by the school when the school deems the student can benefit from the instruction offered.

(d) If total tuition is greater than five-thousand dollars (\$5,000) the school may collect up to 50 percent of the total tuition prior to that mid-point of the program. The remainder of the tuition may be collected only when the student has completed one-half of the program. Federal regulations regarding the disbursement of tuition shall supersede state disbursement regulations stated in this Rule.

History Note: Authority G.S. 115D-89; 115D-90; Eff. September 1, 1993; Amended Eff. December 1, 2004.

23 NCAC 03A .0107 RECORDS

(a) A school licensed under G.S. 115D, Article 8, shall maintain current, complete, and accurate records to show the following:

(1) An application for admissions that includes the student's educational and personal background, age, and other personal characteristics.

~~(5)~~(2) Progress and attendance including date entered, dates attended, subjects studied, and class schedule; this record shall be in a form which permits accurate preparation of transcripts of educational records for purpose of transfer and placement, providing reports to government services or agencies, or for such other purposes as the needs of the student might require. Such transcripts shall be in the form understandable by lay persons and educators alike. The grading system on such transcripts shall be explained on the transcript form. Subjects appearing on the transcripts shall be numbered or otherwise designated to indicate the subject matter covered.

~~(6)~~(3) All student enrollment agreements shall include at a minimum, the program of study,

program tuition and fees, date programs are to begin, time period covered by the tuition payment, and statement of or reference to the school's tuition refund policy.

(4) All student account ledgers shall include, at a minimum, monies owed and paid by each student, and refunds issued by the school.

(5) The students official high school transcript or proof of GED completion.

(6) Proof of students "ability to benefit" if the student has not earned a high school diploma or GED certificate.

(b) Records of students shall be open for inspection by properly authorized officials of the State Board of Community Colleges.

(c) Financial records of the school shall be open for inspection by properly authorized officials of the State Board of Community Colleges.

History Note: Authority G.S. 115D-89; 115D-90; Eff. September 1, 1993; Amended Eff. December 1, 2004.

23 NCAC 03A .0108 INSTRUCTIONAL PROGRAM

(a) A school licensed under G.S. 115D, Article 8, shall limit its offering in certificate and diploma programs and special subjects to the courses and subjects for which it has been licensed to offer. At the beginning of each term, each school shall post the schedule of subjects being offered during the term. This schedule will show the time and instructor for each subject and designate the room in which the subject will be taught. Each student shall be provided a schedule of classes for each term to show the student's individual schedule.

(b) Schools shall not publish in their catalogs courses which they have not been licensed to offer. When a school is licensed to offer a course or program and enrolls students in the course or program, the school shall maintain sufficient and qualified faculty to teach all subjects required for completing the course or program during the time stipulated in the school's bulletin as the required time to complete the course or program and classes shall be scheduled so that the students will be able to receive instruction in all subjects for the number of instructional hours as advertised in the school's bulletin under which the students enrolled. When a school previously licensed to offer a course or program fails to maintain the qualifications for continuing the course or program, the course or program shall be removed from the catalog or stamped "not offered."

(c) The number of curriculum programs offered by a school shall be realistic in relationship to faculty employed and students enrolled. As a general rule, the number of curriculum programs offered shall not exceed the number of faculty employed on a full-time basis.

(d) The school shall establish its calendar one calendar year in advance and give full information to prospective and enrolled students about holidays; beginning and ending dates of each term and other important dates.

(e) Schools may measure instruction on a clock-hour or credit-hour basis. The catalog shall provide a clear definition of the method used. The school catalog shall show the number of clock hours or credit hours for each subject offered and the

minimum clock hours or credit hours a student shall carry for full-time enrollment. Courses offered on a credit-hour basis shall show class hours, laboratory hours, and credit hours.

(f) The ratio between student and instructor shall be reasonable at all times and in keeping with generally accepted delivery modes, including technology and course content.

(g) Class period shall permit a minimum of 50 minutes net instruction. Class shall not be scheduled for more than two consecutive class periods without a break.

(h) Certificates and diplomas shall be issued only upon successful completion of a standard program of study.

(i) Students enrolled in diploma or certificate programs shall not be enrolled except at the beginning of each term or within the drop/add period which shall not exceed 10 percent of a semester course or 25 percent of quarters or clock hour courses. This provision is not applicable to classes offered on a multi-entry basis.

History Note: Authority G.S. 115D-89; 115D-90; Eff. September 1, 1993; Amended Eff. December 1, 2004.

23 NCAC 03A .0109 INSTRUCTIONAL PERSONNEL

(a) An application for approval to teach in a licensed proprietary school shall be made on forms provided for this purpose. The application shall be filed prior to an instructor's beginning date for teaching in a proprietary school.

(b) An instructor shall be found to be qualified by education or work experience background and must meet the following qualifications as minimum requirements:

- (1) Be a person of good moral character;
- (2) Be at least 18 years of age;
- (3) Be a graduate of a college or university accredited by an agency that is recognized by the U.S. Department of Education, and hold at least an associate degree in a related field or meet the requirements of other occupational licensing, certification, or approval bodies requested to approve instructor adequacy; and,
- (4) Personnel who possess and can document qualifications which are equivalent to the requirements prescribed herein for instructor, may be approved on an individual basis by the North Carolina Community College System President or his designee.

History Note: Authority G.S. 115D-89; 115D-90; Eff. September 1, 1993; Amended Eff. December 1, 2004.

23 NCAC 03A .0113 STUDENT REFUND

(a) Any proprietary school that is licensed by the State Board of Community Colleges is subject to the following refund policies. A refund shall not be made except under the following circumstances:

- (1) A 100 percent refund shall be made if the student officially withdraws prior to the first day of class(es) as noted in the school

calendar. Also, a student is eligible for a 100 percent refund if the class(es) in which the student is officially registered is cancelled due to insufficient enrollment.

(2) A 75 percent refund shall be made for semester courses if the student officially withdraws from class(es) prior to or on the official 10 percent point of the semester.

(3) A 75 percent refund shall be made up to the 25 percent point of any term defined by quarters or clock hours for a student who officially withdraws from class(es).

(4) Refunds for multi-entry classes will be based on the percentage of class requirements completed.

(5) To comply with applicable federal regulations regarding refunds; federal regulations regarding refunds will supercede state refund regulations in this Rule.

(b) Proprietary schools are not required to deposit funds collected for tuition with the State Treasurer's Office.

History Note: Authority G.S. 115D-90; Eff. April 1, 1997; Amended Eff. December 1, 2004.

23 NCAC 03A .0115 TEACH-OUT PLAN AND RECORDS PRESERVATION

(a) Each proprietary school shall adopt a teach-out plan. The plan shall be kept on file in the school's administrative office. A copy of the plan shall be submitted to the North Carolina Community College System Office, Office of Proprietary Schools, with the application for license. Amendments or revisions to the plan shall be submitted to the Office of Proprietary Schools as they are made.

(b) The plan shall include the procedure for notifying students of a pending school closure and the teach-out arrangements with other educational or training institutions. The teach-out arrangements shall include provisions for students to complete their programs, to transfer to other equivalent programs at other institutions, and to be refunded that portion of their prepaid tuition and fees not earned by the school.

(c) Each student shall be given a minimum 30-day written notice of the school's intent to close. Prior to closure, school officials shall assist students with:

- (1) completing their programs at the school;
- (2) identifying equivalent programs at other institutions;
- (3) transferring to other institutions, and
- (4) receiving refunds.

(d) Prior to closure, a school shall file a copy of all student permanent academic and financial aid records with the Department of Cultural Resources.

History Note: Authority G.S. 115D-90; Eff. December 1, 2004.

This Section contains information for the meeting of the Rules Review Commission on Wednesday, January 19, 2005, 10:00 a.m. at 1307 Glenwood Avenue, Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments by Monday, January 17, 2005 to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate
 Jim R. Funderburke - 1st Vice Chair
 David Twiddy - 2nd Vice Chair
 Thomas Hilliard, III
 Robert Saunders
 Jeffrey P. Gray

Appointed by House
 Jennie J. Hayman - Chairman
 Graham Bell
 Lee Settle
 Dana E. Simpson
 Dr. John Tart

RULES REVIEW COMMISSION MEETING DATES

	January 19, 2005	
February 17, 2005		March 17, 2005
April 21, 2005		May 19, 2005
June 16, 2005		July 21, 2005

**Commission Review/Permanent Rules
 Log of Filings
 November 23, 2004 through December 20, 2004**

MENTAL HEALTH, COMMISSION OF

The rules in Chapter 26 concern Mental Health.

The rules in Subchapter 26E concern the manufacture, distribution, and dispensing of controlled substances including general provisions and registration (.0100); labeling, packaging, and record keeping (.0200); prescriptions (.0300); some miscellaneous provisions (.0400); and administrative functions, practices, and procedures (.0500).

<u>Definitions</u>	10A	NCAC	26E	.0102
Amend/*				
<u>Persons Required to Register</u>	10A	NCAC	26E	.0104
Amend/*				
<u>Separate Registration for Independent Activities</u>	10A	NCAC	26E	.0105
Amend/*				
<u>Training and Qualification Requirements for Dog Handlers</u>	10A	NCAC	26E	.0106
Adopt/*				
<u>Approval of Canine Certification Associations by the Department</u>	10A	NCAC	26E	.0107
Adopt/*				
<u>Exemption of Law Enforcement Officials</u>	10A	NCAC	26E	.0111
Amend/*				
<u>Application Forms: Contents: Signatures</u>	10A	NCAC	26E	.0113
Amend/*				

HOME INSPECTOR LICENSURE BOARD

The rules in Chapter 8 are the engineering and building codes including the State Building Code (.0200); approval of school maintenance electricians (.0400); qualification board-limited certificate (.0500); qualification board-probationary certificate (.0600); qualification board-standard certificate (.0700); disciplinary actions and other contested matters (.0800); manufactured housing board (.0900); NC Home Inspector Licensure Board (.1000); home inspector standards of practice and code of ethics (.1100); disciplinary actions (.1200); and home inspector continuing education (.1300).

<u>Definitions</u>	11	NCAC	08	.1101
Amend/*				
<u>Purpose and Scope</u>	11	NCAC	08	.1103
Amend/*				
<u>General Exclusions</u>	11	NCAC	08	.1105
Amend/*				
<u>Structural Components</u>	11	NCAC	08	.1106
Amend/*				
<u>Exterior</u>	11	NCAC	08	.1107
Amend/*				
<u>Roofing</u>	11	NCAC	08	.1108
Amend/*				
<u>Plumbing</u>	11	NCAC	08	.1109
Amend/*				
<u>Electrical</u>	11	NCAC	08	.1110
Amend/*				
<u>Heating</u>	11	NCAC	08	.1111
Amend/*				
<u>Air conditioning</u>	11	NCAC	08	.1112
Amend/*				
<u>Interiors</u>	11	NCAC	08	.1113
Amend/*				
<u>Insulation and Ventilation</u>	11	NCAC	08	.1114
Amend/*				
<u>Built-in Kitchen Appliances</u>	11	NCAC	08	.1115
Amend/*				
<u>Board Staff</u>	11	NCAC	08	.1203
Amend/*				
<u>Investigation</u>	11	NCAC	08	.1204
Amend/*				

ENVIRONMENTAL MANAGEMENT COMMISSION

The rules in Chapter 2 concern environmental management and are promulgated by the Environmental Management Commission.

The rules in Subchapter 2D are air pollution control requirements including definitions and references (.0100); air pollution sources (.0200); air pollution emergencies (.0300); ambient air quality standards (.0400); emission control standards (.0500); air pollutants monitoring and reporting (.0600); complex sources (.0800); volatile organic compounds (.0900); motor vehicle emission control standards (.1000); control of toxic air pollutants (.1100); control of emissions from incinerators (.1200); oxygenated gasoline standard (.1300); nitrogen oxide standards (.1400); transportation conformity (.1500); general conformity for federal actions (.1600); emissions at existing municipal solid waste landfills (.1700); control of odors (.1800); open burning (.1900); and transportation conformity (.2000).

<u>Purpose and Scope</u>	15A	NCAC	02D	.0801
Amend/*				
<u>Highway Projects</u>	15A	NCAC	02D	.0803
Repeal/*				

The rules in Subchapter 2Q are rules relating to applying for and obtaining air quality permits and include general information (.0100); fees (.0200); application requirements (.0300); acid rain program requirements (.0400); Title V requirements (.0500); transportation facility requirements (.0600); toxic air pollutant procedures (.0700); and exempt categories (.0800).

<u>Applications</u>	15A	NCAC	02Q	.0603
Amend/*				
<u>Final Action on Permit Applications</u>	15A	NCAC	02Q	.0605
Amend/*				
<u>Applicability</u>	15A	NCAC	02Q	.0701
Amend/*				
<u>Demonstrations</u>	15A	NCAC	02Q	.0709
Amend/*				
<u>Emission Rates Requiring a Permit</u>	15A	NCAC	02Q	.0711
Amend/*				

HEALTH SERVICES, COMMISSION FOR

The rules in Chapter 18 are from the Commission for Health Services and cover environmental aspects of health such as sanitation (18A), mosquito control (18B), water supplies (18C), and water treatment facility operators (18D). The rules in Subchapter 18A deal with sanitation and include handling, packing and shipping of crustacean meat (.0100); sanitation of scallops (.0200) and shellfish (.0300 and .0400); operation of shellstock plants and reshippers (.0500); shucking and packing plants (.0600); depuration facilities (.0700); wet storage of shellstock (.0800); shellfish growing waters (.0900); summer camps (.1000); food and beverage vending machines (.1100); grade A milk (.1200); hospitals, nursing homes, rest homes, etc. (.1300); mass gatherings (.1400); local confinement facilities (.1500); residential care facilities (.1600); protection of water supplies (.1700); lodging places (.1800); sewage treatment and disposal systems (.1900); migrant housing (.2100); bed and breakfast homes (.2200); delegation of authority to enforce rules (.2300); public, private and religious schools (.2400); public swimming pools (.2500); restaurants meat markets, and other food handling establishments (.2600); child day care facilities (.2800); restaurant and lodging fee collection program (.2900); bed and breakfast inns (.3000); lead poisoning prevention (.3100); tattooing (.3200); adult day service facilities (.3300); and primitive camps (.3500).

<u>Approval and Permitting of on-Site Waste Water Systems</u>	15A	NCAC	18A	.1969
Amend/*				

**LIST OF APPROVED PERMANENT RULES
December 16, 2004 Meeting**

AGRICULTURE, BOARD OF

<u>Infant Formula Standards of Quality</u>	02	NCAC	09N	.0101
<u>Definitions</u>	02	NCAC	48A	.1701
<u>Regulated Areas</u>	02	NCAC	48A	.1703
<u>Importation Requirements: Goats</u>	02	NCAC	52B	.0208
<u>Importation Requirements: Sheep</u>	02	NCAC	52B	.0209

CHILD CARE COMMISSION

<u>Pre-service Requirements for Lead Teachers, Teachers and Assistants</u>	10A	NCAC	09	.0710
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HHS-MEDICAL ASSISTANCE

<u>Rate Setting Methods</u>	10A NCAC 22G .0102
<u>Reasonable and Non-Allowable Costs</u>	10A NCAC 22G .0103
<u>Cost Reporting Auditing</u>	10A NCAC 22G .0104
<u>Case-Mix Index Calculation</u>	10A NCAC 22G .0105
<u>Payment Assurance</u>	10A NCAC 22G .0107
<u>Reimbursement Methods for State-Operated Facilities</u>	10A NCAC 22G .0108
<u>Provider Assessment</u>	10A NCAC 22G .0109
<u>Definitions</u>	10A NCAC 22G .0110

MENTAL HEALTH, COMMISSION OF

<u>Documentation of Release</u>	10A NCAC 26B .0207
<u>Documentation of Disclosure</u>	10A NCAC 26B .0303

HEALTH SERVICES, COMMISSION FOR

<u>Reportable Diseases and Conditions</u>	10A NCAC 41A .0101
<u>Hospital Emergency Department Reporting</u>	10A NCAC 41A .0105
<u>Dosage & Age Requirements for Immunization</u>	10A NCAC 41A .0401

STATE REGISTRAR

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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>
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ABC Commission v. Pantry, Inc. T/A Pantry 355	03 ABC 1094	Gray	09/01/04	
ABC Commission v. Richard Martin Falls, Jr., T/A Falls Quick Stop	04 ABC 0341	Mann	07/16/04	
ABC Commission v. Nichos, Inc., T/A Mexican Store	04 ABC 0626	Gray	10/15/04	
ABC Commission v. Red Lion Manestream, Inc., T/A Red Lion Manestream	04 ABC 0695	Wade	07/20/04	
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Jean Stevens on Behalf of Amber Nichole Sewell v. Victim and Justice Services	04 CPS 0399	Chess	09/16/04	
Krista Chmiel v. Crime Victims Compensation Commission Case #CV-65-04-0020899	04 CPS 0992	Gray	09/31/04	
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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	
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Winter McCotter v. DHHS, Div. of Facility Services, Healthcare Personnel Registry Section	03 DHR 0905	Gray	10/20/04	
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A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncsoh.com/decisions.

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STATE OF NORTH CAROLINA

COUNTY OF CABARRUS

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
04 DHR 1251

B. L.,)
 by her parent/guardian)
 Kay L.)
)
 Petitioner,)
)
 v.)
)
 N.C. DEPARTMENT OF HEALTH AND)
 HUMAN SERVICES,)
)
 Respondent.)

DECISION

This matter came on to be heard and was heard before the undersigned administrative law judge on November 4-5, 2004, the parties having been represented by counsel, Douglas Sea, Legal Services of Southern Piedmont, and Brett Loftis, Council for Children, for the Petitioner, and Diane Martin Pomper, Assistant Attorney General, for the Respondent; and the Court having heard the testimony and received and admitted the evidence of the parties, hereby makes the following FINDINGS OF FACT AND CONCLUSIONS OF LAW.

FINDINGS OF FACT

1. Petitioner was born on February 19, 1991. Because she is a minor, her name, her adoptive mother’s last name, and the name of her minor sister are not being used in this publicly available decision.
2. While in her biological parents’ custody, Petitioner was a victim of sodomy and other sexual abuse by multiple persons, severe neglect, and lived in an environment where she witnessed frequent drug abuse, prostitution and domestic violence.
3. In 1998, at age 7, Petitioner was placed in Social Services custody in Cabarrus County, North Carolina.
4. Prior to her adoption, Petitioner was placed by Cabarrus DSS in five different foster homes. She was removed from two different foster homes after engaging in sexually reactive inappropriate behavior with children other than her sister.
5. The evidence also indicates acts of sexual abuse by Petitioner of her younger biological sister A.L. while in the custody of her biological parents, while in foster home placements, and since placed with Kay L.
6. Petitioner was initially placed by Cabarrus DSS with Kay L. as a foster parent, along with her sister, A.L.
7. On April 29, 2002, Petitioner and her sister A.L. were adopted by Kay L.
8. In November 2003 and January 2004, Petitioner was involuntarily hospitalized on two occasions after episodes of violence and threats to others and herself.
9. Petitioner has been placed in a Level III group home in Cabarrus County since January 2004.
10. In October 2000, Respondent’s agent, Piedmont Area Mental Health (hereinafter, “Piedmont”), referred Petitioner to Dana Horne, M.S.W. for assessment and treatment of possible reactive attachment disorder (hereinafter, “RAD”).
11. Dana Horne is an expert in RAD and in the treatment of RAD. Ms. Horne is one of only two therapists currently in the state of North Carolina to be certified by the Association for Treatment and Training in the Attachment of Children (ATTACH).
12. In October 2000, Petitioner was diagnosed with RAD by Ms. Horne.
13. In a letter dated May 10, 2004, Dana Horne requested that Respondent provide coverage for out of home placement for Petitioner at the Chaddock Institute in Quincy, Illinois (hereinafter, “Chaddock”), as well as the development of post-discharge

services in the local community to treat Petitioner's RAD. This request for services was denied by Piedmont on September 3, 2004.

14. Petitioner's diagnosis of RAD and the treatment recommendations made by Dana Horne in her letter of May 10, 2004 have been reviewed and concurred in by Ms. Horne's clinical supervisor, William Goble, PhD, who is one of the nation's leading authorities on RAD.

15. Petitioner's diagnosis of RAD and the treatment recommendations made by Dana Horne in her letter of May 10, 2004 have been reviewed and concurred in by Melissa Kirkland, another qualified therapist specializing in the treatment of RAD, who has treated the Petitioner on several occasions.

16. Petitioner's diagnosis of RAD and the treatment recommendations made by Dana Horne, MSW in her letter of May 10, 2004 have been reviewed and concurred in by Petitioner's treating psychiatrist, Dejaun Singletary, M.D.

17. Karen Buckwalter, M.S.W., another qualified RAD expert and the Director of Attachment Programming at Chaddock, reviewed many of Petitioner's treatment records, spoke to Dana Horne and Kay L., and concurred in Ms. Horne's treatment recommendation for placement at Chaddock.

18. The weight due to the treating clinicians' unanimous opinion that Petitioner needs treatment at Chaddock and post-discharge specialized RAD services is augmented by the significant length of time they have treated Petitioner, their extensive clinical experience and training in the treatment of RAD, and the complete information about both Chaddock and Petitioner which they reviewed prior to providing their opinions. All four witnesses who testified that Petitioner needs treatment at Chaddock and post-discharge RAD services, Ms. Horne, Ms. Buckwalter, Ms. Kirkland, and Dr. Singletary, were qualified as experts in the treatment of RAD.

19. Petitioner's diagnosis and her need for specialized RAD treatment were also supported by other independent practitioners who recently examined and tested Petitioner, including Dr. Stegman, a pediatrician who specializes in child development, Dr. O'Malley, a sex offender expert, and Dr. Strzlecki, an educational psychologist.

20. Petitioner requires out of home residential treatment. All of Respondent's internal unpublished criteria under both the Medicaid and CTSP programs for the level of residential treatment provided by Chaddock (whether classified as Level III or Level IV) are met in this case.

21. Chaddock specializes in the treatment of RAD in adolescents.

22. The group home staff currently caring for Petitioner have received little or no training in RAD or the treatment of RAD.

23. The services provided to Petitioner in the group home where she currently lives primarily make use of behavior modification techniques, which are contraindicated for her diagnosis and may worsen her condition unless used in combination with specialized attachment therapy techniques by her daily caregivers.

24. The residential treatment at Chaddock requested in this appeal is not unsafe or experimental.

25. There is currently no residential placement in North Carolina which accepts patients of petitioner's age and which specializes in the treatment of RAD.

26. Respondent is currently in the process of planning to develop specialized services for the treatment of RAD in North Carolina. However, such services will not be available to Petitioner within the State of North Carolina with reasonable promptness.

27. Petitioner, if not monitored on a twenty-four hour basis, currently poses a significant risk to other children because of her history of sexual abuse, both as a victim and as an abuser.

28. Petitioner is likely to continue to be a danger to her sister and to other children if she does not receive appropriate treatment of her RAD in a safe, restricted setting prior to returning home.

29. None of the post-discharge specialized RAD services recommended for Petitioner by Dana Horne's May 10, 2004 letter or in her testimony currently exist in Cabarrus County or the surrounding region.

30. Dana Horne assessed Petitioner's treatment needs using the Randolph Attachment Disorder Quotient (RADQ), on which she scored a 95, which places her in the range for needing residential treatment. This result was determined by Ms. Horne to be consistent

with her clinical observations and Petitioner's history.

31. The RADQ has been tested for reliability and validity, and is the best measurement available in this case of needs for treatment of RAD. Dana Horne was trained to administer the RADQ by the test's creator.

32. Other measurements made by the Respondent, including Petitioner's Global Assessment of Functioning (GAF) scores and Child and Adolescent Functional Assessment Scale (CAFAS) scores, also support the severity of her condition and provide evidence of her lack of improvement while in her current placement.

33. Before denying Ms. Horne's May 10, 2004 request, Piedmont initially approved in June 2004 a request for services stating that Petitioner needs residential treatment at Chaddock. Piedmont's progress notes also indicate that the current placement is not appropriate for Petitioner's diagnosis and that a placement that specializes in the treatment of RAD is needed.

34. The testimony of Respondent's expert witnesses is not entitled to deference or significant weight on the issue of what treatment Petitioner needs. None of Respondent's experts has ever treated or even examined Petitioner, and none discussed Petitioner's case with Kay L. or Dr. Singletary. Only Dr. Hummel spoke to Dana Horne. Also greatly reducing the weight given to their views is the significant amount of written evidence, concerning both Petitioner and the program at Chaddock, which was provided to the Respondent but not reviewed by Respondent's experts before they testified. None of Respondents' witnesses were qualified to testify as an expert in RAD or the treatment of RAD. Dr. Lancaster has never treated an adolescent with RAD and has no special training in the diagnosis or treatment of RAD. Dr. Hummel has not treated any child for any diagnosis since 1981 and his experience with treatment guidelines is solely for adults. Dr. Baker has not treated any child since 1999.

35. The greater weight of the evidence also established that the current placement for Petitioner is not effectively treating her diagnosis. Experts on both sides testified that inconsistency between the attachment theory used by her therapist and the behavioral modification techniques used by her daily caregivers interferes with the effectiveness of the treatment. Piedmont has measured Petitioner's CAFAS score as worse in 2004 than 2003.

36. Petitioner is an authorized recipient of the N.C. Medicaid program.

37. Petitioner meets Respondent's criteria for coverage of any services at Chaddock which cannot be covered by Medicaid under the North Carolina At-Risk Children's program, through the Comprehensive Treatment Services Program (CTSP), and Petitioner is eligible for CTSP funding.

38. Petitioner needs residential services in a program specializing in the treatment of RAD for the period of time prescribed by her treating clinicians.

39. Chaddock is an appropriate accredited residential program specializing in the treatment of RAD.

40. Chaddock is not a locked facility.

41. The North Carolina Medicaid program is currently paying for treatment at Chaddock for another adolescent with RAD. Chaddock also accepts Medicaid from six other states.

42. The greater weight of the evidence established that the type of attachment therapy about which concerns have been raised in published literature provided in Respondent's exhibits is not the same treatment being provided at Chaddock.

43. The level of safety measures, staffing ratios, supervision, training, education levels of staff, and other objective measures of the ability to deal effectively with both Petitioner's behavior and diagnosis have been proven by the greater weight of the evidence to be superior at Chaddock to Petitioner's current placement.

44. The risk of physical harm to Petitioner from improper restraint is greater in a group home in N.C. than at Chaddock. The greater weight of the evidence proved that significant systemic problems with supervision, monitoring, training, and other safety issues exist in the North Carolina system of Level III mental health group homes for children and adolescents and that Petitioner's current placement is not immune to these systemic problems.

45. Dr. Hummel told Ms. Buckwalter that if Chaddock were in North Carolina he would have no trouble referring patients to that facility.

46. Respondent reviewed hundreds of documents about the Chaddock program, thoroughly reviewed their treatment protocol,

and then approved Chaddock to be an enrolled, licensed, accredited provider for the N.C. Medicaid program. This action involved a determination by Respondent that Chaddock is providing safe, effective treatment.

47. There is a general consensus among RAD experts nationally that specialized treatment is needed for RAD and that such specialized treatment needs to be provided in a residential setting in severe cases such as Petitioner's.

48. The necessity for treatment of Petitioner at Chaddock is also supported by other evidence that includes academic research on attachment theory and outcome reports supporting the effectiveness of therapy techniques used at Chaddock in treating RAD.

49. Ethical barriers and other problems make it impractical to obtain scientific studies with control groups for residential mental health treatment of children. No evidence about outcomes or the effectiveness of treatment was provided by Respondent to support the current residential placement being provided for Petitioner. In contrast, Chaddock, although a new program, has already produced impressive outcomes which are in evidence.

50. Chaddock provides treatment and rehabilitation services that are necessary to ameliorate Petitioner's RAD.

51. The treatment team of Chaddock, after reviewing written information concerning Petitioner and consulting with Dana Horne, M.S.W. and Kay L., has approved Petitioner as an appropriate candidate for admission to their Integrative Attachment Therapy Program and has accepted Petitioner for admission.

52. Without intensive residential services specializing in the treatment of RAD, the Petitioner's prognosis is poor and she is likely to present a continuing danger to other persons, particularly younger children.

53. Petitioner's current placement may be achieving outward behavioral compliance in most cases when Petitioner is under close supervision, but the current residential and CBS service providers are not controlling or likely even aware of all of her hidden, sneaky behaviors. Moreover, the current services are not effectively treating Petitioner's underlying disorder of RAD so that she can safely return to her family.

54. Other specialized services to treat her RAD will be necessary for Petitioner upon her discharge from Chaddock. These specialized RAD-based services will be needed in the Concord region in order to allow Petitioner to return to her home community. The services Petitioner will need upon discharge from Chaddock include a RAD-trained level II therapeutic foster home that can provide emergency, respite, or longer-term care for Petitioner as needed, and a RAD-trained professional CBS worker. Such services need to be developed by Respondent in a manner consistent with the recommendations of Petitioner's treating clinicians and need to incorporate attachment therapy techniques.

55. Respondent has not developed appropriate RAD-trained services to be available to Petitioner in her home community. It will take several months for Respondent to develop, contract with, and assure the appropriate training of the providers of these services. The development of such services by Respondent needs to begin immediately in order to be available upon Petitioner's discharge from Chaddock.

56. The testimony of all of the witnesses testifying on behalf of the Petitioner is found to be credible, based on the demeanor of the witnesses, the supporting records, the detail and consistency of their testimony, the expertise of four of the witnesses, and other observations of the fact finder.

57. The opinions of the four expert witnesses testifying on behalf of the Petitioner, Ms. Horne, Ms. Buckwalter, Ms. Kirkland and Dr. Singletary, are being given great weight by the fact-finder because of these witnesses' demonstrated expertise and clinical experience in the treatment of RAD, particularly in adolescents, the significant longitudinal and recent history of three of these witnesses in treating the Petitioner, their detailed testimony explaining the basis for their opinions, and the consistency of their opinions with supporting reports, testing, and other evidence admitted.

58. The testimony of the three expert witnesses testifying on behalf of the Respondent, Dr. Lancaster, Dr. Hummel, and Dr. Baker, are not being given significant weight by the fact-finder because of these witnesses' relative lack of expertise and clinical experience in treating RAD, their relative lack of prior knowledge of much of the relevant information about both Petitioner and Chaddock, their relative lack of clearly stated positions and justified explanations on the precise issue before this fact-finder of whether the Petitioner needs specialized treatment for her RAD, the partial inconsistency of their views with the other evidence adduced, and the credibility determinations of this fact finder.

59. Petitioner has shown by a preponderance of the evidence that the prescribed residential treatment at Chaddock and the post-discharge services specified by the treating clinicians are necessary to correct or ameliorate the RAD from which Petitioner suffers.

The greater weight of the evidence indicates that without such services Petitioner's condition will likely not improve and that others in the community will be at significant risk.

60. Petitioner, a Medicaid recipient under the age of twenty-one, has received screening services from a qualified medical provider which identified the existence of Reactive Attachment Disorder, a mental illness or condition, within the scope of 42 U.S.C. §1396d(r).

61. Petitioner's mental illness or condition identified through screening services, Reactive Attachment Disorder, requires necessary health care, treatment or rehabilitation services within the meaning of 42 U.S.C. §1396d(r) and 42 U.S.C. §1396d(a)(6) and (13).

62. The specialized residential treatment and post-discharge services requested in this appeal are medical or remedial services recommended by a licensed practitioner within the meaning of 42 U.S.C. §1396d(a)(13).

63. Specialized residential treatment at Chaddock and the post-discharge services specified herein are medical or remedial services recommended by a licensed practitioner within the meaning of 42 U.S.C. §1396d(a)(13) and are necessary in order to correct or ameliorate Petitioner's RAD.

64. Upon Petitioner's discharge from Chaddock, community-based medical and rehabilitative services provided by persons thoroughly trained in the treatment of RAD, as specified by Petitioner's treating practitioners, will be necessary in order to permit Petitioner to be properly reintegrated into her family and community and to correct or ameliorate Petitioner's RAD.

65. The determination of medical necessity for the above-specified services for Petitioner, both at Chaddock and after discharge from Chaddock, as recommended by her treating practitioners, is in accordance with generally accepted community practice standards for North Carolina mental health professionals.

CONCLUSIONS OF LAW

66. The N.C. Office of Administrative Hearings has jurisdiction of this contested case, for which a formal appeal was timely and properly requested pursuant to 10A NCAC 22H .0100 and G.S. 150B-23.

67. Federal law mandates that each state participating in the Medicaid program must designate "a single state agency" responsible for the program in that state. 42 U.S.C. §1396a(a)(5). The N.C. Department of Health and Human Services operates as this state's single state agency.

68. The N.C. Department of Health and Human Services' rules concerning appeals by Medicaid recipients for the denial, termination or reduction in services (10A N.C.A.C. Subch. 22H) have been promulgated pursuant to the federal provisions of 42 C.F.R. §431, Subpt. E (200 to 246). These provisions, along with North Carolina's Administrative Procedures Act (N.C. Gen. Stat. Ch.150B), entitle Medicaid recipients requesting review of denials of requested Medicaid services to pursue their due process rights through Article 3 of N.C. Gen. Stat. Ch. 150B.

69. The federal regulations governing the Medicaid appeal process mandate that a final agency decision be made within ninety (90) days from the date of the request for hearing. 42 C.F.R. §431.244(f). Based on this regulation, the parties agreed to a procedure for Medicaid prior approval appeals in the Office of Administrative Hearings (OAH) which requires that a final decision by Respondent be issued within thirty (30) days of the date of that the OAH record is provided to the Respondent, unless good cause for further delay is shown.

70. Pursuant to 42 C.F.R. §431.244 and G.S. §150B-34, this decision is issued pursuant to a *de novo* hearing held on November 4 and 5, 2004, and the findings of fact are based upon the preponderance of the evidence provided at the hearing.

71. The federal Medicaid statute creates special rights for recipients under the age of twenty-one to Early and Periodic Screening, Diagnostic, and Treatment Services (EPSDT). Participation in Medicaid requires state Medicaid agencies to "arrange for (directly or through referral to appropriate agencies, organizations, or individuals) corrective treatment" to Medicaid recipients under the age of twenty-one. 42 U.S.C. §1396a(a)(43). The duty to provide corrective treatment includes all "necessary health care, diagnostic services, treatment, and other measures . . . to correct or ameliorate defects and physical and mental illnesses and conditions[.]" 42 U.S.C. § 1396d(r)(5).

72. The federal EPSDT provisions obligate the state Medicaid agency to provide all necessary treatment to children to ameliorate conditions discovered by screenings if such services are listed in 42 U.S.C. §1396d(a). *Pereira v. Kozlowski*, 996 F.2d 723 (4th Cir.

1993). Listed services include “any medical or remedial services (provided in a facility, a home, or other setting) recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under State law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level.” 42 U.S.C. § 1396d(a)(13).

73. The state Medicaid agency must ensure that such medical assistance is “furnished with reasonable promptness to all eligible individuals.” 42 U.S.C. §1396a(a)(8). States are obligated to make available a variety of healthcare providers willing and qualified to provide treatment services to meet the needs of children who are eligible for Medicaid. 42 C.F.R. § 441.61. States must “take advantage of all resources available” to achieve adequate provider participation in Medicaid services. CMS State Medicaid Manual § 5220. In this case, since the evidence showed that there is no residential treatment facility in North Carolina specializing in the treatment of RAD in adolescents, the requirements of 42 CFR § 431.52(b)(3) have been met.

74. Petitioner, as a Medicaid recipient under the age of twenty-one, is entitled to receive necessary mental health treatment under North Carolina’s Medicaid program. 42 U.S.C. §1396d(a)(13) & (r)(5).

75. Respondent has a duty under 42 U.S.C. §1396a(a)(43) to arrange for treatment necessary to correct or ameliorate Petitioner’s Reactive Attachment Disorder.

76. Respondent has a duty under 42 U.S.C. §1396d(r)(5) and 42 U.S.C. §1396a(a)(43) to arrange for the residential treatment and post-discharge services requested in this appeal, if that treatment is necessary to correct or ameliorate Petitioner’s Reactive Attachment Disorder, whether or not the requested services are otherwise covered under the N.C. State Medicaid plan.

77. The determination that a service is necessary lies primarily with the child’s treating physician or other qualified health care provider. Sen. Rpt. No. 404, 89th Cong. 1st Sess., reprinted in 1965 U.S.C.C.A.N. 1943 (1986) (“The physician is to be the key figure in determining the utilization of health services. It is the physician who is to decide upon ...treatments.”) The state agency may review this determination; however, absent evidence the prescribed treatment is not medical in nature, or is unsafe or experimental, the agency should normally defer to the recommendation of the treating practitioner if it is supported by other evidence. See, e.g., Jackson v. Millstone, 369 Md. 575, 801 A.2d 1034 (2002) (holding that Maryland Medicaid regulation requiring that services be both “necessary” and “appropriate” conflicted with federal Medicaid law because appropriateness is not required under EPSDT); Georgia Dept. of Comm. Health v. Freels, 576 S.E.2d 2 (Ga. Ct. of App. 2002)(medical necessity standard under EPSDT more expansive than for adults). See also, e.g., Weaver v. Reagen, 886 F.2d 194 (8th Cir. 1989) (holding that state generally must defer to treating physician); Hillburn v. Hillburn v. Maher, 795 F.2d 252 (2d Cir. 1986).

78. North Carolina law determines medical necessity for Medicaid services not by requiring scientific studies to prove that the treatment works but based upon generally accepted North Carolina clinical practice standards for treatment of the diagnosis. In determining the issue of necessity of treatment in this case, the opinions of Petitioner’s treating clinicians are entitled to deference, particularly given their demonstrated expertise, long and recent treating history with Petitioner, supporting reports and other evidence, and the absence of significant, credible evidence to the contrary.

79. Respondent has a duty under 42 U.S.C. §1396d(r)(5) and 42 U.S.C. §1396a(a)(43) to arrange for the residential treatment and other services requested in this appeal because that treatment is necessary to correct or ameliorate Petitioner’s Reactive Attachment Disorder, whether or not the requested service is otherwise covered under the N.C. State Medicaid plan.

80. Respondents are not relieved of this duty to provide the medically necessary treatments to Petitioner by simply *attempting* to refer Petitioner to such services. The EPSDT provisions of Medicaid impose a higher duty on the state to assure access to EPSDT services than to other Medicaid services. Thus, in contrast to other Medicaid services, the state must not only cover needed EPSDT services but must “arrang[e] for (directly or through referral to appropriate agencies, organizations, or individuals) corrective treatment.” 42 U.S.C. 1396a(a)(43). Many health law commentators have commented on this higher standard, *i.e.* George Annas et. al. American Health Law 186-87 (Little, Brown and Company (1990) (Whereas a state generally is required only to pay for medical necessary services, “a state must provide for early and periodic, screening, diagnosis and treatment (EPSDT) for eligible children” (emphasis in original). See also Doe v. Pickett, 480 F. Supp. 1218, 1221 (S.D. W. Va 1979) (EPSDT “imposes on the states an affirmative obligation to see that minors actually receive necessary treatment and medical services”).

81. The federal statutory requirement that the State must arrange for such services to be provided, either “directly or through referral” is a clear indication that the Respondent, in this case acting through the Piedmont Area Mental Health Authority, must assure that the prescribed, necessary, medical services are provided to Petitioner. These services must be provided with “reasonable promptness.”

82. Payment for the non-Medicaid portion of the cost of medically necessary residential treatment and other ancillary services for

Medicaid recipients under the age of twenty-one is funded in North Carolina through the Comprehensive Treatment Services Program (CTSP). Session Law 2001-424, Section 21.60. CTSP provides appropriate, medically necessary, residential and nonresidential treatment services including placements for sexually aggressive youth and children with serious emotional disturbances. Id. at § 21.60(a)(3) and (4). CTSP services are not an entitlement unless the child is Medicaid eligible. Id. at § 2160(e).

83. Petitioner meets the eligibility criteria for the CTSP program and is entitled to payment of the portion of the cost of the required treatment not covered by Medicaid funding from CTSP funding.

84. The December 8, 2003 decision by Respondent to deny the services requested in this appeal was erroneous, arbitrary and capricious, a failure to act as required by law, and based upon improper procedure.

85. As the prevailing party, Petitioner may move for an award of costs, including reasonable witness fees for experts who testified under subpoena.

BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, THE UNDERSIGNED MAKES THE FOLLOWING

DECISION

1. Respondent's denial of Petitioner's request for out-of state specialized residential treatment and post-discharge services for Petitioner is REVERSED.

2. Effective immediately, Respondent shall arrange for Petitioner to receive the services recommended by Petitioner's treating practitioners for the period needed at the Chaddock Institute in Quincy, Illinois, and to pay that facility's reasonable, customary charges for the services provided, as well as the necessary charges of other ancillary providers working with the Chaddock facility in Illinois, including treatment, rehabilitation, transportation, education, room and board, and other attendant expenses, through the Medicaid and CTSP programs, in a manner consistent with the direction of Petitioner's treating clinicians.

3. Upon the recommendation of Petitioner's treating practitioners, or after one year if earlier, Respondent shall conduct a utilization review to determine if further treatment at Chaddock is necessary under the standards established in this decision.

4. Prior to terminating payment for services at Chaddock, Respondent shall issue proper advance written notice of such action with the right to appeal and to obtain continued services pending appeal pursuant to 10A NCAC 22H .0104.

5. Beginning immediately, Respondent shall begin the development of post-discharge services to be provided to Petitioner upon her discharge from Chaddock. Respondent shall develop a detailed plan, pursuant to which such services shall be expeditiously contracted for in the greater Concord region. The progress and results of this development plan shall be shared with counsel for the Petitioner and with Petitioner's treating clinicians at least every three months. Pursuant to this plan, Respondent shall develop and arrange for the provision to Petitioner of all necessary medical and rehabilitative post-discharge services in order to permit Petitioner to be properly reintegrated into her family and community. Such post-discharge services shall be provided by persons specifically trained in the treatment of Reactive Attachment Disorder, in the manner recommended by Petitioner's treating clinicians. The post-discharge services to be developed by Respondent shall include a RAD-trained level II therapeutic foster home that can provide emergency, respite, or longer-term care for Petitioner as needed, and a RAD-trained professional Community Based Services (CBS) worker. All necessary medical and rehabilitative post-discharge services shall be made available immediately upon Petitioner's discharge from Chaddock and prior to Respondent's termination of payment for services at Chaddock.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714, in accordance with North Carolina General Statute 150B-36(b), within thirty (30) days of the date of the service upon the agency of the OAH record, unless good cause is shown for further delay.

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina Department of Health and Human Services.

This the 30th day of November 2004.

William A. Creech
Temporary Administrative Law Judge