

**NORTH CAROLINA**

**IN THIS ISSUE**

**REGISTER**



**Volume 19, Issue 15**  
**Pages 1196 - 1298**

**February 1, 2005**

This issue contains documents officially filed through January 10, 2005.

Office of Administrative Hearings  
Rules Division  
424 North Blount Street (27601)  
6714 Mail Service Center  
Raleigh, NC 27699-6714  
(919) 733-2678  
FAX (919) 733-3462

Julian Mann III, Director  
Camille Winston, Deputy Director  
Molly Masich, Director of APA Services  
Dana Sholes, Publication Coordinator  
Linda Dupree, Editorial Assistant  
Julie Brincefield, Editorial Assistant

**I. IN ADDITION**

Voting Rights Letter ..... 1196  
Building Code Council Public Hearing..... 1197 – 1198  
Summary of Notice of Intent to Redevelop a..... 1199  
Brownfields Property – Milkco, Inc.

**II. PROPOSED RULES**

**Health & Human Services**  
Medical Care Commission ..... 1200 - 1221  
**Licensing Boards**  
Cosmetic Art Examiners ..... 1221 - 1223  
Nursing, Board of..... 1223 - 1224

**III. APPROVED RULES ..... 1225 - 1281**

**Agriculture**  
Food and Drug Protection  
Plant Industry  
Veterinary  
**Environment and Natural Resources**  
Radiation Protection  
**Health and Human Services**  
Day Care  
Epidemiology  
Medical Assistance Eligibility  
Mental Health, General  
**Justice**  
Sheriffs' Education & Training Standards Commission  
**Labor**  
Elevator & Amusement Devices  
Occupational Safety & Health  
**Licensing Boards**  
Locksmith Licensing Board  
Podiatry Examiners, Board of  
**State Personnel**  
Equal Opportunity  
**Treasurer**  
Retirement System

**IV. RULES REVIEW COMMISSION..... 1282 - 1285**

**V. CONTESTED CASE DECISIONS**

Index to ALJ Decisions..... 1286 - 1291  
Text of Selected Decisions  
04 CPS 0935 ..... 1292 - 1298

**For the CUMULATIVE INDEX to the NC Register go to:**  
<http://ncoah.com/register/CI.pdf>

*North Carolina Register* is published semi-monthly for \$195 per year by the Office of Administrative Hearings, 424 North Blount Street, Raleigh, NC 27601. *North Carolina Register* (ISSN 15200604) to mail at Periodicals Rates is paid at Raleigh, NC. POSTMASTER: Send Address changes to the *North Carolina Register*, 6714 Mail Service Center, Raleigh, NC 27699-6714.

**NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM**

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

<b>NCAC TITLES</b>		<b>TITLE 21 LICENSING BOARDS</b>	<b>TITLE 24 INDEPENDENT AGENCIES</b>
1	ADMINISTRATION	1 Acupuncture	1 Housing Finance
2	AGRICULTURE & CONSUMER SERVICES	2 Architecture	2 Agricultural Finance Authority
3	AUDITOR	3 Athletic Trainer Examiners	3 Safety & Health Review Board
4	COMMERCE	4 Auctioneers	4 Reserved
5	CORRECTION	6 Barber Examiners	5 State Health Plan Purchasing Alliance Board
6	COUNCIL OF STATE	8 Certified Public Accountant Examiners	
7	CULTURAL RESOURCES	10 Chiropractic Examiners	
8	ELECTIONS	11 Employee Assistance Professionals	
9	GOVERNOR	12 General Contractors	
10A	HEALTH AND HUMAN SERVICES	14 Cosmetic Art Examiners	
11	INSURANCE	16 Dental Examiners	
12	JUSTICE	17 Dietetics/Nutrition	
13	LABOR	18 Electrical Contractors	
14A	CRIME CONTROL & PUBLIC SAFETY	19 Electrolysis	
15A	ENVIRONMENT & NATURAL RESOURCES	20 Foresters	
16	PUBLIC EDUCATION	21 Geologists	
17	REVENUE	22 Hearing Aid Dealers and Fitters	
18	SECRETARY OF STATE	25 Interpreter/Transliterator	
19A	TRANSPORTATION	26 Landscape Architects	
20	TREASURER	28 Landscape Contractors	
21*	OCCUPATIONAL LICENSING BOARDS	29 Locksmith Licensing	
22	ADMINISTRATIVE PROCEDURES (REPEALED)	30 Massage & Bodywork Therapy	
23	COMMUNITY COLLEGES	31 Marital and Family Therapy	
24*	INDEPENDENT AGENCIES	32 Medical Examiners	
25	STATE PERSONNEL	33 Midwifery Joint Committee	
26	ADMINISTRATIVE HEARINGS	34 Funeral Service	
27	NC STATE BAR	36 Nursing	
28	JUVENILE JUSTICE AND DELINQUENCY PREVENTION	37 Nursing Home Administrators	
		38 Occupational Therapists	
		40 Opticians	
		42 Optometry	
		44 Osteopathic Examination (Repealed)	
		45 Pastoral Counselors, Fee-Based Practicing	
		46 Pharmacy	
		48 Physical Therapy Examiners	
		50 Plumbing, Heating & Fire Sprinkler Contractors	
		52 Podiatry Examiners	
		53 Professional Counselors	
		54 Psychology	
		56 Professional Engineers & Land Surveyors	
		57 Real Estate Appraisal	
		58 Real Estate Commission	
		60 Refrigeration Examiners	
		61 Respiratory Care	
		62 Sanitarian Examiners	
		63 Social Work Certification	
		64 Speech & Language Pathologists & Audiologists	
		65 Therapeutic Recreation Certification	
		66 Veterinary Medical	
		68 Substance Abuse Professionals	
		69 Soil Scientists	

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

**NORTH CAROLINA REGISTER**  
 Publication Schedule for January 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 <sup>th</sup> 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
20:11	12/01/05	11/07/05	12/16/05	01/30/06	02/20/06	04/01/06	05/06	08/28/06
20:12	12/15/05	11/22/05	12/30/05	02/13/06	02/20/06	04/01/06	05/06	09/11/06

## 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: This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.*

U.S. Department of Justice

Civil Rights Division

JDR:RPL:TGL:maf  
DJ 166-012-3  
2003-4616

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

December 13, 2004

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

Dear Mr. Holec:

This refers to five annexations (Ordinance Nos. 04-89 through 04-93) and their designation to districts of the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on October 25, 2004.

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

Sincerely,

Joseph D. Rich  
Chief, Voting Section

NOTICE OF PUBLIC HEARING

NORTH CAROLINA BUILDING CODE COUNCIL

Notice of Rule-making Proceedings is hereby given by N.C. Building Code Council in accordance with G.S. 150B-21.5(d).

**Citation to Existing Rule Affected by this Rule-Making:** North Carolina Administrative, Building, Energy Conservation, Fire Prevention, Fuel Gas, Mechanical, Plumbing, Rehabilitation, and Residential Codes.

**Authority for Rule-making:** G.S. 143-136; 143-138.

**Reason for Proposed Action:** To incorporate changes in the NC Building Codes as a result of rulemaking petitions filed with the NC Building Code Council and to incorporate changes proposed by the Council.

**Public Hearing:** March 7, 2005, 1:00PM, Shell Island Resort, Wrightsville Beach, NC.

**Comment Procedures:** Written comments may be sent to Barry Gupton, Secretary, NC Building Code Council, c/o NC Department of Insurance, 322 Chapanoke Road, Suite 200, Raleigh, NC 27603. Comment period expires on March 7, 2005.

**Statement of Subject Matter:**

**1. Request by the University of North Carolina System to modify sections 510.1, 510.2, 510.4, and 510.7 of the NC Mechanical Code to reflect the language in the 2004 supplement to the International Codes.**

Ken Kretchman and Bob Fraser spoke on behalf of NC State University. Al Bass made a motion to Grant the Petition to modify the Mechanical Code. Barry Maness seconded the motion. The motion carried.

This code change is proposed to allow for the current practice to manifold lab exhaust systems.

**2. Request by the Staff of the NC Department of Insurance to adopt the following Codes with the 2002 NC Amendments:**

- A. 2006 NC Administrative Rules and Policies
- B. 2003 International Building Code
- C. 2003 International Energy Conservation Code
- D. 2003 International Fire Prevention Code
- E. 2003 International Fuel Gas Code
- F. 2003 International Mechanical Code
- G. 2003 International Plumbing Code
- H. 2003 International Residential Code

Barry Gupton spoke to the council on behalf of the NC Department of Insurance. Mr. Gupton stated that the intent of these code adoptions is to also include any modifications made by the current ad hoc committees. Marshall Knight made a motion to Grant the Petition for the adoption of the codes. Butch Simmons seconded the motion. The motion carried.

**3. Request by Tim Bradley, Deputy State Fire Marshal, to modify the 2002 NC Fire Prevention Code as follows:**

**105.6.7 Combustible dust producing operations.** ~~Optional permit~~ Mandatory permit. An operational permit ~~may be~~ is required to operate a grain elevator, flour starch mill, feed mill, or a plant pulverizing aluminum, coal, cocoa, magnesium, spices or sugar, or other operations producing combustible dusts as defined in Chapter 2.

Tim Bradley addressed the council concerning this issue. Mr. Bradley stated that this request was prompted by the devastating explosion of the West Pharmaceutical Plant in Kinston, NC. Al Bass and Tom Turner were concerned about the limitations this proposed mandatory permit would place on grist mills still in operation in the state. Mr. Bradley assured the council that grist mills, and similar operations, would not be negatively impacted. John Hitch made a motion to Grant the Petition. Alan Perdue seconded the motion. The motion carried.

**4. Request by Patrick Granson to modify the 2002 NC Building Code as follows:**

**308.5.2 Child care facility.** A facility that provides supervision and personal care on less than a 24-hour basis for more than five children 2 ½ years of age or less and when the rooms where such children are cared for are located on the level of exit discharge shall be classified as Group I-4. For children older than 2 ½ years of age shall comply with 1007.6 North Carolina State Building Code.

Patrick Granson with Mecklenburg County Code Enforcement spoke to the council on behalf of this item. Al Bass made a motion to grant the petition. Alan Perdue seconded the motion. The motion carried.

This code change is proposed to clarify that Group I-4 facilities for young children are required to be on the level of exit discharge.

**5. Request by Icynene, Inc. to adopt section R806.4, Conditioned Attic Assemblies of the 2004 supplement to the International Residential Code.**

Randy Nicklas spoke to the council on behalf of this petition. Marshall Knight made a motion to Grant this Petition. John Hitch seconded the motion. The motion carried.

This code change is proposed to allow for the prescriptive construction of conditioned, un-vented attics.

**6. Request by the North Carolina Building Code Council to adopt the “Rehabilitation Code” as cited in the North Carolina Session Law 2001-372. The document is available online at the following site: [www.ncrehabcode.com](http://www.ncrehabcode.com).**

John Dalrymple expressed gratitude to the council for their diligence in working on the Rehabilitation Code. Jim Bartl addressed the council in regards to this petition. Wanda Edwards, NCDOL staff, questioned who would train the inspectors in regards to the Rehabilitation code. Dave Crawford stated that training would be provided through a series of education seminars and would be open for the staff of NCDOL. Rex Pace addressed the issue of potential confusion with code language after the pilot program comes to an end in December 2005. Chairman Dan Tingen expressed thanks to the members of the Rehabilitation Code pilot program. Butch Simmons advised that all concerns be dealt with between NCDOL staff and members of the pilot program before March of 2005. Diane Miller warned that all responsibility would be placed on NCDOL. Alan Perdue suggested planning for potential appeals to the Rehab code due to the fact that most of the language in the code is written to be reasonable. Tim Bradley suggested a merger of the NC Existing Building Code and the Rehabilitation code and that strain would be placed on the NC Qualification Board to provide specialized training in the code. John Hitch made a motion to grant this petition. Butch Simmons seconded the motion. The motion carried.

This code change is proposed to allow for State-wide use of the Rehabilitation Code.

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

**Milkco, Inc.**

Pursuant to N.C.G.S. § 130A-310.34, Milkco, Inc., has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Asheville, Buncombe County, North Carolina. The Property consists of 8.01 acres and is located at 180 Deaverview Road. The Property is bordered to the north by Deaverview Road, where Haynes Corporation and Roy D. Farmer Park are located; to the south by Perfection Gear and existing Milkco property; to the east by Norfolk Southern Railroad tracks, beyond which is land in residential and commercial use; and to the west by Milkco's existing plant, beyond which is land in residential use. Environmental contamination exists on the Property in soil and groundwater. Milkco, Inc. has committed itself to make no use of the Property other than for trailer parking, expansion of its milk production operation, light industry, warehousing, storage or office space. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Milkco, Inc., which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at Asheville-Buncombe West Branch Library, 924 Haywood Road, Asheville, NC 28806 by contacting Julie Niwinski at (828) 251-4990; or at 401 Oberlin Rd., Raleigh, NC 27605 by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net, or at (919) 733-2801, ext. 336, where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents. Written public comments may be submitted to DENR within 60 days after the date this Notice is published in a newspaper of general circulation serving the area in which the brownfields property is located, or in the North Carolina Register, whichever is later. Written requests for a public meeting may be submitted to DENR within 30 days after the period for written public comments begins. All such comments and requests should be addressed as follows:

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



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

Statutory reference: G.S. 150B-21.2.

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

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Medical Care Commission intends to adopt the rules cited as 10A NCAC 13F .0301, .0304, .0704, .0909, .1210; 13G .0909, .1212, amend the rules cited as 10A NCAC 13F .0302-.0303, .0305-.0307, .0309-.0311, .0403-.0404, .0905, .0907, .1201; 13G .0202, .0403-.0404, .0703-.0704, .0905, .0907, .1201 and repeal the rule cited as 10A NCAC 13F .0312.*

**Proposed Effective Date:** June 1, 2005

**Public Hearing:**

**Date:** March 18, 2005

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

**Location:** Division of Facility Services, Dorothea Dix Campus, Council Bldg, Room 142, 701 Barbour Drive, Raleigh, NC

**Reason for Proposed Action:** *The NC Medical Care Commission is proposing to adopt, amend and repeal rules found in 10A NCAC 13F and 13G. These Subchapters pertain to the Licensing of Homes for the Aged and Infirm and Licensing of Family Care Homes. In an effort to improve the care of residents in adult care and family care homes, the Division of Facility Services sought and considered input from a variety of stakeholders with an interest in adult care homes. The adoption, amendment and repeal of these rules when required are a result of this effort and all recommended changes are being proposed with the expressed intent of improving care provided to residents in adult and family care homes. The rules were adopted/amended/repealed initially as temporary rules. This rulemaking action will facilitate the process of establishing them as permanent rules.*

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

**Written comments may be submitted to:** Mercidee Benton, Division of Facility Services, 2701 Mail Service Center, Raleigh, NC 27699-2701

**Comment period ends:** April 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 13F – LICENSING OF HOMES FOR THE AGED AND INFIRM**

**SECTION .0300 - PHYSICAL PLANT**

**10A NCAC 13F .0301 APPLICATION OF PHYSICAL PLANT REQUIREMENTS**

The physical plant requirements for each facility shall be applied as follows:

- (1) New construction shall comply with the requirements of Rules .0301 - .0311 of this Section.
- (2) Except where otherwise specified, existing licensed facilities or portions of existing licensed facilities shall meet licensure and code requirements in effect at the time of construction, change in service or bed count, addition, renovation, or alteration, however in no case shall the requirements for any licensed facility where no addition or renovation has been made, be less than those requirements found in the 1971 "Minimum and Desired Standards and Regulations" for "Homes for the Aged and Infirm", copies of which are available at the Division of Facility Services, 701 Barbour Drive, Raleigh, North Carolina, 27603 at no cost;
- (3) New additions, alterations, modifications and repairs shall meet the technical requirements

of Rules .0301 - .0311 of this Section; however, where strict conformance with current requirements would be impractical, the Division may approve alternative measures where the facility can demonstrate to the Division's satisfaction that the alternative measures do not reduce the safety or operating effectiveness of the facility;

- (4) Effective July 1, 1987, resident bedrooms and resident services shall not be permitted on the second floor of any facility licensed for seven or more beds prior to April 1, 1984 and classified as two-story wood frame construction by the North Carolina State Building Code;
- (5) Rules .0301 - 0311 of this Subchapter are minimum requirements and are not intended to prohibit buildings, systems or operational conditions that exceed minimum requirements;
- (6) The bed capacity and services provided in a facility shall be in compliance with G.S. 131E, Article 9 regarding Certificate of Need. A facility shall be licensed for no more beds than the number for which required physical space and other required facilities are available;
- (7) Equivalency: Alternate methods, procedures, design criteria and functional variations from the physical plant may be approved by the Division when the facility can effectively demonstrate that the intent of the physical plant requirements are met and that the variation does not reduce the safety or operational effectiveness of the facility; and
- (8) Where rules, codes or standards have any conflict, the most stringent requirement shall apply and any conflicting requirement shall not apply.

*Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; 2003-0284.*

**10A NCAC 13F .0302 DESIGN AND CONSTRUCTION**

(a) Any building licensed for the first time shall meet the requirements of the North Carolina State Building Code for new construction, construction as well as all of the rules of this Section. No horizontal exits shall be permitted in newly constructed facilities or new additions to existing facilities. All new construction, additions and renovations to existing buildings shall meet the requirements of the North Carolina State Building Code for I-2 Institutional Occupancy if the facility houses 13 or more residents or the North Carolina State Building Code requirements for Large Residential Care Facilities if the facility houses seven to twelve residents. The North Carolina State Building Code, all applicable volumes, which is incorporated by reference, including all subsequent amendments may be purchased from the Department of Insurance Engineering Division located at 322 Chapanoke Road, Suite 200, Raleigh, North Carolina 27603 at a cost of three hundred eighty dollars (\$380.00). The facility shall also meet all of the rules of this Section.

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

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

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

~~(d) The building shall meet sanitation requirements as determined by the North Carolina Division of Environmental Health.~~

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

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

~~(b) Each facility shall be planned, constructed, equipped and maintained to provide the services offered in the facility.~~

~~(c) Any existing building converted from another use to an Adult Care Home shall meet all requirements of a new facility.~~

~~(d) Any existing licensed facility that is closed or vacant for more than one year shall meet all requirements of a new facility.~~

~~(e) The sanitation, water supply, sewage disposal and dietary facilities shall comply with the rules of the North Carolina Division of Environmental Health, which are incorporated by reference, including all subsequent amendments. The "Rules Governing the Sanitation of Hospitals, Nursing and Rest Homes, Sanitariums, Sanatoriums, and Educational and Other Institutions", 15A NCAC 18A .1300 are available for inspection~~

at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from Environmental Health Services Section, 1632 Mail Service Center, Raleigh, North Carolina 27699-1632 at no cost.

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

Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; 2003-0284.

**10A NCAC 13F .0301 .0303 LOCATION**

(a) The ~~home~~ proposed facility ~~must~~ shall be in a location approved by local zoning boards, ~~boards and be a safe distance from streets, highways, railroads, open lakes and other hazards. It must be located on a street, road or highway accessible by car.~~ The home shall be located so that the occupants are protected from hazards.

(b) Plans for the building and site are to be reviewed and approved by the Construction Section of the Division of Facility Services. ~~Services prior to licensure.~~

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

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

(d) The site of the proposed facility shall be approved by the Department prior to construction and shall:

- (1) ~~be accessible by streets, roads and highways and be maintained for motor vehicles and emergency vehicle access;~~
- (2) ~~be accessible to fire fighting and other emergency services;~~
- (3) ~~have a water supply, sewage disposal system, garbage disposal system and trash disposal system approved by the local health department having jurisdiction;~~
- (4) ~~meet all local ordinances and zoning laws; and~~
- (5) ~~be free from exposure to hazards and pollutants.~~

Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; 2003-0284.

**10A NCAC 13F .0304 PLANS AND SPECIFICATIONS**

(a) ~~When construction or remodeling is planned, two copies of Construction Documents and specifications shall be submitted by the applicant or his appointed representative to the Department for review and approval. As a preliminary step to avoid last minute difficulty with final plan approval, Schematic drawings and Design Development drawings may be submitted for approval prior to the required submission of Construction Documents.~~

~~(b) Approval of Construction Documents and specifications shall be obtained from the Division prior to licensure. Approval of Construction Documents shall expire after one year unless a building permit for the construction has been obtained.~~

(c) ~~If an approval expires, renewed approval shall be issued provided revised Construction Documents meeting all current regulations, codes and standards are submitted and reviewed.~~

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

~~(e) Completed construction or remodeling shall conform to the minimum standards established in Rules .0301 - .0311 of this Section including the operation of all building systems and shall be approved in writing by the Division prior to licensure or occupancy. Within 90 days following licensure, the Owner or Licensee shall submit documentation to the Division that "as built" drawings have been received from the builder.~~

~~(f) The applicant or his designated agent shall notify the Division when actual construction or remodeling starts and at points when construction is 50 percent, 75 percent and 90 percent complete and upon final completion.~~

Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; 2003-0284.

**10A NCAC 13F .0303 .0305 PHYSICAL ENVIRONMENT**

The home shall provide ~~ample~~ living arrangements to meet the individual needs of the residents, the live-in staff and other live-in persons.

(1) The requirements for each living room and recreational area are:

- (a) Each living room and recreational area shall be located off a lobby or ~~corridor~~ corridor. At least 50 percent of required living and recreational areas shall be and enclosed with walls and doors;
- (b) In buildings with a licensed capacity of 15 or less, there shall be a minimum area of 250 square feet;
- (c) In buildings with a licensed capacity of 16 or more, there shall be a minimum of 16 square feet per resident; and
- (d) Each living room and recreational area shall have windows.

(2) The requirements for the dining room are:

- (a) The dining room shall be located off a lobby or corridor and enclosed with walls and doors;
- (b) In buildings with a licensed capacity of 15 or less, there shall be a minimum of 200 square feet;
- (c) In building with a licensed capacity of 16 or more, there shall be a minimum of 14 square feet per resident; and
- (d) The dining room shall have windows.

~~(3) The requirements for the kitchen are:~~

- ~~(a) The size of the kitchen and the kitchen equipment shall meet the sanitation requirements of the North Carolina Department of Environment, Health, and Natural Resources; Division of Environmental Health. Sealed drawings and specifications~~

~~shall be submitted to the Division of Facility Services; and~~

~~(b) In areas where approved water and sewer services are not available, the owner shall secure from the local sanitarian instructions on the installation of an approved water and sewer system and comply with these instructions.~~

(4)(3) The requirements for the bedroom are:

- (a) The number of resident beds set up shall not exceed the licensed capacity of the facility;
- (b) There shall be bedrooms sufficient in number and size to meet the individual needs according to age and sex of the residents, ~~the administrator or supervisor in charge,~~ other any live-in staff and ~~any~~ other persons living in the home. Residents shall not share bedrooms with staff or other live-in non-residents;
- (c) Only rooms authorized as bedrooms shall be used for residents' bedrooms;
- (d) Bedrooms shall be located on an outside wall and off a corridor. A room where access is through a bathroom, kitchen, or another bedroom shall not be approved for a resident's bedroom;
- (e) There ~~must~~ shall be a minimum area of 100 square feet excluding vestibule, closet or wardrobe space, in rooms occupied by one person and a minimum area of 80 square feet per bed, excluding vestibule, closet or wardrobe space, in rooms occupied by two ~~or more~~ people;
- (f) The total number of residents assigned to a bedroom shall not exceed the number authorized for that particular bedroom;
- (g) A bedroom may not be occupied by more than ~~four~~ two residents; ~~residents. This does not apply to homes licensed before April 1, 1984, with five residents occupying one bedroom, which meet all other rules of this Subchapter;~~
- (h) Resident bedrooms shall be designed to accommodate all required furnishings;
- (i) Each resident bedroom shall be ventilated with one or more windows which are maintained operable and well lighted. The window area shall be equivalent to at least eight percent of the floor ~~space.~~ space and be provided with insect screens. The

window opening may be restricted to a six inch opening to inhibit resident elopement or suicide. The windows shall be low enough to see outdoors from the bed and chair, with a maximum 36 inch sill height; and

(j) Bedroom closets or wardrobes shall be large enough to provide each resident with a minimum of 48 cubic feet of ~~hanging~~ clothing storage space (approximately two feet deep by three feet wide ~~of hanging space~~ by eight feet ~~high~~ high) of which at least one-half shall be for hanging clothes with an adjustable height hanging bar.

~~(5)(4)~~ (4) The requirements for bathrooms and toilet rooms are:

- (a) Minimum bathroom and toilet facilities shall include a toilet and a hand lavatory for each 5 residents and a tub or shower for each 10 residents or portion thereof;
- (b) Entrance to the bathroom shall not be through a kitchen, another person's bedroom, or another bathroom;
- (c) Toilets and baths for staff and visitors shall be in accordance with ~~Volume II, Plumbing,~~ the North Carolina State Building Code; Code, Plumbing Code;
- (d) Bathrooms and toilets accessible to the physically handicapped shall be provided as required by ~~Section 11X,~~ Volume I, I-C, North Carolina State Building Code; Code, Accessibility Code;
- (e) The bathrooms and toilet rooms ~~must~~ shall be designed to provide privacy. Bathrooms and toilet rooms with two or more water closets (commodes) shall have privacy partitions or curtains for each water closet. Each tub or shower shall have privacy partitions or curtains;
- (f) Hand grips shall be installed at all commodes, tubs and showers used by or accessible to residents;
- (g) Each home shall have at least one bathroom opening off the corridor with: a door three feet minimum width, a three feet by three feet roll-in shower designed to allow the staff to assist a resident in taking a shower without the staff getting wet, a bathtub accessible on at least two sides, a lavatory and a toilet. If the tub and shower are in separate rooms, each room shall have a lavatory and a ~~toilet.~~ toilet. ~~All fixtures shall meet~~

- ~~the State Building Code requirements for the physically handicapped in effect at the time the building was constructed;~~
- (h) Bathrooms and toilet rooms shall be located as conveniently as possible to the residents' bedrooms;
  - (i) Resident toilet rooms and bathrooms shall not be utilized for storage or purposes other than those indicated in Item ~~(5)~~ (4) of this Rule;
  - (j) Toilets and baths shall be well lighted and mechanically ventilated at two cubic feet per minute. The mechanical ventilation requirement does not apply to facilities licensed before April 1, 1984, with ~~adequate~~ adequate natural ventilation;
  - (k) Nonskid surfacing or strips shall be installed in showers and bath areas; and
  - (l) The floors of the bathrooms and toilet rooms shall have, water-resistant covering.
- ~~(6)~~(5) The requirements for storage rooms and closets are:
- (a) General Storage for the Home. A minimum area of five square feet (40 cubic feet) per licensed capacity shall be provided. This storage space shall be either in the facility or within 500 feet of the facility on the same site;
  - (b) Linen Storage. Storage areas shall be adequate in size and number for separate storage of clean linens and separate storage of soiled linens. Access to soiled linen storage shall be from a corridor or laundry room;
  - (c) Food Storage. Space shall be provided for dry, refrigerated and frozen food items to comply with sanitation regulations;
  - (d) Housekeeping storage requirements are:
    - (i) A housekeeping closet, with mop sink or mop floor receptor, shall be provided at the rate of one per 60 residents or portion thereof; and
    - (ii) There shall be separate locked areas for storing cleaning agents, bleaches, pesticides, and other substances which may be hazardous if ingested, inhaled or handled. Cleaning supplies shall be supervised while in use;
- (e) Handwashing facilities with wrist type lever handles shall be provided immediately adjacent to the drug storage area;
  - (f) Storage for Resident's Articles. Some means for residents to lock personal articles within the home shall be provided; and
  - (g) Staff Facilities. Some means for staff to lock personal articles within the home shall be provided.
- ~~(7)~~(6) The requirements for corridors are:
- (a) Doors to spaces other than small reach-in closets shall not swing into the corridor;
  - (b) Handrails shall be provided on both sides of corridors at 36 inches above the floor and be capable of supporting a 250 pound concentrated load;
  - (c) Corridors shall be lighted sufficiently with night lights providing 1 foot-candle power at the floor; and
  - (d) Corridors shall be free of all equipment and other obstructions.
- ~~(8)~~(7) The requirements for outside entrances and exits are:
- (a) ~~Public and service~~ Service entrances shall not be through ~~required~~ resident use areas;
  - (b) All steps, porches, stoops and ramps shall be provided with handrails and guardrails; ~~and~~
  - (c) All exit door locks shall be easily operable, by a single hand motion, from the inside at all times without ~~keys.~~ keys; and
  - (d) In homes with at least one resident who is determined by a physician or is otherwise known to be disoriented or a wanderer, each ~~required~~ exit door accessible by residents shall be equipped with a sounding device that is activated when the door is opened. The sound shall be of sufficient volume that it can be heard by staff. ~~A central control panel that will deactivate the sounding device may be used provided the control panel is located in the office of the administrator.~~ If a central system of remote sounding devices is provided, the control panel for the system shall be located in the office of the administrator or in a secured location approved by the Division.
- ~~(9)~~(8) The requirements for floors are:
- (a) All floors shall be of smooth, non-skid material and so constructed as to be easily cleanable;

- (b) Scatter or throw rugs shall not be used; and
  - (c) All floors shall be kept in good repair.
  - ~~(10)~~(9) Soil Utility Room. A separate room shall be provided and equipped for the cleaning and sanitizing of bed pans and shall have handwashing facilities.
  - ~~(11)~~(10) Office. There shall be an area within the home large enough to accommodate normal administrative functions.
  - ~~(12)~~(11) The requirements for laundry facilities are:
    - (a) Laundry facilities shall be large enough to accommodate washers, dryers, and ironing equipment or work tables;
    - (b) These facilities shall be located where soiled linens will not be carried through the kitchen, dining, clean linen storage, living rooms or recreational areas; and
    - (c) A minimum of one residential type washer and dryer each shall be ~~provided~~, provided in a separate room which is accessible by staff, residents and family, even if all laundry services are contracted.
  - ~~(13)~~(12) The requirements for outside premises are:
    - (a) The outside grounds shall be maintained in a clean and safe condition;
    - (b) If the home has a fence around the premises, the fence shall not prevent residents from exiting or entering freely or be hazardous; and
    - (c) Outdoor walkways and drives shall be illuminated by no less than five foot-candles of light at ground level.
  - ~~(14)~~(13) Alternate methods, procedures, design criteria and functional variations from the physical environment requirements, because of extraordinary circumstances, new programs or unusual conditions, may be approved by the Division when the facility can effectively demonstrate to the Division's satisfaction that the intent of the physical environment requirements are met and the variation does not reduce the safety or operational effectiveness of the facility.
- (4) have a North Carolina Division of Environmental Health approved sanitation classification at all times in facilities with 12 beds or less and North Carolina Division of Environmental Health sanitation scores of 85 or above at all times in facilities with 13 beds or more;
  - (5) be maintained in an uncluttered, clean and orderly manner, free of all obstructions and hazards;
  - (6) have an adequate supply of bath soap, clean towels, washcloths, sheets, pillow cases, blankets, and additional coverings on hand at all times;
  - (7) make available the following items as needed through any means other than charge to the personal funds of recipients of State-County Special Assistance:
    - (A) protective sheets and clean, absorbent, soft and smooth pads;
    - (B) bedpans, urinals, hot water bottles, and ice caps; and
    - (C) bedside commodes, walkers, and wheelchairs;
  - (8) have television and radio, each in good working order; ~~and~~
  - (9) have curtains, draperies or blinds, where ~~appropriate~~ appropriate;
  - ~~(10)~~ have recreational equipment, supplies for games, books, magazines and a current newspaper available for residents; and
  - ~~(11)~~ have a clock that has numbers at least 1½ inches tall in an area commonly used by the residents.
  - ~~(b) Residents will be allowed to bring their own furniture and personal belongings if permitted by the home.~~
  - ~~(e)~~(b) Each bedroom shall have the following furnishings in good repair and clean for each resident:
    - (1) ~~Single~~ A bed equipped with box springs and mattress or solid link springs and no-sag innerspring or foam mattress. Hospital bed appropriately equipped shall be arranged for as needed. ~~A double bed is allowed if used only for single occupancy, unless occupied by husband and wife.~~ A water bed is allowed if requested by a resident and permitted by the home. Each bed is to have the following:
      - (A) at least one pillow with clean pillow case;
      - (B) clean top and bottom sheets on the bed, with bed changed as often as necessary but at least once a week; and
      - (C) clean bedspread and other clean coverings as needed;
    - (2) a bedside type table;
    - (3) chest of drawers or bureau when not provided as built-ins, or a double chest of drawers or double dresser for two residents;

Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334; 2002-0160; 2003-0284.

**10A NCAC 13F .0304 .0306 HOUSEKEEPING AND FURNISHINGS**

- (a) Facilities shall:
- (1) have walls, ceilings, and floors or floor coverings kept clean and in good repair;
  - (2) have no chronic unpleasant odors;
  - (3) have furniture clean and in good repair;

- (4) a wall or dresser mirror that can be used by each resident;
- (5) a minimum of one comfortable chair (rocker or straight, arm or without arms, as preferred by resident), high enough from floor for easy rising;
- (6) additional chairs available, as needed, for use by visitors;
- (7) individual clean towel, towel and wash cloth, cloth and towel bar; bar in the bedroom or an adjoining bathroom; and
- (8) a light overhead of bed with a switch within reach of person lying on bed; or a lamp. The light shall ~~be of~~ provide a minimum of 30 foot-candle power of illumination for reading.

~~(d)(c)~~ The living room shall have ~~the following furnishings;~~ functional living room furnishings for the comfort of aged and disabled persons, with coverings that are easily cleanable.

- ~~(1) functional living room furnishings for the comfort of aged and disabled persons, with coverings easily cleanable;~~
- ~~(2) recreational equipment, supplies for games, books, and reasonably current magazines;~~
- ~~(3) an easily readable clock; and~~
- ~~(4) a newspaper.~~

~~(e)(d)~~ The dining room shall have the following furnishings:

- (1) small tables serving from two to eight persons and chairs to seat all residents eating in the dining room; tables and chairs equal to the resident capacity of the home shall be on the premises; and
- (2) movable, chairs that are sturdy, non-folding chairs, without rollers unless retractable or on front legs only, non-folding and designed to minimize tilting.

(e) This Rule shall apply to new and existing facilities.

*Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; 2003-0284.*

**10A NCAC 13F ~~.0305~~ .0307 FIRE ALARM SYSTEM**

(a) The fire alarm system ~~must shall~~ be able to ~~transmit an automatic signal to the local fire department where possible. to~~ transmit the fire alarm signal automatically to the local emergency fire department dispatch center, either directly or through a central station monitoring company connection.

~~(b) For the minimum fire alarm system in facilities licensed before April 1, 1984, see Rule .0302(e) of this Subchapter.~~

~~(c)(b)~~ Any other applicable fire safety requirements required by city ordinances or county building inspectors ~~must shall~~ be provided.

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

- (1) A fire alarm system with pull stations near each exit and sounding devices which are audible throughout the building;

- (2) Products of combustion (smoke) U/L listed detectors in all corridors. The detectors shall be no more than 60 feet from each other and no more than 30 feet from any end wall;
- (3) Heat detectors or products of combustion detectors in all storage rooms, kitchens, living rooms, dining rooms and laundries;
- (4) All detection systems interconnected with the fire alarm system; and
- (5) Emergency power for the fire alarm system, heat detection system, and products of combustion detection shall be automatic start generator or trickle charge battery system capable of operating the fire alarm systems for 24 hours and be able to sound the alarm for five minutes at the end of that time. Emergency egress lights and exit signs shall be powered from an automatic start generator or a U/L approved trickle charge battery system capable of operation for 1-1/2 hours when normal power fails.

(d) When any facility not equipped with a complete automatic fire extinguishment system replaces the fire alarm system, each bedroom shall be provided with smoke detectors. Other building spaces shall be provided with such fire detection devices as required by the North Carolina State Building Code and requirements of this Subchapter.

*Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; 2003-0284.*

**10A NCAC 13F ~~.0307~~ .0309 PLAN FOR EVACUATION**

(a) A written ~~fire/disaster~~ fire evacuation plan (including a diagrammed drawing) which has the written approval of the local fire department Code Enforcement Official ~~must shall~~ be prepared in large print and posted in a central location on each floor. The plan ~~must shall~~ be reviewed with each resident on admission and ~~must shall~~ be a part of the orientation for all new staff.

(b) There ~~must shall~~ be at least 12 rehearsals of the ~~fire/disaster~~ fire plan each year (four times on each shift), quarterly on each shift in accordance with the requirement of the local Fire Prevention Code Enforcement Official.

(c) Records of rehearsals shall be maintained and copies furnished to the county department of social services annually. The records ~~must shall~~ include the date and time of the rehearsals, the shift, staff members present, and a short description of what the rehearsal involved.

(d) A written disaster plan, which has the written approval of or has been documented as received by the local emergency management agency and the local agency designated to coordinate special needs sheltering during disasters, shall be prepared and updated at least annually and shall be maintained in the facility.

(e) A facility that elects to be designated as a special care shelter during an impending disaster or emergency event shall follow the guidelines established by the State of North Carolina Disaster Plan 2001. The facility shall contact the Division of Facility Services to determine which licensure rules may be

waived according to G.S. 131D-7 to allow for emergency care shelter placements prior to sheltering during the emergency event.

(f) This Rule shall apply to new and existing facilities.

*Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; 2003-0284.*

**10A NCAC 13F ~~.0308~~ .0310 ELECTRICAL OUTLETS**

All electrical outlets in wet locations ~~such as at sinks,~~ bathrooms and outside of building ~~must~~ shall have ground fault interrupters.

*Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; 2003-0284.*

**10A NCAC 13F ~~.0309~~ .0311 OTHER REQUIREMENTS**

(a) The building and all fire safety, electrical, mechanical, and plumbing equipment shall be maintained in a safe and operating condition.

(b) There shall be an approved heating system sufficient to maintain 75 degrees F (24 degrees C) under winter design conditions. In addition, the following shall apply to heaters and cooking appliances.

- (1) Built-in electric heaters, if used, shall be installed or protected so as to avoid burn hazards to residents and room furnishings.
- (2) Unvented fuel burning room heaters and portable electric heaters are prohibited.
- (3) Fireplaces, fireplace inserts and wood stoves shall be designed or installed so as to avoid a burn hazard to residents. Fireplace inserts and wood stoves shall be U.L. listed.
- (4) Ovens, ranges and cook tops located in resident activity or recreational areas shall not be used except under facility staff supervision. The degree of staff supervision shall be based on the facilities assessment of the capabilities of each resident. The operation of the equipment shall have a locking feature provided, that shall be controlled by staff.
- (5) Ovens, ranges and cook tops located in resident rooms shall have a locking feature provided, controlled by staff, to limit the use of the equipment by residents who have been assessed by the facility to be incapable of operating the equipment in a safe manner.

(c) Air conditioning or at least one fan per resident bedroom and living and dining areas shall be provided when the temperature in the main center corridor exceeds 80 degrees F (26.7 degrees C).

(d) The hot water system shall be of such size to provide an adequate supply of hot water to the kitchen, bathrooms, laundry, housekeeping closets and soil utility room. The hot water temperature at all fixtures used by residents shall be maintained at a minimum of 100 degrees F (38 degrees C) and shall not exceed 116 degrees F (46.7 degrees C).

(e) All multi-story facilities shall be equipped with elevators.

(f) In addition to the required emergency lighting, minimum lighting shall be as follows:

- (1) 30 foot-candle power for reading;

- (2) 10 foot-candle power for general lighting; and
- (3) 1 foot-candle power at the floor for corridors at night.

(g) The spaces listed in this Paragraph shall be provided with exhaust ventilation at the rate of two cubic feet per minute per square foot. This requirement does not apply to facilities licensed before April 1, 1984, with adequate natural ventilation in these specified spaces:

- (1) soiled linen storage;
- (2) soil utility room;
- (3) bathrooms and toilet rooms;
- (4) housekeeping closets; and
- (5) laundry area.

~~(h) Where required for staffing purposes,~~ In facilities licensed for 7-12 residents, an electrically operated call system shall be provided connecting each resident bedroom to the live-in staff bedroom. The resident call ~~switches~~ system activator shall be such that they can be activated with a single action and remain on until ~~switched off~~ deactivated by ~~staff.~~ staff at the point of origin. The call ~~switch~~ system activator shall be within reach of the resident lying on ~~his~~ the bed.

(i) In newly licensed facilities without live-in staff, an electrically operated call system shall be provided connecting each resident bedroom and bathroom to a staff station. The resident call system activator shall be such that they can be activated with a single action and remain on until deactivated by staff at the point of origin. The call system activator shall be within reach of the resident lying on the bed.

(j) Except where otherwise specified, existing facilities housing persons unable to evacuate without staff assistance shall provide those residents with handbells or other signaling devices.

*Authority G.S. 131D-2; 143B-165; S.L. 1999-0334; 2002-0160; 2003-0284.*

**10A NCAC 13F .0312 BUILDING CODE AND SANITATION REQUIREMENTS**

~~Homes for the aged must meet all institutional building code requirements of the North Carolina Insurance Department and the sanitation requirements of the state division of health services. Some of these requirements have been incorporated into these standards and regulations after consultation with both agencies.~~

*Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; 2003-0284.*

**SECTION .0400 - STAFF QUALIFICATIONS**

**10A NCAC 13F .0403 QUALIFICATIONS OF MEDICATION STAFF**

~~(a) Effective February 15, 2000,~~ Staff who administer medications, hereafter referred to as medication aides, and staff who directly supervise the administration of medications shall have documentation of successfully completing the clinical skills validation portion of the competency evaluation according to Paragraphs (d) and (e) of Rule 10A NCAC ~~13G~~ 13F .0503 prior to the administration or supervision of the administration of medications. ~~Medication aides who perform other personal care tasks shall also meet the staff training and competency~~



requirements according to Rule .0501 of this Section. Persons authorized by state occupational licensure laws to administer medications are exempt from this requirement.

(b) ~~Effective July 1, 2000, medication~~ Medication aides and their direct supervisors, except persons authorized by state occupational licensure laws to administer medications, shall successfully pass the written examination within 90 days after successful completion of the clinical skills validation portion of a competency evaluation according to Rule .0503 of this Section. ~~Medication aides shall also meet the staff training and competency requirements according to Rule .0501 of this Section.~~

(c) Medication aides and staff who directly supervise the administration of medications, except persons authorized by state occupational licensure laws to administer medications, shall complete six hours of continuing education annually related to medication administration.

*Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334; 2002-0160; 2003-0284.*

**10A NCAC 13F .0404 QUALIFICATIONS OF ACTIVITY DIRECTOR**

~~Since activities are a required part of the program of the family care home, there~~ There shall be a designated ~~activities coordinator~~ activity director who meets the ~~requirements and following qualifications; qualifications set forth in this Rule.~~

- (1) ~~The qualifications of the administrator and co-administrator referenced in Paragraphs (2) and (5) of Rule 10A NCAC 13G .0401 shall apply to the activities coordinator.~~ The ~~activities coordinator~~ activity director (employed on or after August 1, 1991) shall meet a minimum educational requirement by being at least a high school graduate or certified under the GED Program or by passing an alternative examination established by the Department of Health & Human Services; Services.
- (2) The ~~activities coordinator~~ activity director hired on or after the effective date of this rule shall have completed or complete, within 48 nine months of employment or assignment to this position, the 48-hour course entitled "The Activities Coordinator Program." ~~an activity course for assisted living activity directors offered by community colleges or a comparable activity course as determined by the Department based on instructional hours and content.~~ A person with a degree in recreational administration or a related field meets this requirement as does a person who completed the ~~required activity coordinator course of 48 hours or more through a community college before the effective date of this Rule; and~~ Rule.
- (3) ~~The activities coordinator shall be willing to work with bona fide inspectors and the monitoring and licensing agencies toward~~

~~meeting and maintaining the rules of this Subchapter and other legal requirements.~~

*Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; 2003-0284.*

**SECTION .0700 - ADMISSION AND DISCHARGE**

**10A NCAC 13F .0704 RESIDENT CONTRACT, INFORMATION ON HOME AND RESIDENT REGISTER**

(a) The administrator or administrator-in-charge shall furnish and review with the resident or responsible person information on the home upon admission and when changes are made to that information. A statement indicating that this information has been received upon admission or amendment as required by this Rule shall be signed and dated by each person to whom it is given and retained in the resident's record in the home. The information shall include at least the following:

- (1) the resident contract to which the following applies:
    - (A) the contract shall specify rates for resident services and accommodations, including the cost of different levels of service, if applicable, and any other charges or fees;
    - (B) the contract shall disclose any health needs or conditions that the facility has determined it cannot meet pursuant to G.S. 131D-2(a1)(4);
    - (C) the contract shall be signed and dated by the administrator or administrator-in-charge and the resident or responsible person, a copy given to the resident or responsible person and a copy kept in the resident's record;
    - (D) the resident or responsible person shall be notified as much in advance as possible, soon as any change is known, but not less than 30 days for rate changes initiated by the facility, of any changes in the contract and be provided an amended contract or an amendment to the contract for review and signature;
    - (E) gratuities in addition to the established rates shall not be accepted; and
    - (F) the maximum monthly adult care home rate that may be charged to Special Assistance recipients is established by the North Carolina Social Services Commission and the North Carolina General Assembly.
- Note: It is permissible by Special Assistance policy for facilities to accept payments for room and board from a third party, such as family member, charity or faith community,

if the payment is made voluntarily to supplement the cost of room and board for the added benefit of a private room or a private or semi-private room in a special care unit.

- (2) a written copy of all house rules, including facility policies on smoking, alcohol consumption, visitation, refunds and the requirements for discharge of residents consistent with the rules of this Subchapter, and amendments disclosing any changes in the house rules;
- (3) a copy of the Declaration of Residents' Rights as found in G.S. 131D -21;
- (4) a copy of the home's grievance procedures which shall indicate how the resident is to present complaints and make suggestions as to the home's policies and services on behalf of himself or others; and
- (5) a statement as to whether the home has signed Form DSS-1464, Statement of Assurance of Compliance with Title VI of the Civil Rights Act of 1964 for Other Agencies, Institutions, Organizations or Facilities, and which shall also indicate that, if the home does not choose to comply or is found to be in non-compliance, the residents of the home would not be able to receive State-County Special Assistance for Adults and the home would not receive supportive services from the county department of social services.

(b) The administrator or administrator-in-charge and the resident or the resident's responsible person shall complete and sign the Resident Register within 72 hours of the resident's admission to the facility and revise the information on the form as needed. The Resident Register is available on the internet website, <http://facility-services.state.nc.us/gcpage.htm>, or at no charge from the Division of Facility Services, Adult Care Licensure Section, 2708 Mail Service Center, Raleigh, NC 27699-2708. The facility may use a resident information form other than the Resident Register as long as it contains at least the same information as the Resident Register.

*Authority 131D-2; 143B-165; S.L. 2002-0160; 2003-0284.*

**SECTION .0900 – RESIDENT CARE AND SERVICES**

**10A NCAC 13F .0905 ACTIVITIES PROGRAM**

- (a) Each home shall develop a program of activities designed to promote the residents' active involvement with each other, their families, and the community. The program is to provide social, physical, intellectual, and recreational activities in a planned, coordinated, and structured manner, using the Activities Coordinator's Guide, a copy of which each facility is required to have. When there is a cluster of homes, one Activities Coordinator's Guide may be shared by the homes.
- (b) The program shall be designed to promote active involvement by all residents but is not to require any individual to participate in any activity against his will. If there is a

question about a resident's ability to participate in an activity, the resident's physician shall be consulted to obtain a statement regarding the resident's capabilities.

(c) Each home shall assign a person to be the activities coordinator, who meets the qualifications specified in Rule .0404 of this Subchapter. The activities coordinator activity director, as required in Rule .0404 of this Subchapter, is responsible for: for responding to the residents' need and desire for meaningful activities, by:

- (1) Reviewing upon admission personal information about each resident's interests and capabilities recorded on an individualized index card or the equivalent. This card is to be completed from, at least, the information recorded on the Resident Register, Form DSS 1865. It shall be maintained for use by the activities coordinator for developing activities and is to be updated as needed;
- (2)(1) Using using the information on the residents' interests and capabilities as documented upon admission and updated as needed to arrange for and or provide planned individual and group activities for the residents, residents, taking into account the varied interests, capabilities and possible cultural differences of the residents; In addition to individual activities, there shall be a minimum of 1014 hours of planned group activities per week. Homes designated for residents with HIV disease are exempt from the 10-hour requirement as long as the facility can demonstrate each resident's involvement in a structured volunteer program that provides the required range of activities;
- (3)(2) Preparing preparing a monthly calendar of planned group activities which is to be in easily readable, readable with large print, posted in a prominent location on by the first day of each month, and updated when there are any changes;
- (4)(3) Involving involving community resources, such as recreational, volunteer, religious, aging and developmentally disabled-associated agencies, to enhance the activities available to residents, residents; The coordinator may use the home's aides in carrying out some activities with residents; and
- (5)(4) Evaluating evaluating and documenting the overall effectiveness of the activities program at least every six months with input from the residents to determine what have been the most valued activities and to elicit suggestions of ways to enhance the program, program;
- (5) encouraging residents to participate in activities; and
- (6) assuring there are adequate supplies, supervision and assistance to enable each resident to participate.

Note: Aides and other facility staff may be used to assist with activities.

~~(d) A variety of group and individual activities shall be provided. The program is to include, at least, the following types of activities:~~

~~(1) Social and Recreational Activities:~~

~~(A) Opportunity shall be available for both individual and group social and recreational activities sufficiently diverse to accommodate the residents' varied interests and capabilities. These activities emphasize increasing self confidence and stimulating interest and friendships;~~

~~(B) Individual activity includes one to one interactions in mutually enjoyable activity, such as buddy walks, card playing and horseshoes as well as activity by oneself, such as bird watching, nature walks, and card playing;~~

~~(C) Each resident shall have the opportunity to participate in at least one planned group social or recreational activity weekly. A group activity is one which involves a number of residents in physical and mental interaction. Each resident shall be encouraged to participate in an activity which best matches his physical, mental and emotional capability. Such activities may include group singing, dancing, bingo, and exercise classes;~~

~~(D) Each resident shall have the opportunity to participate in at least one outing every other month. A resident interested in involving himself in the community more frequently shall be encouraged and helped to do so. The coordinator is to contact volunteers and residents' families to assist in the effort to get residents involved in activities outside the home;~~

~~(E) If a resident cannot participate actively in community events, arrangements shall be made so that the more active residents can still participate in such outings. If there is a question about a resident's ability to participate in an activity, the resident's physician shall be consulted to obtain a statement regarding the resident's capabilities; and~~

~~(F) The activities planned and offered shall take into account possible cultural differences of the residents;~~

~~(2) Diversional and Intellectual Activities:~~

~~(A) Opportunity for both individual and group diversional and intellectual activities sufficiently diverse to accommodate the residents' varied interests and capabilities shall be available. There shall be adequate supplies and supervision provided to enable each resident to participate;~~

~~(B) Individual activities emphasize individual accomplishments, creative expression, increased knowledge and the learning of new skills. Such activities may include sewing, crafts, painting, reading, creative writing, and wood carving;~~

~~(C) Each resident shall have the opportunity to participate in at least one planned group activity weekly that emphasizes group accomplishment, creative expression, increased knowledge, and the learning of new skills. Such activities may include discussion groups, drama, resident council meetings, book reviews, music appreciation, review of current events, and spelling bees; and~~

~~(D) The activities planned and offered shall take into account possible cultural differences of the residents.~~

(d) There shall be a minimum of 14 hours of a variety of planned group activities per week that include activities that promote socialization, physical interaction, group accomplishment, creative expression, increased knowledge and learning of new skills. Homes that care exclusively for residents with HIV disease are exempt from this requirement as long as the facility can demonstrate planning for each resident's involvement in a variety of activities.

Note: Examples of group activities are group singing, dancing, games, exercise classes, seasonal parties, discussion groups, drama, resident council meetings, book reviews, music appreciation, review of current events and spelling bees.

(e) Residents shall have the opportunity to participate in activities involving one to one interaction and activity by oneself that promote enjoyment, a sense of accomplishment, increased knowledge, learning of new skills, and creative expression.

Note: Examples of these activities are crafts, painting, reading, creative writing, buddy walks, card playing, and nature walks.

(f) Each resident shall have the opportunity to participate in at least one outing every other month. Residents interested in being involved in the community more frequently shall be encouraged to do so.

(3)(g) Work Type and Volunteer Service Activities: Each resident shall have the opportunity to participate in meaningful work-type and volunteer service activities in the home or in the community, but participation shall be on an entirely voluntary basis, never forced upon residents and Under no circumstances shall this activity be forced upon a resident. Residents shall not be assigned these tasks in place of staff. Examples of work-type

and volunteer services activities range from bedmaking, personal ironing, and assisting another resident, to more structured activities such as general ironing, making or repairing toys for children, telephone reassurance, and gardening.

Note: Examples of work-type and volunteer services activities range from bedmaking, personal ironing, and assisting another resident, to more structured activities such as general ironing, making or repairing toys for children, telephone reassurance, and gardening

*Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; 2003-0284.*

**10A NCAC 13F .0907 RESPITE CARE**

~~(a) Respite care shall be controlled by 10 NCAC 42C .2406 and all the rules of this Subchapter except for Rules 42D .1808, .1827, and .1828. Rule .1801 of this Subchapter shall apply to respite care except that Rules 42C .2402 and .2404 as referenced in Rule 42D .1801 of this Subchapter do not apply~~

~~(b) If the facility is staffing to census, the respite care residents shall be included in the daily census for determination of appropriate staffing levels according to the rules of this Subchapter.~~

~~(a) For the purposes of this Subchapter, respite care is defined as supervision, personal care and services provided for persons admitted to an adult care home on a temporary basis for temporary caregiver relief, not to exceed 30 days.~~

~~(b) Respite care is not required as a condition of licensure. However, respite care is subject to the requirements of this Subchapter except for Rules .0702, .0704(b), .0801, .0802 and .1201.~~

~~(c) The number of respite care residents and adult care home residents shall not exceed the facility's licensed bed capacity.~~

~~(d) If the facility is staffing to census, the respite care residents shall be included in the daily census for determination of appropriate staffing levels according to the rules of this Subchapter.~~

~~(e) The respite care resident contract shall specify the rates for respite care services and accommodations, the date of admission to the facility and the proposed date of discharge from the facility. The contract shall be signed by the administrator or designee and the respite care resident or his responsible person and a copy given to the resident and responsible person.~~

~~(f) Upon admission of a respite care resident into the facility, the facility shall assure that the resident has a current FL-2 and been tested for tuberculosis disease according to Rule .0703 of this Subchapter and that there are current physician orders for any medications, treatments and special diets for inclusion in the respite care resident's record. The facility shall assure that the respite care resident's physician or prescribing practitioner is contacted for verification of orders if the orders are not signed and dated within seven calendar days prior to admission to the facility as a respite care resident or for clarification of orders if orders are not clear or complete.~~

~~(g) The facility shall complete an assessment which allows for the development of a short-term care plan prior to or upon admission to the facility with input from the resident or responsible person. The assessment shall address respite resident needs, including identifying information, hearing,~~

vision, cognitive ability, functional limitations, continence, special procedures and treatments as ordered by physician, skin conditions, behavior and mood, oral and nutritional status and medication regimen. The facility may use the Resident Register or an equivalent as the assessment instrument. The care plan shall be signed and dated by the facility's administrator or designated representative and the respite care resident or responsible person.

(h) The respite care resident's record shall include a copy of the signed respite care contract; the FL-2; the assessment and care plan; documentation of a tuberculosis test according to Paragraph (f) of this Rule; documentation of any contacts (office, home or telephone) with the resident's physician or other licensed health professionals from outside the facility; physician orders; medication administration records; a statement, signed and dated by the resident or responsible person, indicating that information on the home as required in Rule .0704(a) of this Subchapter has been received; a written description of any acute changes in the resident's condition or any incidents or accidents resulting in injury to the respite care resident, and any action taken by the facility in response to the changes, incidents or accidents; and how the responsible person or his designated representative can be contacted in case of an emergency.

(i) The respite care resident's responsible person or his designated representative shall be contacted and informed of the need to remove the resident from the facility if one or more of the following conditions exists:

- (1) the resident's condition is such that he is a danger to himself or poses a direct threat to the health of others as documented by a physician; or
- (2) the safety of individuals in the home is threatened by the behavior of the resident as documented by the facility.

Documentation of the emergency discharge shall be on file in the facility.

*Authority G.S. 131D-2; 143B-165; S.L. 2000-50; 2002-0160; 2003-0284.*

**10A NCAC 13F .0909 RESIDENT RIGHTS**

The facility shall assure that the rights of all residents guaranteed under G.S. 131D-21, Declaration of Residents' Rights, are maintained and may be exercised without hindrance.

*Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; 2003-0284.*

**SECTION .1200 – POLICIES, RECORDS AND REPORTS**

**10A NCAC 13F .1201 RESIDENT RECORDS**

~~The rules stated in 10A NCAC 13G .1201 shall control for this Subchapter. In addition, the administrator of a facility accepting recipients of State-County Special Assistance for Adults funds must establish and maintain the uniform chart of accounts and cost reporting system developed by the Division of Social Services. Each affected home must submit an annual fiscal report of its costs and revenues to the Division of Social Services.~~

**SUBCHAPTER 13G – LICENSING OF  
FAMILY CARE HOMES**

**SECTION .0200 - LICENSING**

**10A NCAC 13G .0202 THE LICENSE**

- (a) Except as otherwise provided in Rule .0203 of this Subchapter, the Department shall issue an adult care home license to any person who submits an application on the forms provided by the Department with a non-refundable license fee as required by G.S. 131D-2(b)(1) ~~if~~ and the Department determines that the applicant complies with the provisions of all applicable State adult care home licensure statutes and rules. All applications for a new license shall disclose the names of individuals who are co-owners, partners or shareholders holding an ownership or controlling interest of five percent or more of the applicant entity.
- (b) The license shall be conspicuously posted in a public place in the home.
- (c) The license shall be in effect for 12 months from the date of issuance unless revoked for cause, voluntarily or involuntarily terminated, or changed to provisional licensure status.
- (d) A provisional license may be issued in accordance with G.S. 131D-2(b).
- (e) When a provisional license is issued, the administrator shall post the provisional license and a copy of the notice from the Division of Facility Services identifying the reasons for it, in place of the full license.
- (f) The license is not transferable or assignable.
- (g) The license shall be terminated when the home is licensed to provide a higher level of care or a combination of a higher level of care and adult care home level of care.

*Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0113; 2002-0160; 2003-0284;*

**SECTION .0400 – STAFF QUALIFICATIONS**

**10A NCAC 13G .0403 QUALIFICATIONS OF  
MEDICATION STAFF**

- (a) ~~Effective February 15, 2000, staff~~ Staff who administer medications, hereafter referred to as medication aides, and staff who directly supervise the administration of medications shall have documentation of successfully completing the clinical skills validation portion of the competency evaluation according to Paragraphs (d) and (e) of Rule .0503 of this Section prior to the administration or supervision of the administration of medications. ~~Medication aides who perform other personal care tasks shall also meet the staff training and competency requirements according to Rule .0501 of this Section.~~ Persons authorized by state occupational licensure laws to administer medications are exempt from this requirement.
- (b) ~~Effective July 1, 2000, medication~~ Medication aides and their direct supervisors, except persons authorized by state occupational licensure laws to administer medications, shall successfully pass the written examination within 90 days after successful completion of the clinical skills validation portion of a competency evaluation according to Rule .0503 of this Section.

(a) The following shall be maintained on each resident in an orderly manner in the resident's record in the facility and made available for review by representatives of the monitoring and licensing agencies:

- (1) FL-2 or MR-2 forms and the patient transfer form or hospital discharge summary, when applicable;
- (2) Resident Register;
- (3) receipt for the following as required in Rule .0704 of this Subchapter:
  - (A) contract for services, accommodations and rates;
  - (B) house rules as specified in Rule .0704(a)(2) of this Subchapter;
  - (C) Declaration of Residents' Rights (G.S. 131D-21);
  - (D) the home's grievance procedures; and
  - (E) civil rights statement;
- (4) resident assessment and care plan;
- (5) contacts with the resident's physician, physician service or other licensed health professional as required in Rule .0902 of this Subchapter;
- (6) orders or written treatments or procedures from a physician or other licensed health professional and their implementation;
- (7) documentation of immunizations against influenza virus and pneumococcal disease according to G.S. 131D-9 or the reason the resident did not receive the immunizations based on this law; and
- (8) the Adult Care Home Notice of Discharge and Adult Care Home Hearing Request Form if the resident is being or has been discharged.

Note: When a resident leaves the facility for a medical evaluation, records necessary for that medical evaluation such as Subparagraphs (1), (4), (5), (6) and (7) of this Paragraph may be sent with the resident.

(b) A resident financial record providing an accurate accounting of the receipt and disbursement of the resident's personal funds if handled by the facility according to Rule .1101 of this Subchapter shall be maintained on each resident in an orderly manner in the facility and made available for review by representatives of the monitoring and licensing agencies. When there is an approved cluster of licensed facilities, financial records may be kept in one location among the clustered facilities.

*Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; 2003-0284.*

**10A NCAC 13F .1210 RECORD OF STAFF  
QUALIFICATIONS**

The facility shall maintain records of staff qualifications required by the rules in Section .0400 of this Subchapter in the facility. When there is an approved cluster of licensed facilities, these records may be kept in one location among the clustered facilities.

*Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; 2003-0284.*

~~Medication aides shall also meet the staff training and competency requirements according to Rule .0501 of this Section.~~

(c) Medication aides and staff who directly supervise the administration of medications, except persons authorized by state occupational licensure laws to administer medications, shall complete six hours of continuing education annually related to medication administration.

*Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334; 2002-0160; 2003-0284.*

**10A NCAC 13G .0404 QUALIFICATIONS OF ACTIVITY DIRECTOR**

~~Since activities are a required part of the program of the family care home, there~~ There shall be a designated activities coordinator activity director who meets the requirements and following qualifications: qualifications set forth in this Rule.

- (1) ~~The qualifications of the administrator and co-administrator referenced in Paragraphs (2) and (5) of Rule 10A NCAC 13G .0401 shall apply to the activities coordinator. The activities coordinator activity director (employed on or after August 1, 1991) shall meet a minimum educational requirement by being at least a high school graduate or certified under the GED Program or by passing an alternative examination established by the Department of Health & Human Services; Services.~~ The qualifications of the administrator and co-administrator referenced in Paragraphs (2) and (5) of Rule 10A NCAC 13G .0401 shall apply to the activities coordinator. The activities coordinator activity director (employed on or after August 1, 1991) shall meet a minimum educational requirement by being at least a high school graduate or certified under the GED Program or by passing an alternative examination established by the Department of Health & Human Services; Services.
- (2) ~~The activities coordinator activity director hired on or after the effective date of this Rule shall must complete have completed or complete, within 48 nine months of employment or assignment to this position, the 48-hour course entitled "The Activities Coordinator Program." an activity course for assisted living activity directors offered by community colleges or a comparable activity course as determined by the Department based on instructional hours and content. A person with a degree in recreational administration or a related field meets this requirement as does a person who completed the required activity coordinator course of 48 hours or more through a community college before the effective date of this Rule; and Rule.~~ The activities coordinator activity director hired on or after the effective date of this Rule shall must complete have completed or complete, within 48 nine months of employment or assignment to this position, the 48-hour course entitled "The Activities Coordinator Program." an activity course for assisted living activity directors offered by community colleges or a comparable activity course as determined by the Department based on instructional hours and content. A person with a degree in recreational administration or a related field meets this requirement as does a person who completed the required activity coordinator course of 48 hours or more through a community college before the effective date of this Rule; and Rule.
- (3) ~~The activities coordinator shall be willing to work with bona fide inspectors and the monitoring and licensing agencies toward meeting and maintaining the rules of this Subchapter and other legal requirements.~~

*Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; 2003-0284.*

**SECTION .0700 - ADMISSION AND DISCHARGE**

**10A NCAC 13G .0703 RESIDENT REGISTER**

(a) ~~Before or at admission, the~~ The administrator or supervisor-in-charge, and the resident or his responsible person shall complete and sign the Resident Register (Form DSS-1865) within 72 hours of the resident's admission to the home. The Resident Register is available on the internet website, <http://facility-services.state.nc.us/gcpage.htm>, or at no charge from the Division of Facility Services, Adult Care Licensure Section, 2708 Mail Service Center, Raleigh, NC 27699-2708. The facility may use a resident information form other than the Resident Register as long as it contains at least the same information as the Resident Register. Special instructions for the completion of several items on the Resident Register are:

- (1) ~~name, address and telephone number of the resident's physician. If a resident does not have a personal physician, arrangements must be made by the administrator with the resident, his responsible person or social worker to have a physician before admission; and~~
- (2) ~~personal information from the resident, his responsible person and social worker. This must at least include information about the resident's ties to the community, his preferences for food and activities, and his capabilities and capacity for self care.~~

(b) ~~The administrator or supervisor-in-charge must shall~~ revise the completed Resident Register (Form DSS-1865) with the resident or his responsible person as needed.

*Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; 2003-0284.*

**10A NCAC 13G .0704 RESIDENT CONTRACT AND INFORMATION ON HOME**

~~At admission, the~~ The administrator or supervisor-in-charge must shall furnish and review with the resident or his responsible person essential information on the home: home upon admission and when changes are made to that information. A statement indicating that this information has been received upon admission or amendment as required by this Rule is to be signed and dated by each person to whom it is given. This statement must shall be retained in the resident's record in the home. The information must shall at least include:

- (1) ~~a copy of the home's resident contract specifying rates for resident services and accommodations; accommodations, including the cost of different levels of service, if applicable, any other charges or fees, and any health needs or conditions the home has determined it cannot meet pursuant to G.S. 131D-2(a1)(4); in addition, the following applies:~~
  - (a) ~~The contract must shall~~ be signed and dated by the administrator or supervisor-in-charge and the resident or his responsible person and a copy given to the resident or his responsible person;
  - (b) ~~The resident or his responsible person must shall~~ be notified as much in

~~advance as possible, as soon as any change is known, but not less than 30 days for rate changes initiated by the home,~~ of any rate changes or other changes in the contract affecting the resident services and accommodations and be provided an amended copy of the contract for review and signature;

- (c) A copy of each signed contract ~~must~~ shall be kept in the resident's record in the home;
  - (d) Gratuities in addition to the established rates shall not be accepted; and
  - (e) The maximum monthly rate for ~~domiciliary care~~ that may be charged to ~~public~~ Special Assistance recipients is established by the North Carolina Social Services Commission ~~or~~ and the North Carolina General Assembly;  
Note: It is permissible by Special Assistance policy for facilities to accept payments for room and board from a third party, such as family member, charity or faith community, if the payment is made voluntarily to supplement the cost of room and board for the added benefit of a private room.
- (2) a written copy of any house rules, including the conditions for the discharge and transfer of residents, the refund policies, and the home's policies on smoking, alcohol consumption and visitation ~~visitation~~. ~~The resident or his responsible person must be promptly notified of any change in the house rules and provided an amended copy. All house rules must be consistent with the rules in this Subchapter, Subchapter and amendments disclosing any changes in the house rules;~~
  - (3) a copy of the Adult Care Home Residents' Bill of ~~Rights~~; Rights as found in G.S. 131D-21;
  - (4) a copy of the home's grievance procedures which ~~must~~ shall indicate how the resident is to present complaints and make suggestions as to the home's policies and services on behalf of ~~himself or others~~; and
  - (5) a statement as to whether the home has signed Form DSS-1464, Statement of Assurance of Compliance with Title VI of the Civil Rights Act of 1964 for Other Agencies, Institutions, Organizations or Facilities, and which assuring compliance with Title VI of the Civil Rights Act. ~~This statement must~~ shall also indicate that if the home does not choose to comply or is found to be in non-compliance the residents of the home would not be able to receive

State-County Special Assistance for Adults and the home would not receive supportive services from the county department of social services.

*Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; 2003-0284.*

**SECTION .0900 – RESIDENT CARE AND SERVICES**

**10A NCAC 13G .0905 ACTIVITIES PROGRAM**

(a) Each home ~~must~~ shall develop a program of activities designed to promote the residents' active involvement with each other, their families, and the community. ~~The program is to provide social, physical, intellectual, and recreational activities in a planned, coordinated, and structured manner, using the Activities Coordinator's Guide, a copy of which each facility is required to have. When there is a cluster of homes, one Activities Coordinator's Guide may be shared by the homes.~~

(b) The program ~~must~~ shall be designed to promote active involvement by all residents but is not to require any individual to participate in any activity against his will. If there is a question about a resident's ability to participate in an activity, the resident's physician shall be consulted to obtain a statement regarding the resident's capabilities.

(c) ~~Each home must assign a person to be the activities coordinator, who meets the qualifications specified in Rule .0404 of this Subchapter. The activities coordinator activity director, as required in Rule .0404 of this Subchapter, is responsible for: responding to the residents' need and desire for meaningful activities, by:~~

(1) ~~Reviewing upon admission personal information about each resident's interests and capabilities recorded on an individualized index card or the equivalent. This card is to be completed from, at least, the information recorded on the Resident Register, Form DSS 1865. It must be maintained for use by the activities coordinator for developing activities and is to be updated as needed;~~

(2)(1) Using using the information on the residents' interests and capabilities as documented upon admission and updated as needed to arrange for and or provide planned individual and group activities for the residents. residents, taking into account the varied interests, capabilities and possible cultural differences of the residents; ~~In addition to individual activities, there must be a minimum of 1014 hours of planned group activities per week. Homes designated for residents with HIV disease are exempt from the 10-hour requirement as long as the facility can demonstrate each resident's involvement in a structured volunteer program that provides the required range of activities;~~

(3)(2) Preparing preparing a monthly calendar of planned group activities which is to be in easily readable, readable with large print, posted in a prominent location on by the first

day of each month, and updated when there are any changes;

(4)(3) ~~Involving involving~~ community resources, such as recreational, volunteer, religious, aging and developmentally disabled-associated agencies, to enhance the activities available to residents. ~~residents.~~ The coordinator may use the home's aides in carrying out some activities with residents; and

(5)(4) ~~Evaluating evaluating~~ and documenting the overall effectiveness of the activities program at least every six months with input from the residents to determine what have been the most valued activities and to elicit suggestions of ways to enhance the program. ~~program.~~

(5) ~~encouraging residents to participate in activities; and~~

(6) ~~assuring there are adequate supplies, supervision and assistance to enable each resident to participate.~~

Note: ~~Aides and other facility staff may be used to assist with activities.~~

(d) A variety of group and individual activities must be provided. The program is to include, at least, the following types of activities:

(1) ~~Social and Recreational Activities:~~

(A) ~~Opportunity must be available for both individual and group social and recreational activities sufficiently diverse to accommodate the residents' varied interests and capabilities. These activities emphasize increasing self-confidence and stimulating interest and friendships;~~

(B) ~~Individual activity includes one to one interactions in mutually enjoyable activity, such as buddy walks, card playing and horseshoes as well as activity by oneself, such as bird watching, nature walks, and card playing;~~

(C) ~~Each resident must have the opportunity to participate in at least one planned group social or recreational activity weekly. A group activity is one which involves a number of residents in physical and mental interaction. Each resident must be encouraged to participate in an activity which best matches his physical, mental and emotional capability. Such activities may include group singing, dancing, bingo, and exercise classes;~~

(D) ~~Each resident must have the opportunity to participate in at least one outing every other month. A resident interested in involving himself in the community more~~

~~frequently shall be encouraged and helped to do so. The coordinator is to contact volunteers and residents' families to assist in the effort to get residents involved in activities outside the home;~~

(E) ~~If a resident cannot participate actively in community events, arrangements shall be made so that the more active residents can still participate in such outings. If there is a question about a resident's ability to participate in an activity, the resident's physician must be consulted to obtain a statement regarding the resident's capabilities; and~~

(E) ~~The activities planned and offered must take into account possible cultural differences of the residents;~~

(2) ~~Diversional and Intellectual Activities:~~

(A) ~~Opportunity for both individual and group diversional and intellectual activities sufficiently diverse to accommodate the residents' varied interests and capabilities must be available. There must be adequate supplies and supervision provided to enable each resident to participate;~~

(B) ~~Individual activities emphasize individual accomplishments, creative expression, increased knowledge and the learning of new skills. Such activities may include sewing, crafts, painting, reading, creative writing, and wood carving;~~

(C) ~~Each resident must have the opportunity to participate in at least one planned group activity weekly that emphasizes group accomplishment, creative expression, increased knowledge, and the learning of new skills. Such activities may include discussion groups, drama, resident council meetings, book reviews, music appreciation, review of current events, and spelling bees; and~~

(F) ~~The activities planned and offered must take into account possible cultural differences of the residents.~~

(d) There shall be a minimum of 14 hours of a variety of planned group activities per week that include activities that promote socialization, physical interaction, group accomplishment, creative expression, increased knowledge and learning of new skills. Homes that care exclusively for residents with HIV disease are exempt from this requirement as long as the facility can demonstrate planning for each resident's involvement in a variety of activities.



Note: Examples of group activities are group singing, dancing, games, exercise classes, seasonal parties, discussion groups, drama, resident council meetings, book reviews, music appreciation, review of current events and spelling bees.

(e) Residents shall have the opportunity to participate in activities involving one to one interaction and activity by oneself that promote enjoyment, a sense of accomplishment, increased knowledge, learning of new skills, and creative expression.

Note: Examples of these activities are crafts, painting, reading, creative writing, buddy walks, card playing, and nature walks.

(f) Each resident shall have the opportunity to participate in at least one outing every other month. Residents interested in being involved in the community more frequently shall be encouraged to do so.

~~(3)(g) Work Type and Volunteer Service Activities: Each resident must shall have the opportunity to participate in meaningful work-type and volunteer service activities in the home or in the community, but participation must shall be on an entirely voluntary basis, never forced upon residents and Under no circumstances shall this activity be forced upon a resident. Residents shall not be assigned these tasks in place of staff. Examples of work type and volunteer services activities range from bedmaking, personal ironing, and assisting another resident, to more structured activities such as general ironing, making or repairing toys for children, telephone reassurance, and gardening.~~

Note: Examples of work-type and volunteer service activities range from bedmaking, personal ironing, and assisting another resident, to more structured activities such as general ironing, making or repairing toys for children, telephone reassurance, and gardening.

Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; 2003-0284.

**10A NCAC 13G .0907 RESPITE CARE**

(a) For the purposes of this Subchapter, respite care is defined as supervision, personal care and services provided for persons admitted to an adult care home on a temporary basis for temporary caregiver relief, not to exceed 30 days.

(b) Respite care is not required as a condition of licensure. However, respite care is subject to the requirements of this Subchapter except for Rules ~~.0702, .0703, .0705, 1201, .0801, .0802 and 1002(a)~~ and .1201.

(c) The number of respite care residents and adult care home residents shall not exceed the facility's licensed bed capacity.

(d) The respite care resident contract shall specify the rates for respite care services and accommodations, the date of admission to the facility and the proposed date of discharge from the facility. The contract shall be signed by the administrator or designee and the respite care resident or his responsible person and a copy given to the resident and responsible person.

(e) Upon admission of a respite care resident into the facility, the facility shall assure that the resident has a current FL-2 and been tested for tuberculosis disease within the past 12 months according to Rule .0702 of this Subchapter and that there are current physician orders for any medications, treatments and special diets for inclusion in the respite care resident's record. The facility shall assure that the respite care resident's physician or prescribing practitioner is contacted for verification of orders

if the orders are not signed and dated within seven calendar days prior to admission to the facility as a respite care resident or for clarification of orders if orders are not clear or complete. ~~Tests for tuberculosis disease shall comply with control measures adopted by the Commission for Health Services as specified in 10A NCAC 41A .0205 including subsequent amendments and editions. Copies of the rule are available at no charge by contacting the Department of Health and Human Services, Tuberculosis Control Program, 1902 Mail Service Center, Raleigh, North Carolina 27699-1902.~~

(f) The facility shall complete an assessment which allows for the development of a short-term care plan prior to or upon admission to the facility with input from the resident or responsible person. The assessment shall address respite resident needs, including identifying information, hearing, vision, cognitive ability, functional limitations, continence, special procedures and treatments as ordered by physician, skin conditions, behavior and mood, oral and nutritional status and medication regimen. The facility may ~~develop and use its own~~ assessment instrument or use the assessment instrument approved by the Department for initial admission assessments as stated in Rule .0801 of this Subchapter: the Resident Register or an equivalent as the assessment instrument. The care plan shall be signed and dated by the facility's administrator or designated representative and the respite care resident or responsible person.

(g) The respite care resident's record shall include a copy of the signed respite care contract; the FL-2; the assessment and care plan; documentation of a tuberculosis test according to Paragraph (e) of this Rule; documentation of any contacts (office, home or telephone) with the resident's physician or other licensed health professionals from outside the facility; physician orders; medication administration records; a statement, signed and dated by the resident or responsible person, indicating that information on the home as required in Rule .0704 of this Subchapter has been received; a written description of any acute changes in the resident's condition or any incidents or accidents resulting in injury to the respite care resident, and any action taken by the facility in response to the changes, incidents or accidents; and how the responsible person or his designated representative can be contacted in case of an emergency.

(h) The respite care resident's responsible person or his designated representative shall be contacted and informed of the need to remove the resident from the facility if one or more of the following conditions exists:

- (1) the resident's condition is such that he is a danger to himself or poses a direct threat to the health of others as documented by a physician; or
- (2) the safety of individuals in the home is threatened by the behavior of the resident as documented by the facility.

Documentation of the emergency discharge shall be on file in the facility.

Authority G.S. 131D-2; 143B-165; S.L. 2000-50; 2002-0160; 2003-0284.

**10A NCAC 13G .0909 RESIDENT RIGHTS**

The facility shall assure that the rights of all residents guaranteed under G.S. 131D-21, Declaration of Residents' Rights, are maintained and may be exercised without hindrance.

Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; 2003-0284.

SECTION .1200 – POLICIES, RECORDS AND REPORTS

10A NCAC 13G .1201 RESIDENT RECORDS

(a) The administrator is responsible for correctly maintaining required records.

(b) All forms required by the rules of this Subchapter are available free of charge, upon request, from the county department of social services.

(c) The following records must shall be maintained on each resident in an orderly manner in the resident's record in the facility facility. They are to be kept in an orderly manner and be and made readily available for review by representatives of the monitoring and licensing agencies.

- (1) FL-2 or MR-2 Forms and patient transfer form or hospital discharge summary, when applicable;
- (2) Resident Register; Register (Form DSS 1865);
- (3) receipt for the following as required in Rule .0704 of this Subchapter:
  - (A) contract for services, accommodations and rates;
  - (B) house rules to include discharge, transfer and refund policies; as specified in Rule .0704(2) of this Subchapter;
  - (C) Adult Care Home Residents' Bill of Rights; Declaration of Residents' Rights (G.S. 131D-21);
  - (D) home's grievance procedures; and
  - (E) civil rights statement;
- (4) Report of Health Services to Resident (Form DSS 1867) or approved equivalent resident assessment and care plan;
- (5) contacts with the resident's physician, physician service or other licensed health professional as required in Rule .0902 of this Subchapter;
- (6) orders or written treatments or procedures from a physician or other licensed health professional and their implementation;
- (7) documentation of immunizations against influenza virus and pneumococcal disease according to G.S. 131D-9 or the reason the resident did not receive the immunizations based on this law; and
- (8) the Adult Care Home Notice of Discharge and Adult Care Home Hearing Request Form if the resident is being or has been discharged.

Note: When a resident leaves the facility for a medical evaluation, records necessary for that medical evaluation such as Subparagraphs (1), (4), (5), (6) and (7) of this Paragraph may be sent with the resident.

(d)(b) A Resident Financial Record resident financial record (Form DSS 1866), providing an accurate accounting of the receipt and disbursement of the resident's personal funds, if handled by the facility according to Rule .1103 of this Subchapter, approved equivalent method of bookkeeping must be maintained on each resident. The financial records are to be kept shall be maintained on each resident in an orderly manner in the facility and be readily available for review by representatives of monitoring and licensing agencies. When there is an approved cluster of licensed facilities, financial records may be kept in a central location. one location among the clustered facilities.

Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; 2003-0284.

10A NCAC 13G .1212 RECORD OF STAFF QUALIFICATIONS

The facility shall maintain records of staff qualifications required by the rules in Section .0400 of this Subchapter in the facility. When there is an approved cluster of licensed facilities, these records may be kept in one location among the clustered facilities.

Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; 2003-0284.

\*\*\*\*\*

Notice is hereby given in accordance with G.S. 150B-21.2 that the Medical Care Commission intends to adopt the rules cited as 10A NCAC 13F .0509, .1211, .1501 and 10A NCAC 13G .0509, .1211 and .1301.

Proposed Effective Date: June 1, 2005

Public Hearing:

Date: March 18, 2005

Time: 10:00 a.m.

Location: Division of Facility Services, Council Building, Room 142, Dorothea Dix Campus, 701 Barbour Drive, Raleigh, NC

Reason for Proposed Action: The General Assembly passed legislation in 2002 providing the Medical Care Commission temporary rulemaking authority for adult care home rules under 10A NCAC 13F and 13G and extended the time frame for that authority through July 1, 2004 in legislation passed in 2003. In an effort to improve the care provided to residents in adult and family care homes, input was sought and considered from a variety of stakeholders with an interest in adult care homes. The rules were adopted as temporary rules as a result of that effort. All recommended changes are being proposed with the expressed intent of improving care to residents in adult and family care homes. This rulemaking action will facilitate the process of adopting them as permanent rules.

Procedure by which a person can object to the agency on a proposed rule: An individual may object to the agency on the proposed rules by submitting written comments on the proposed

rule. They may also object by attending the public hearing and personally voice their objections during that time.

Written comments may be submitted to: Mercidee Benton, Division of Facility Services, 2701 Mail Service Center, Raleigh, NC 27699-270, phone 919-855-3750, fax 919-733-2757 and email mercidee.benton@ncmail.net.

Comment period ends: April 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 13F – LICENSING OF HOMES FOR THE AGED AND INFIRM

SECTION .0500 - STAFF ORIENTATION, TRAINING, COMPETENCY AND CONTINUING EDUCATION

10A NCAC 13F .0509 FOOD SERVICE ORIENTATION
The staff person in charge of the preparation and serving of food shall complete a food service orientation program established by the Department or an equivalent within 30 days of hire for those staff hired on or after the effective date of this rule. Registered dietitians are exempt from this orientation. The orientation program is available on the internet website, http://facility-services.state.nc.us/gcpage.htm, or it is available at the cost of printing and mailing from the Division of Facility Services, Adult Care Licensure Section, 2708 Mail Service Center, Raleigh, NC 27699-2708.

Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; 2003-0284.

SECTION .1200 – POLICIES, RECORDS AND REPORTS

10A NCAC 13F .1211 WRITTEN POLICIES AND PROCEDURES

(a) The facility shall ensure the development of written policies and procedures that comply with applicable rules of this Subchapter, on the following:

- (1) ordering, receiving, storage, discontinuation, disposition, administration, including self-administration, and monitoring the resident's reaction to medications, as developed in consultation with a licensed health professional who is authorized to dispense or administer medications;
(2) use of alternatives to physical restraints and the care of residents who are physically restrained, as developed in consultation with a registered nurse;
(3) accident, fire safety and emergency procedures;
(4) infection control;
(5) refunds;
(6) missing resident;
(7) identification and supervision of wandering residents;
(8) management of physical aggression or assault by a resident;
(9) handling of resident grievances;
(10) visitation in the facility by guests; and
(11) smoking and alcohol use.

(b) In addition to other training and orientation requirements in this Subchapter, all staff shall be trained within 30 days of hire on the policies and procedures in Subparagraphs (a)(3), (4), (6), (7), (8), (9), (10) and (11) of this Rule.

(c) Policies and procedures on which staff have been trained shall be available within the facility to staff for their reference.

Authority 131D -2; 143B-165; S.L. 2002-0160; 2003-0284.

SECTION .1501 - USE OF PHYSICAL RESTRAINTS AND ALTERNATIVES

10A NCAC 13F .1501 USE OF PHYSICAL RESTRAINTS AND ALTERNATIVES

(a) The facility shall assure that a physical restraint, any physical or mechanical device attached to or adjacent to the resident's body that the resident cannot remove easily and which restricts freedom of movement or normal access to one's body, shall be:

- (1) used only in those circumstances in which the resident has medical symptoms that warrant the use of restraints and not for discipline or convenience purposes;
(2) used only with a written order from a physician except in emergencies, according to Paragraph (e) of this Rule;
(3) the least restrictive restraint that would provide safety;
(4) used only after alternatives that would provide safety to the resident and prevent a potential decline in the resident's functioning have been tried and documented in the resident's record.

- (5) used only after an assessment and care planning process has been completed, except in emergencies, according to Paragraph (d) of this Rule;
- (6) applied correctly according to the manufacturer's instructions and the physician's order; and
- (7) used in conjunction with alternatives in an effort to reduce restraint use.

Note: Bed rails are restraints when used to keep a resident from voluntarily getting out of bed as opposed to enhancing mobility of the resident while in bed. Examples of restraint alternatives are: providing restorative care to enhance abilities to stand safely and walk, providing a device that monitors attempts to rise from chair or bed, placing the bed lower to the floor, providing frequent staff monitoring with periodic assistance in toileting and ambulation and offering fluids, providing activities, controlling pain, providing an environment with minimal noise and confusion, and providing supportive devices such as wedge cushions.

(b) The facility shall ask the resident or resident's legal representative if the resident may be restrained based on an order from the resident's physician. The facility shall inform the resident or legal representative of the reason for the request and the benefits of restraint use and the negative outcomes and alternatives to restraint use. The resident or the resident's legal representative may accept or refuse restraints based on the information provided. Documentation shall consist of a statement signed by the resident or the resident's legal representative indicating the signer has been informed, the signer's acceptance or refusal of restraint use and, if accepted, the type of restraint to be used and the medical indicators for restraint use.

Note: Potential negative outcomes of restraint use include incontinence, decreased range of motion, decreased ability to ambulate, increased risk of pressure ulcers, symptoms of withdrawal or depression and reduced social contact.

(c) In addition to the requirements in Rules 13F .0801, .0802 and .0903 of this Subchapter regarding assessments and care planning, the resident assessment and care planning prior to application of restraints as required in Subparagraph (a)(5) of this Rule shall meet the following requirements:

- (1) The assessment and care planning shall be implemented through a team process with the team consisting of at least a staff supervisor or personal care aide, a registered nurse, the resident and the resident's responsible person or legal representative. If the resident or resident's responsible person or legal representative is unable to participate, there shall be documentation in the resident's record that they were notified and declined the invitation or were unable to attend.
- (2) The assessment shall include consideration of the following:
  - (A) medical symptoms that warrant the use of a restraint;
  - (B) how the medical symptoms affect the resident;

- (C) when the medical symptoms were first observed;
- (D) how often the symptoms occur;
- (E) alternatives that have been provided and the resident's response; and
- (F) the least restrictive type of physical restraint that would provide safety.

- (3) The care plan shall include at least the following:
  - (A) alternatives and how the alternatives will be used prior to restraint use and in an effort to reduce restraint time once the resident is restrained;
  - (B) the type of restraint to be used; and
  - (C) care to be provided to the resident during the time the resident is restrained.

(d) The following applies to the restraint order as required in Subparagraph (a)(2) of this Rule:

- (1) The order shall indicate:
  - (A) the medical need for the restraint;
  - (B) the type of restraint to be used;
  - (C) the period of time the restraint is to be used; and
  - (D) the time intervals the restraint is to be checked and released, but no longer than every 30 minutes for checks and two hours for releases.
- (2) If the order is obtained from a physician other than the resident's physician, the facility shall notify the resident's physician of the order within seven days.
- (3) The restraint order shall be updated by the resident's physician at least every three months following the initial order.
- (4) If the resident's physician changes, the physician who is to attend the resident shall update and sign the existing order.
- (5) In emergency situations, the administrator or administrator-in-charge shall make the determination relative to the need for a restraint and its type and duration of use until a physician is contacted. Contact shall be made within 24 hours and documented in the resident's record.
- (6) The restraint order shall be kept in the resident's record.

(e) All instances of the use of physical restraints and alternatives shall be documented by the facility in the resident's record and include at least the following:

- (1) restraint alternatives that were provided and the resident's response;
- (2) type of restraint that was used;
- (3) medical symptoms warranting restraint use;
- (4) the time the restraint was applied and the duration of restraint use;
- (5) care that was provided to the resident during restraint use; and
- (6) behavior of the resident during restraint use.

(f) Physical restraints shall be applied only by staff who have received training according to Rule .0506 of this Subchapter and been validated on restraint use according to Rule .0903 of this Subchapter.

*Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; 2003-0284.*

**SUBCHAPTER 13G – LICENSING OF FAMILY CARE HOMES**

**SECTION .0500 – STAFF ORIENTATION, TRAINING, COMPETENCY AND CONTINUING EDUCATION**

**10A NCAC 13G .0509 FOOD SERVICE ORIENTATION**

The staff person in charge of the preparation and serving of food shall complete a food service orientation program established by the Department or an equivalent within 30 days of hire for those staff hired on or after the effective date of this Rule. The orientation program is available on the internet website, <http://facility-services.state.nc.us/gcpage.htm>, or it is available at the cost of printing and mailing from the Division of Facility Services, Adult Care Licensure Section, 2708 Mail Service Center, Raleigh, NC 27699-2708.

*Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; 2003-0284.*

**SECTION .1200 – POLICIES, RECORDS AND REPORTS**

**10A NCAC 13G .1211 WRITTEN POLICIES AND PROCEDURES**

(a) The facility shall ensure the development of written policies and procedures that comply with applicable rules of this Subchapter, on the following:

- (1) ordering, receiving, storage, discontinuation, disposition, administration, including self-administration, and monitoring the resident's reaction to medications, as developed in consultation with a licensed health professional who is authorized to dispense or administer medications;
- (2) use of alternatives to physical restraints and the care of residents who are physically restrained, as developed in consultation with a registered nurse;
- (3) accident, fire safety and emergency procedures;
- (4) infection control;
- (5) refunds;
- (6) missing resident;
- (7) identification and supervision of wandering residents;
- (8) management of physical aggression or assault by a resident;
- (9) handling of resident grievances;
- (10) visitation in the facility by guests; and
- (11) smoking and alcohol use.

(b) In addition to other training and orientation requirements in this Subchapter, all staff shall be trained within 30 days of hire

on the policies and procedures listed as Subparagraphs (a)(3), (4), (6), (7), (8), (9), (10) and (11) of this Rule.

(c) Policies and procedures on which staff have been trained shall be available within the facility to staff for their reference.

*Authority G.S. 131D –2; 143B-165; S.L. 2002-0160; 2003-0284.*

**SECTION .1300 - USE OF PHYSICAL RESTRAINTS AND ALTERNATIVES**

**10A NCAC 13G .1301 USE OF PHYSICAL RESTRAINTS AND ALTERNATIVES**

(a) The facility shall assure that a physical restraint, any physical or mechanical device attached to or adjacent to the resident's body that the resident cannot remove easily and which restricts freedom of movement or normal access to one's body, shall be:

- (1) used only in those circumstances in which the resident has medical symptoms that warrant the use of restraints and not for discipline or convenience purposes;
- (2) used only with a written order from a physician except in emergencies, according to Paragraph (e) of this Rule;
- (3) the least restrictive restraint that would provide safety;
- (4) used only after alternatives that would provide safety to the resident and prevent a potential decline in the resident's functioning have been tried and documented in the resident's record.
- (5) used only after an assessment and care planning process has been completed, except in emergencies, according to Paragraph (d) of this Rule;
- (6) applied correctly according to the manufacturer's instructions and the physician's order; and
- (7) used in conjunction with alternatives in an effort to reduce restraint use.

Note: Bed rails are restraints when used to keep a resident from voluntarily getting out of bed as opposed to enhancing mobility of the resident while in bed. Examples of restraint alternatives are: providing restorative care to enhance abilities to stand safely and walk, providing a device that monitors attempts to rise from chair or bed, placing the bed lower to the floor, providing frequent staff monitoring with periodic assistance in toileting and ambulation and offering fluids, providing activities, controlling pain, providing an environment with minimal noise and confusion, and providing supportive devices such as wedge cushions.

(b) The facility shall ask the resident or resident's legal representative if the resident may be restrained based on an order from the resident's physician. The facility shall inform the resident or legal representative of the reason for the request and the benefits of restraint use and the negative outcomes and alternatives to restraint use. The resident or the resident's legal representative may accept or refuse restraints based on the information provided. Documentation shall consist of a statement signed by the resident or the resident's legal

representative indicating the signer has been informed, the signer's acceptance or refusal of restraint use and, if accepted, the type of restraint to be used and the medical indicators for restraint use.

Note: Potential negative outcomes of restraint use include incontinence, decreased range of motion, decreased ability to ambulate, increased risk of pressure ulcers, symptoms of withdrawal or depression and reduced social contact.

(c) In addition to the requirements in Rules 13F .0801, .0802 and .0903 of this Subchapter regarding assessments and care planning, the resident assessment and care planning prior to application of restraints as required in Subparagraph (a)(5) of this Rule shall meet the following requirements:

- (1) The assessment and care planning shall be implemented through a team process with the team consisting of at least a staff supervisor or personal care aide, a registered nurse, the resident and the resident's responsible person or legal representative. If the resident or resident's responsible person or legal representative is unable to participate, there shall be documentation in the resident's record that they were notified and declined the invitation or were unable to attend.
- (2) The assessment shall include consideration of the following:
  - (A) medical symptoms that warrant the use of a restraint;
  - (B) how the medical symptoms affect the resident;
  - (C) when the medical symptoms were first observed;
  - (D) how often the symptoms occur;
  - (E) alternatives that have been provided and the resident's response; and
  - (F) the least restrictive type of physical restraint that would provide safety.
- (3) The care plan shall include at least the following:
  - (A) alternatives and how the alternatives will be used prior to restraint use and in an effort to reduce restraint time once the resident is restrained;
  - (B) the type of restraint to be used; and
  - (C) care to be provided to the resident during the time the resident is restrained.

(d) The following applies to the restraint order as required in Subparagraph (a)(2) of this Rule:

- (1) The order shall indicate:
  - (A) the medical need for the restraint;
  - (B) the type of restraint to be used;
  - (C) the period of time the restraint is to be used; and
  - (D) the time intervals the restraint is to be checked and released, but no longer than every 30 minutes for checks and two hours for releases.

- (2) If the order is obtained from a physician other than the resident's physician, the facility shall notify the resident's physician of the order within seven days.
- (3) The restraint order shall be updated by the resident's physician at least every three months following the initial order.
- (4) If the resident's physician changes, the physician who is to attend the resident shall update and sign the existing order.
- (5) In emergency situations, the administrator or administrator-in-charge shall make the determination relative to the need for a restraint and its type and duration of use until a physician is contacted. Contact shall be made within 24 hours and documented in the resident's record.
- (6) The restraint order shall be kept in the resident's record.

(e) All instances of the use of physical restraints and alternatives shall be documented by the facility in the resident's record and include at least the following:

- (1) restraint alternatives that were provided and the resident's response;
- (2) type of restraint that was used;
- (3) medical symptoms warranting restraint use;
- (4) the time the restraint was applied and the duration of restraint use;
- (5) care that was provided to the resident during restraint use; and
- (6) behavior of the resident during restraint use.

(f) Physical restraints shall be applied only by staff who have received training according to Rule .0506 of this Subchapter and been validated on restraint use according to Rule .0903 of this Subchapter.

*Authority G.S. 131D-2; 143B-165; S.L. 2002-0160; 2003-0284.*

---

## TITLE 21 – OCCUPATIONAL LICENSING BOARDS

### CHAPTER 14 – BOARD OF COSMETIC ART EXAMINERS

*Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Cosmetic Art Examiners intends to amend the rule cited as 21 NCAC 14J .0207.*

**Proposed Effective Date:** *June 1, 2005*

**Public Hearing:**

**Date:** *February 16, 2005*

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

**Location:** *NC State Board of Cosmetic Art, 1201-110 Front Street, Raleigh, NC*

**Reason for Proposed Action:** *Rule updates for Departmental rules and Cosmetology curriculum*

**Procedure by which a person can object to the agency on a proposed rule:** *If you have any objections to the proposed rule, please forward a typed or handwritten letter indicating your specific reason(s) for your objection(s) to Souk Rios, NC Board of Cosmetic Art Examiners, 1201 Front Street, Suite 110, Raleigh, NC 27609.*

**Written comments may be submitted to:** *Souk Rios, 1201-110 Front Street, Raleigh, NC 27609, phone 919-733-4117, ext. 222, fax 919-733-4127 or email srrios@jntrex.net*

**Comment period ends:** *April 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**

**21 NCAC 14J .0207 LIVE MODEL/MANNEQUIN PERFORMANCE REQUIREMENTS**

(a) The following minimum live model/mannequin performance completions shall be done by each student in the advanced department before the student is eligible to take the cosmetologist's examination. Sharing of performance completions shall not be allowed. Credit for a performance shall only be given to one student.

		1200		1500	
		Live Model	Maniq.	Live Model	Maniq.
(1)	scalp/hair treatments w/massage	15		15	
(2)	roller sets/styles	50	25	75	25
(3)	fullhead fingerwave/style	5	OR 5	5	OR 5
(4)	fullhead pincurl/style	5	OR 5	5	OR 5
(5)	blowdry/marcel style	50	25	75	25
(6)	blowdry/style with brush	5	OR 5	10	OR 10
(7)	thermal press & curl	3	OR 3	5	OR 5
(8)	artificial hair	2	OR 2	2	OR 2
(9)	haircuts	25	25	50	25
(10)	chemical reformation/permanent waving & relaxers	20	5	30	5
(11)	temporary color	5		5	
(12)	semi perm color	5	5	15	5
(13)	permanent color	10	5	15	5
(13)	permanent color	10	5	15	5
(14)	<u>hair lightening/highlighting</u>	<u>5</u>	<u>OR 5</u>	<u>10</u>	<u>OR 10</u>
<del>(14)</del> (15)	lash & brow tinting	2		4	
<del>(15)</del> (16)	manicure with arm & hand massage	15		15	
<del>(16)</del> (17)	pedicure with leg & foot massage	2		2	
<del>(17)</del> (18)	artificial nails (sets)	2	OR 2	2	2

(18)(19) facials with massage/makeup	5	10
(19)(20) hair removal	5	5

(b) Certification of these live model/mannequin performance completions shall be required along with the application for the examination.

(c) A live model may be substituted with a mannequin for any mannequin service.

Authority G.S. 88-23.

\*\*\*\*\*

CHAPTER 36 - BOARD OF NURSING

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

Proposed Effective Date: July 1, 2005

Public Hearing:

Date: May 17, 2005

Time: 1:00 p.m.

Location: NC Board of Nursing Office, 3724 National Drive, Suite 201, Raleigh, NC

Reason for Proposed Action: To further clarify the criteria that must be met when the licensed nurse delegates aspects of care to unlicensed personnel.

Procedure by which a person can object to the agency on a proposed rule: Persons may submit objections to this Rule by contacting Jean H. Stanley, APA Coordinator, NC Board of Nursing, P.O. Box 2129, Raleigh, NC 27602, fax (919) 781-9461 and email jeans@ncbon.com or polly@ncbon.com.

Written comments may be submitted to: Jean H. Stanley, APA Coordinator, NC Board of Nursing, PO Box 2129, Raleigh, NC 27602, phone 919-782-3211, ext. 252, fax 919-781-9461, or email jeans@ncbon.com.

Comment period ends: May 17, 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

21 NCAC 36 .0221 LICENSE REQUIRED

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

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

- (1) frequently recur in the daily care of a client or group of clients;
- (2) are performed according to an established sequence of steps;
- (3) involve little or no modification from one client-care situation to another;
- (4) may be performed with a predictable outcome; and
- (5) do not inherently involve ongoing assessment, interpretation, or decision-making which cannot be logically separated from the procedure(s) itself.

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

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

- (1) recognizing side effects;
- (2) recognizing toxic effects;
- (3) recognizing allergic reactions;
- (4) recognizing immediate desired effects;
- (5) recognizing unusual and unexpected effects;



- (6) recognizing changes in client's condition that contraindicates continued administration of the medication;
- (7) anticipating those effects which may rapidly endanger a client's life or well-being; and
- (8) making judgments and decisions concerning actions to take in the event such untoward effects occur; and ~~occur~~.
- (9) delegating to an appropriately qualified unlicensed person only those technical aspects of the treatment and pharmaceutical regimen

consistent with Paragraph (b) of this Rule and with 21 NCAC 36 .0410 and .0403.

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

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

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

*This Section includes the Register Notice citation to rules approved by the Rules Review Commission (RRC) at its meeting December 16, 2004, and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules are published below when the rules have been approved by RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register. The rules published in full text are identified by an \* in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

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

<b>APPROVED RULE CITATION</b>				<b>REGISTER CITATION TO THE NOTICE OF TEXT</b>
02	NCAC	09N	.0101*	19:05 NCR
02	NCAC	48A	.1701*	19:02 NCR
02	NCAC	48A	.1703*	19:02 NCR
02	NCAC	52B	.0208-.0209*	19:05 NCR
10A	NCAC	09	.0710*	n/a G.S. 150B-21.5(a)(2) – Eff. January 1, 2005
10A	NCAC	22G	.0102-.0104*	19:05 NCR
10A	NCAC	22G	.0105	19:05 NCR
10A	NCAC	22G	.0107-.0108*	19:05 NCR
10A	NCAC	22G	.0109-.0110	19:05 NCR
10A	NCAC	26B	.0207*	19:02 NCR
10A	NCAC	26B	.0303	19:02 NCR
10A	NCAC	41A	.0101	19:04 NCR
10A	NCAC	41A	.0105	19:05 NCR
10A	NCAC	41A	.0401	19:02 NCR
10A	NCAC	41H	.0701-.0704	19:05 NCR
10A	NCAC	41H	.1301*	19:05 NCR
12	NCAC	10B	.0204*	19:06 NCR
12	NCAC	10B	.0301*	19:06 NCR
12	NCAC	10B	.0405*	19:06 NCR
12	NCAC	10B	.0406	19:06 NCR
12	NCAC	10B	.0505*	19:06 NCR
12	NCAC	10B	.0703-.0704*	19:06 NCR
12	NCAC	10B	.0709*	19:06 NCR
12	NCAC	10B	.0713*	19:06 NCR
12	NCAC	10B	.0802*	19:06 NCR
12	NCAC	10B	.0903*	19:06 NCR
12	NCAC	10B	.0904	19:06 NCR
12	NCAC	10B	.0905*	19:06 NCR
12	NCAC	10B	.0911*	19:06 NCR
12	NCAC	10B	.0913*	19:06 NCR
12	NCAC	10B	.0914	19:06 NCR
12	NCAC	10B	.0915*	19:06 NCR
12	NCAC	10B	.0919*	19:06 NCR
13	NCAC	15	.0202*	19:03 NCR
15A	NCAC	11	.0104*	19:01 NCR
15A	NCAC	11	.0306	19:01 NCR
15A	NCAC	11	.0308	19:01 NCR
15A	NCAC	11	.0309-.0310*	19:01 NCR
15A	NCAC	11	.0510*	19:01 NCR
15A	NCAC	11	.0512*	19:01 NCR
15A	NCAC	11	.0523*	19:01 NCR
15A	NCAC	11	.0702*	19:01 NCR
15A	NCAC	11	.1302*	19:01 NCR
15A	NCAC	11	.1307	19:01 NCR
15A	NCAC	11	.1308*	19:01 NCR
15A	NCAC	11	.1311-.1312	19:01 NCR

15A	NCAC	11	.1316*	19:01 NCR
15A	NCAC	11	.1324	19:01 NCR
15A	NCAC	11	.1326*	19:01 NCR
15A	NCAC	11	.1327	19:01 NCR
15A	NCAC	11	.1614	19:01 NCR
15A	NCAC	11	.1618-.1619	19:01 NCR
15A	NCAC	11	.1620-.1621*	19:01 NCR
20	NCAC	02O	.0101-.0103	n/a G.S. 150B-21.5(b)(1) Eff. December 16, 2004
21	NCAC	20	.0106	19:06 NCR
21	NCAC	29	.0701*	19:06 NCR
21	NCAC	29	.0704	19:06 NCR
21	NCAC	29	.0801-.0805	19:06 NCR
21	NCAC	29	.0806*	19:06 NCR
21	NCAC	46	.1501	19:04 NCR
21	NCAC	46	.2705-.2706	19:04 NCR
21	NCAC	52	.0101	n/a G.S. 150B-21.5(a) Eff. December 16, 2004
21	NCAC	52	.0103	n/a G.S. 150B-21.5(a) Eff. December 16, 2004
21	NCAC	52	.0201	n/a G.S. 150B-21.5(a) Eff. December 16, 2004
21	NCAC	52	.0207	n/a G.S. 150B-21.5(a) Eff. December 16, 2004
21	NCAC	52	.0601	n/a G.S. 150B-21.5(a) Eff. December 16, 2004
21	NCAC	52	.0610	n/a G.S. 150B-21.5(a) Eff. December 16, 2004
21	NCAC	52	.0701	n/a G.S. 150B-21.5(a) Eff. December 16, 2004
21	NCAC	52	.1002	n/a G.S. 150B-21.5(a) Eff. December 16, 2004
25	NCAC	01L	.0304-.0305*	18:21 NCR

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

13	NCAC	07F	.0605*	19:03 NCR
13	NCAC	07F	.0607*	19:03 NCR

**TITLE 2 – DEPARTMENT OF AGRICULTURE  
AND CONSUMER SERVICES**

**02 NCAC 09N .0101 INFANT FORMULA STANDARD  
OF QUALITY**

- (a) Infant formula shall not be sold, held for sale or offered for sale after the "use by" date appearing on the label.
- (b) For the purpose of this Rule, "infant formula" shall have the same meaning as in the Federal Food Drug and Cosmetic Act at 21 United States Code, Section 321.

*History Note: Authority G.S. 106-128;  
Eff. January 1, 2005.*

**02 NCAC 48A .1701 DEFINITIONS**

The following definitions shall apply to this Section:

- (1) Administrator. The Plant Pest Administrator of the North Carolina Department of Agriculture and Consumer Services, Plant Industry Division;
- (2) Board. The North Carolina Board of Agriculture;
- (3) Certificate. A document issued by a specialist to allow the movement of noncontaminated regulated articles to any destination;
- (4) Class A. Any noxious weed on the Federal Noxious Weed List or any noxious weed that

- (5) is not native to the state, not currently known to occur in the state, and poses a threat to the state;
- Class B. Any noxious weed that is not native to the state, is present in fewer than 20 counties statewide, and poses a threat to the state;
- (6) Class C. Any noxious weed not meeting the definition of a Class A or Class B noxious weed for which the Commissioner has determined that eradication is not feasible;
- (7) Commissioner. The Commissioner of the North Carolina Department of Agriculture and Consumer Services or his authorized representative;
- (8) Compliance Agreement. A written agreement between a person engaged in growing, handling, or moving regulated articles, and the North Carolina Department of Agriculture and Consumer Services, Plant Industry Division;
- (9) Infestation. The presence of a noxious weed in any stage of development;
- (10) Noxious Weed. Any plant in any stage of development, including parasitic plants whose presence whether direct or indirect, is detrimental to crops or other desirable plants, livestock, land, or other property, or is injurious to the public health;

- |  |   |
|--|---|
| <p>(11) Limited Permit. A document issued by a specialist to allow the movement of noncertified regulated articles to a specified destination for special handling, utilization, or processing, or for treatment;</p> <p>(12) Regulated Article. Any noxious weed or any article described in this Section which is capable of carrying a noxious weed;</p> <p>(13) Regulated Area. Any state or territory or any portion thereof of the United States described in this Section which is infested with a noxious weed;</p> <p>(14) Scientific Permit. A document issued by the Administrator to authorize the movement of regulated articles to a specified destination for scientific purposes;</p> <p>(15) Specialist. Any authorized employee of the North Carolina Department of Agriculture and Consumer Services, Plant Industry Division, or any other person authorized by the Commissioner of Agriculture to enforce the provisions of this Section.</p> | <p>(7) The movement of Plumeless Thistle (<i>Carduus acanthoides</i> L.) or any regulated article infested with Plumeless Thistle from the following counties: Haywood, Jackson, Madison, Watauga;</p> <p>(8) The movement of Puncturevine (<i>Tribulus terrestris</i> L.) or any regulated article infested with Puncturevine from the following counties: Durham, New Hanover;</p> <p>(9) The movement of any <i>Lythrum</i> species not native to North Carolina or any regulated article infested with any nonnative <i>Lythrum</i> species from the following counties: Forsyth, Watauga;</p> <p>(10) The movement of Uruguay Waterprimrose [<i>Ludwigia hexapetala</i> (Hook &amp; Arn.) Zardini, Gu &amp; Raven] or any regulated article infested with Uruguay Waterprimrose from the following counties: Bladen, Brunswick, Columbus, Durham, Granville, Hyde, New Hanover, Orange, Rowan, Wake, Warren;</p> <p>(11) The movement of Yellow Fieldcress [<i>Rorippa sylvestris</i> (L.) Bess.] or any regulated article infested with Yellow Fieldcress from the following county: Orange;</p> <p>(12) The movement of Oriental Bittersweet (<i>Celastrus orbiculatus</i> Thunb.) or any regulated article infested with Oriental Bittersweet from the following counties: Alleghany, Ashe, Avery, Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, Mitchell, Swain, Transylvania, Watauga, Wilkes, Yancey;</p> <p>(13) The sale or distribution of any Class A or B noxious weed;</p> <p>(14) The sale or distribution of any Class C noxious weed outside a regulated area.</p> |
|--|---|

*History Note: Authority G.S. 106-420; Eff. December 1, 1991; Amended Eff. January 1, 2005.*

**02 NCAC 48A .1703 REGULATED AREAS**

(a) Except as permitted in 02 NCAC 48A .1705 and .1706, the following is prohibited:

- (1) The movement of Canada Thistle [*Cirsium arvense* (L.) Scop.] or any regulated article infested with Canada Thistle from the following counties: Ashe, Avery, Haywood, Mitchell, Northampton, Yancey;
- (2) The movement of Class A, B, or C noxious weeds or any regulated article infested with Class A, B, or C noxious weeds into North Carolina;
- (3) The movement of a Class A noxious weed or any regulated article infested with any Class A noxious weed is prohibited within the state;
- (4) The movement of Eurasian Watermilfoil (*Myriophyllum spicatum* L.) or any regulated article infested with Eurasian Watermilfoil from the following counties: Halifax, Northampton, Perquimans, Tyrrell, Warren;
- (5) The movement of Florida Betony (*Stachys floridana* Shuttlew.) or any regulated article infested with Florida Betony from the following counties: Bladen, Brunswick, Cumberland, Forsyth, Hoke, New Hanover, Onslow, Wake;
- (6) The movement of Musk Thistle (*Carduus nutans* L.) or any regulated article infested with Musk Thistle from the following counties: Buncombe, Cleveland, Chatham, Gaston, Henderson, Lincoln, Madison, Randolph, Rowan, Rutherford;

(b) Other regulated areas. The Commissioner may designate as a regulated area any state or portion of a state in which there is reasonable cause to believe that a noxious weed exists, and there is an immediate need to prevent its introduction, spread or dissemination in North Carolina.

*History Note: Authority G.S. 106-420; 106-421; Eff. December 1, 1991; Amended Eff. January 1, 2005; April 1, 2003; June 1, 1994; June 1, 1993.*

**02 NCAC 52B .0208 IMPORTATION REQUIREMENTS: GOATS**

(a) All goats entering the state except those consigned to a federal or state-inspected slaughtering establishment shall be accompanied by a health certificate from the state of origin. The health certificate shall state that the goats were clinically free of any infectious or communicable disease. The health certificate shall include a description of each animal, the age, sex, breed and color or marking shall be given. Goats over six months of age and sexually intact imported from out-of-state shall have a

negative brucellosis test within 30 days prior to import, and all imports over six months of age must have a negative tuberculosis test within 60 days prior to import unless they originate from a United States Department of Agriculture-certified and accredited herd or unless they are consigned to a slaughtering establishment under state or federal inspection.

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

*History Note: Authority G.S. 106-307.5; 106-396; Eff. April 1, 1984; Amended Eff. January 1, 2005; April 1, 2001.*

**02 NCAC 52B .0209 IMPORTATION REQUIREMENTS: SHEEP**

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

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

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

(d) Sheep consigned for the purpose of immediate slaughter to a livestock market licensed under G.S. 106, Article 35, or to a slaughtering establishment with state or federal inspection may be imported without a health certificate. A waybill or certificate marked for immediate slaughter must accompany such shipments.

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

(f) The brucellosis and tuberculosis testing requirements of this Rule shall not apply to sheep entering the state only for exhibition purposes from states that are United States Department of Agriculture-Tuberculosis Accredited-Free and Brucellosis Certified Free, when accompanied by an official

health certificate. Such animals shall remain in the state for exhibition purposes for no more than 30 days from the date of issuance of the health certificate.

*History Note: Authority G.S. 106-307.5; Eff. April 1, 1984; Amended Eff. January 1, 2005; April 1, 2001; May 1, 1992; December 1, 1989.*

**TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**10A NCAC 09 .0710 PRESERVICE REQUIREMENTS FOR LEAD TEACHERS, TEACHERS AND AIDES**

(a) If an individual already has a North Carolina Early Childhood Credential or its equivalent, none of the requirements of this Rule shall apply. If an individual does not have a North Carolina Early Childhood Credential or its equivalent, the requirements of this Rule shall be met.

(b) A lead teacher or a teacher shall be at least 18 years of age, have a high school diploma or its equivalent, and have at least one of the following:

- (1) One year of verifiable child care experience working in a child care center or two years of verifiable experience as a licensed family child care home operator; or
- (2) Successful completion of a two year high school program of Early Childhood Education in Family and Consumer Sciences Education; or
- (3) Twenty hours of training in child development, which could include the North Carolina Early Childhood Credential coursework, within the first six months of employment in addition to the number of annual inservice training hours required in Rule .0707 of this Section.

(c) An aide is a person who assists the lead teacher or the teacher in planning and implementing the daily program, and shall be at least 16 years old and literate.

(d) Individuals employed prior to July 1, 1998 are exempted from the requirements of this Rule, as long as they remain employed by the same operator.

*History Note: Authority G.S. 110-91(8); 143B-168.3; Eff. July 1, 1988; Amended Eff. January 1, 2005; October 29, 1998; April 1, 1997; October 1, 1991; November 1, 1989.*

**10A NCAC 22G .0102 RATE SETTING METHODS**

(a) A rate for nursing facility care shall be determined quarterly for each facility to be effective for dates of service for a three month period beginning the first day of each calendar quarter. Rates shall be derived from either desk or field audited cost reports for a base year period. For rates effective October 1, 2003, the FY01 cost reports shall be used as the base year period. Cost reports shall be filed and audited under provisions set forth in 10A NCAC 22G .0104.

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

(1) The direct care rate shall be that portion of the Medicaid daily rate that shall be attributable to:

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

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

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

(A) The per diem case-mix adjusted cost shall be determined by dividing the facility's case-mix adjusted base year cost by the facility's total base year inpatient days. This case-mix adjusted base year cost per diem shall be trended forward using the index factor set forth in 10A NCAC 22G .0102(e). A per diem neutralized case-mix adjusted cost shall be then calculated by dividing each facility's case-mix adjusted per diem cost by the facility cost report period case-mix index. The facility cost report period case-mix index shall be the resident-weighted average of quarterly facility-wide average case-mix indices, carried to four decimal places. The quarters used in this average shall be the quarters that most closely coincide with the facility's base year cost reporting period. Example: An October 1, 2000 – September 2001 cost report period would use the facility-wide average case-mix indices for quarters ending December 31, 2000, March 31, 2001, June 30, 2001, and September 30, 2001.

(B) The per diem non-case-mix adjusted cost shall be determined by dividing the facility's non-case-mix adjusted base year cost, excluding the Medicaid cost of direct ancillary

services, by the facility's total base year inpatient days plus the facility's Medicaid cost of direct ancillary services base year cost divided by the facility's total base year Medicaid resident days. This non-case-mix adjusted base year cost per diem shall be trended forward using the index factor set forth in 10A NCAC 22G .0102(e).

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

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

(E) For each nursing facility, the statewide direct care ceiling shall be apportioned between the per diem case-mix adjusted component and the per diem non-case-mix adjusted component using the facility-specific percentages determined in 10A NCAC 22G .0102(b)(2)(C).

(F) On a quarterly basis, each facility's direct care rate shall be adjusted to account for changes in its Medicaid average case-mix index. The facility's direct care rate shall be determined as the lesser of the facility's specific case-mix adjusted component of the statewide ceiling times the facility's Medicaid average case-mix index, plus each facility's specific non-case mix adjusted component of the statewide ceiling; or the facility's per diem neutralized case-mix adjusted cost times the Medicaid average case-mix index, plus the facility's per diem non-case-mix adjusted cost. If applicable an incentive allowance shall be included as provided below. Effective October 1, 2003, the incentive allowance shall be equal to 50% times the difference (if greater than zero) of the facility-specific case-mix component as set out above. The program shall be rebased using

full price-based methodology. The Division of Medical Assistance may negotiate direct rates that exceed the facility's specific direct care ceiling for ventilator dependent and head injury patients. Payment of such special direct care rates shall be made only after specific prior approval of the Division of Medicaid Assistance.

- (G) For rates effective October 1, 2003, the Medicaid average case-mix index calculated as of March 31, 2003 shall be used to adjust the case-mix adjusted component of the statewide direct care ceiling. For rates effective January 1, 2004 and thereafter, the prior quarters Medicaid average case-mix index shall be used to adjust the case-mix adjusted component of the statewide direct care ceiling. Example: January 1, 2004 rate shall use the Medicaid average case-mix index calculated as of September 30, 2003.
  - (H) The statewide direct care ceiling shall be adjusted annually using the index factor set forth in 10A NCAC 22G .0102(e). The facility's base year per diem neutralized case-mix adjusted cost plus the facility's base year per diem non-case-mix adjusted cost shall be adjusted annually using the index factor set forth in 10A NCAC 22G .0102(e).
- (3) The indirect rate shall be intended to cover the following costs of an efficiently and economically operated facility:
- (A) Administrative and General;
  - (B) Laundry and Linen;
  - (C) Housekeeping,
  - (D) Operation of Plant and Maintenance/Non Capital;
  - (E) Capital Lease; and
  - (F) Medical Cost of Indirect Ancillary Services.
- (4) Effective for dates of service beginning October 1, 2003, the indirect rate shall be standard for all nursing facilities. Each facility's per diem indirect cost shall be the sum of:
- (A) the facility's indirect base year cost, excluding the Medicaid cost of indirect ancillary services, divided by the facility's total base year inpatient days plus; and
  - (B) the facility's Medicaid cost of indirect ancillary services base year cost divided by the facility's total base year Medicaid resident days.

The base year per diem indirect cost, excluding property ownership and use and mortgage interest shall be trended forward using the index factor set forth in 10A NCAC 22G .0102(e) of this Section. Each facility's base year per diem indirect cost shall be arrayed from low to high and the Medicaid-day-weighted median cost shall be determined. The indirect rate shall be established at 100 percent of the Medicaid-day-weighted median cost. The indirect rate shall be adjusted annually by the index factor set forth in 10A NCAC 22G .0102(e).

- (c) Nursing facility assessments. An adjustment to the nursing facility payment rate calculated in accordance with 10A NCAC 22G .0102(b) shall be established, effective October 1, 2003, to reimburse Medicaid participating nursing facilities for the provider's assessment costs that shall be incurred for the care of North Carolina Medicaid residents. No adjustment shall be made for the provider's assessment costs that shall be incurred for the care of privately paying residents or others who shall be not Medicaid eligible.
- (d) Return on Equity. Effective October 1, 2003, the nursing facility payment rate calculated in accordance with 10A NCAC 22G .0102(b) shall be adjusted to include a return on equity capital add-on for those proprietary providers who received a FY01 return on equity capital payment. The return on equity capital add-on shall be equal to the facility's total FY01 return on equity capital payment divided by the facility's base year total Medicaid resident days.
- (e) Index factor. The index factor shall be based on the Skilled Nursing Facility Market Basket without Capital Index published by Global Insight using the most current quarterly publication available annually as of August 1. The index factor shall not exceed that approved by the North Carolina General Assembly. If necessary, the Division of Medical Assistance shall adjust the annual index factor or rates in order to prevent payment rates from exceeding upper payment limits established by Federal Regulations.
- (f) New Facilities and Transfer of Ownership of Existing Facilities
  - (1) New facilities shall be those entities whose beds have not previously been certified to participate or otherwise participated in the Medicaid program immediately prior to the operation of the new owner. A new facility's rate shall be determined as follows and shall continue to be reimbursed under this section until the incentive allowance percentage referenced in 10A NCAC 22G .0102(b)(2)(F) shall be equal to 100%:
    - (A) The direct care rate for new facilities shall be equal to the statewide Medicaid day-weighted average direct care rate that shall be calculated effective on the first day of each calendar quarter. After the second full calendar quarter of operation, the statewide Medicaid

day-weighted average direct care rate in effect for the facility shall be adjusted to reflect the facility's Medicaid acuity and the facility's direct care rate shall be calculated as the sum of 65 percent of the statewide Medicaid day-weighted average direct care rate multiplied by the ratio of the facility's Medicaid average case-mix index (numerator) to the statewide Medicaid day-weighted average Medicaid case-mix index (denominator) and the statewide Medicaid day-weighted average direct care rate times 35%.

- (B) The indirect rate for a new facility shall be equal to the standard indirect rate in effect at the time the facility shall be enrolled in the Medicaid Program. The indirect rate shall be adjusted annually by the index factor set forth in 10A NCAC 22G .0102(e).
  - (C) A new facility's rate shall include also the nursing assessment adjustment calculated in accordance with 10A NCAC 22G .0102(c).
- (2) Transfer of ownership of existing facilities. Transfer of ownership means, for reimbursement purposes, a change in the majority ownership that does not involve related organizations (as defined in Rule .0104 of this Section) including corporations, partnerships and limited liability companies. Majority ownership shall be defined as an individual or entity that owns more than 50 percent of the entity, which shall be the subject of the transaction. The following applies to the transfer of ownership of a nursing facility:
- (A) For any facility that transfers ownership, the new owner shall receive a per diem rate equal to the previous owner's per diem rate less any return on equity adjustment received by the previous owner, rate adjusted quarterly to account for changes in its Medicaid average case-mix index. The old provider's base year cost report shall become the new facility's base year cost report until the new owner has a cost report included in a base year rate setting.
  - (B) Regardless of changes in control or ownership for any facility certified for participation in the Medicaid program, the Division shall issue payments to the facility identified in the current Medicaid participation agreement. Regardless of changes in control of ownership for any facility

certified for participation in Medicaid, the Division shall recover from that entity liabilities, sanctions and penalties pertaining to the Medicaid program, regardless of when the services were rendered.

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

(h) Specialized Service Rates:

- (1) Head Injury Intensive Rehabilitation Services.
  - (A) A single all-inclusive prospective per diem rate combining both the direct and indirect cost components may be negotiated for nursing facilities that specialize in providing intensive rehabilitation services for head-injured patients. The rate may exceed the maximum rate applicable to other Nursing Facility services. A facility must specialize to the extent of staffing at least 50 percent of its Nursing Facility licensed beds for intensive head-injury rehabilitation services. The facility must also be accredited by the Commission for the Accreditation of Rehabilitation Facilities (CARF).
  - (B) A facility's initial rate shall be negotiated based on budget projections of revenues, allowable costs, patient days, staffing and wages, at a level no greater than the facility's specific projected cost, and subject to review by the Division of Medical Assistance upon the completion of an audited full year cost report. The negotiated rate shall not be less than the North Carolina statewide Medicaid day-weighted average direct care plus the indirect rate. The facility must provide a complete description of the medical program. Rates in subsequent years shall be determined by applying the index factor as set forth in 10A NCAC 22G .0102(e) average annual skilled nursing care adjustment factors to the rate in the previous



- year, unless either the provider or the State requests a renegotiation of the rate within 60 days of the rate notice.
- (C) Cost reports for this service must be filed in accordance with the rules in 10A NCAC 22G .0104, but there shall not be cost settlements for any differences between cost and payments. The negotiated rate shall be considered to provide payment for all financial considerations and shall not include return or equity adjustment as defined in 10A NCAC 22G .0102. The negotiated rate shall be paid to the facility for services provided to head injured patients only. The per diem payment rate for non-head injured patients shall be the rate calculated in accordance with 10A NCAC 22G .0102(b)-(e).
- (2) Ventilator Services.
- (A) Ventilator services approved for nursing facilities providing intensive services for ventilator dependent patients shall be reimbursed at higher direct rates as described in Subparagraph (b)(2)(A) of this Rule.
- (B) A facility's initial direct rate shall be negotiated based on budget projections of revenues, allowable costs, patient days, staffing and wages, at a level no greater than the facility's specific projected cost, and subject to review by the Division of Medical Assistance upon the completion of an audited full year cost report. The negotiated rate shall not be less than the North Carolina statewide Medicaid day-weighted average direct care plus the indirect rate. Rates in subsequent years shall be determined by applying the index factor as set forth in 10A NCAC 22G .0102(e) to the negotiated rate in the previous year, unless either the provider or the State requests a renegotiation of the rate within 60 days of the rate notice.
- (C) Cost reports for this service shall be filed in accordance with 10A NCAC 22G .0104 but there shall not be settlements for any difference between cost and payments.
- (D) A single all-inclusive prospective per diem rate combining both the direct and indirect cost components may be negotiated for nursing facilities that specialize in providing intensive services for ventilator-dependent

patients. The negotiated rate shall be considered to provide payment for all financial considerations and shall not include the return on equity adjustment as defined in Rule .0102. The negotiated rate shall be paid to the facility for services provided to ventilator patients only. The per diem payment rate for non-ventilator patients shall be the rate calculated in accordance with 10A NCAC 22G .0102(b) through (e).

(i) Religious Dietary Considerations.

- (1) A standard amount may be added to a nursing facility's rate for special dietary need for religious reasons.
- (2) Facilities must apply to receive this special payment consideration. In applying, facilities must document the reasons for special dietary consideration for religious reasons and must submit documentation for the increased dietary costs for religious reasons. Facilities must apply for this special benefit each time rates shall be determined from a new database. Fifty or more percent of the patients in total licensed beds must require religious dietary consideration in order for the facility to qualify for this special dietary rate add-on.
- (3) The special dietary add-on may not exceed more than 140% of the base year neutralized case-mix adjusted and non-case-mix adjusted Medicaid day-weighted median cost determined under 10A NCAC 22G .0102(b)(2)(D) and adjusted for inflation each year until a new database shall be used to determine rates.

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

*Eff. January 1, 1978;*

*Temporary Amendment Eff. October 1, 1984 for a Period of 120 Days to Expire on January 28, 1985;*

*Temporary Amendment Eff. October 1, 1991 for a Period of 180 Days to Expire on March 31, 1992;*

*Amended Eff. April 1, 1992;*

*Temporary Amendment Eff. July 1, 1992 for a Period of 180 Days to Expire on December 31, 1992;*

*Amended Eff. May 1, 1995; February 1, 1993; January 1, 1993;*

*Temporary Amendment Eff. January 22, 1998;*

*Amended Eff. April 1, 1999;*

*Temporary Amendment Eff. November 9, 2001;*

*Temporary Amendment Expired August 30, 2002;*

*Amended Eff. April 1, 2003;*

*Temporary Amendment Eff. August 3, 2004;*

*Amended Eff. January 1, 2005.*

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

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

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

- (1) bad debts;
- (2) advertising-except personnel want ads, and one line yellow page (indicating facility address);
- (3) life insurance (except for employee group plans);
- (4) interest paid to a related organization, as defined in Rule .0104 of this Section;
- (5) contributions, including political or church-related, charity and courtesy allowances;
- (6) prescription drugs and insulin (available to recipients under State Medicaid Drug Program);
- (7) vending machine expenses;
- (8) personal grooming other than haircuts, shampooing (basic hair care services) and nail trimming performed by either facility staff or barbers/beauticians. The facility may elect the means of service delivery. The costs of services beyond those provided by the nursing facility, are the responsibility of the patient.
- (9) state or federal corporate income taxes, plus any penalties and interest;
- (10) telephone, television, or radio for personal use of patient;
- (11) income taxes, plus any penalties and interest;
- (12) dental expenses-except for consultant fees as required by law;
- (13) farm equipment and expenses;
- (14) retainers, unless itemized services of equal value have been rendered;
- (15) physicians fees for other than medical directors or medical consultants as required by law;
- (16) country club dues;
- (17) sitter services or private duty nurses;
- (18) fines or penalties;
- (19) guest meals;
- (20) morgue boxes;
- (21) leave days-except therapeutic leave;
- (22) personal clothing;
- (23) ancillary costs that are billable to Medicare or other third party payors.

(c) For those non-allowable expenses which generate income, such as prescription drugs, vending machines, hair care (other than basic care), expense shall be identified as a non-reimbursable cost center, where determinable. If the provider cannot determine the actual amount of expense which is

to be identified, then the income which was generated must be offset in full to the appropriate cost center if the income reasonably covers the cost incurred. If income generated does not reasonably cover the cost incurred, an adjustment must be made to recognize a reasonable amount of non-reimbursable cost.

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

*History Note: Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C; Eff. January 1, 1978; Temporary Amendment Eff. October 1, 1984 for a Period of 120 Days to Expire on January 28, 1985; Amended Eff. January 4, 1993; October 1, 1991; November 1, 1988; January 28, 1985; Temporary Amendment Eff. August 3, 2004; Amended Eff. January 1, 2005.*

**10A NCAC 22G .0104 COST REPORTING: AUDITING**

(a) Each facility that receives payments from the North Carolina Medicaid Program must prepare and submit a an annual report of its costs and other financial information to include; the facility's original working trial balance, year end adjusting journal entries, and the facility's daily midnight census records for the cost reporting period. The report must include costs from the fiscal period beginning on October 1 and ending on September 30 and must be submitted to the state on or before the December 31 that immediately follows the September 30 year end. A new provider must submit a report for the period beginning with the date of certification and ending on September 30. Hospital based nursing facilities with a fiscal year ending other than September 30 and State operated facilities with a June fiscal year ending must file their cost reports within 150 days after their fiscal year ends. Facilities that fail to file their cost reports by the due date are subject to payment suspension until the reports are filed. The Division of Medical Assistance shall extend the deadline no more than 30 days for filing the report if, in its view, good cause exists for the delay. A good cause is an action that is uncontrollable by the provider.

(b) Cost report format. The cost report must be submitted on forms provided by the Division of Medical Assistance. The account structure for the report is based on the chart of accounts published by the American Healthcare Association in 1979 but amended or modified to the extent necessary to meet the requirements of this Subchapter. The Division of Medical Assistance shall make one copy of the cost report format with detailed instructions and guidance available to each facility (combination facilities receive only one) on or before September 1 of the reporting year for which the report is to be filed.

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

- (1) Costs must be reported in accordance with the specific provisions as set forth in this Rule.

- (2) Costs must be reported in conformance with the Medicare Provider Reimbursement Manual, HCFA 15.
  - (3) Costs must be reported in conformance with Generally Accepted Accounting Principles.
- (d) A provider may request clarification in writing from the state if there is uncertainty about the proper cost center classification of any particular expense item. Clarifications may be made prior to the beginning of each cost reporting period. In no case, however, shall any clarifications be applied retroactively.

- (1) Nursing Cost Center includes the cost of nursing staff, medical supplies, and related operating expenses needed to provide nursing care to patients, including medical records (including forms), the Medical Director and the Pharmacy Consultant. The amount of nursing time provided to each patient must be recorded in order to allocate nursing cost between reimbursable and non-reimbursable cost centers.
- (2) Dietary Cost Center includes the cost of staff, raw food, and supplies needed to prepare and deliver food to patients.
- (3) Laundry and Linen Cost Center includes the cost of staff, bed linens (replacement mattresses and related operating expenses needed to launder facility-provided items).
- (4) Housekeeping Cost Center includes the cost of staff and supplies needed to keep the facility clean.
- (5) Patient Activities Cost Center includes the cost of staff, supplies, and related operating expenses needed to provide activities for patients.
- (6) Social Services includes the cost of social workers and related operating expenses needed to provide necessary social services to patients.
- (7) Ancillary Cost Center includes the cost of all therapy services covered by the Medicaid program and billable medical supplies. Providers must bill Medicare Part B for those ancillary services covered under the Medicare Part B program. Ancillary cost centers include: Radiology, Laboratory, Physical Therapy, Occupational Therapy, Speech Therapy, Oxygen Therapy, Intravenous Fluids, Billable Medical Supplies, Parenteral/Enteral Therapy and life sustaining equipment, such as oxygen concentrators, respirators, and ventilators. Effective October 1, 1996, air fluidized beds (e.g. Clinitron beds), low air loss mattresses or beds and alternating pressure mattresses may be recorded in the life sustaining equipment cost center. This program is applicable to lease or depreciation expense incurred on or after October 1, 1996 regardless of when the equipment was initially

leased or acquired. Effective October 1, 1994, a separate ancillary cost center shall be established to include costs associated with medically related transportation for facility residents. Medically related transportation costs include the costs of vehicles leased or owned by the facility, payroll costs associated with transporting residents and payments to third parties for providing these services.

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

(9) Capital / Lease:

(A) This cost center includes all allowable costs related to the use of the physical assets including building, fixed equipment and movable equipment, that are required to deliver patient care, except for automobiles and the special equipment, as specified in Subparagraphs (d)(1) or (d)(7) of this Rule. Except for automobiles and the special equipment noted in Subparagraphs (d)(1) and (d)(7), it includes the lease expense for all physical assets; depreciation of assets utilizing the straight line method, per AHA guidelines; and interest expense of asset related liabilities, (e.g. mortgage expense).

(B) In establishing the allowable cost for depreciation and for interest on capital indebtedness, with respect to an asset which has undergone a change of ownership, the valuation of the asset shall be the lesser of allowable acquisition cost less accumulated depreciation to the first owner of record on or after July 18, 1984 who received Medicaid payments for said asset or the acquisition cost to the new owner. Payment of rent by the Medicaid enrolled provider to the lessor of the facility shall constitute Medicaid payments under this plan. Depreciation recapture shall not be performed at sale. The method for

- establishing the allowable related capital indebtedness shall be as follows. The allowable asset value shall be divided by the actual acquisition cost times the value of any related capital indebtedness. The result shall be the liability amount upon which interest may be recorded at the rate set forth in the debt instrument or such lower rate as the state may prove is reasonable.
- (10) Operation of Plant and Maintenance Cost / Non-Capital Cost Center includes all costs necessary to operate or maintain the functionality and appearance of the plant. These include: building and equipment, automobile depreciation and lease expense, property taxes and property insurance.
  - (11) Equipment Expense. Equipment is defined as an item with a useful life of more than two years and a value greater than five thousand dollars (\$5000.00).
  - (12) Training Expense. Training expense for an employee shall be identified in the same cost center as the employee's salary expense.
  - (13) The costs of training nurse aides in a competency and evaluation program approved by the Division of Facility Services, as set out in 42 CFR 483.151, 483.152 and 483.154, must be separately identified on the cost report and may include the cost of purchasing programs and equipment that have been approved by the State for training or testing. These costs shall be cost-settled during the desk or field audit and shall not be included in the direct care and indirect cost centers. A copy of the Code of Federal Regulations (CFR) may be obtained by contacting the Government Printing Office, Superintendent of Documents, Post Office Box 37194, Pittsburgh, Pennsylvania 15250-7954 or they may be accessed online at [www.gpoaccess.gov/cfr/retrieve/html](http://www.gpoaccess.gov/cfr/retrieve/html).
  - (14) Home Office Costs. Home office costs are generally charged to the Administrative and General Cost Centers. However, personnel costs which are direct patient care oriented may be allocated to "direct" patient care cost centers if time records are maintained to document the performance of direct patient care services. No home office overhead may be so allocated. The basis of this allocation among facilities participating in the North Carolina Medicaid program may be:
    - (A) specific time records of work performed at each facility, or
    - (B) patient days in each facility to which the costs apply relative to the total
  - (15) Management Fees. Management fees are charged to the Administrative and General Cost Center. However, a portion of a management fee may be allocated to a direct patient care cost center if time records are maintained to document the performance of direct patient care services. The amount so allocated may be equal only to the salary and fringe benefits of persons who are performing direct patient care services while employed by the management company. Records adequate to support these costs must be made available to staff of the Division of Medical Assistance. The basis of this allocation among facilities participating in the North Carolina Medicaid program may be:
    - (A) specific time records of work performed at each facility, or
    - (B) patient days in each facility to which the costs apply relative to the total patient days in all the facilities to which the costs apply.
  - (16) Related Organization Costs. A nursing facility shall demonstrate by convincing evidence to the satisfaction of the Division of Medical Assistance that the costs are reasonable. Reasonable costs of related organizations shall be identified in accordance with direct and indirect cost center categories as follows:
    - (A) Direct Cost:
      - (i) Compensation of direct care staff such as nursing personnel (aides, orderlies, nurses), food service workers, housekeeping staff and other personnel who would normally be accounted for in a direct cost center.
      - (ii) Supplies and services that would normally be accounted for in a direct cost center.
      - (iii) Capital, rental, maintenance, supplies/repairs and utility costs (gas, water, fuel, electricity) for facilities that are not typically a part of a nursing facility. These facilities include such items as warehouses, vehicles for delivery and offices which are totally dedicated or exceed the number, size, or complexity required for a normal nursing facility, its

- home office, or management company.
  - (iv) Compensation of all administrative staff who perform no duties which are related to the nursing facility or its home office and who are neither officers nor owners of the nursing facilities or its home office.
- (B) Indirect Cost:
  - (i) Compensation of indirect staff such as housekeeping, laundry and linen, maintenance, and other personnel who would normally be accounted for in the indirect cost center.
  - (ii) Capital, rental, maintenance, supplies/repairs, and utility costs which are normally a part of a nursing facility. This would include, for example, kitchen and laundry facilities.
  - (iii) Except for salary and fringe benefits of Personnel, Accounting and Data Processing staff, home office costs which are allocated by methods approved by the Division of Medical Assistance are direct costs when the work performed is specific to the related organization that provides a direct care service or product to the provider. In determining if an allocation method is appropriate, a case-by-case review shall be made based on the preponderance of evidence. A proposed allocation method shall be denied if the review supports a determination that the associated cost either exceeds the cost of comparable products or services that could be purchased elsewhere or was for services that were not related to direct patient care or services not covered by the North Carolina Medical Assistance program.
  - (iv) Compensation of all administrative staff who
- (v) perform any duties for the nursing facility or its home office. All compensation of all officers and owners of the nursing facility or its home office, or parent corporation.

A related organization must file a Medicaid Cost Statement (DMA-4083) identifying its costs, adjustments to costs, allocation of costs, equity capital, adjustments to equity capital, and allocations of equity capital along with the nursing facilities cost report. A home office, or parent company, shall be recognized as a related organization. Auditable records to support these costs must be made available to staff of the Division of Medical Assistance and its designated contract auditors. Undocumented costs shall be disallowed. A nursing facility shall demonstrate by convincing evidence to the satisfaction of the Division of Medical Assistance that the criteria in the Medicare Provider Reimbursement Manual, Section 1010, have been met in order to be recognized as an exception to the related organization principle. When a related organization is recognized as an exception; reasonable charges by the related organization to the nursing facility are recognized as allowable costs; receivable/payables from/to the nursing facility and related organization recognized as an exception are not adjusted from the nursing facility's balance sheet in computing equity capital.

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

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

*History Note: Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447, Subpart C; Eff. January 1, 1978; Amended Eff. March 22, 1978; Emergency Amendment [(a), (h)] Eff. April 1, 1978 for a period of 120 days to expire on July 30, 1978; Emergency Amendment [(a), (h)] Expired Eff. July 30, 1978; Temporary Amendment Eff. October 1, 1984 for a period of 120 days to expire on January 28, 1985; Amended Eff. August 1, 1998; June 1, 1995; January 4, 1993; October 1, 1991; December 1, 1988; Temporary Amendment Eff. August 3, 2004; Amended Eff. January 1, 2005.*

**10A NCAC 22G .0107 PAYMENT ASSURANCE**

(a) The state shall pay each provider of nursing care services, who furnishes the services in accordance with the requirements of the rules in 10A NCAC 22G and the participation agreement, the amount determined under the plan. In addition, Nursing Facilities must be enrolled in the Title XVIII Program. However, State-operated nursing facilities are not required to be enrolled in the Medicare program.

(b) The payment methods and standards set forth in this Rule are designed to enlist the participation of any provider who operates a facility both economically and efficiently. Participation in the program shall be limited to providers of service who accept, as payment in full, the amounts paid in accordance with the rules in 10A NCAC 22G. This reimbursement plan is effective upon approval of the State Plan for Medical Assistance.

(c) In all circumstances involving third party payment, Medicaid is the payor of last resort. No payment shall be made for a Medicaid recipient who is also eligible for Medicare, Part A, for the first 20 days of care rendered to skilled nursing patients. Medicaid payments for co-insurance for such patients shall be made for the subsequent 21st through the 100th day of care. The Division of Medical Assistance shall pay an amount for each day of Medicare Part A inpatient co-insurance, the total of which shall equal the facility's Medicaid per diem rate less any Medicare Part A payment, but no more than the Medicare coinsurance amount. In the case of ancillary services, providers shall:

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

- (4) properly bill Medicare or other third-party payors or have disallowance of any related cost claimed as Medicaid cost.
- (d) The state may withhold payments to providers under the following circumstances:
  - (1) Upon determination of any sum due the Medicaid Program or upon instruction from a legally authorized agent of the State or Federal Government the state may withhold sums to meet the obligations identified.
  - (2) The state may arrange repayment schedules within the limits set forth in federal regulations in lieu of withholding funds.
  - (3) The state may charge interest on overpayments from the date that the overpayment occurred.
  - (4) The state may withhold up to 20 percent per month of a provider's payment for failure to file a timely cost report and associated accounting records. These funds shall be released to the provider after a cost report is acceptably filed. The provider shall experience delayed payment while the check is routed to the state and split for the amount withheld.

*History Note: Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; Section 95 of Chapter 689, 1991 Session Laws; 42 C.F.R. 447, Subpart C; Temporary Rule Eff. October 1, 1984 for a Period of 120 Days to Expire on January 28, 1985; Eff. January 28, 1985; Amended Eff. December 1, 1988; Temporary Amendment Eff. August 1, 1991 for a Period of 180 Days to Expire on January 31, 1992; Amended Eff. February 1, 1992; October 1, 1991; Temporary Amendment Eff. August 3, 2004; Amended Eff. January 1, 2005.*

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

(a) A NC Division of Facility Services certified State-operated nursing facility shall be reimbursed for the reasonable costs that are necessary to efficiently meet the needs of its patients and to comply with federal and state laws and regulations. The costs shall be determined in accordance with Rules .0103 and .0104 of this Section, except that annual cost reports shall be required for the fiscal year beginning on July 1 and ending on the following June 30 and must be submitted to the Division of Medical Assistance within 150 days after their fiscal year end. Payments shall be suspended if reports are not filed. The Division of Medical Assistance shall extend the deadline for filing the report if the Division determines good cause. "Good cause" is an action uncontrollable by the provider. The Medicare principles for the reimbursement of skilled nursing facilities shall be utilized for the cost principles that are not specifically addressed in this Section.

(b) A per diem rate based on the providers estimated annual cost divided by patient days shall be used to make interim payments. A desk audit and a tentative settlement shall be performed on

each annual cost report to determine the amount of Medicaid reasonable cost and the amount of interim payments received by the provider.

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

*History Note: Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C; Eff. January 1, 1992; Temporary Amendment Eff. August 3, 2004; Amended Eff. January 1, 2005.*

**10A NCAC 26B .0207 DOCUMENTATION OF RELEASE**

Whenever confidential information is released with consent, a delegated employee shall ensure that the release is placed in the client record.

*History Note: Authority G.S. 122C-52; 122C-53; 131E-67; 143B-147(a)(6); Eff. July 1, 1979; Amended Eff. January 1, 2005; February 1, 1986.*

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

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

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

*History Note: Authority G.S. 130A-92(a)(7); Eff. October 1, 1977; Readopted Eff. November 15, 1977; Amended Eff. January 1, 1984; Transferred and Recodified from 10 NCAC 7G .1301 Eff. April 4, 1990; Amended Eff. January 1, 2005; May 1, 1991.*

**TITLE 12 – DEPARTMENT OF JUSTICE**

**12 NCAC 10B .0204 SUSPENSION: REVOCATION: OR DENIAL OF CERTIFICATION**

(a) The Commission shall revoke or deny the certification of a justice officer when the Commission finds that the applicant for

certification or the certified officer has committed or been convicted of:

- (1) a felony; or
- (2) a crime for which the authorized punishment could have been imprisonment for more than two years.

(b) The Commission shall revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer:

- (1) has not enrolled in and satisfactorily completed the required basic training course in its entirety within a one year time period as specified by the rules in this Subchapter; or
- (2) fails to meet or maintain any of the employment or certification standards required by 12 NCAC 10B .0300; or
- (3) fails to satisfactorily complete the in-service training requirements as presented in 12 NCAC 10B .2000 and .2100; or
- (4) has refused to submit to the drug screen as required in 12 NCAC 10B .0306(a)(6) or .0410(a) or in connection with an application for or certification as a justice officer or a criminal justice officer as defined in 12 NCAC 09A .0103(6); or
- (5) has produced a positive result on any drug screen reported to the Commission as specified in 12 NCAC 10B .0410 or reported to any commission, agency, or board established to certify, pursuant to said commission, agency, or boards' standards, a person as a justice officer or a criminal justice officer as defined in 12 NCAC 09A .0103(6), unless the positive result is due to a medically indicated cause.

(c) The Commission may revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or certified justice officer:

- (1) has knowingly made a material misrepresentation of any information required for certification or accreditation from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission. This Rule shall also apply to obtaining or attempting to obtain in-service firearms requalification as required by 12 NCAC 10B .2000 and .2100; or
- (2) has knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission. This Rule shall also apply to obtaining or attempting to obtain in-service firearms requalification as required by 12 NCAC 10B .2000 and .2100; or
- (3) has knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever,

aided another in obtaining or attempting to obtain credit, training, or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission. This Rule shall also apply to obtaining or attempting to obtain in-service firearms requalification as required by 12 NCAC 10B .2000 and .2100; or

- (4) has been removed from office by decree of the Superior Court in accordance with the provisions of G.S. 128-16 or has been removed from office by sentence of the court in accord with the provisions of G.S. 14-230; or
- (5) has been denied certification or had such certification suspended or revoked by the North Carolina Criminal Justice Education and Training Standards Commission, or a similar North Carolina, out-of-state or federal approving, certifying or licensing agency.

(d) The Commission may revoke, suspend or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of:

- (1) a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor and which occurred after the date of initial certification; or
- (2) a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor within the five-year period prior to the date of appointment; or
- (3) four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(b) as Class B misdemeanors regardless of the date of commission or conviction; or
- (4) four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(a) as a Class A misdemeanor, each of which occurred after the date of initial certification; or
- (5) four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(a) as a Class A misdemeanor except the applicant shall be certified if the last conviction or commission occurred more than two years prior to the date of appointment; or
- (6) any combination of four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(a) as a Class A misdemeanor or defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor regardless of the date of commission or conviction.

(e) Without limiting the application of G.S. 17E, a person who has had his certification suspended or revoked may not exercise the authority or perform the duties of a justice officer during the period of suspension or revocation.

(f) Without limiting the application of G.S. 17E, a person who has been denied certification may not be employed or appointed

as a justice officer or exercise the authority or perform the duties of a justice officer.

*History Note: Authority G.S. 17E-7; Eff. January 1, 1990; Amended Eff. July 1, 1990; Recodified from 12 NCAC 10B .0204 Eff. January 1, 1991; Amended Eff. April 1, 1991; January 1, 1991; Recodified from 12 NCAC 10B .0207 Eff. January 1, 1992; Amended Eff. January 1, 2005; August 1, 1998; January 1, 1996; January 1, 1995; January 1, 1994; January 1, 1993.*

**12 NCAC 10B .0301 MINIMUM STANDARDS FOR JUSTICE OFFICERS**

(a) Every Justice Officer employed or certified in North Carolina shall:

- (1) be a citizen of the United States;
- (2) be at least 21 years of age;
- (3) be a high school graduate, or the equivalent (GED);
- (4) have been fingerprinted by the employing agency;
- (5) have had a medical examination by a licensed physician;
- (6) have produced a negative result on a drug screen administered according to the following specifications:
  - (A) the drug screen shall be a urine test consisting of an initial screening test using an immunoassay method and a confirmatory test on an initial positive result using a gas chromatography/mass spectrometry (GC/MS) or other reliable initial and confirmatory tests as may, from time to time, be authorized or mandated by the Department of Health and Human Services for Federal Workplace Drug Testing Programs; and
  - (B) a chain of custody shall be maintained on the specimen from collection to the eventual discarding of the specimen; and
  - (C) the drugs whose use shall be tested for shall include at least cannabis, cocaine, phencyclidine (PCP), opiates and amphetamines or their metabolites; and
  - (D) the test threshold values established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs are hereby incorporated by reference, and shall automatically include any later amendments and editions of the referenced materials. Copies of this information may be obtained from the National Institute on Drug Abuse,



- 5600 Fisher Lane, Rockville, Maryland 20857 at no cost at the time of adoption of this Rule; and
- (E) the test conducted shall be not more than 60 days old, calculated from the time when the laboratory reports the results to the date of employment; and
  - (F) the laboratory conducting the test must be certified for federal workplace drug testing programs, and must adhere to applicable federal rules, regulations and guidelines pertaining to the handling, testing, storage and preservation of samples, except that individual agencies may specify other drugs to be tested for in addition to those drugs set out in Part (C) of this Subparagraph; and
  - (G) every agency head shall make arrangements for the services of a medical review officer (MRO) for the purpose of review of drug tests reported by the laboratory and such officer shall be a licensed physician;
- (7) within five working days notify the Standards Division and the appointing department head in writing of all criminal offenses with which the officer is charged and all Domestic Violence Orders (50B) which are issued by a judicial official and which provide an opportunity for both parties to be present; and shall also give notification, in writing, to the Standards Division and the appointing department head following the adjudication of these criminal charges and Domestic Violence Orders (50B). This shall include all criminal offenses except minor traffic offenses and shall specifically include any offense of Driving Under The Influence (DUI) or Driving While Impaired (DWI). A minor traffic offense is defined, for purposes of this Subparagraph, as an offense where the maximum punishment allowable is 60 days or less. Other offenses under G.S. 20 (Motor Vehicles) or similar laws of other jurisdictions which shall be reported to the Division expressly include G.S. 20-139 (persons under the influence of drugs), G.S. 20-28(b) (driving while license revoked or permanently suspended) and G.S. 20-166 (duty to stop in event of accident). The initial notification required must specify the nature of the offense, the date of offense, and the arresting agency. The notifications of adjudication required must specify the nature of the offense, the court in which the case was handled and the date of disposition, and must include a certified copy of the final disposition from the Clerk of Court

- in the county of adjudication. The notifications of adjudication must be received by the Standards Division within 30 days of the date the case was disposed of in court. Officers required to notify the Standards Division under this Subparagraph shall also make the same notification to their employing or appointing department head within 20 days of the date the case was disposed of in court. The department head, provided he has knowledge of the officer's charge(s) and Domestic Violence Orders (50B) shall also notify the Division within 30 days of the date the case or order was disposed of in court. Receipt by the Standards Division of timely notification of the initial offenses charged and of adjudication of those offenses, from either the officer or the department head, is sufficient notice for compliance with this Subparagraph;
- (8) be of good moral as defined in: *In re Willis*, 299 N.C. 1, 215 S.E.2d 771 appeal dismissed 423 U.S. 976 (1975); *State v. Harris*, 216 N.C. 746, 6 S.E.2d 854 (1940); *In re Legg*, 325 N.C. 658, 386 S.E.2d 174 (1989); *In re Applicants for License*, 143 N.C. 1, 55 S.E. 635 (1906); *In re Dillingham*, 188 N.C. 162, 124 S.E. 130 (1924); *State v. Benbow*, 309 N.C. 538, 308 S.E.2d 647 (1983); and their progeny;
  - (9) have a background investigation conducted by the employing agency, to include a personal interview prior to employment;
  - (10) not have committed or been convicted of a crime or crimes as specified in 12 NCAC 10B .0307.
- (b) The requirements of this Rule shall apply to all applications for certification and shall also be applicable at all times during which the justice officer is certified by the Commission.

*History Note: Authority G.S. 17E-7; 95-230: 95-231: 95-232: 95-233: 95-234: 95-235; Eff. January 1, 1989; Amended Eff. January 1, 2005; August 1, 2002; January 1, 1996; January 1, 1994; January 1, January 1, 1993; January 1, 1992; July 1, 1990; January 1, 1990.*

**12 NCAC 10B .0405 REPORT OF SEPARATION**

- (a) An agency separating a person from employment or appointment as a justice officer shall, not later than 10 days after separation, forward to the Division a completed Report of Separation (F-5).
- (b) Although not presently required by these Rules, it is recommended by the Commission that the employing agency cancel the oath of office of a justice officer who has separated.
- (c) The employing agency will notify the justice officer of the effective date of separation as reported to the Division, and provide documentation of such notification at the time Report of Separation (Form F-5) is submitted to the Division. Where no such documentation is provided, the Division will mail a copy of

the Report of Separation (Form F-5) to the justice officer's last know address.

*History Note: Authority G.S. 17E-4; Eff. January 1, 1989; Amended Eff. January 1, 2005; January 1, 1996; January 1, 1992.*

**12 NCAC 10B .0505 EVALUATION FOR TRAINING WAIVER**

The Division staff shall evaluate each deputy's training and experience to determine if equivalent training has been satisfactorily completed as specified in 12 NCAC 10B .0504(a). The following rules shall be used by Division staff in evaluating an applicant's training and experience to determine eligibility for a waiver of training.

- (1) Persons who separated from a sworn law enforcement position during their probationary period after having completed a commission-certified Basic Law Enforcement Training Course and who have been separated from a sworn law enforcement position for one year or less shall serve the remainder of the initial probationary period in accordance with G.S. 17E-7(b), but need not complete an additional training program.
- (2) Persons who separated from a sworn law enforcement position during their probationary period without having completed Basic Law Enforcement Training, or whose certification was suspended pursuant to 12 NCAC 10B .0204(b)(1), and who have remained separated or suspended for over one year shall complete a commission-certified Basic Law Enforcement Training Course in its entirety and pass the State Comprehensive Examination, and shall be allowed a 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).
- (3) Persons transferring to a Sheriff's Office from another law enforcement agency who held certification and who have previously completed a commission-certified Basic Law Enforcement Training Course beginning on or after October 1, 1984, and continuing to July 1, 2000 and who have been separated from a sworn law enforcement position for no more than one year or who have had no break in service shall complete the following enumerated topics of a commission-certified Basic Law Enforcement Training Course and pass that portion of the State Comprehensive Examination which deals with those subjects within 12 months of the date of appointment as defined in 12 NCAC 10B .0103(1).
  - (a) Civil Process 24 hours
  - (b) Sheriffs' Responsibilities: Detention Duties 4 hours

- (c) Sheriffs' Responsibilities: Court Duties 6 hours
- UNIT TOTAL 34 hours
- (4) Persons who have training and experience as a military law enforcement officer and are appointed as a deputy sheriff in North Carolina shall complete a commission-certified Basic Law Enforcement Training Course in its entirety regardless of previous military training and experience and pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).
- (5) Persons transferring to a sheriff's office from another law enforcement agency who have previously completed a commission-certified Basic Law Enforcement Training Course beginning on or after January 1, 1996 and continuing to July 1, 1997, and who did not complete the Commission's Driver Training curriculum, and who have been separated from a sworn law enforcement position for no more than one year or who have had no break in service shall complete the following enumerated topics of a commission-certified Basic Law Enforcement Training Course within 12 months of the date of appointment as defined in 12 NCAC 10B .0103(1): Law Enforcement Driver Training 40 hours
- (6) North Carolina applicants shall:
  - (a) have a minimum of two years full-time sworn law enforcement experience which occurred prior to their application;
  - (b) have had a break in service exceeding one year;
  - (c) have previously received General or Grandfather certification as a sworn law enforcement officer by either the Commission or the North Carolina Criminal Justice Education and Training Standards Commission, and such certification has not been denied, revoked or suspended by either Commission; and
  - (d) have held general powers of arrest.
- (7) Out-of-state transferees shall:
  - (a) have a minimum of two years full-time sworn law enforcement experience which occurred prior to their application;
  - (b) have held certification in good standing as a sworn law enforcement officer from the appropriate Peace Officer's Standards and Training entity in the transferee's respective state;
  - (c) have had general powers of arrest; and

- (d) submit documentation verifying their qualified status.
- (8) Federal Transferees shall:
  - (a) have a minimum of two years full-time sworn law enforcement experience;
  - (b) have held certification or commissioning as a sworn law enforcement officer from the appropriate federal entity authorized to issue such sworn law enforcement officers certification or commission;
  - (c) have held general powers of arrest; and
  - (d) submit documentation verifying their qualified status.
- (9) North Carolina applicants; qualified out-of-state transferees; and qualified federal transferees shall be allowed to select one of the following two options for gaining North Carolina certification as a deputy sheriff:
  - (a) Undertake and successfully complete Basic Law Enforcement Training in its entirety during a one year probationary period and successfully pass the State Comprehensive Examination;
  - (b) Pass the following entry criteria:
    - (i) Challenge the Basic Law Enforcement Training Comprehensive State Examination to be delivered at the end of an ongoing Basic Law Enforcement Training Course and successfully pass each unit examination of the comprehensive examination with a minimum score of 70%. Any applicant failing to pass more than two unit examinations shall complete the Basic Law Enforcement Training Course in its entirety. Any applicant failing one or two unit examinations shall enroll in each topic area which comprises that unit taught in a subsequent BLET course and submit to the unit examination at the end of the course and pass that unit examination;
    - (ii) Each applicant shall demonstrate proficiency in the following skills related activities to the satisfaction of an appropriate instructor certified by the North Carolina Criminal Justice Education and Training Standards Commission. Successful completion of the skills related activities shall be documented on a Commission approved form by the certified instructor;
      - (A) First Responder;
      - (B) Firearms;
      - (C) Law Enforcement Driver Training;
      - (D) Physical Fitness; and
      - (E) Subject Control Arrest Techniques.
  - (iii) Any applicant failing to pass a unit examination after remediation as referenced in Rule 12 NCAC 10B .0505(9)(b)(i) shall be required to complete Basic Law Enforcement Training in its entirety; and
  - (iv) All criteria referenced in 12 NCAC 10B .0505(9)(b)(i) and (ii) must be successfully completed within the one-year probationary period.
- (10) Persons transferring to a sheriff's office from another law enforcement agency who held certification and who have previously been granted a training waiver by the North Carolina Criminal Justice Commission and who have been separated from a sworn law enforcement position for no more than one year or who had no break in service shall not be required to complete the Basic Law Enforcement Training course, but shall have the waiver honored by this Commission.
- (11) Persons previously holding Grandfather law enforcement certification in accordance with G.S. 17C-10(a) or G.S. 17E-7(a) who have been separated from a sworn law enforcement position for less than one year or have had no break in service shall not be required to complete a commission-certified Basic Law Enforcement Training Course.

*History Note: Authority G.S. 17E-4; 17E-7; Eff. January 1, 1989; Amended Eff. January 1, 2005; August 1, 2002; August 1, 2000; August 1, 1998; February 1, 1998; January 1, 1996; January 1, 1994; January 1, 1993; January 1, 1992.*

**12 NCAC 10B .0703 ADMINISTRATION OF DETENTION OFFICER CERTIFICATION COURSE**

(a) The executive officer or officers of the institution or agency sponsoring a Detention Officer Certification Course shall have primary responsibility for implementation of the rules in this Section and for administration of the school.

(b) The executive officers shall designate a compensated staff member who may apply to the Commission to be the school director. No more than two school directors shall be designated at each accredited institution/agency to deliver a Detention Officer Certification Course. The school director shall have administrative responsibility for planning scheduling, presenting, coordinating, reporting, and generally managing each sponsored detention officer certification course and shall be readily available at all times during course delivery as specified in 12 NCAC 10B .0704(b).

(c) The executive officers of the institution or agency sponsoring the Detention Officer Certification Course shall:

- (1) acquire and allocate sufficient financial resources to provide commission-certified instructors and to meet other necessary program expenses;
- (2) provide adequate secretarial, clerical, and other supportive staff assistance as required by the school director;
- (3) provide or make available suitable facilities, equipment, materials, and supplies for comprehensive and qualitative course delivery, as required in the "Detention Officer Certification Course Management Guide" and specifically including the following:
  - (A) a comfortable, well-lighted and ventilated classroom with a seating capacity sufficient to accommodate all attending trainees;
  - (B) audio-visual equipment and other instructional devices and aids necessary and beneficial to the delivery of effective training;
  - (C) a library for trainees' use covering the subject matter areas relevant to the training course, maintained in current status and having sufficient copies for convenient trainee access; and
  - (D) an area designated for instruction of subject control techniques which enables the safe execution of the basic detention officer subject control techniques topic area, with the following specifications:
    - (i) 30 square feet of floor space per student during the practical exercise portion of this topic area and while testing trainees' proficiency in performing the required maneuvers;
    - (ii) one instructor for every 10 students during the practical exercise portion of this topic area and while testing

trainees' proficiency in performing the required maneuvers;

- (iii) restrooms and drinking water within 100 yards of the training site; and
- (iv) telephone or radio communication immediately available on site.

(E) an area designated for use as a jail cell for performing the practical exercises in the topic area entitled "Contraband Searches". If a county jail cell is unavailable, a simulated jail cell is acceptable provided it is built to the same specifications required by the Department of Human Resources with regards to size;

(F) an area designated for fire emergencies instruction which enables the safe execution of the lesson plan as follows:

- (i) a well-ventilated, open area which allows for the setting and putting out of a fire;
- (ii) restrooms and drinking water within 100 yards of the training site;
- (iii) telephone or radio communication immediately available on site; and
- (iv) one instructor for every 10 students during the practical exercise portion of this training.

(G) an area designated for physical fitness for detention officer trainees to include:

- (i) an area for running, weight lifting and other exercises performed during the physical fitness topic area which provides a minimum of 20 square feet per trainee during the performance of the exercises required in the physical fitness topic area;
- (ii) restrooms and drinking water within 100 yards of the training site;
- (iii) telephone or radio communication immediately available on site;
- (iv) shower facilities, if physical fitness is performed prior to classroom training; and
- (v) one instructor for every 10 students during the physical

- (vi) assessment portion of this block of instruction; sufficient instructors as needed to maintain visual contact with students while performing any physical exercise.
- (H) an area designated for instruction in first aid and CPR techniques which provides a minimum of 20 square feet per trainee during the practical exercise portion and testing for proficiency in administering CPR. There must also be one instructor for every 10 students during the practical exercise portion and proficiency testing in administering CPR.
- (4) In the event that an institution or agency does not own a facility as required in this Section, written agreements with other entities must be made to assure use of and timely access to such facilities. A copy of such agreement must accompany the originating institution or agency "Pre-Delivery Report" (Form F7-A) when submitted to the Division.

*History Note: Authority G.S. 17E-4; Eff. January 1, 1989; Amended Eff. January 1, 2005; August 1, 2000; August 1, 1998; January 1, 1996; January 1, 1992.*

**12 NCAC 10B .0704 RESPONSIBILITIES: SCHOOL DIRECTORS**

(a) In planning, developing, coordinating, and delivering each commission-certified Detention Officer Certification Course, the school director shall:

- (1) Formalize and schedule the course curriculum in accordance with the curriculum standards established by the rules in this Chapter.
  - (A) The Detention Officer Certification Course shall be presented with a minimum of 40 hours of instruction each week during consecutive calendar weeks until course requirements are completed.
  - (B) In the event of exceptional or emergency circumstances, the Director may, upon written finding of justification, grant a waiver of the minimum hours requirement.
- (2) Select and schedule instructors who are properly certified by the Commission. The selecting and scheduling of instructors is subject to special requirements as follows:
  - (A) No single individual may be scheduled to instruct more than 35 percent of the total hours of the curriculum during any one delivery

- (B) except as set forth in Part (a)(2)(B) of this Rule. Where the school director shows exceptional or emergency circumstances and the school director documents that an instructor is properly certified to instruct more than 35 percent of the total hours of the curriculum, the Director of the Division may grant written approval for the expansion of the individual instructional limitation.
- (C) Schedule appropriate number of instructors for specific topic areas as required in 12 NCAC 10B .0703.
- (3) Provide each instructor with a commission-approved course outline and all necessary additional information concerning the instructor's duties and responsibilities.
- (4) Review each instructor's lesson plans and other instructional materials for conformance to the rules in this Chapter and to minimize repetition and duplication of subject matter.
- (5) Arrange for the timely availability of appropriate audiovisual aids and materials, publications, facilities and equipment for training in all topic areas as required in the "Detention Officer Certification Course Management Guide".
- (6) Develop, adopt, reproduce, and distribute any supplemental rules, regulations, and requirements determined by the school to be necessary or appropriate for:
  - (A) Effective course delivery;
  - (B) Establishing responsibilities and obligations of agencies or departments employing course trainees; and
  - (C) Regulating trainee participation and demeanor and ensuring trainee attendance and maintaining performance records.

A copy of such rules, regulations and requirements shall be submitted to the Director as an attachment to the Pre-Delivery Report of Training Course Presentation, Form F-7A. A copy of such rules shall also be given to each trainee and to the sheriff of each trainee's employing agency at the time the trainee enrolls in the course.
- (7) If appropriate, recommend housing and dining facilities for trainees.
- (8) Not less than 30 days before commencing delivery of the course, submit to the Commission a Pre-Delivery Report of Training Course Presentation (Form F-7A) along with the following attachments:
  - (A) A comprehensive course schedule showing arrangement of topical

- presentations and proposed instructional assignments;
- (B) A copy of any rules, regulations, and requirements for the school and, when appropriate, completed applications for certification of instructors. The Director shall review the submitted Pre-Delivery Report together with all attachments to ensure that the school is in compliance with all commission rules; if school's rules are found to be in violation, the Director shall notify the school director of deficiency, and approval will be withheld until all matters are in compliance with the Commissions' rules.
- (9) Administer the course delivery in accordance with the rules in this Chapter and ensure that the training offered is as effective as possible.
- (10) Monitor or designate a certified instructor to monitor the presentations of all probationary instructors during course delivery and prepare written evaluations on their performance and suitability for subsequent instructional assignments. These evaluations shall be prepared on commission forms and forwarded to the Division at the conclusion of each delivery. Based on this evaluation the school director shall recommend approval or denial of requests for Detention Officer Instructor Certification, Limited Lecturer Certification or Professional Lecturer Certification.
- (11) Monitor or designate a certified instructor to monitor the presentations of all other instructors during course delivery and prepare written evaluations on their performance and suitability for subsequent instructional assignments. Instructor evaluations shall be prepared on commission forms in accordance with the rules in this Chapter. These evaluations shall be kept on file by the school for a period of three years and shall be made available for inspection by a representative of the Commission upon request.
- (12) Ensure that any designated certified instructor who is evaluating the instructional presentation of another shall hold certification in the same instructional topic area as that being taught.
- (13) Administer or designate a person to administer appropriate tests as determined necessary at various intervals during course delivery.
- (14) Maintain direct supervision, direction, and control over the performance of all persons to whom any portion of the planning, development, presentation, or administration of a course has been delegated.
- (15) During a delivery of the Detention Officer Certification Course, make available to authorized representatives of the Commission three hours of scheduled class time and classroom facilities for the administration of a written examination to those trainees who have satisfactorily completed all course work.
- (16) Not more than ten days after receiving from the Commission's representative the Report of Examination Scores, submit to the Commission a Post-Delivery Report of Training Course Presentation (Form 7-B).
- (b) In addition to the requirements in 12 NCAC 10B .0704(a), the school director shall be readily available to students and Division staff at all times during course delivery by telephone, pager, or other means. The means, and applicable numbers, shall be filed with the commission-certified training delivery site and the Division prior to the beginning of a scheduled course delivery.

*History Note: Authority G.S. 17E-4; Eff. January 1, 1989; Amended Eff. January 1, 2005; August 1, 1998; January 1, 1996; January 1, 1994; January 1, 1992.*

**12 NCAC 10B .0709 RESPONSIBILITIES: SCHOOL DIRECTORS, TELECOMMUNICATOR CERTIFICATION COURSE**

- (a) In planning, developing, coordinating, and delivering each commission-certified Telecommunicator Certification Course, the school director shall:
- (1) Formalize and schedule the course curriculum in accordance with the curriculum standards established by the rules in this Chapter;
  - (2) Select and schedule instructors who are properly certified by the Commission;
  - (3) Provide each instructor with a commission-approved course outline and all necessary additional information concerning the instructor's duties and responsibilities;
  - (4) Review each instructor's lesson plans and other instructional materials for conformance to the rules in this Chapter and to minimize repetition and duplication of subject matter;
  - (5) Arrange for the timely availability of appropriate audiovisual aids and materials, publications, facilities and equipment for training in all topic areas as required in the "Telecommunicator Certification Course Management Guide";
  - (6) Develop, adopt, reproduce, and distribute any supplemental rules, regulations, and requirements determined by the school to be necessary or appropriate for:
    - (A) Effective course delivery;
    - (B) Instruction on the responsibilities and obligations of agencies or departments employing course trainees; and

- (C) Regulating trainee participation and demeanor and ensuring trainee attendance and maintaining performance records.
- A copy of such rules, regulations and requirements shall be submitted to the Director as an attachment to the Pre-Delivery Report of Training Course Presentation, Form F-7A-T. A copy of such rules shall also be given to each trainee and to the sheriff or agency head of each trainee's employing agency at the time the trainee enrolls in the course;
- (7) If appropriate, recommend housing and dining facilities for trainees;
- (8) Not less than 30 days before commencing delivery of the course, submit to the Commission a Pre-Delivery Report of Training Course Presentation (Form F-7A-T) along with the following attachments:
- (A) A comprehensive course schedule showing arrangement of topical presentations and proposed instructional assignments;
- (B) A copy of any rules, regulations, and requirements for the school and, when appropriate, completed applications for certification of instructors. The Director shall review the submitted Pre-Delivery Report together with all attachments to ensure that the school is in compliance with all commission rules; if school's rules are found to be in violation, the Director shall notify the school director of deficiency, and approval will be withheld until all matters are in compliance with the Commissions' rules;
- (9) Administer the course delivery in accordance with the rules in this Chapter and ensure that the training offered is as effective as possible;
- (10) Monitor or designate a certified instructor to monitor the presentations of all probationary instructors during course delivery and prepare written evaluations on their performance and suitability for subsequent instructional assignments. These evaluations shall be prepared on commission forms and forwarded to the Division at the conclusion of each delivery. Based on this evaluation the school director shall recommend approval or denial of requests for Telecommunicator Instructor Certification or Professional Lecturer Certification;
- (11) Monitor or designate a certified instructor to monitor the presentations of all other instructors during course delivery and prepare written evaluations on their performance and suitability for subsequent instructional assignments. Instructor evaluations shall be prepared on commission-approved forms in accordance with the rules in this Chapter. These evaluations shall be kept on file by the school for a period of three years and shall be made available for inspection by a representative of the Commission upon request;
- (12) Ensure that any designated certified instructor who is evaluating the instructional presentation of another shall hold certification in the same instructional topic area as that being taught;
- (13) Administer or designate a person to administer appropriate tests as determined necessary at various intervals during course delivery;
- (14) Maintain direct supervision, direction, and control over the performance of all persons to whom any portion of the planning, development, presentation, or administration of a course has been delegated;
- (15) During a delivery of the Telecommunicator Certification Course, make available to authorized representatives of the Commission two hours of scheduled class time and classroom facilities for the administration of a written examination to those trainees who have satisfactorily completed all course work; and
- (16) Not more than 10 days after receiving from the Commission's representative the Report of Examination Scores, submit to the Commission a Post-Delivery Report of Training Course Presentation (Form 7-B-T).
- (b) In addition to the requirements in 12 NCAC 10B .0708(a), the school director shall be readily available to students and Division staff at all times during course delivery by telephone, pager, or other means. The means, and applicable numbers, shall be filed with the commission-certified training delivery site and the Division prior to the beginning of a scheduled course delivery.

*History Note: Authority G.S. 17E-4; Eff. April 1, 2001; Amended Eff. January 1, 2005.*

**12 NCAC 10B .0713 ADMISSION OF TRAINEES**

- (a) The school may not admit any individual younger than 21 years of age as a trainee in any non-academic commission-certified basic training course without the prior written approval of the Director of the Standards Division. The Director shall approve those individuals who will turn 21 years of age during the course, but prior to the ending date.
- (b) The school shall give priority admission in commission-certified basic training courses to individuals holding full-time employment with criminal justice agencies.
- (c) The school shall administer the reading component of a standardized test which reports a grade level for each trainee participating in the Detention Officer Certification Course. The specific type of test instrument shall be determined by the school

director and shall be administered no later than by the end of the first two weeks of a presentation of the Detention Officer Certification Course. The grade level results on each trainee shall be submitted to the Commission on each trainee's Report of Student Course Completion (Form F-7d).

(d) The school shall not admit any individual as a trainee in a presentation of the Detention Officer Certification Course or the Telecommunicator Certification Course unless as a prerequisite the individual has provided to the certified school director a Medical Examination Report Form (F-2) and the Medical History Statement Form (F-1) in compliance with 12 NCAC 10B .0304. The Medical Examination Report Form (F-2) and the Medical History Statement Form (F-1) required by the North Carolina Criminal Justice Education and Training Standards Commission shall be recognized by the Commission for the purpose of complying with this Rule.

*History Note: Authority G.S. 17E-7;  
Eff. April 1, 2001;  
Amended Eff. January 1, 2005.*

**12 NCAC 10B .0802 CERTIFICATION:  
DELIVERY/DETENTION OFFICER  
CERTIFICATION COURSE**

(a) An institution or agency must be certified to deliver a Detention Officer Certification Course.

(b) In order to obtain certification, an institution or agency shall meet or exceed the following minimum standards for overall course delivery:

- (1) the institution or agency shall conduct a minimum of one Detention Officer Certification Course each calendar year;
- (2) the executive officer shall comply with the requirements of 12 NCAC 10B .0703; and
- (3) the executive officer shall comply with the additional certification requirements as specified in the "Detention Officer Certification Course Management Guide".

(c) An institution or agency meeting the requirements of 12 NCAC 10B .0802(b) may submit a "Request for Certification" (Form F-7) to the Division. Upon receipt of the request, the Division staff shall:

- (1) review the application for completeness;
- (2) contact the institution or agency executive officer or designated school director to schedule an on-site visit and tour of the proposed training facilities;
- (3) during the on-site visit note any deficiencies and attempt to provide assistance and recommendations in correcting those deficiencies; and
- (4) notify the applying institution or agency, in writing, of the approval or denial of the certification request.

(d) In cases where the deficiencies prohibit the immediate certification of the institution or agency, the application shall be placed in a pending status:

- (1) applications may remain in a pending status for no more than 30 days from the date of notification of any deficiencies; and
- (2) within or following the 30 day period, the Division shall:

- (A) issue certification; or
- (B) notify the institution or agency, in writing, that it must re-apply for certification.

(e) Any existing commission-issued certifications issued and valid on July 31, 1998 shall be automatically extended with an expiration date of December 31, 1999 at which time the previously issued certification shall be terminated.

(f) All new applicants for certification shall meet the requirements of this Section after August 1, 1998.

(g) The certified institution or agency shall be subject to unannounced on-site certification audits to ensure compliance with the rules in this Section

(h) Following an on-site certification audit, the Division staff shall:

- (1) notify the institution or agency of the results of the audit; and
- (2) recommend to the Commission's Probable Cause Committee any action pursuant to 12 NCAC 10B .0802(j).

(i) School certification shall remain effective until surrendered, suspended, or revoked.

(j) The Commission may suspend or revoke the certification of a school when it finds that the school has failed to meet or to continuously maintain any requirement, standard or procedure for school certification or course delivery as required by Section .0700 of this Subchapter.

*History Note: Authority G.S. 17E-4;  
Eff. January 1, 1989;  
Amended Eff. January 1, 2005; August 1, 1998;  
January 1, 1996; January 1, 1990.*

**12 NCAC 10B .0903 CERT: INSTRUCTORS FOR  
DETENTION OFFICER CERTIFICATION COURSE**

(a) Any person participating in a commission-certified Detention Officer Certification Course as an instructor, teacher, professor, lecturer, or other participant making presentations to the class shall first be certified by the Commission as an instructor.

(b) The Commission shall certify Detention Officer Certification Course instructors under the following categories:

- (1) Detention Officer Instructor Certification;
- (2) Professional Lecturer Certification; or
- (3) Limited Lecturer Certification as outlined in Rules .0904, .0906 and .0908 of this Section.

(c) In addition to all other requirements of this Section, all instructors certified by the Commission to teach in a commission-certified Detention Officer Certification Course shall remain knowledgeable and attend and complete any instructor training updates related to curriculum content and delivery as may be offered by the curriculum developer and within the time period as specified by the curriculum developer.



*History Note: Authority G.S. 17E-4; Eff. January 1, 1989; Amended Eff. January 1, 2005; August 1, 1998; January 1, 1996; January 1, 1990.*

**12 NCAC 10B .0905 TERMS AND CONDITIONS OF DETENTION OFFICER INSTRUCTOR CERTIFICATION**

(a) An applicant meeting the requirements for certification as a Detention Officer Instructor shall serve a probationary period. The probationary period shall be set to expire concurrently with the expiration of the instructors' General Instructor Certification issued by the North Carolina Criminal Justice Education and Training Standards Commission. As of August 1, 2002, the expiration dates of any existing commission-issued Probationary General Detention Officer Instructor Certifications shall be amended to expire concurrently with the expiration of the instructors' General Instructor Certification issued by the North Carolina Criminal Justice Education and Training Standards Commission. If the time-period before the expiration date is less than one year, then the eight hours of instruction shall be waived for this shortened term and Full General Detention Officer Instructor Certification shall be issued provided all other conditions for Full status as set out in Paragraph (b) of this Section are met.

(b) The probationary instructor shall be awarded full Detention Officer Instructor Certification at the end of the probationary period if the instructors certification required in 12 NCAC 10B .0904(a)(2) remains valid, and that the instructor through application, submits to the Division either:

- (1) a favorable recommendation from a school director accompanied by certification on a commission Instructor Evaluation Form that the instructor satisfactorily taught a minimum of eight hours as specified in Paragraph (e) of this Rule in a commission-certified Detention Officer Certification Course during his/her probationary year; or
- (2) an acceptable written evaluation as specified in Paragraph (e) of this Rule by a commission member or staff member based on an on-site classroom evaluation of the probationary instructor in a commission-certified Detention Officer Certification Course. Such evaluation shall be certified on a commission Instructor Evaluation Form. In addition, instructors evaluated by a commission or staff member must also teach a minimum of eight hours in a commission-certified Detention Officer Certification Course during his/her probationary year.

(c) As of August 1, 2002, the expiration dates of any existing commission-issued Full General Detention Officer Instructor Certifications shall be amended to expire concurrently with the expiration of the instructors' General Instructor Certification issued by the North Carolina Criminal Justice Education and Training Standards Commission. If the time-period before the expiration date shall be less than two years, then the eight hours of instruction shall be waived for this shortened term and Full General Detention Officer Instructor Certification shall be

renewed. Full Detention Officer Instructor Certification is continuous so long as the, instructor's certification required in 12 NCAC 10B .0904(a)(2) remains valid, and that the instructor submits to the Division every two years a renewal application which includes either:

- (1) a favorable recommendation from a school director accompanied by certification on a commission Instructor Evaluation Form that the instructor satisfactorily taught a minimum of eight hours as specified in Paragraph (e) of this Rule in a commission-certified Detention Officer Certification Course during the previous two year period. The date full Instructor Certification is originally issued shall be the anniversary date from which each two year period is figured; or
- (2) an acceptable written evaluation as specified in Paragraph (e) of this Rule by a commission member or staff member based on a minimum eight hours, on-site classroom observation of the instructor in a commission-certified Detention Officer Certification Course.

(d) In the event a General Detention Officer Instructor Certification (either Probationary or Full) is terminated for failure to have been satisfactorily evaluated for eight hours of instruction in a Detention Officer Certification Course, the individual may re-apply for certification meeting the initial conditions for such certification, but must also provide documentation that he/she has audited eight hours of instruction in a delivery of an certified Detention Officer Certification Course.

(e) An Instructor Evaluation Form records a rating of the instructor's qualities, organization and presentation of materials consistent with the requirements for successfully completing the Criminal Justice Instructor Training as set out in 12 NCAC 09B .0209. Instructor qualities, organization and presentation are rated on a scale of 1 (poor), 2 (fair), 3 (good), 4 (excellent) and 5 (superior). Instructor qualities include appearance, gestures, verbal pauses, grammar, pronunciation, enunciation, voice, rate (too slow or too fast), eye contact, and enthusiasm. Organization and presentation include:

- (1) Major objectives of the course made clear;
- (2) Class Presentation planned and organized;
- (3) Important ideas clearly explained;
- (4) Instructor's mastery of the course content;
- (5) Class time well used;
- (6) Encouragement of critical thinking and analysis;
- (7) Encouragement of student involvement;
- (8) Reaction to student viewpoints different from instructors;
- (9) Student's attitude toward instructor; and
- (10) Instructor's use of training aids.

A rating of 1 or 2 is unacceptable or unsatisfactory; and a rating of 3, 4, or 5 is acceptable or satisfactory.

*History Note: Authority G.S. 17E-4; Eff. January 1, 1989; Amended Eff. January 1, 2005; August 1, 2002;*

*January 1, 1996; January 1, 1992.*

**12 NCAC 10B .0911      SUSPENSION: REVOCATION:  
DENIAL OF DETENTION OFFICER INSTRUCTOR  
CERTIFICATION**

(a) The Division may notify an applicant for instructor certification or a certified instructor that a deficiency appears to exist and attempt, in an advisory capacity, to assist the person in correcting the deficiency.

(b) When any person certified as an instructor by the Commission is found to have knowingly and willfully violated any provision or requirement of the rules of this Subchapter the Commission may take action to correct the violation and to ensure that the violation does not recur, including:

- (1) issuing an oral warning and request for compliance;
- (2) issuing a written warning and request for compliance;
- (3) issuing an official written reprimand;
- (4) suspending the individual's certification for a specified period of time or until acceptable corrective action is taken by the individual;
- (5) revoking the individual's certification.

(c) The Commission may deny, suspend, or revoke an instructor's certification when the Commission finds that the person:

- (1) has failed to meet and maintain any of the requirements for qualification; or
- (2) has failed to remain currently knowledgeable in the person's areas of expertise by failing to attend and successfully complete any instructor training updates pursuant to 12 NCAC 10B .0903(c); or
- (3) has failed to deliver training in a manner consistent with the instructor lesson plans; or
- (4) has failed to follow specific guidelines outlined in the "Detention Officer Certification Course Management Guide" which is hereby incorporated by reference and shall automatically include any later amendments and editions of the referenced materials. This publication is authored by and may be obtained from the North Carolina Justice Academy, Post Office Drawer 99, Salemburg, North Carolina 28385 at no cost at the time of adoption of this Rule; or
- (5) has demonstrated unprofessional personal conduct in the delivery of commission-mandated training; or
- (6) has otherwise demonstrated instructional incompetence; or
- (7) has knowingly and willfully obtained, or attempted to obtain instructor certification by deceit, fraud, or misrepresentation; or
- (8) has had any type of certification issued from the Commission, from the North Carolina Criminal Justice Education and Training Standards Commission, or from any commission, agency, or board established to

certify pursuant to said commission, agency or boards' standards, which was revoked, suspended or denied for cause.

*History Note: Authority G.S. 17E-4;  
Eff. January 1, 1993;  
Amended Eff. January 1, 2005; August 1, 1998;  
January 1, 1996.*

**12 NCAC 10B .0913      CERT: INSTRUCTORS FOR  
TELECOMMUNICATOR CERTIFICATION COURSE**

(a) Any person participating in a commission-certified Telecommunicator Certification Course as an instructor, teacher, professor, lecturer, or other participant making presentations to the class shall first be certified by the Commission as an instructor.

(b) As of the effective date of this Rule, the Commission shall certify Telecommunicator Certification Course instructors under the following categories:

- (1) Telecommunicator Instructor Certification; or
- (2) Professional Lecturer Certification.

(c) Individuals who have previously instructed in a commission-certified Telecommunicator Certification Course as it existed prior to the effective date of this Rule are eligible for a waiver of 12 NCAC 10B .0913(b), provided documentation is submitted showing the applicant taught a minimum of eight hours in the Telecommunicator Certification Course within the one-year period prior to the date of application.

(d) In addition to all other requirements of this Section, all instructors certified by the Commission to teach in a commission-certified Telecommunicator Certification Course shall remain knowledgeable and attend and complete any instructor training updates related to curriculum content and delivery as may be offered by the curriculum developer and within the time period as specified by the curriculum developer.

*History Note: Authority G.S. 17E-4;  
Eff. April 1, 2001;  
Amended Eff. January 1, 2005.*

**12 NCAC 10B .0915      TERMS AND CONDITIONS OF  
TELECOMMUNICATOR INSTRUCTOR  
CERTIFICATION**

(a) An applicant meeting the requirements for certification as a Telecommunicator Instructor shall serve a probationary period. The Telecommunicator Instructor Certification probationary period shall be set to automatically expire concurrently with the expiration of the instructor's General Instructor Certification issued by the North Carolina Criminal Justice Education and Training Standards Commission. As of August 1, 2002, the expiration dates of any existing commission-issued Probationary General Telecommunicator Instructor Certifications shall be amended to expire concurrently with the expiration of the instructors' General Instructor Certification issued by the North Carolina Criminal Justice Education and Training Standards Commission. If the time-period before the expiration date is less than one year, then the eight hours of instruction shall be waived for this shortened term and Full General Telecommunicator Instructor Certification shall be issued provided all other

conditions for Full status as set out in Paragraph (b) of this Rule are met.

(b) The probationary instructor shall be awarded full Telecommunicator Instructor Certification at the end of the probationary period if the instructor's certification required in 12 NCAC 10B .0914(a)(2) remains valid, and that the instructor through application, submits to the Division either:

- (1) a favorable recommendation from a school director accompanied by certification on a commission Instructor Evaluation Form that the instructor satisfactorily taught a minimum of eight hours as specified in Paragraph (e) of this Rule in a commission-certified Telecommunicator Certification Course during his/her probationary year; or
- (2) an acceptable written evaluation as specified in Paragraph (e) of this Rule by a commission member or staff member based on an on-site classroom evaluation of the probationary instructor in a commission-certified Telecommunicator Certification Course. Such evaluation shall be certified on a commission Instructor Evaluation Form. In addition, instructors evaluated by a commission or staff member must also teach a minimum of eight hours in a commission-certified Telecommunicator Certification Course during his/her probationary year.

(c) As of August 1, 2002, the expiration dates of any existing commission-issued Full General Telecommunicator Instructor Certifications shall be amended to expire concurrently with the expiration of the instructors' General Instructor Certification issued by the North Carolina Criminal Justice Education and Training Standards Commission. If the time-period before the expiration date is less than two years, then the eight hours of instruction shall be waived for this shortened term and Full General Telecommunicator Instructor Certification shall be renewed. Full Telecommunicator Instructor Certification is continuous so long as the, instructor's certification required in 12 NCAC 10B .0904(a)(2) remains valid, and that the instructor submits to the Division every two years a renewal application and either:

- (1) a favorable recommendation from a school director accompanied by certification on a commission Instructor Evaluation Form that the instructor satisfactorily taught a minimum of eight hours as specified in Paragraph (e) of this Rule in a commission-certified Telecommunicator Certification Course during the previous two year period. The date full Instructor Certification is originally issued is the anniversary date from which each two year period is figured; or
- (2) an acceptable written evaluation as specified in Paragraph (e) of this Rule by a commission member or staff member based on a minimum eight hours, on-site classroom observation of the instructor in a commission-certified Telecommunicator Certification Course.

(d) In the event a General Telecommunicator Instructor Certification (either Probationary or Full) is terminated for failure to have been evaluated for eight hours of instruction in a Telecommunicator Certification Course, the individual may re-apply for certification meeting the initial conditions for such certification, but must also provide documentation that he/she has audited 8-hours of instruction in a delivery of a certified Telecommunicator Certification Course.

(e) An Instructor Evaluation Form records a rating of the instructor's qualities, organization and presentation of materials consistent with the requirements for successfully completing the Criminal Justice Instructor Training as set out in 12 NCAC 09B .0209. Instructor qualities, organization and presentation are rated on a scale of 1(poor), 2 (fair), 3 (good), 4 (excellent) and 5 (superior). Instructor qualities include appearance, gestures, verbal pauses, grammar, pronunciation, enunciation, voice, rate (too slow or too fast), eye contact, and enthusiasm. Organization and presentation include:

- (1) Major objectives of the course made clear;
- (2) Class presentation planned and organized;
- (3) Important ideas clearly explained;
- (4) Instructor's mastery of the course content;
- (6) Encouragement of critical thinking and analysis;
- (7) Encouragement of student involvement;
- (8) Reaction to student viewpoints different from instructors;
- (9) Students attitude toward instructor; and
- (10) Instructor's use of training aids.

A rating of 1 or 2 is unacceptable or unsatisfactory; and a rating of 3, 4, or 5 are acceptable or satisfactory.

*History Note: Authority G.S. 17E-4; Eff. April 1, 2001; Amended Eff. January 1, 2005; August 1, 2002.*

**12 NCAC 10B .0919 SUSPENSION: REVOCATION: DENIAL OF TELECOMMUNICATOR INSTRUCTOR CERTIFICATION**

(a) The Division may notify an applicant for instructor certification or a certified instructor that a deficiency appears to exist and attempt, in an advisory capacity, to assist the person in correcting the deficiency.

(b) When any person certified as an instructor by the Commission is found to have knowingly and willfully violated any provision or requirement of the rules of this Subchapter, the Commission may take action to correct the violation and to ensure that the violation does not recur, including:

- (1) issuing an oral warning and request for compliance;
- (2) issuing a written warning and request for compliance;
- (3) issuing an official written reprimand;
- (4) suspending the individual's certification for a specified period of time or until acceptable corrective action is taken by the individual; or
- (5) revoking the individual's certification.

(c) The Commission may deny, suspend, or revoke an instructor's certification when the Commission finds that the person:

- (1) has failed to meet and maintain any of the requirements for qualification; or
- (2) has failed to remain currently knowledgeable in the person's areas of expertise by failing to attend and successfully complete any instructor training updates pursuant to 12 NCAC 10B .0913(d); or
- (3) has failed to deliver training in a manner consistent with the instructor lesson plans; or
- (4) has failed to follow specific guidelines outlined in the "Telecommunicator Certification Course Management Guide" which shall be used and shall automatically include any later amendments and editions of the referenced materials. This publication is authored by and may be obtained from the North Carolina Justice Academy, Post Office Drawer 99, Salemburg, North Carolina 28385 at no cost at the time of adoption of this Rule; or
- (5) has demonstrated unprofessional personal conduct in the delivery of commission-mandated training; or
- (6) has otherwise demonstrated instructional incompetence; or
- (7) has knowingly and willfully obtained, or attempted to obtain instructor certification by deceit, fraud, or misrepresentation; or
- (8) has had any type of certification issued from this Commission, from the North Carolina Criminal Justice Education and Training Standards Commission, or from any commission, agency, or board established to certify pursuant to said commission, agency or boards' standards, which was revoked, suspended or denied for cause.

*History Note: Authority G.S. 17E-4;  
Eff. April 1, 2001;  
Amended Eff. January 1, 2005.*

**TITLE 13 – DEPARTMENT OF LABOR**

**13 NCAC 07F .0605 FALL PROTECTION**

(a) General.

- (1) Prior to employees climbing the tower at heights above six feet, the employer shall ensure that one-hundred percent (100%) fall protection systems compatible with the tasks assigned are provided, used, and maintained.
- (2) The rules in this Section shall not require the retrofitting of communication towers; provided, that employees who are exposed to fall hazards above six feet while performing work on communication towers are protected

from such hazards by means of a one-hundred percent (100%) fall protection system.

(b) Pre-Climb Planning and Inspection. In addition to the criteria for pre-climb planning and inspection included in Paragraph (g) of this Rule, the employer shall ensure that the following items occur prior to employees climbing the tower at heights above six (6) feet:

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

(c) Fall Protection Systems. In order to comply with the requirements of Subparagraph (a)(1) of this Rule, the employer may permit employees to utilize the 100% fall protection systems described in Paragraphs (d) through (g) of this Rule. If the fall protection systems described therein are not present on the tower, the employer shall not permit employees to climb the tower at heights above six feet unless:

- (1) an alternative means of 100% fall protection is utilized that is at least as effective as the fall protection systems described in Paragraphs (d) through (g) of this Rule;
- (2) an alternative means of access to the work area is utilized such as an aerial lift or elevated work platform; or

- (3) the employer can demonstrate that the requirements for a fall protection plan under Paragraph (i) of this Rule have been met.
- (d) **Guardrail Systems.** The employer shall ensure that guard rail systems and their components that are utilized by employees as a means of 100% fall protection conform to the criteria in 29 CFR 1926.502(b).
- (e) **Personal Fall Arrest Systems (PFAS).** The employer shall ensure that personal fall arrest systems and their components that are utilized by employees as a means of 100% fall protection conform to the criteria in 29 CFR 1926.502(d), and are utilized according to the manufacturer's recommendations. When utilized by employees as an anchorage as part of a PFAS, the employer shall ensure that step bolts and the attachment point to the structure are designed to meet the requirements of an approved anchorage in accordance with 29 CFR 1926.502(d), and are designed to ensure the connector will not slip off the end of the step bolt.
- (f) **Positioning Device System.** The employer shall ensure that positioning device systems and their components that are utilized by employees as a means of 100% fall protection conform to the criteria in 29 CFR 1926.502(e).
- (g) **Ladder Safety Systems.** The employer shall ensure that, in addition to the applicable criteria in 29 CFR 1926, Subpart X, ladder safety systems and related support systems for fixed ladders that are utilized by employees as a means of 100% fall protection conform to the following criteria:
- (1) Prior to climbing the structure, the employer shall ensure that the employee(s) have tested the ladder safety system for proper operation and that all components utilized with the ladder safety system are compatible.
  - (2) To perform the test required by Subparagraph (g)(1) of this Rule, the employee(s) shall:
    - (A) Approach the ladder at the base and connect to the functional safety climb system;
    - (B) Climb to a height less than six feet;
    - (C) Forcibly engage the device without letting go of the ladder;
    - (D) If the device functions as intended, the employee(s) shall begin the ascension;
    - (E) If the device does not function properly, the employee(s) shall immediately descend the structure and shall not utilize the device until it functions properly;
  - (3) If a ladder is obstructed, inhibiting the effective use of the ladder safety system, an alternative means of 100% fall protection shall be utilized that is at least as effective as the types of fall protection described by this Rule.
    - (A) Where step bolts are installed as the climbing facility, they shall conform to the criteria in 29 CFR 1910.268(h)(2), be uniformly spaced throughout the climbing length and shall be no more than 18 inches alternately spaced.
- (B) Where utilized as an anchorage as part of a PFAS, step bolts and the attachment point to the structure shall be designed to meet the requirements of an approved anchorage per 29 CFR 1926.502(d) and shall be designed to ensure the connector will not slip off the end of the step bolt.
- (h) **Fall Protection Plan.** This Paragraph applies when employees are working on a structure where no adequate tie-off anchorage point(s) exist, the fall protection systems described in Paragraph (c) of this Rule are not feasible or create a greater hazard, and the work can not be completed utilizing an alternative means of access to the work area such as an aerial lift or elevated work platform. If an employer demonstrates the foregoing conditions are present, then in addition to the criteria in 29 CFR 1926.502(k), the employer shall conform to the following provisions:
- (1) The employer shall ensure that each employee under the fall protection plan has been trained as a qualified climber.
  - (2) The fall protection plan shall be made available and communicated to exposed employee(s) prior to the employee(s) beginning work, and such communication shall be documented.
  - (3) The fall protection plan shall identify each location on the tower structure where fall protection methods as described in Paragraph (c) of this Rule cannot be used. As soon as adequate tie-off anchorage points or other fall protection systems can be established, the employer shall utilize any of the fall protection systems described in Paragraph (c) of this Rule.
- (i) **Emergency and Rescue Procedures.**
- (1) The employer shall establish procedures for prompt rescue of employees in the event of an emergency, which shall include whether the employer will designate its own employees to perform the rescue procedures or whether the employer will designate a third-party to perform the rescue procedures. The procedures shall be documented and available for review by the Deputy Commissioner of Labor for Occupational Safety and Health or his designee, upon request.
  - (2) **Employer to Perform Rescue Procedures.** An employer whose employees have been designated to provide elevated (high angle) rescue and emergency services shall take the following measures:
    - (A) Ensure at least two trained and designated rescue employees are on site when employees are working at heights over six feet on the tower,

provided however, where there are only two employees on site, then an employer may comply with the requirements of this Part if one employee is a trained and designated rescue employee and one employee has been designated by the employer as a probationary employee and has been employed for less than six months.

- (B) Ensure that personal protective equipment (PPE) and high angle rescue equipment needed to conduct elevated rescues are provided, used and maintained by the designated rescue employees;
  - (C) Train designated rescue employees so they are proficient in the use and maintenance of PPE and high angle rescue equipment needed to conduct elevated rescues; and
  - (D) Train designated rescue employees to perform assigned rescue duties to ensure that they become competent to perform such duties, including conducting simulated rescue operations at least once every 12 months.
- (3) Third-Party to Perform Rescue Procedures. An employer who designates a third-party rescue and emergency service to provide elevated (high angle) rescue and emergency services shall take the following measures:
- (A) Evaluate a prospective rescue team or service's ability to respond to a rescue summons in a timely manner, considering the hazard(s) identified;
  - (B) Evaluate a prospective rescue team or service's ability, in terms of proficiency with rescue-related tasks and equipment, to function appropriately while rescuing climbers from elevated heights on communication structures;
  - (C) Select a rescue team or service from those evaluated that has the capability to reach the victim(s) and is equipped for and capable of performing the needed rescue services;
  - (D) Provide the rescue team or service selected with access to all towers/structures from which rescue may be necessary so that the rescue service can develop appropriate rescue plans and practice rescue operations; and
  - (E) Inform each rescue team or service, prior to the first day on which employee(s) perform work at heights

over six feet on the tower, of the site and location of the tower(s) to be climbed; the hazard(s) identified on the site; the number of employees that will climb the tower(s); the height(s) at which employee(s) will be working; the name(s) and telephone number(s) for any employer contact(s); and, any other information that is requested by the rescue team or service.

- (j) First Aid/CPR Training and Supplies. In addition to the requirements of 29 CFR 1910.151 and 29 CFR 1926.50, the employer shall ensure that at least two employees on site are trained and hold current certifications in basic first aid and cardiopulmonary resuscitation (CPR) issued by the American Red Cross or any other organization whose standards are equivalent to the American Red Cross; provided, however, where there are only two employees on site, then an employer may comply with the requirements of this Paragraph if one employee is trained and holds current certifications in basic first aid and CPR and one employee has been designated by the employer as a probationary employee and has been employed for less than six months.

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

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

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

- (1) All hoists shall meet the requirements set forth in this rule, 29 CFR 1910, Subpart N, and 29 CFR 1926, Subpart N, where applicable.
- (2) All hoists shall meet applicable requirements for design, construction, installation, testing, inspection, maintenance, and operation as prescribed by the manufacturer, or a licensed professional engineer.
- (3) Employers shall maintain at the work site the operating manual developed by the manufacturer for the specific make and model hoist being used, as well as documentation for any inspection, testing, and operator training certification required by the rules in this Section,
- (4) An employer shall not operate or permit to be operated a hoist that the employer knows, or reasonably should know, will expose his employee(s) to an unsafe condition which is likely to result in personal injury or property damage.

(b) Gin Poles.

- (1) Rigging Equipment.
  - (A) Wire rope, slings, chains, shackles, turnbuckles, links, hooks, sheaves, rotating rooster heads, blocks, and hoists, used in a gin pole lifting

- arrangement shall meet the manufacturer's safe working load limits. In addition, each component shall have a nominal breaking strength of no less than five times the static load applied. Consideration for end fitting losses and actual positioning of connecting parts shall be given;
- (B) Lugs or other devices for lifting or attaching the gin pole in position shall be designed with load and resistance factors appropriate for their intended use;
  - (C) Only alloy chains marked by the manufacturer with an 8, T, or an A, rated for lifting, shall be used;
  - (D) Only quenched and tempered hooks and shackles shall be used. The manufacturer's load rating shall be stamped on the product; and
  - (E) The breaking strength of the sheave shall equal or exceed the breaking strength of the wire rope intended for the sheave.
- (2) **Gin Pole Use.**
- (A) A user's gin pole load chart shall be provided for each pole;
  - (B) Any special engineered pick, which is outside of the load chart, shall only be allowed at the direction of a licensed professional engineer. Monitoring and measuring conditions, as specified by a licensed professional engineer, shall be provided and used during all special engineered picks;
  - (C) Modifications or repairs of a gin pole shall be made with like or similar materials to meet or exceed the original specifications. Modifications or repairs shall be recertified by a licensed professional engineer; and
  - (D) There shall be a mechanism in place to prevent the gin pole from tipping during the jumping process.
- (3) **Wire Rope.** Wire rope used for rigging shall be as follows:
- (A) Compatible with the sheaves of the rooster head and hoisting blocks;
  - (B) Lubricated in accordance to manufacturer specifications to prevent corrosion and wear;
  - (C) End connections shall be terminated per industry and manufacturer's specifications;
  - (D) Wedge sockets shall have a minimum tail length of one rope lay with a properly torqued clip attached to prevent accidental disengagement; and
  - (E) Flemish eyes shall contain heavy duty thimbles of appropriate size for the wire rope diameter, and shall have a minimum tail length of one rope lay secured with a properly torqued clip at its end.
- (4) **Inspections.**
- (A) Gin poles shall have a documented inspection annually by a qualified person;
  - (B) In addition to the annual inspection, the employer shall designate a competent person who shall visually inspect the gin pole and rigging prior to each use, and during use, to make sure it is in safe operating condition. Any deficiencies shall be repaired before use continues;
  - (C) During each inspection, the qualified or competent person shall inspect the legs and bracing members for bends or distortion;
  - (D) During each inspection, the qualified or competent person shall inspect the straightness tolerances for the overall assembly (including leg and bracing members);
  - (E) During each inspection, the qualified or competent person shall visually inspect the welds for quality, deformation, cracks, rust, or pitting or loss of cross sectional area;
  - (F) During each inspection, the qualified or competent person shall inspect the members for excessive rust or pitting or loss of cross sectional area;
  - (G) During each inspection, the qualified or competent person shall inspect the sling attachment points for distortion, wear, cracks, and rust;
  - (H) During each inspection, the qualified or competent person shall ensure that proper bolts are utilized and all associated hardware is in good condition;
  - (I) During each inspection, the qualified or competent person shall inspect side plates on rooster heads for distortion or other damage;
  - (J) During each inspection, the qualified or competent person shall inspect all attachment hardware, including rigging and parts such as cables, slings, and sling attachment points, shackles, hooks, and sockets for wear, distortion, cracks, and rust; and

- (K) During each inspection, the qualified or competent person shall ensure that all problems identified during the inspection are corrected before placing the gin pole into service.

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

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

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

- (1) Electrically-powered elevator driving machines shall be equipped with a friction brake applied by a spring or springs or by gravity and released electrically.
- (2) The car of every elevator suspended by wire ropes shall be provided with one or more safety devices. The safeties shall be attached to the car frame and one safety shall be located within or below the lowest members of the car frame (safety plank). All safeties shall be designed and installed in accordance with Section 2.17 of the A17.1 - American National Standard Safety Code for Elevators and Escalators.
- (3) Operating devices for electrically-powered or electrically-controlled elevators shall be of the enclosed electric type. Rope or rod operating devices activated directly by hand, or rope operating devices activated by wheels, levers or cranks shall not be used.
- (4) Elevator hoistways shall be enclosed throughout their height and all hoistway landing openings shall be protected with doors or gates. Hoistway enclosures shall be constructed to have a fire resistive rating of not less than one hour.
- (5) Hoistway enclosure doors or gates shall be equipped with electric interlocks.
- (6) Each elevator car shall be permanently enclosed on all sides and the top, except the sides for entrance and exit. Car side enclosures shall be of such strength and so designed and installed that when subjected to a pressure of 75 pounds applied horizontally at any point on the walls of the enclosure, the deflection will not exceed one inch.
- (7) Car top enclosures shall be so designed and installed as to be capable of sustaining a load of not less than 100 pounds at any one point.

- (8) An emergency exit with a cover shall be provided in the top of all elevator cars. The exit opening shall have an area of not less than 400 square inches and shall not measure less than 16 inches on any side. The exit shall be so located as to provide a clear unobstructed passage through it. The exit cover shall open outward and be hinged or otherwise attached to the car top and arranged to be opened from the top of the car only.
- (9) A door or gate shall be provided at each entrance to the car.
- (10) Doors shall be of the horizontally or vertically sliding type. Gates shall be of the vertically sliding or horizontally sliding collapsible type located not more than 1-3/4 inches from the car sill. Gates shall extend from a point not less than one inch above the car floor to not less than six feet above the car floor.
- (11) Vertically sliding gates when in the fully opened position shall provide an entrance of not less than six feet in height. Such gates shall be provided with pull straps to facilitate closing of the gate.
- (12) Each car door shall be equipped with a car door or gate electric contact so located as to be inaccessible from inside the car door and shall stop the car when the gate is opened a maximum of two inches.

The completion of any of the items in Subparagraphs (a)(1) through (12) of this Rule that increases the gross load of the elevator shall not reduce the safety factor of the driving machine below that required by Rule 2.24.3 of the A17.1 - American National Standard Safety Code for Elevators and Escalators.

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

- (1) The warehouse shall be used solely for the purpose of storing materials and products.
- (2) Hoistways that are not fully enclosed shall be protected by guards to prevent access to the hoistways by other than elevator personnel.
- (3) All capabilities of operating the elevator from the car or platform shall be removed.
- (4) Riders shall not be permitted to ride the car or platform.
- (5) A sign stating "Absolutely No Riders Permitted" in letters no less than one inch high on a contrasting background shall be posted at each entrance to the elevator.

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



Rule, it shall be issued a certificate of operation containing the following statement:

"Warning: This elevator has been inspected and found to be in a reasonably safe condition; however, it is not equipped with some of the safety features now required by the Department of Labor."

If the existing installation is not in compliance with the requirements of Paragraph (a) of this Rule, the following sign in letters no less than one inch high on a contrasting background shall be posted within and at each entrance to the elevator:

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

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

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

Any elevator, dumbwaiter, escalator or moving walk that has been properly landed or otherwise removed from service for a period exceeding one year shall comply with the requirements of the A17.3 - American National Standard Safety Code for Existing Elevators and Escalators in effect at the time they are returned to service, which is hereby incorporated by reference. This incorporation includes subsequent amendments and editions of this Code. Copies of the A17.3 - American National Standard Safety Code for Existing Elevators and Escalators are available for public inspection in the office of the Division, and may be obtained from the American Society of Mechanical Engineers (ASME), via U.S. Mail at United Engineering Center, 345 East 47<sup>th</sup> Street, New York, New York 10017, via telephone at (800) 843-2763, or via the internet at [www.asme.org](http://www.asme.org). The cost is seventy-five dollars (\$75.00) per copy.

(e) Alterations, repairs, replacement, maintenance, inspections and operation of existing installations of elevators, escalators, dumbwaiters or moving walks shall conform to the requirements of Sections 8.6 and 8.7 of the A17.1 - American National Standard Safety Code for Elevators and Escalators.

*History Note: Authority G.S. 95-110.5;  
Eff. August 1, 1987;  
Amended Eff. January 1, 2005; May 1, 1992.*

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

**15A NCAC 11 .0104 DEFINITIONS**

As used in these Rules, the following definitions shall apply.

- (1) "Absorbed dose" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the rad and the gray (Gy).

- (2) "Accelerator produced material" means any material made radioactive by use of a particle accelerator.
- (3) "Act" means North Carolina Radiation Protection Act as defined in G.S. 104E-1.
- (4) "Activity" is the rate of disintegration (transformation) or decay of radioactive material. The units of activity are the curie (Ci) and the becquerel (Bq).
- (5) "Adult" means an individual 18 or more years of age.
- (6) "Agency" means the North Carolina Department of Environment and Natural Resources, Division of Environmental Health, Radiation Protection Section.
- (7) "Agreement state" means any state which has consummated an agreement with the United States Nuclear Regulatory Commission under the authority of section 274 of the Atomic Energy Act of 1954 as amended, as authorized by compatible state legislation providing for acceptance by that state of licensing authority for agreement materials and the discontinuance of such licensing activities by the United States Nuclear Regulatory Commission, as defined in G.S. 104E-5(2).
- (8) "Air-purifying respirator" means a respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.
- (9) "Airborne radioactive material" means any radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.
- (10) "Airborne radioactivity area" means a room, enclosure, or area in which airborne radioactive materials, composed wholly or partly of licensed radioactive material, exist in concentrations:
  - (a) in excess of the derived air concentrations (DACs) specified in Appendix B to 10 CFR 20.1001 - 20.2401; or
  - (b) to such a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6 percent of the annual limit on intake (ALI) or 12 DAC-hours.
- (11) "ALARA" (acronym for "as low as is reasonably achievable") means making every reasonable effort to maintain exposures to radiation as far below the dose limits in the rules of this Chapter as is practical consistent with the purpose for which the licensed or registered activity is undertaken, taking into account the state of technology, the economics

- of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of sources of radiation in the public interest.
- (12) "Annual limit on intake" (ALI) means the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in an effective dose equivalent of five rems (0.05 Sv) or a committed dose equivalent of 50 rems (0.5 Sv) to any individual organ or tissue. (ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Table 1, Columns 1 and 2, of Appendix B to 10 CFR 20.1001 - 20.2401).
- (13) "Annually" means either:
- (a) at intervals not to exceed 12 consecutive months; or
  - (b) once per year at the same time each year (completed during the same month each year over a period of multiple years).
- (14) "Assigned protection factor (APF)" means the expected workplace level of respiratory protection that would be provided by a properly functioning respirator or a class of respirators to properly fitted and trained users. APF can be divided into the ambient airborne concentrations to estimate inhaled air concentrations.
- (15) "Atmosphere-supplying respirator" means a respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere and includes supplied-air respirators (SARs) and self-contained breathing apparatus (SCBA) units.
- (16) "Authorized representative" means an employee of the agency, or an individual outside the agency when the individual is specifically so designated by the agency under Rule .0112 of this Section.
- (17) "Authorized user" means an individual who is authorized by license or registration condition to use a source of radiation.
- (18) "Background radiation" means radiation from cosmic sources; naturally occurring radioactive materials, including radon (except as a decay product of source or special nuclear material); and global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee or registrant. "Background radiation" does not include sources of radiation regulated by the agency.
- (19) "Becquerel" is the SI unit of radioactivity. One becquerel is equal to one disintegration per second ( $s^{-1}$ ).
- (20) "Bioassay" or "radiobioassay" means the determination of kinds, quantities or concentrations, and, in some cases, the locations of radioactive material in the human body, whether by direct measurement (in vivo counting) or by analysis and evaluation of materials excreted or removed from the human body.
- (21) "Byproduct material" means any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material, as defined in G.S. 104E-5(4).
- (22) "Class", "lung class" or "inhalation class" means a classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times as follows:
- CLASSIFICATION OF INHALED MATERIAL
- | Class           | Clearance half-time   |
|-----------------|-----------------------|
| Class D (Day)   | less than 10 days     |
| Class W (Weeks) | 10 days to 100 days   |
| Class Y (Years) | greater than 100 days |
- (23) "Collective dose" is the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.
- (24) "Commission" means the North Carolina Radiation Protection Commission.
- (25) "Committed dose equivalent" ( $H_{T,50}$ ) means the dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.
- (26) "Committed effective dose equivalent" ( $H_{E,50}$ ) is the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to these organs or tissues ( $H_{E,50} = \sum w_T H_{T,50}$ ).
- (27) "Constraint (dose constraint)" means a value above which specified licensee actions are required.
- (28) "Controlled area" means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee or registrant for any reason.
- (29) "Critical group" means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.
- (30) "Curie" is the special unit of radioactivity. One curie is equal to  $3.7 \times 10^{10}$  disintegrations

- per second =  $3.7 \times 10^{10}$  becquerels =  $2.22 \times 10^{12}$  disintegrations per minute.
- (31) "Declared pregnant woman" means a woman who has voluntarily informed the licensee or registrant, in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant.
- (32) "Decommission" means to remove (as a facility) safely from service and reduce residual radioactivity to a level that permits release of the property for either unrestricted use and termination of the license or for restricted use and termination of the license.
- (33) "Deep-dose equivalent" ( $H_d$ ), which applies to external whole-body exposure, is the dose equivalent at a tissue depth of one cm ( $1000 \text{ mg/cm}^2$ ).
- (34) "Demand respirator" means an atmosphere-supplying respirator that admits breathing air to the facepiece only when a negative pressure is created inside the facepiece by inhalation.
- (35) "Department" means the North Carolina Department of Environment and Natural Resources.
- (36) "Depleted uranium" means the source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.
- (37) "Derived air concentration" (DAC) means the concentration of a given radionuclide in air which, if breathed by the reference man for a working year of 2,000 hours under conditions of light work (inhalation rate 1.2 cubic meters of air per hour), results in an intake of ALI. DAC values are given in Table 1, Column 3, of Appendix B to 10 CFR 20.1001 - 20.2401).
- (38) "Derived air concentration-hour" (DAC-hour) is the product of the concentration of radioactive material in air (expressed as a fraction or multiple of the derived air concentration for each radionuclide) and the time of exposure to that radionuclide, in hours. A licensee may take 2,000 DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of five rems (0.05 Sv).
- (39) "Diagnostic clinical procedures manual" means a collection of written procedures governing the use of radioactive material that describes each method by which the licensee performs diagnostic clinical procedures and includes other instructions and precautions. Each diagnostic clinical procedure including but not limited in content to the radiopharmaceutical, dosage and route of administration, shall be approved by an authorized user prior to inclusion in the manual. The radiation safety officer shall ensure that the manual includes the approved written procedure for all diagnostic clinical procedures performed at the facility.
- (40) "Disposable respirator" means a respirator for which maintenance is not intended and that is designed to be discarded after excessive breathing resistance, sorbent exhaustion, physical damage, or end-of-service-life renders it unsuitable for use. Examples of this type of respirator are a disposable half-mask respirator or a disposable escape-only self-contained breathing apparatus (SCBA).
- (41) "Distinguishable from Background" means that the detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using measurement technology, survey and statistical techniques as defined in 10 CFR 20.1003.
- (42) "Dose" (or radiation dose) is a generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, effective dose equivalent, or total effective dose equivalent, as defined in other Items of this Rule.
- (43) "Dose equivalent" ( $H_T$ ) means the product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the rem and sievert (Sv).
- (44) "Dose limits" (see "Limits" defined in this Rule).
- (45) "Dosimetry processor" means an individual or an organization that processes and evaluates individual monitoring equipment in order to determine the radiation dose delivered to the equipment.
- (46) "Effective dose equivalent" ( $H_E$ ) is the sum of the products of the dose equivalent to the organ or tissue ( $H_T$ ) and the weighting factors ( $w_T$ ) applicable to each of the body organs or tissues that are irradiated ( $H_E = \sum w_T H_T$ ).
- (47) "Embryo/fetus" means the developing human organism from conception until the time of birth.
- (48) "Entrance or access point" means any location through which an individual could gain access to radiation areas or to a source of radiation. This includes entry or exit portals of sufficient size to permit human entry, irrespective of their intended use.
- (49) "Equipment services" means the selling, installation, rebuilding, conversion, repair, inspection, testing, survey or calibration of

- equipment which can affect compliance with these Rules by a licensee or registrant.
- (50) "Exposure" means being exposed to ionizing radiation or to radioactive material.
- (51) "Exposure rate" means the exposure per unit of time, such as R/min and mR/h.
- (52) "External dose" means that portion of the dose equivalent received from radiation sources outside the body.
- (53) "Extremity" means hand, elbow, arm below the elbow, foot, knee, or leg below the knee.
- (54) "Eye dose equivalent" (See "Lens dose equivalent" as defined in this Rule).
- (55) "Filtering facepiece (dust mask)" means a negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium, not equipped with elastomeric sealing surfaces and adjustable straps.
- (56) "Fit factor" means a quantitative estimate of the fit of a particular respirator to a specific individual, and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.
- (57) "Fit test" means the use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.
- (58) "Generally applicable environmental radiation standards" means standards issued by the U.S. Environmental Protection Agency (EPA) under the authority of the Atomic Energy Act of 1954 (42 U.S.C. 2D11 et seq;), as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using sources of radiation.
- (59) "Gray" (Gy) is the SI unit of absorbed dose. One gray is equal to an absorbed dose of one joule/kilogram (100 rads).
- (60) "Helmet" means a rigid respiratory inlet covering that also provides head protection against impact and penetration.
- (61) "High radiation area" means an area, accessible to individuals, in which radiation levels from sources external to the body could result in an individual receiving a dose equivalent in excess of 0.1 rem (1 mSv) in one hour at 30 centimeters from the radiation source or from any surface that the radiation penetrates.
- (62) "Hood" means a respiratory inlet covering that completely covers the head and neck and may also cover portions of the shoulders and torso.
- (63) "Hospital" means a facility that provides as its primary functions diagnostic services and intensive medical and nursing care in the treatment of acute stages of illness.
- (64) "Human use" means the internal or external administration of radiation or radioactive materials to human beings.
- (65) "Individual" means any human being.
- (66) "Individual monitoring" means:
- (a) the assessment of dose equivalent by the use of devices designed to be worn by an individual;
  - (b) the assessment of committed effective dose equivalent by bioassay (see Bioassay) or by determination of the time-weighted air concentrations to which an individual has been exposed, i.e., DAC-hours; or
  - (c) the assessment of dose equivalent by the use of survey data.
- (67) "Individual monitoring devices" or "individual monitoring equipment" means devices designed to be worn by a single individual for the assessment of dose equivalent such as film badges, thermoluminescence dosimeters (TLDs), pocket ionization chambers, and personal ("lapel") air sampling devices.
- (68) "Inhalation class" (see "Class" defined in this Rule).
- (69) "Inspection" means an official examination or observation to determine compliance with rules, orders, requirements and conditions of the agency or the Commission.
- (70) "Internal dose" means that portion of the dose equivalent received from radioactive material taken into the body.
- (71) "Lens dose equivalent" or "LDE" applies to the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 cm (300 mg/cm<sup>2</sup>).
- (72) "License", except where otherwise specified, means a license issued pursuant to Section .0300 of this Chapter.
- (73) "Licensee" means any person who is licensed by the agency pursuant to Section .0300 of this Chapter.
- (74) "Licensing state" means any state designated as such by the Conference of Radiation Control Program Directors, Inc. Unless the context clearly indicates otherwise, use of the term Agreement State in this Chapter shall be deemed to include licensing state with respect to naturally occurring and accelerator produced radioactive material (NARM).
- (75) "Limits" or "dose limits" means the permissible upper bounds of radiation doses.
- (76) "Loose-fitting facepiece" means a respiratory inlet covering that is designed to form a partial seal with the face.
- (77) "Lost or missing licensed radioactive material" means licensed radioactive material whose

- location is unknown. It includes material that has been shipped but has not reached its destination and whose location cannot be readily traced in the transportation system.
- (78) "Lung class" (see "Class" as defined in this Rule).
- (79) "Medical use" means the intentional internal or external administration of radioactive material or the radiation therefrom to patients or human research subjects under the supervision of an authorized user.
- (80) "Member of the public" means any individual except when that individual is receiving an occupational dose.
- (81) "Minor" means an individual less than 18 years of age.
- (82) "Misadministration" means the administration of the following:
- (a) a diagnostic radiopharmaceutical dosage:
    - (i) involving a dose to the patient that exceeds 5 rems effective dose equivalent or 50 rems dose equivalent to any individual organ; and
      - (A) the wrong patient;
      - (B) the wrong radiopharmaceutical;
      - (C) the wrong route of administration; or
      - (D) an administered dosage that differs from the prescribed dosage by more than 20 percent of the prescribed dosage; or
    - (ii) for sodium iodide I-125 or I-131 involving:
      - (A) the wrong patient or wrong radiopharmaceutical; or
      - (B) an administered dosage that differs from the prescribed dosage by more than 20 percent of the prescribed dosage and the difference between the administered dosage and prescribed dosage exceeds 30 microcuries;
  - (b) a therapeutic radiopharmaceutical dosage:
    - (i) involving:
      - (A) the wrong patient;
      - (B) wrong radiopharmaceutical;
      - (C) wrong route of administration; or
      - (D) when the administered dosage differs from the prescribed dosage by more than 20 percent of the prescribed dosage; or
    - (ii) when the administered dosage of sodium iodide I-125 or I-131 differs from the prescribed dosage by more than 20 percent of the prescribed dosage;
  - (c) a teletherapy or accelerator radiation dose:
    - (i) involving:
      - (A) the wrong patient;
      - (B) the wrong mode of treatment; or
      - (C) wrong treatment site;
    - (ii) when the treatment consists of three or fewer fractions and the calculated total administered dose differs from the total prescribed dose by more than 10 percent of the total prescribed dose;
    - (iii) when the calculated weekly administered dose is 30 percent greater than the weekly prescribed dose; or
    - (iv) when the calculated total administered dose differs from the total prescribed dose by more than 20 percent of the total prescribed dose;
  - (d) a brachytherapy radiation dose:
    - (i) involving:
      - (A) the wrong patient;
      - (B) the wrong radioisotope; or
      - (C) the wrong treatment site. This excludes, for permanent implants, seeds that were implanted in the correct site but

- migrated outside the treatment site;
    - (ii) involving a sealed source that is leaking;
    - (iii) when, for a temporary implant, one or more sealed sources are not removed upon completion of the procedure; or
    - (iv) when the calculated administered dose differs from the prescribed dose by more than 20 percent of the prescribed dose; or
  - (e) a gamma stereotactic radiosurgery radiation dose:
    - (i) involving the wrong patient or wrong treatment site; or
    - (ii) when the calculated total administered dose differs from the total prescribed dose by more than 10 percent of the total prescribed dose.
- (83) "Mobile nuclear medicine service" means the transportation and medical use of radioactive material.
- (84) "Monitoring", "radiation monitoring" or "radiation protection monitoring" means the measurement of radiation levels, concentrations, surface area concentrations or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses.
- (85) "Natural radioactivity" means radioactivity of naturally occurring nuclides.
- (86) "Negative pressure respirator" means a tight-fitting respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside of the respirator.
- (87) "Nonstochastic effect" means health effects, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect (also called a deterministic effect).
- (88) "NRC" means the United States Nuclear Regulatory Commission or its duly authorized representatives.
- (89) "Occupational dose" means the dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to radiation or radioactive material from licensed and unlicensed sources of radiation, whether in the possession of the licensee or registrant or other person. Occupational dose does not include dose received from background radiation, as a patient from medical practices, from exposure to individuals administered radioactive material and released in accordance with Rule .0358 of this Chapter, from voluntary participation in medical research programs, or as a member of the general public.
- (90) "Particle accelerator" means any machine capable of accelerating electrons, protons, deuterons, or other charged particles.
- (91) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent or agency of the foregoing, other than the United States Nuclear Regulatory Commission, or any successor thereto, and other than federal government agencies licensed by the United States Nuclear Regulatory Commission, or any successor thereto, as defined in G.S. 104E-5(11).
- (92) "Personnel monitoring equipment" means devices, such as film badges, pocket dosimeters, and thermoluminescent dosimeters, designed to be worn or carried by an individual for the purpose of estimating the dose received by the individual.
- (93) "Pharmacist" means an individual licensed by this state to compound and dispense drugs, prescriptions and poisons.
- (94) "Physician" means an individual currently licensed to practice medicine in this state.
- (95) "Planned special exposure" means an infrequent exposure to radiation, separate from and in addition to the annual dose limits.
- (96) "Positive pressure respirator" means a respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.
- (97) "Powered air-purifying respirator (PAPR)" means an air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.
- (98) "Prescribed dosage" means the quantity of radiopharmaceutical activity documented in a written directive by an authorized user.
- (99) "Prescribed dose" means:
  - (a) for teletherapy or accelerator radiation:
    - (i) the total dose; and
    - (ii) the dose per fraction as documented in the written directive;
  - (b) for brachytherapy:
    - (i) the total source strength and exposure time; or

- (ii) the total dose, as documented in the written directive; or
- (c) for gamma stereotactic radiosurgery, the total dose as documented in the written directive.
- (100) "Pressure demand respirator" means a positive pressure atmosphere-supplying respirator that admits breathing air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.
- (101) "Public dose" means the dose received by a member of the public from exposure to radiation or radioactive material released by a licensee or registrant, or to another source of radiation within a licensee's or registrant's control. It does not include occupational dose or doses received from background radiation, as a patient from medical practices, from exposure to individuals administered radioactive material and released in accordance with Rule .0358 of this Chapter, or from voluntary participation in medical research programs.
- (102) "Qualitative fit test (QLFT)" means a pass/fail fit test to assess the adequacy of respirator fit that relies on the individual's response to the test agent.
- (103) "Quality factor" (Q) means the modifying factor that is used to derive dose equivalent from absorbed dose. Quality factors are provided in the definition of rem in this Rule.
- (104) "Quantitative fit test (QNFT)" means an assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.
- (105) "Quarter" means a period of time equal to one-fourth of the year observed by the licensee or registrant (approximately 13 consecutive weeks), providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.
- (106) "Quarterly" means either:
  - (a) at intervals not to exceed 13 weeks; or
  - (b) once per 13 weeks at about the same time during each 13 week period (completed during the same month of the quarter (first month, second month or third month) each quarter over a time period of several quarters.
- (107) "Rad" is the special unit of absorbed dose. One rad is equal to an absorbed dose of 100 ergs/gram or 0.01 joule/kilogram (0.01 gray).
- (108) "Radiation" (ionizing radiation), except as otherwise defined in Section .1400 of this Chapter, means gamma rays and x-rays, alpha and beta particles, high-speed electrons, protons, neutrons, and other nuclear particles, and electromagnetic radiation consisting of associated and interacting electric and magnetic waves including those with frequencies between three times 10 to the eighth power cycles per second and three times 10 to the twenty-fourth power cycles per second and wavelengths between one times 10 to the minus fourteenth power centimeters and 100 centimeters as defined in G.S. 104E-5(12).
- (109) "Radiation area" means an area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.005 rem (0.05 mSv) in one hour at 30 centimeters from the radiation source or from any surface that the radiation penetrates.
- (110) "Radiation dose" means dose.
- (111) "Radiation machine" means any device designed to produce or which produces radiation or nuclear particles when the associated control devices of the machine are operated as defined in G.S. 104E-5(13).
- (112) "Radiation safety officer" means one who has the knowledge and responsibility to apply appropriate radiation protection rules.
- (113) "Radioactive material" means any solid, liquid, or gas, which emits ionizing radiation spontaneously as defined in G.S. 104E-5(14).
- (114) "Radioactive waste disposal facility" means any low-level radioactive waste disposal facility, as defined in G.S. 104E-5(9c), established for the purpose of receiving low-level radioactive waste, as defined in Rule .1202 of this Chapter, generated by another licensee for the purpose of disposal.
- (115) "Radioactive waste processing facility" means any low-level radioactive waste facility, as defined in G.S. 104E-5(9b), established for the purpose of receiving waste, as defined in this Rule, generated by another licensee to be stored, compacted, incinerated or treated.
- (116) "Radioactivity" means the disintegration of unstable atomic nuclei by emission of radiation.
- (117) "Radiobioassay" means bioassay.
- (118) "Recordable event" means the administration of the following:
  - (a) a radiopharmaceutical or radiation from a licensed source without a written directive where a written directive is required by Sub-items 167(a)(i) and 167(b)-(f) of this Rule;
  - (b) a radiopharmaceutical or radiation from a licensed source where a written directive is required by Sub-items 167(a)(i) and 167(b)-(f) of this Rule without recording each administered radiopharmaceutical

- (c) dosage or radiation dose in the appropriate record on a daily basis;
    - (i) a radiopharmaceutical dosage of greater than 30 microcuries of sodium iodide I-125 and I-131 when:
      - (i) the administered dosage differs from the prescribed dosage by more than 10 percent of the prescribed dosage; and
      - (ii) the difference between the administered dosage and prescribed dose exceeds 15 microcuries;
    - (d) a therapeutic dosage of any radiopharmaceutical dosage other than sodium iodide I-125 or I-131 when the administered dosage differs from the prescribed dosage by more than 10 percent of the prescribed dosage;
    - (e) a teletherapy or accelerator radiation dose when the calculated weekly administered dose is 15 percent greater than the weekly prescribed dose; or
    - (f) a brachytherapy radiation dose when the calculated administered dose differs from the prescribed dose by
- more than 10 percent of the prescribed dose.
- (119) "Reference man" means a hypothetical aggregation of human physical and physiological characteristics arrived at by international consensus as published by the International Commission on Radiological Protection. These characteristics may be used by researchers and public health workers to standardize results of experiments and to relate biological insult to a common base.
  - (120) "Registrant" means any person who is registered with the agency as required by provisions of these Rules or the Act.
  - (121) "Registration" means registration with the agency in accordance with these Rules.
  - (122) "Regulations of the U.S. Department of Transportation" means the regulations in 49 CFR Parts 100-189.
  - (123) "Rem" is the special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rems is equal to the absorbed dose in rads multiplied by the quality factor (1 rem = 0.01 sievert). As used in this Chapter, the quality factors for converting absorbed dose to dose equivalent are as follows:

QUALITY FACTORS AND ABSORBED DOSE EQUIVALENCIES

TYPE OF RADIATION	Quality Factor (Q)	Absorbed Dose Equal to a Unit Dose Equivalent <sup>a</sup>
X-, gamma, or beta radiation	1	1
Alpha particles, multiple-charged particles, fission fragments and heavy particles of unknown charge	20	0.05
Neutrons of unknown energy	10	0.1
High-energy protons	10	0.1

<sup>a</sup> Absorbed dose in rad equal to one rem or the absorbed dose in gray equal to one sievert.

If it is more convenient to measure the neutron fluence rate than to determine the neutron dose equivalent rate in rems per hour or sieverts per hour, one rem (0.01 Sv) of neutron radiation of unknown energies may, for purposes of the rules of this Chapter, be assumed to result from a total fluence of 25 million neutrons per square centimeter incident upon the body.

If sufficient information exists to estimate the approximate energy distribution of the neutrons, the licensee or registrant may use the fluence rate per unit dose equivalent or the appropriate Q value from the following table to convert a measured tissue dose in rads to dose equivalent in rems:

MEAN QUALITY FACTORS, Q, AND FLUENCE PER UNIT DOSE EQUIVALENT FOR MONOENERGETIC NEUTRONS

Neutron Energy	Quality Factor <sup>a</sup>	Fluence per Unit Dose Equivalent <sup>b</sup>
----------------	-----------------------------	---



	(MeV)	(Q)	(neutrons cm <sup>-2</sup> rem <sup>-1</sup> )
(thermal)	2.5 x 10 <sup>-8</sup>	2	980 x 10 <sup>6</sup>
	1 x 10 <sup>-7</sup>	2	980 x 10 <sup>6</sup>
	1 x 10 <sup>-6</sup>	2	810 x 10 <sup>6</sup>
	1 x 10 <sup>-5</sup>	2	810 x 10 <sup>6</sup>
	1 x 10 <sup>-4</sup>	2	840 x 10 <sup>6</sup>
	1 x 10 <sup>-3</sup>	2	980 x 10 <sup>6</sup>
	1 x 10 <sup>-2</sup>	2.5	1010 x 10 <sup>6</sup>
	1 x 10 <sup>-1</sup>	7.5	170 x 10 <sup>6</sup>
	5 x 10 <sup>-1</sup>	11	39 x 10 <sup>6</sup>
	1	11	27 x 10 <sup>6</sup>
	2.5	9	29 x 10 <sup>6</sup>
	5	8	23 x 10 <sup>6</sup>
	7	7	24 x 10 <sup>6</sup>
	10	6.5	24 x 10 <sup>6</sup>
	14	7.5	17 x 10 <sup>6</sup>
	20	8	16 x 10 <sup>6</sup>
	40	7	14 x 10 <sup>6</sup>
	60	5.5	16 x 10 <sup>6</sup>
	1 x 10 <sup>2</sup>	4	20 x 10 <sup>6</sup>
	2 x 10 <sup>2</sup>	3.5	19 x 10 <sup>6</sup>
	3 x 10 <sup>2</sup>	3.5	16 x 10 <sup>6</sup>
	4 x 10 <sup>2</sup>	3.5	14 x 10 <sup>6</sup>

<sup>a</sup> Value of quality factor (Q) at the point where the dose equivalent is maximum in a 30-cm diameter cylinder tissue-equivalent phantom.

<sup>b</sup> Monoenergetic neutrons incident normally on a 30-cm diameter cylinder tissue-equivalent phantom.

- |  |   |
|--|---|
| <p>(124) "Research and development" means:</p> <p>(a) theoretical analysis, exploration, or experimentation; or</p> <p>(b) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.</p> <p>Research and development does not include the internal or external administration of radiation or radioactive material to human beings.</p> <p>(125) "Residual radioactivity" means radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if the burials were made in accordance with the provisions of Section .1600 of this Chapter.</p> | <p>(126) "Respiratory protective device" means an apparatus, such as a respirator, used to reduce the individual's intake of airborne radioactive materials.</p> <p>(127) "Restricted area" means an area, access to which is controlled by the licensee or registrant for purposes of protecting individuals against undue risks from exposure to radiation and radioactive materials. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.</p> <p>(128) "Roentgen" (R) means the special unit of exposure. One roentgen equals 2.58 x 10<sup>-4</sup> coulombs/kilogram of air.</p> <p>(129) "Sanitary sewerage" means a system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee.</p> <p>(130) "Sealed source" means radioactive material that is permanently bonded, fixed or encapsulated so as to prevent release and dispersal of the radioactive material under the most severe conditions which are likely to be encountered in normal use and handling.</p> <p>(131) "Self-contained breathing apparatus (SCBA)" means an atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.</p> |
|--|---|

- (132) "Semiannually" means either:
- (a) at intervals not to exceed six months; or
  - (b) once per six months at about the same time during each six month period (completed during the sixth month of each six month period over multiple six month periods).
- (133) "Shallow-dose equivalent" ( $H_s$ ), which applies to the external exposure of the skin or an extremity, is taken as the dose equivalent at a tissue depth of 0.007 centimeter ( $7 \text{ mg/cm}^2$ ) averaged over an area of one square centimeter.
- (134) "SI unit" means a unit of measure from the International System of Units as established by the General Conference of Weights and Measures.
- (135) "Sievert" is the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sieverts is equal to the absorbed dose in grays multiplied by the quality factor ( $1 \text{ Sv} = 100 \text{ rems}$ ).
- (136) "Site boundary" means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee or registrant.
- (137) "Source material" means:
- (a) uranium or thorium or any other material which the Department declares to be source material after the United States Nuclear Regulatory Commission, or any successor thereto has determined the material to be such; or
  - (b) ores containing one or more of the foregoing materials, in such concentrations as the Department declares to be source material after the United States Nuclear Regulatory Commission, or any successor thereto, has determined the material in such concentration to be source material as defined in G.S. 104E-5(15).
- (138) "Source of radiation" means any radioactive material, or any device or equipment emitting or capable of producing radiation.
- (139) "Special form radioactive material" means radioactive material which satisfies the following conditions:
- (a) It is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;
  - (b) The piece or capsule has at least one dimension not less than five millimeters (0.197 inch); and
- (c) It satisfies the test requirements specified by the U.S. Nuclear Regulatory Commission, Subpart F of 10 CFR Part 71, and the tests prescribed in Rule .0114 of this Section. A special form encapsulation designed in accordance with the U.S. Nuclear Regulatory Commission requirements, Subpart F of 10 CFR Part 71, in effect on June 30, 1984, and constructed prior to July 1, 1985, may continue to be used. A special form encapsulation either designed or constructed after June 30, 1985, must meet requirements of this definition applicable at the time of its design or construction.
- (140) "Special nuclear material" means:
- (a) plutonium, uranium 233, uranium 235, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Department declares to be special nuclear material after the United States Nuclear Regulatory Commission, or any successor thereto, has determined the material to be such, but does not include source material; or
  - (b) any material artificially enriched by any of the foregoing, but does not include source material as defined in G.S. 104E-5(16).
- (141) "Special nuclear material in quantities not sufficient to form a critical mass" means uranium enriched in the isotope uranium-235 in quantities not exceeding 350 grams of contained uranium-235; uranium-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or any combination of uranium-235, uranium enriched in uranium-235 and plutonium in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified in this Rule for the same kind of special nuclear material. The sum of these ratios for all the kinds of special nuclear material in combination shall not exceed unity. For example, the following quantities in combination would not exceed the limitations and are within the formula, as follows:
- $$\frac{175 \text{ (gram contained U-235)}}{200} + \frac{50 \text{ (grams U-233)}}{350} + \frac{50 \text{ (grams Pu)}}{200} \text{ is } < \text{ or } = 1$$

- (142) "State" means the State of North Carolina.
- (143) "Stochastic effects" means health effects that occur randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects.
- (144) "Supplied-air respirator (SAR or airline respirator)" means an atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.
- (145) "Survey" means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of sources of radiation. When appropriate, such an evaluation includes a physical survey of the location of sources of radiation and measurements or calculations of levels of radiation, or concentrations or quantities of radioactive material present.
- (146) "These Rules" means Chapter 11 of this Title.
- (147) "Tight-fitting facepiece" means a respiratory inlet covering that forms a complete seal with the face.
- (148) "To the extent practicable" means to the extent feasible or capable of being done or carried out with reasonable effort.
- (149) "Total effective dose equivalent" (TEDE) means the sum of the deep-dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures).
- (150) "Toxic or hazardous constituent of the waste" means the nonradioactive content of waste which, notwithstanding the radioactive content, would be classified as "hazardous waste" as defined in G.S. 130A-290(8).
- (151) "Type A quantity" means a quantity of radioactive material, the aggregate radioactivity of which does not exceed  $A_1$  for special form radioactive material or  $A_2$  for normal form radioactive material, where  $A_1$  and  $A_2$  are given in Rule .0113 of this Section or may be determined by procedures described in Rule .0113 of this Section. All quantities of radioactive material greater than a Type A quantity are Type B.
- (152) "Unit dosage" means a dosage intended for medical use in an individual that has been obtained from a manufacturer or preparer licensed pursuant to 10 CFR 32.72 or equivalent agreement state requirements.
- (153) "Unrefined and unprocessed ore" means ore in its natural form prior to any processing, such as grinding, roasting, beneficiating, or refining.
- (154) "Unrestricted area" means an area, access to which is neither limited nor controlled by the licensee or registrant.
- (155) "User seal check (fit check)" means an action conducted by the respirator user to determine if the respirator is properly seated to the face. Examples include negative pressure check, positive pressure check, irritant smoke check, or isoamyl acetate check.
- (156) "Very high radiation area" means an area, accessible to individuals, in which radiation levels from sources external to the body could result in an individual receiving an absorbed dose in excess of 500 rads (5 grays) in one hour at one meter from a radiation source or from any surface that the radiation penetrates. At very high doses received at high dose rates, units of absorbed dose (e.g., rads and grays) are appropriate, rather than units of dose equivalent (e.g., rems and sieverts).
- (157) "Waste" means low-level radioactive waste as defined in G.S. 104E-5(9a) and includes licensed naturally occurring and accelerator produced radioactive material which is not subject to regulation by the U.S. Nuclear Regulatory Commission under the Atomic Energy Act of 1954, as amended, except as defined differently in Rule .1202 of this Chapter.
- (158) "Waste, Class A" is defined in Rule .1650 of this Chapter.
- (159) "Waste, Class B" is defined in Rule .1650 of this Chapter.
- (160) "Waste, Class C" is defined in Rule .1650 of this Chapter.
- (161) "Week" means seven consecutive days starting on Sunday.
- (162) "Weighting factor",  $w_T$ , for an organ or tissue (T) is the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of  $w_T$  are:

**ORGAN DOSE WEIGHTING FACTORS**

Organ or Tissue	$w_T$
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	0.30 <sup>a</sup>
Whole body	1.00 <sup>b</sup>

<sup>a</sup> 0.30 results from 0.06 for each of 5 "remainder" organs (excluding the skin and the lens of the eye) that receive the highest doses.

<sup>b</sup> For the purpose of weighting the external whole body dose (for adding it to the internal dose), a single weighting factor,  $w_T = 1.0$ , has been specified.

- (163) "Whole body" means, for purposes of external exposure, head, trunk (including male gonads), arms above the elbow, or legs above the knee.
- (164) "Worker" means an individual engaged in work under a license or registration issued by the agency and controlled by a licensee or registrant, but does not include the licensee or registrant.
- (165) "Working level" (WL) is any combination of short-lived radon daughters (for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212) in one liter of air that will result in the ultimate emission of  $1.3 \times 10^5$  MeV of potential alpha particle energy.
- (166) "Working level month" (WLM) means an exposure to one working level for 170 hours.
- (167) "Written directive" means an order in writing for a specific patient, dated and signed by an authorized user prior to the administration of a radiopharmaceutical or radiation from a licensed source, except as specified in Sub-item (e) of this definition, containing the following information:
  - (a) for the diagnostic administration of a radiopharmaceutical:
    - (i) if greater than 30 microcuries of sodium iodide I-125 or I-131, the dosage to be administered in accordance with the diagnostic clinical procedures manual; or
    - (ii) if not subject to Sub-item (a)(i) of this Item, the type of study to be performed in accordance with the diagnostic clinical procedures manual;
  - (b) for the therapeutic administration of a radiopharmaceutical:
    - (i) radiopharmaceutical;
    - (ii) dosage; and
    - (iii) route of administration;
  - (c) for teletherapy or accelerator radiation therapy:
    - (i) total dose;
    - (ii) dose per fraction;
    - (iii) treatment site; and
    - (iv) overall treatment period;
  - (d) for high-dose-rate remote afterloading brachytherapy:
    - (i) radioisotope;
    - (ii) treatment site; and
    - (iii) total dose;

- (e) for all other brachytherapy:
  - (i) prior to implantation:
    - (A) radioisotope;
    - (B) number of sources to be implanted; and
    - (C) source strengths in millicuries; and
  - (ii) after implantation but prior to completion of the procedure:
    - (A) radioisotope;
    - (B) treatment site; and
    - (C) either:
      - (I) total source strength and exposure time; or
      - (II) total dose;
- (f) for gamma stereotactic radiosurgery:
  - (i) target coordinates;
  - (ii) collimator size;
  - (iii) plug pattern; and
  - (iv) total dose.

(168) "Year" means the period of time beginning in January used to determine compliance with the provisions of Section .1600 of this Chapter. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

*History Note: Authority G.S. 104E-7(a)(2); Eff. February 1, 1980; Amended Eff. November 1, 1989; June 1, 1989; October 1, 1984; Transferred and Recodified from 10 NCAC 3G .2204 Eff. January 4, 1990; Amended Eff. January 1, 1994; May 1, 1992; Temporary Amendment Eff. August 20, 1994, for a Period of 180 Days or until the permanent rule becomes effective, whichever is sooner; Amended Eff. January 1, 2005; August 1, 2002; April 1, 1999; August 1, 1998; May 1, 1995.*

**15A NCAC 11 .0309 GENERAL LICENSES: MEASURING GAUGING: CONTROLLING DEVICES**  
 (a) A general license shall be issued to commercial and industrial firms; research, educational and medical institutions; individuals in the conduct of their business; and federal, state, or local government agencies to acquire, receive, possess, use, or transfer in accordance with Paragraphs (b), (c), and (d) of this

Rule, radioactive material contained in devices designed and manufactured for the purpose of detecting, measuring, gauging, or controlling thickness, density, level, interface location, radiation leakage, or qualitative or quantitative chemical composition, or for producing light or an ionized atmosphere.

(b) The general license in Paragraph (a) of this Rule applies only to radioactive material contained in devices which have been:

- (1) manufactured or initially transferred and labeled in accordance with the specifications contained in a specific license issued pursuant to Rule .0328 of this Section or in accordance with the specifications contained in a specific license issued by the U.S. Nuclear Regulatory Commission or an agreement state which authorizes distribution of the devices to persons generally licensed pursuant to equivalent regulations; and
- (2) received from one of the specific licensees referenced in Subparagraph (b)(1) of this Rule or through a transfer completed in accordance with Subparagraph (c)(8) of this Rule.

(c) Any person who acquires, receives, possesses, uses or transfers radioactive material in a device pursuant to the general license issued under Paragraph (a) of this Rule:

- (1) shall assure that all labels, affixed to the device at the time of receipt and bearing a statement that removal of the label is prohibited, are maintained thereon and shall comply with all instructions and precautions provided by the labels;
- (2) shall assure that the device is tested for leakage of radioactive material and proper operation of the on-off mechanism and indicator, if any, at no longer than six-month intervals or at such other intervals as are specified in the label, except as follows:
  - (A) Devices containing only krypton need not be tested for leakage of radioactive material;
  - (B) Devices containing only tritium or not more than 100 microcuries of other beta, gamma, or beta and gamma emitting material or ten microcuries of alpha emitting material and devices held in storage in the original shipping container prior to initial installation need not be tested for any purpose;
- (3) shall assure that the tests required by Subparagraph (c)(2) of this Rule and other testing, installation, servicing and removal from installation involving the radioactive materials, its shielding or containment are performed:
  - (A) in accordance with the instructions provided on labels affixed to the device, except that tests for leakage or contamination may be performed by

the general licensee using leak test kits provided and analyzed by a specific licensee who is authorized to provide leak test kit services; or

- (B) by a person holding a specific license or registration which authorizes the providing of services required by this Rule and which is issued pursuant to Rules .0205 and .0306 of this Chapter or equivalent regulations of the U.S. Nuclear Regulatory Commission or an agreement state.
- (4) shall maintain records, showing compliance with the requirements in Subparagraphs (c)(2) and (3) of this Rule, to include:
  - (A) the name of the person(s) performing the test(s) and the date(s) of the test(s);
  - (B) the name of the person(s) performing installation, servicing and removal of any radioactive material, shielding or containment;
  - (C) retention of leakage or contamination, on-off mechanism and on-off indicator test records for one year after the next required test is performed or until the sealed source is disposed of or transferred, whichever is shorter;
  - (D) retention of other records of tests required in Subparagraph (c)(3) of this Rule for two years from the date of the recorded test or until the device is disposed of or transferred.
- (5) upon the occurrence of a failure of or damage to, or any indication of a possible failure of or damage to, the shielding of the radioactive material or the on-off mechanism or indicator, or upon the detection of 0.005 microcurie or more removable radioactive material, shall immediately suspend operation of the device until it has been:
  - (A) repaired by the manufacturer or other person authorized to repair the device(s) by a specific license issued by the agency, the U.S. Nuclear Regulatory Commission, or an agreement state; or
  - (B) disposed of by transfer to a person authorized by a specific license to receive the radioactive material contained in the device; and within 30 days, furnish to the agency at the address in Rule .0111 of this Chapter a report containing a brief description of the event and the remedial action taken. In the event that 0.005 microcurie or more of removable radioactive contamination is detected,

- or if the failure of or damage to a source of radiation is likely to result in the contamination of the facility or the environment, a plan for ensuring that the facility and the environment are acceptable for unrestricted use shall be submitted to the agency at the address in Rule .0111 of this Chapter.
- (6) shall not abandon the device containing radioactive material;
  - (7) except as provided in Subparagraph (c)(8) of this Rule, shall transfer or dispose of the device containing radioactive material only by transfer to a person holding a specific license authorizing receipt of the device; and, prior to the transfer of a device to a specific licensee, shall furnish to the agency at the address in Rule .0111 of this Chapter, a report that contains:
    - (A) the identification of the device by manufacturer's or initial transferor's name, model number, and serial number;
    - (B) the name, address and specific license number of the person receiving the device; and
    - (C) the date of the transfer.
  - (8) shall transfer the device to another general licensee only where the device:
    - (A) remains in use at a particular location.
      - (i) In this case the transferee shall give the transferee a copy of this Section and any safety documents identified in the label of the device;
      - (ii) The transferor shall, within 30 days of the transfer, report to the agency at the address in Rule .0111 of this Chapter the manufacturer's or initial transferor's name, serial number, and model number of device transferred; the name and mailing address of the transferee; and the name, title, and telephone number of the individual identified by the transferee pursuant to Subparagraph (c)(10) of this Rule as having knowledge of and authority to take actions to ensure compliance with the requirements contained in these Rules; or
    - (B) is held in storage by the licensee or an intermediate person in the original shipping container at its intended location of use prior to initial use by a general licensee.
  - (9) shall comply with the provisions of Sections .0100 and .1600 of this Chapter for reporting radiation incidents, theft or loss of licensed material, but shall be exempt from the other requirements of Section .1600 of this Chapter;
  - (10) shall appoint an individual responsible for having knowledge of the requirements contained in these Rules and the authority for taking the actions required to comply with these Rules. The general licensee, through this individual, shall ensure the day-to-day compliance with these Rules. The appointment of such an individual does not relieve the general licensee of any of its responsibility in this regard;
  - (11) shall register, when required by the agency, any source of radiation subject to a general license in accordance with the rules in this Section. Each address for a location of use represents a separate general license and requires a separate registration action;
  - (12) shall register, on an annual basis, all devices containing, based on the activity indicated on the label, at least 10 mCi (370 MBq) of cesium-137, 0.1 mCi (3.7 MBq) of strontium-90, 1 mCi (37MBq) of cobalt-60, 1 mCi (37 MBq) of americium-241 or any other transuranic isotope. Each address for a location of use represents a separate general license and requires a separate registration action. Annual registration consists of verifying, correcting, or adding to the information provided in a request for annual registration within 30 days of a request from the agency. The general licensee shall furnish the following information for annual registration:
    - (A) the name and mailing address of the general licensee;
    - (B) specific information about each device to include the manufacturer or initial transferor, model number, serial number, the radioisotope, and the activity indicated on the label;
    - (C) the name, title, and telephone number of the responsible person designated as a representative of the general licensee in accordance with Subparagraph (c)(10) of this Rule;
    - (D) the address or location at which the device(s) are to be used or stored. For portable devices that are granted a general license by the agency, the address of the primary place of storage;
    - (E) certification by the responsible person designated by the general licensee

- (F) that the information concerning the device(s) has been verified through a physical inventory and a check of label information; and certification by the responsible person designated by the general licensee that they are aware of the requirements of the general license.
- (13) shall report changes to the mailing address to the agency within 30 days of the effective date of the change;
- (14) shall report changes to the name of the general licensee to the agency within 30 days of the effective date of the change;
- (15) shall not hold devices that are not in use for longer than two years. If devices that have shutters are not in use, the shutter shall be locked in the closed position. Leak testing is not required during the period of storage; however, when devices are returned to service or transferred to another person, the devices must be tested for leakage and shutter operation. Devices kept in standby for future use shall be excluded from the two year time limit if quarterly physical inventories of these devices are performed while in standby.

(d) The general license in Paragraph (a) of this Rule does not authorize the manufacture or distribution of devices containing radioactive material.

(e) The general license in Paragraph (a) of this Rule is subject to the provisions of Rules .0107 to .0111, .0303(a), .0338, .0342, .0343 and .0345 of this Chapter and to labeling requirements in Section .1600 of this Chapter.

*History Note: Authority G.S. 104E-7; 104E-10(b); Eff. February 1, 1980; Amended Eff. January 1, 2005; January 1, 1994; June 1, 1989.*

**15A NCAC 11 .0310 GENERAL LICENSES: MANUFACTURE, TRANSFER, INSTALL GENERALLY LICENSED DEVICES**

Any person who is authorized to manufacture, install or service a device described in Rule .0309 of this Section pursuant to a specific license issued by the agency, the U.S. Nuclear Regulatory Commission or an agreement state is hereby granted a general license to install and service the device described in Rule .0309, provided the following requirements are met:

- (1) The person shall file a report with the agency within 30 days after the end of each calendar quarter in which any device is transferred to or installed in this state. Each report shall identify each general licensee, to whom the device is transferred by name and address, the type of device transferred, and the quantity and type of radioactive material contained in the device;
- (2) The device is manufactured, labeled, installed, and serviced in accordance with applicable provisions of the specific license issued to the

- (3) person by the U.S. Nuclear Regulatory Commission or an agreement state; The person shall assure that any labels satisfy the requirements in Rule .0309 of this Section and shall furnish to each general licensee, to whom he transfers a device or on whose premises he installs a device, a copy of the general license contained in Rule .0309 of this Section;
- (4) The person shall ensure that each device having a separable source housing that provides the primary shielding for the source also bears, on the source housing, a durable label containing the device model and serial number, the isotope and quantity, the words "Caution: Radioactive Material," the radiation symbol described in Rule .1623 of this Chapter, and the name of the manufacturer or initial transferor;
- (5) The person shall ensure that each device meeting the criteria of Rule .0309 of this Chapter bears a permanently embossed, etched, stamped or engraved label affixed to the source housing, if separable, or the device if the source housing is not separable. The label shall include the words, "Caution: Radioactive Materials," and, if space and accessibility permit, the radiation symbol described in Rule .1623 of this Chapter;
- (6) If a device is to be transferred for use under the general license granted in Rule .0309(c)(12) of this Chapter, each person that is licensed under this Rule shall provide the following information to each person to whom the device is being transferred prior to the device being transferred. In the case of a transfer through an intermediate person, the information shall also be provided to the intended user prior to the initial transfer to the intermediate person. The required information includes:
  - (a) a copy of the general license document referenced in Rule .0306 of this Chapter or if no license document is issued, a copy of the letter issued by the agency indicating a license exists in accordance with Rule .0309 of this Chapter. If the prospective general licensee is in the jurisdiction of the Nuclear Regulatory Commission or another Agreement State, the notification shall include a statement advising the person receiving the device of the agency that has jurisdiction over the device;
  - (b) a copy of Rule .0309 of this Section. If the prospective general licensee is in the jurisdiction of the Nuclear Regulatory Commission or another

- Agreement State, the notification of transfer shall include the name or title, address, and telephone number of the contact at the proper regulatory agency that has jurisdiction over the person receiving the device;
- (c) a list of services, as provided by the manufacturer, that can be performed only by a specific licensee;
  - (d) information on acceptable disposal options, including estimated cost of disposal; and
  - (e) a statement that loss or improper disposal of the device may result in formal enforcement actions.
- (7) Each device transferred after January 1, 2005 shall meet the labeling requirements;
- (8) Each person specifically licensed to initially transfer generally licensed devices to other persons shall comply with the requirements of this Paragraph.
- (a) The person shall report, on a quarterly basis, all transfers of devices to persons for use under a general license and all receipts of devices from generally licensed persons. For devices transferred for use under the general license granted in Rule .0309(c)(12) of this Chapter, the reports shall be provided to the agency at the address listed in Rule .0111. For devices transferred outside the jurisdiction of the agency, the reports shall be provided to the Nuclear Regulatory Commission or to the Agreement State which has jurisdiction over the general licensee. The information shall be provided either on the Nuclear Regulatory Commission's Form 653 "Transfers of Industrial Devices Report" or in a clear and legible report that contains all of the information required by the form. The required information includes:
    - (i) the identity of each general licensee by name and mailing address for the location of use. If there is no mailing address at the location of use, an alternate address for the general licensee shall be submitted along with the information on the actual location of use;
    - (ii) the name, title and telephone number of the person identified by the general licensee as having knowledge of, and authority to ensure compliance with, these rules;
    - (iii) the date of transfer;
    - (iv) the type, model number, and serial number of the device transferred; and
    - (v) the quantity and type of radioactive material contained in the device.
  - (b) If one or more intermediate persons will temporarily possess the device at the intended use location prior to its use by the end user, the report shall include the same information for both the intended end user and each intermediate person, and designate the intermediate person(s).
  - (c) If the licensee makes changes to a device possessed by a general licensee such that the label must be changed to update required information, the report shall identify the general licensee, the device, and the changes to the information on the label.
  - (d) The report shall cover a calendar quarter and must be filed within 30 days of the end of the calendar quarter. The report shall identify the period covered by the report.
  - (e) The report shall identify the specific licensee submitting the report and include the license number of the specific licensee.
  - (f) In providing information on devices received from a general licensee, the report shall include the identity of the general licensee by name and address, the type, model number and serial number of the device received, and, in the case of devices not initially transferred by the licensee submitting the report, the name of the manufacturer or initial transferor.
  - (g) If no transfers have been made to or from persons generally licensed during the reporting period, the report shall so indicate.
- (9) The person providing the reports shall maintain all information concerning the transfers and receipts of devices required by this Rule for a period of three years following the date of the recorded event.

*History Note: Authority G.S. 104E-7; 104E-10(b);  
Eff. February 1, 1980;  
Amended Eff. January 1, 2005.*



**15A NCAC 11 .0510 LIMITATIONS**

(a) The licensee or registrant shall not permit any person to act as a radiographer until the person:

- (1) has been instructed in the subjects outlined in Rule .0519 of this Section and has demonstrated understanding thereof by successful completion of a written test. The person shall also have a minimum of two months of on-the-job training, and be certified through a radiography certification program by a certifying entity in accordance with the requirements of Rule .0525 of this Section;
- (2) has received copies of and instruction in the rules contained in this Section and in the applicable rules of Sections .0200, .0300, .0900 and .1600 of this Chapter, in applicable U.S. Department of Transportation regulations referenced in Rule .0117 of this Chapter, and the licensee's or registrant's operating and emergency procedures, and has demonstrated understanding thereof by successful completion of a written test;
- (3) has received training in the use of the licensee or registrant's radiographic exposure devices, sealed sources, in the daily inspection of devices and associated equipment, and in the use of radiation survey instruments;
- (4) has demonstrated competence to use the radiographic exposure devices, sealed sources, related handling tools, radiation machines and survey instruments which will be employed in his assignment by successful completion of a practical examination covering this material; and
- (5) has demonstrated understanding of the instructions in Paragraph (a) of this Rule by successful completion of a written test on the subjects covered.

(b) The licensee or registrant shall not permit any person to act as a radiographer's assistant until the person:

- (1) has received copies of and instructions in the licensee's or registrant's operating and emergency procedures, and has demonstrated understanding thereof by successful completion of a written or oral test and practical examination on the subjects covered;
- (2) has demonstrated competence to use under the personal supervision of the radiographer, the radiographic exposure devices, sealed sources, related handling tools, radiation machines and radiation survey instruments which will be employed in his assignment; and
- (3) has demonstrated understanding of the instructions in Paragraph (b) of this Rule by successfully completing a written or oral test and a field examination on the subjects covered.

(c) Records of the training including copies of written tests and dates of oral tests and field examinations shall be maintained in accordance with Rule .0523 of this Section.

(d) Each licensee or registrant shall conduct an internal audit program to ensure that the agency's radioactive material license, registration conditions and the licensee's or registrant's operating and emergency procedures are followed by each radiographer and radiographer's assistant. These internal audits shall be performed and records maintained by the licensee or registrant as specified in Items (3) and (4) of Rule .0323 of this Chapter.

(e) The licensee or registrant shall provide periodic training for radiographers and radiographer's assistants at least once during every 12 months.

(f) Whenever radiography is performed outside of a permanent radiographic installation, the radiographer shall be accompanied by another radiographer or an individual with, at least, the qualifications of a radiographer's assistant. This person's responsibilities shall include but not be limited to observing the operations and being capable and prepared to provide immediate assistance to prevent unauthorized entry.

(g) A licensee or registrant may conduct lay-barge, off-shore platform, or underwater radiography only if procedures have been developed and submitted to the agency that ensure radiation exposure to the workers and the public are ALARA during the radiographic operation.

(h) The radiation safety officer shall ensure that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's or registrant's program.

- (1) The radiation safety officer's qualifications shall include:
  - (A) completion of the training and testing requirements of Paragraph (a) of this Rule; and
  - (B) Two thousand hours documented experience in industrial radiographic operations, with at least 40 hours of classroom training with respect to the establishment and maintenance of radiation protection programs; or
  - (C) an equivalent combination of education and experience.
- (2) The specific duties and authorities of the radiation safety officer shall include, but are not limited to the following:
  - (A) to establish and oversee operating, emergency and ALARA procedures, and to review them at least annually to assure that the procedures are current and conform with these Rules and to the license conditions;
  - (B) to oversee and approve all phases of the training of radiographic personnel so that appropriate and effective radiation protection practices are taught;
  - (C) to ensure that required radiation surveys and leak tests are performed and documented in accordance with

- this Rule, including any corrective measures when levels of radiation exceed established limits;
- (D) to ensure that personnel monitoring devices are calibrated and used properly by occupationally-exposed personnel, that records are kept of the monitoring results, and that timely notifications are made as required by Rule .1646 of this Chapter;
  - (E) to assure that operations are conducted safely and to assume control and have the authority to institute corrective actions including stopping of operations when necessary in emergency situations or unsafe conditions.

*History Note: Authority G.S. 104E-7; 10 C.F.R. Chapter 1, Commission Notices, Policy Statements, Agreement States, 46 F.R. 7540; 10 C.F.R. 34.43; 10 C.F.R. Appendix A; Eff. February 1, 1980; Amended Eff. June 1, 1993; June 1, 1989; Temporary Amendment Eff. August 20, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Amended Eff. January 1, 2005; April 1, 1999; May 1, 1995; June 1, 1993; June 1, 1989.*

**15A NCAC 11 .0512 PERSONNEL MONITORING**

- (a) The licensee or registrant shall not permit any individual to act as a radiographer or a radiographer's assistant unless, at all times during radiographic operations, each such individual wears on the trunk of the body a direct reading pocket dosimeter, an operating alarm ratemeter, and a personnel dosimeter that is processed and evaluated by an accredited National Voluntary Laboratory Accreditation Program (NVLAP) processor. At permanent radiography facilities where other alarming or warning devices are in routine use, the wearing of an alarming ratemeter is not required. Direct reading pocket dosimeters shall have a range from zero to 200 milliroentgens (2 millisieverts) and shall be recharged at the start of each shift. Each personnel dosimeter shall be assigned to and worn by only one individual. Film badges shall be exchanged at least monthly, and other personnel dosimeters that are processed and evaluated by an accredited NVLAP processor shall be exchanged at least once each three months. Each film badge or other personnel dosimeter shall be submitted for processing within 30 days of replacement.
- (b) Electronic personal dosimeters may be used in place of direct reading ion-chamber pocket dosimeters.
- (c) Direct reading dosimeters such as electronic personal dosimeters or pocket dosimeters shall be read and exposures recorded at the beginning and end of each shift.
- (d) Direct reading dosimeters such as pocket dosimeters or electronic personal dosimeters shall be checked at periods not to exceed 12 months for correct response to radiation. Acceptable dosimeters shall read within plus or minus 20 percent of the true radiation exposure.

- (e) If an individual's pocket dosimeter is found to be off-scale or if the individual's electronic personal dosimeter reads greater than 200 millirem (2 millisieverts), and the possibility of radiation exposure cannot be ruled out as the cause, the individual's personnel dosimeter shall be immediately sent for processing. In addition, the individual shall not work with sealed sources until a determination of his radiation exposure has been made by the radiation safety officer or his designee.
- (f) If a personnel dosimeter is lost or damaged, the worker shall cease work immediately until a replacement personnel dosimeter is provided and exposure is calculated for the time period from issuance to loss or damage of the personnel dosimeter.
- (g) Each alarm ratemeter shall:
  - (1) be checked to ensure that the alarm functions properly prior to use at the start of each shift;
  - (2) be set to give an alarm signal at a preset rate not to exceed 500 mR/hr or 5 mSv/hr;
  - (3) require special means to change the preset alarm function;
  - (4) alarm within plus or minus 20 percent of the true radiation rate;
  - (5) be calibrated at periods not to exceed one year for correct response to radiation.

(h) Records of daily dosimeter readings, determination of exposure as a result of a lost or damaged personnel dosimeter, 12 month response checks on dosimeters and results from the accredited NVLAP personnel dosimeter processor shall be maintained in accordance with Rule .0523 of this Section.

(i) Notwithstanding the requirements of Paragraph (a) of this Rule, the agency may approve a higher pocket dosimeter range upon written request by the licensee or registrant if the agency determines that the requested range shall afford the protection required by the rules in this Chapter.

*History Note: Authority G.S. 104E-7; 104E-12(a)(2); Eff. February 1, 1980; Temporary Amendment Eff. August 20, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Amended Eff. January 1, 2005; April 1, 1999; May 1, 1995.*

**15A NCAC 11 .0523 RECORDS OF INDUSTRIAL RADIOGRAPHY**

- (a) Each licensee or registrant shall maintain, for a period of three years after the record is made, the following records for inspection by the agency:
  - (1) copies of the following documents:
    - (A) radioactive materials license or registration issued by the agency;
    - (B) the complete application submitted for the license or registration that includes all amendments; and
    - (C) current operating and emergency procedures;
  - (2) records showing the receipt and transfer of all sealed sources and devices using depleted uranium (DU) for shielding that include:
    - (A) date;
    - (B) individual making the record;

- (C) radionuclide;
  - (D) activity in curies or becquerel or mass for depleted uranium; and
  - (E) make, model and serial number of each sealed source and device;
  - (3) records of the calibrations of radiation detection instrumentation;
  - (4) records of leak tests for sealed sources and devices containing depleted uranium in units of microcuries or becquerel;
  - (5) records of quarterly inventories that include:
    - (A) radionuclide;
    - (B) activity in curies or becquerel;
    - (C) specific information on each sealed source and the radiographic exposure device, storage container or source changer which contains the sealed source to include:
      - (i) model numbers;
      - (ii) serial numbers; and
      - (iii) manufacturers names;
    - (D) location of sealed sources;
    - (E) name of the individual conducting the inventory; and
    - (F) the date of the inventory;
  - (6) records of utilization logs showing the following information:
    - (A) a description of each radiographic exposure device, radiation machine or transport or storage container in which the sealed source is located that includes:
      - (i) make;
      - (ii) model number; and
      - (iii) serial number;
    - (B) the identity and signature of the radiographer to whom assigned;
    - (C) the plant or site where used; and
    - (D) dates of use that includes the dates removed and returned to storage;
  - (7) records of inspection and maintenance of radiographic exposure devices, transport and storage containers, associated equipment, source changers and radiation machines. The record shall include:
    - (A) date of the check;
    - (B) name of the individual performing the check;
    - (C) equipment involved;
    - (D) any problems found in daily checks and quarterly inspections; and
    - (E) any repairs or maintenance made and name of individual or company performing the repair;
  - (8) records of alarm system tests for permanent radiographic installations;
  - (9) records of the training and certification of each radiographer and radiographer's assistant as follows:
    - (A) radiographer certification documents and verification of certification status;
    - (B) for initial training, copies of written tests; dates and results of oral tests and field examinations; and names of individuals conducting and receiving the oral test or field examination;
    - (C) for periodic training and semi-annual inspections of job performance, list of topics discussed; date(s) of the review; and names of the instructors and the attendees; and
    - (D) for inspections of job performance, the records shall also include a list showing the items checked and any noncompliance observed by the Radiation Safety Officer.
  - (10) records for pocket dosimeters to include daily exposure readings and yearly operability checks;
  - (11) records of reports received from the accredited National Voluntary Laboratory Accreditation Program (NVLAP) personnel dosimetry processor. These records, as well as any records of exposure estimates required as a result of off-scale direct reading dosimeters, or lost or damaged personnel dosimeters, shall be maintained until the agency terminates the license or registration or until authorized by the agency;
  - (12) records of exposure device surveys performed at the end of the work day and prior to placing the device in storage;
  - (13) records of area surveys required by Rule .0515 of this Section;
  - (14) copy of current operating and emergency procedures until the agency terminates the license or registration and copies of superseded material shall be retained for three years after the change is made; and
  - (15) evidence of the latest calibrations of alarm ratemeters and operability checks of pocket dosimeters or electronic personal dosimeters.
- (b) Each licensee or registrant conducting operations at temporary jobsites shall maintain copies of the following documents and records at the temporary jobsite until the radiographic operation is completed:
- (1) operating and emergency procedures required by Rule .0513 of this Section;
  - (2) radioactive materials license or registration;
  - (3) evidence of training of the radiographers and radiographer's assistants. The individuals shall either be listed on the radioactive materials license or registration and offer identification or shall have certification of his training and offer identification;
  - (4) evidence of the latest calibration of the radiation detection instrumentation in use at

- the site as required by Rule .0506 of this Section;
- (5) evidence of the latest leak test of the sealed source required by Rule .0507 of this Section;
- (6) records of the latest surveys required by Rule .0515 of this Section;
- (7) records of current direct reading dosimeters such as pocket dosimeter or electronic personal dosimeter readings;
- (8) shipping papers for the transportation of radioactive materials required by 10 CFR Part 71.5; and
- (9) records of area surveys required by Rule .0515 of this Section;
- (10) a copy of Section .0500 of this Chapter;
- (11) utilization records for each radiographic exposure device dispatched from that location as required by Subparagraph (a) of Rule .0523 of this Section;
- (12) records of equipment problems identified in daily checks of equipment; and
- (13) when operating under reciprocity, a copy of the Nuclear Regulatory Commission or agreement state license authorizing the use of radioactive material.

(c) Each record required by this Rule shall be legible throughout the specified retention period. The record may be an original, a reproduced copy or microform provided that the copy or microform is authenticated by the licensee and the microform is capable of reproducing a clear copy throughout the required record retention period. The record may also be stored in electronic media with the capability for producing legible, accurate and complete records during the required record retention period. Records, such as letters, drawings and specifications shall include all pertinent information, such as stamps, initials and signatures. The licensee or registrant shall maintain safeguards against tampering with and loss of records.

*History Note: Authority G.S. 104E-7; Temporary Adoption Eff. August 20, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. May 1, 1995; Amended Eff. January 1, 2005; April 1, 1999.*

**15A NCAC 11 .0702 INTERSTITIAL:  
INTRACAVITARY AND SUPERFICIAL APPLICATIONS**

- (a) Accountability, storage and transit
  - (1) Each licensee shall provide accountability of sealed sources and shall keep a record of the issue and return of all sealed sources. A physical inventory shall be made at least every six months and a written record of the inventory maintained.
  - (2) When not in use, sealed sources and applicators containing sealed sources shall be kept in a protective enclosure of such material and wall thickness as necessary to assure

- compliance with the provisions of Rules .1604, .1609 and .1611 of this Chapter.
- (b) Testing sealed sources for leakage and contamination
  - (1) All sealed sources with a half-life greater than 30 days and in any form other than gas shall be tested for leakage and contamination prior to initial use and at intervals not to exceed six months. If there is reason to suspect that a sealed source might have been damaged, or might be leaking, it shall be tested for leakage before further use.
  - (2) Leak tests shall be capable of detecting the presence of 0.005 microcurie of radioactive material on the test sample, or in the case of radium, the escape of radon at rate of 0.001 microcurie per 24 hours. Any test conducted pursuant to Subparagraph (b)(1) of this Rule which reveals the presence of 0.005 microcurie or more of removable contamination or, in the case of radium, the escape of radon at the rate of 0.001 microcurie or more per 24 hours shall be considered evidence that the sealed source is leaking. The licensee shall immediately withdraw the source from use and shall cause it to be decontaminated and repaired or to be disposed of in accordance with applicable provisions of Section .1600 of this Chapter. A report describing the sealed sources involved, the test results and the corrective action taken shall be submitted in writing to the agency at the address stated in Rule .0111 of this Chapter within five days after the test.
  - (3) Leak test results shall be recorded in units of microcuries and maintained for inspection by the agency.
- (c) Radiation surveys
  - (1) The maximum radiation level at a distance of one meter from the patient in whom brachytherapy sources have been inserted shall be determined by measurement or calculation. This radiation level shall be entered on the patient's chart and other signs as required in Paragraph (d) of this Rule.
  - (2) The radiation surveying in Paragraph (c) of this Rule or a special survey shall be performed and shall include measurements necessary to comply with the following requirements:
    - (A) The therapeutic use of sealed sources shall not create radiation levels in areas occupied by patients not undergoing radiation therapy which would result in an accumulated dose in excess of 100 millirem if a patient were continuously present during the entire treatment period.
    - (B) The licensee shall maintain a record of this survey and the calculation

- (C) The licensee shall select rooms for hospitalization of these sealed source therapy patients in a manner so as to minimize radiation exposure of other patients, hospital staff, visitors and the public, especially those who are under 18 years of age or who are pregnant.
- (D) This Rule does not relieve the licensee of responsibility to monitor or limit occupational radiation exposure for the licensee's staff as provided in Section .1600 of this Chapter.
- (3) Immediately after implanting sources in an individual the licensee shall make a radiation survey of the individual and the area of use to confirm that no source has been misplaced. The licensee shall make a record of each survey.
- (4) Immediately after removing the last temporary implant source from an individual, the licensee shall make a radiation survey of the individual with a radiation detection survey instrument to confirm that all sources have been removed. The licensee may not release from confinement for medical care an individual treated by temporary implant until all sources have been removed.
- (d) A licensee shall maintain accountability for all brachytherapy sources in storage or in use. After removing sources from an individual, a licensee shall return brachytherapy sources to the storage area. A licensee shall ensure that all sources taken from the storage area have been returned, and shall make a record of the source accountability and retain the record for three years.
- (e) For temporary implants, the record shall include:
  - (1) the number and activity of sources removed from storage;
  - (2) the date the sources were removed from storage;
  - (3) the number and activity of sources returned to storage; and
  - (4) the date the sources were returned to storage.
- (f) For permanent implants, the record shall include:
  - (1) the number and activity of sources removed from storage;
  - (2) the date the sources were removed from storage;
  - (3) the number and activity of sources returned to storage;
  - (4) the date the sources were returned to storage; and
  - (5) the number and activity of sources permanently implanted in the individual.
- (g) Signs and records

- (1) In addition to the requirements of Rule .1624 of this Chapter, the bed, cubicle, or room of the hospital brachytherapy patient shall be marked with a sign indicating the presence of brachytherapy sources. This sign shall incorporate the radiation symbol and specify the radionuclide, activity, date, and the individual(s) to contact for radiation safety instructions. The sign is not required provided the exception in Rule .1625 of this Chapter is satisfied.
- (2) The following information shall be included in the patient's chart:
  - (A) the radionuclide administered, number of sources, activity in millicuries and time and date of administration;
  - (B) the exposure rate at one meter, the time the determination was made, and by whom;
  - (C) the radiation symbol; and
  - (D) the precautionary instructions necessary to assure that the exposure of individuals does not exceed that permitted in Paragraph (c) of this Rule.

*History Note: Authority G.S. 104E-7; 104E-12(a); Eff. February 1, 1980; Amended Eff. January 1, 2005; April 1, 1999; January 1, 1994; October 1, 1980.*

**15A NCAC 11 .1302 DEFINITIONS**

As used in this Section, the following definitions apply:

- (1) "Energy compensation sources (ECS)" means a sealed source, with an activity not exceeding 100 microcuries (3.7 MBq), used within a logging tool or other tool components, to provide a reference standard to maintain the tool's calibration when in use.
- (2) "Field station" means a facility where radioactive sources may be stored or used and from which equipment is dispatched to temporary jobsites.
- (3) "Injection tool" means a device used for controlled subsurface injection of radioactive tracer material.
- (4) "Logging supervisor" means the individual who provides personal supervision of the utilization of sources of radiation at the well site.
- (5) "Logging tool" means a device used subsurface to perform well-logging.
- (6) "Mineral logging" means any logging performed for the purpose of mineral exploration other than oil or gas.
- (7) "Personal supervision" means guidance and instruction by the supervisor who is physically present at the jobsite and watching the

- performance of the operation in such proximity that contact can be maintained and immediate assistance given as required.
- (8) "Radioactive marker" means radioactive material placed subsurface or on a structure intended for subsurface use for the purpose of depth determination or direction orientation.
  - (9) "Source holder" means a housing or assembly into which a radioactive source is placed for the purpose of facilitating the handling and use of the source in well-logging operations.
  - (10) "Subsurface-tracer study" means the release of a substance tagged with radioactive material for the purpose of tracing the movement or position of the tagged substance in the well-bore or adjacent formation.
  - (11) "Temporary jobsite" means a location to which radioactive materials have been dispatched to perform wireline-service operations or subsurface-tracer studies.
  - (12) "Tritium neutron generator target source" means a tritium source used within a neutron generator tube to produce neutrons for use in well logging applications.
  - (13) "Well-bore" means a drilled hole in which wireline-service operations and subsurface-tracer studies are performed.
  - (14) "Well-logging" means the lowering and raising of measuring devices or tools which may contain sources of radiation into well-bores or cavities for the purpose of obtaining information about the well or adjacent formations.
  - (15) "Wireline" means a cable containing one or more electrical conductors which is used to lower and raise logging tools in the well-bore.
  - (16) "Wireline-service operations" means any evaluation or mechanical service which is performed in the well-bore using devices on a wireline.

*History Note:* Authority G.S. 104E-7;  
 Eff. June 1, 1989;  
 Amended Eff. January 1, 2005.

**15A NCAC 11 .1308 LEAK TESTING OF SEALED SOURCES**

- (a) Each licensee using sealed sources of radioactive material shall have the sources tested for leakage. Records of leak test results shall be kept in units of microcuries and maintained for inspection by the agency for six months after the next required leak test is performed or until transfer or disposal of the sealed source.
- (b) Tests for leakage shall be performed using a leak test kit or method approved by the agency in accordance with these Rules and only by persons specifically authorized to perform such tests by the agency, the U.S. Nuclear Regulatory Commission, an agreement state, or a licensing state. The test sample shall be taken from the surface of the source, source holder, or from the

surface of the device in which the source is stored or mounted and on which one might expect contamination to accumulate. The test sample shall be analyzed for radioactive contamination, and the analysis shall be capable of detecting the presence of 0.005 microcurie of radioactive material on the test sample.

(c) Each sealed source of radioactive material, with the exception of energy compensation sources (ECSs), shall be tested at intervals not to exceed six months. Each ECS source that is not exempted from leak testing pursuant to Paragraph (e) of this Rule shall be tested at intervals not to exceed three years. In the absence of a certificate from a transferor indicating that a test has been made prior to the transfer, the sealed source shall not put into use until tested. If, for any reason, it is suspected that a sealed source may be leaking, it shall be removed from service immediately and tested for leakage as soon as practical.

(d) If the test reveals the presence of 0.005 microcurie or more of leakage or contamination, the licensee shall immediately withdraw the source from use and shall cause it to be decontaminated, repaired, or disposed of in accordance with these Rules. A report describing the equipment involved, the test results, and the corrective action taken shall be filed with the agency.

(e) The following sources are exempt from the periodic leak test and notification requirements of this Rule:

- (1) hydrogen-3 (tritium) sources;
- (2) sources of radioactive material with a half-life of 30 days or less;
- (3) sealed sources of radioactive material in gaseous form;
- (4) sources of beta- or gamma-emitting radioactive material with an activity of 100 microcuries or less; and
- (5) sources of alpha- or neutron-emitting radioactive material with an activity of ten microcuries or less.

*History Note:* Authority G.S. 104E-7; 104E-12(a);  
 Eff. June 1, 1989;  
 Amended Eff. January 1, 2005; May 1, 1993.

**15A NCAC 11 .1316 PERSONNEL MONITORING**

- (a) No licensee shall permit any individual to act as a logging supervisor or to assist in the handling of sources of radiation unless each such individual wears a personnel dosimeter that is processed and evaluated by an accredited National Voluntary Laboratory Accreditation Program (NVLAP) processor.
- (b) Each personnel dosimeter required in Paragraph (a) of this Rule shall be assigned to and worn by only one individual.
- (c) Each film badge shall be replaced at least monthly and other personnel dosimeters shall be replaced at least quarterly. Each film badge or other personnel dosimeter shall be submitted for processing within 30 days of replacement.
- (d) The licensee shall maintain personnel monitoring records for inspection until the agency terminates each pertinent license or registration requiring the record.

*History Note:* Authority G.S. 104E-7; 104E-12(a)(2);  
 Eff. June 1, 1989;  
 Amended Eff. January 1, 2005.

**15A NCAC 11 .1326 ENERGY COMPENSATION**

**SOURCES**

The licensee shall use an energy compensation source (ECS) which is contained within a logging tool, or other tool components, only if the ECS contains quantities of licensed material not exceeding 100 microcuries (3.7 MBq).

- (1) For downhole operations utilizing a surface casing for protecting fresh water aquifers, use of the ECS is subject only to the requirements of Rules .1308, .1309, .1310, and .1323 of this Section.
- (2) For downhole operations without a surface casing for protecting fresh water aquifers, use of the ECS is subject only to the requirements of Rules .1303, .1308, .1309, .1310, .1323, and .1324 of this Section.

*History Note: Authority G.S. 104E-7; Eff. January 1, 2005.*

**15A NCAC 11 .1620 USE OF INDIVIDUAL RESPIRATORY PROTECTION EQUIPMENT**

(a) If the licensee uses respiratory protection equipment to limit intakes of radioactive material, the licensee shall:

- (1) use respiratory protection equipment that is tested and certified by the National Institute for Occupational Safety and Health (NIOSH);
- (2) if the licensee wishes to use any equipment that has not been tested or certified by NIOSH, or for which there is no schedule for testing or certification, submit an application to the agency for authorized use of that equipment, including a demonstration by testing, or a demonstration on the basis of reliable test information, that the material and performance characteristics of the equipment are capable of providing the proposed degree of protection under anticipated conditions of use;
- (3) implement and maintain a respiratory protection program that includes:
  - (A) air sampling sufficient to identify the potential hazard, permit proper equipment selection, and estimate exposures;
  - (B) surveys and bioassays, as appropriate, to evaluate actual intakes;
  - (C) testing of respirators for operability immediately prior to each use;
  - (D) written procedures regarding: monitoring, including air sampling and bioassays; supervision and training of respirator users; fit testing; respirator selection; breathing air quality; inventory and control; storage, issuance, maintenance, repair, testing, and quality assurance of respiratory protection equipment; recordkeeping; and limitations on

periods of respirator use and relief from respirator use;

- (E) determination by a physician prior to initial fitting of a face sealing respirator, prior to the first field use of a non-face sealing respirator, and at least every 12 months thereafter or periodically at a frequency determined by a physician, that the individual user is physically able to use the respiratory protection equipment; and
- (F) Fit testing, with fit factor  $\geq 10$  times the APF for negative pressure devices, and a fit factor  $\geq 500$  for any positive pressure, continuous flow, and pressure-demand devices, before the first field use of tight fitting, face sealing respirators and annually thereafter. Fit testing must be performed with the facepiece operating in the negative pressure mode.
- (4) advise each respirator user that the user may leave the area at any time for relief from respirator use in the event of equipment malfunction, physical or psychological distress, procedural or communication failure, significant deterioration of operating conditions, or any other conditions that might require such relief;
- (5) use equipment within limitations for type and mode of use and provide for vision correction, effective communication, low temperature work environments, the concurrent use of other safety or radiological protection equipment, and assurance that other such equipment will be used in such a way as not to interfere with proper operation of the respirator.
- (6) provide standby rescue personnel whenever one-piece atmosphere-supplying suits, or any combination of supplied air respiratory protection devices and personnel protective equipment are used from which an unaided individual would have difficulty extricating himself or herself. The standby rescue personnel shall:
  - (A) be equipped with respiratory protection devices or other apparatus appropriate for the potential hazards identified by the licensee;
  - (B) observe or otherwise maintain continuous communication with the workers through visual, voice, signal line, telephone, radio, or other means suitable for the environment;
  - (C) be immediately available to assist workers in the event of a failure of

- (D) the air supply or for any other reason that requires relief from distress; be immediately available in sufficient number to assist all users of this type of equipment and to provide effective emergency rescue, if needed.
- (7) provide atmosphere-supplying respirators with respirable air of grade D quality or better as defined by the Compressed Gas Association in publication G-7.1, "Commodity Specification for Air," 1997 and included in Title 29 CFR 1910.134(i)(1)(ii)(A) – (E) of the Occupational Safety and Health Administration. Grade D quality air criteria include:
  - (A) Oxygen content of 19.5% - 23.5%;
  - (B) condensed Hydrocarbon content of 5 milligrams per cubic meter of air or less;
  - (C) Carbon Monoxide (CO) content of 10 ppm or less;
  - (D) Carbon Dioxide content of 1,000 ppm or less; and
  - (E) lack of noticeable odor.
- (8) ensure that no objects, materials or substances, such as facial hair, or any conditions that interfere with the face-to-facepiece seal or valve function, and that are under the control of the respirator wearer, are present between the skin of the wearer's face and the sealing surface of a tight-fitting respirator facepiece.

- (1) ensure that the respiratory protection program of the licensee is adequate to limit exposures of individuals to airborne radioactive materials to levels that maintain the total effective dose equivalent ALARA; and
- (2) limit the extent to which a licensee may use respiratory protection equipment instead of process or other engineering controls when process or other engineering controls are appropriate to limit exposures of individuals to airborne radioactive materials to the levels prescribed in this Section.

*History Note: Authority G.S. 104E-7(a)(2); 10 C.F.R. Chapter 1, Commission Notices, Policy Statements, Agreement States, 46 F.R. 7540; Eff. January 1, 1994; Amended Eff. January 1, 2005.*

**TITLE 20 – DEPARTMENT OF THE TREASURER**

- 20 NCAC 020 .0101**      **SCOPE**
- 20 NCAC 020 .0102**      **SHORT-TERM DISABILITY**
- 20 NCAC 020 .0103**      **LONG-TERM DISABILITY**

*History Note: Authority G.S. 135-101(6); 135-102(c); 135-105(a); Eff. April 1, 2004; Repealed Eff. January 1, 2005.*

**TITLE 21 - OCCUPATIONAL LICENSING BOARDS**

**CHAPTER 29 - LOCKSMITH LICENSING BOARD**

**21 NCAC 29 .0701**      **APPLICATION FORM**

All applications for license renewal shall be submitted on the form provided by the Board for this purpose and shall be accompanied by the following required items:

- (1) two frontal photos of the applicant's face, taken within the preceding three months, size one inch by one inch;
- (2) a criminal history report, certified by the law enforcement agency or clerk of court in the applicant's county of residence;
- (3) a criminal history report, certified by the law enforcement agency or clerk of court in the applicant's county of employment, if different from the county of residence;
- (4) complete and truthful explanations of affirmative responses to questions on the application regarding employment history, criminal history and military service, if applicable;
- (5) payment in full of all applicable fees, by check or money order;
- (6) a copy of the applicant's military discharge document (DD-214 or equivalent) if the

(b) In estimating the dose to individuals from intake of airborne radioactive materials, the concentration of radioactive material in the air that is inhaled when respirators are worn is initially assumed to be the ambient concentration in air without respiratory protection, divided by the assigned protection factor. If the dose is later found to be greater than the estimated dose, the corrected value must be used. If the dose is later found to be less than the estimated dose, the corrected value may be used.

(c) The licensee shall obtain authorization, in writing, from the agency before using assigned protection factors in excess of those specified in Appendix A to 10 CFR Part 20. The agency may authorize the use of higher assigned protection factors upon receipt of an application that:

- (1) describes the situation for which a need exists for higher protection factors; and
- (2) demonstrates that the respiratory equipment provides the higher protection factors under the proposed conditions of use.

*History Note: Authority G.S. 104E-7(a)(2); 104E-12(a); Eff. January 1, 1994; Amended Eff. January 1, 2005; August 1, 1998.*

**15A NCAC 11 .1621      RESTRICTIONS ON THE USE OF RESPIRATORY PROTECTION EQUIPMENT**

The agency may impose restrictions in addition to those in Rules .1619 and .1620 of this Section, and Appendix A to 10 CFR 20.1001 - 20.2401 when the agency determines that such requirements are necessary to:



- applicant has actively served in the military since applying for his previously granted license;
- (7) a log, in a format specified by the Board, of Continuing Education hours earned during the previous license period, including the sponsor of the program or course, the name of the instructor or lecturer, the date, the number of hours and a brief description of the subject matter included in the course or program.

*History Note: Authority G.S. 74F-6; 74F-10; Eff. February, 1, 2005.*

**21 NCAC 29 .0806 NON COMPLIANCE**

If the Board disallows any credits claimed by an applicant, then the licensee shall have 90 calendar days after notification to substantiate the original claim or obtain other contact hours to meet the minimum requirements. Upon failure to meet this requirement within the 90 days, the applicant's license shall expire at the end of the 90 days.

*History Note: Authority G.S. 74F-6; Eff. February 1, 2005.*

**CHAPTER 52 - BOARD OF PODIATRY EXAMINERS**

**21 NCAC 52 .0101 NAME AND PURPOSE**

The Board of Podiatry Examiners (hereinafter referred to as the board) is established as provided for in the General Statutes of the State of North Carolina for the purpose of examining and licensing qualified applicants for licensure, regulating the practice of podiatry and performing such other duties as may be required by the General Statutes. The office of the board shall be in Raleigh and the mailing address of the board is Post Office Box 1088, 1500 Sunday Drive, Suite 102, Raleigh, North Carolina 27607.

*History Note: Authority G.S. 90-202.4; 90-202.6; 90-202.8; Eff. February 1, 1976; Amended Eff. January 1, 2005; December 1, 1988.*

**21 NCAC 52 .0103 ANNUAL MEETING: ELECTION AND OFFICERS**

*History Note: Authority G.S. 90-202.4; Eff. February 1, 1976; Amended Eff. December 1, 1988; Repealed Eff. January 1, 2005.*

**21 NCAC 52 .0201 APPLICATION**

Anyone who meets the statutory requirements and wishes to apply for examination may do so by submitting a written application to the office of the executive secretary of the board at 1500 Sunday Drive, Suite 105, Raleigh, NC 27607. Such application for examination or application for reciprocity shall be made on a form provided by the Board. Applicants shall furnish the board with certification of graduation from a four year high school, completion of at least two years of

undergraduate college education, and graduation from an accredited college of podiatric medicine as provided in the statutes. The application will state the amount of the fee, which is non-refundable. The application must be accompanied by the application fee, which shall be the maximum amount provided by statute. Applications must also be notarized by a Notary Public in good standing. Applications shall also include Release of Information Forms.

*History Note: Authority G.S. 90-202.5; 90-202.6; 90-202.7; Eff. February 1, 1976; Amended Eff. January 1, 2005; December 1, 1988.*

**21 NCAC 52 .0207 ANNUAL RENEWAL OF LICENSE**

The executive secretary of the board shall mail to the last known address of each license holder each year a form on which to apply for renewal of his license. The penalties for failure to comply are specified in G.S. 90-202.10.

*History Note: Authority G.S. 90-202.4(g); 90-202.10; Eff. February 1, 1976; Amended Eff. January 1, 2005; December 1, 1988.*

**21 NCAC 52 .0601 APPLICATION FOR EXAMINATION**

The application for examination shall be used by all applicants who wish to take the examination for licensure. It shall require the applicant to furnish the board with information required or permitted by these Rules. The form may be obtained from the office of the executive secretary at 1500 Sunday Drive, Suite 102, Raleigh, North Carolina 27607.

*History Note: Authority G.S. 90-202.5; Eff. February 1, 1976; Amended Eff. January 1, 2005; December 1, 1988.*

**21 NCAC 52 .0610 APPL/EXAM/PODIATRIST LICENSED/OTHER STATES (RECIPROCITY)**

The application for examination for those already licensed in other states to practice podiatric medicine shall be used by applicants who request such consideration. The requirements shall be the same as for the applicant in Rule .0201 of this Chapter and as required by statute. Application forms may be obtained from the office of the executive secretary of the board.

*History Note: Authority G.S. 90-202.7; Eff. December 1, 1988; Amended Eff. January 1, 2005.*

**21 NCAC 52 .0701 PETITION FOR RULEMAKING HEARINGS**

Any person wishing to submit a petition requesting the board to promulgate, amend or repeal a rule shall address a petition to: Board of Podiatry Examiners, 1500 Sunday Drive, Suite 102, Raleigh, North Carolina 27607. The caption of the petition shall bear the notation: RULEMAKING PETITION RE: and then the subject area.

*History Note: Authority G.S. 150B-16;  
Eff. February 1, 1976;  
Amended Eff. January 1, 2005; December 1, 1988.*

**21 NCAC 52 .1002 SUBMISSION OF REQUEST  
FOR RULING**

All requests for declaratory rulings shall be written and mailed to the Board of Podiatry Examiners, 1500 Sunday Drive, Suite 102, Raleigh, North Carolina 27607. Attention: Executive Secretary. The request shall include the following information:

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

*History Note: Authority G.S. 150B-17;  
Eff. February 1, 1976;  
Amended Eff. January 1, 2005; December 1, 1988.*

**TITLE 25 – OFFICE OF STATE PERSONNEL**

**25 NCAC 01L .0304 RESPONSIBILITIES:  
MANAGERS AND SUPERVISORS**

Managers and supervisors shall attend and complete the EEOI in the prescribed time frame.

*History Note: Authority G.S. 126-16.1;  
Eff. January 1, 1992;  
Amended Eff. January 1, 2005.*

**25 NCAC 01L .0305 RESPONSIBILITIES: OFFICE  
OF STATE PERSONNEL**

*History Note: Authority G.S. 126-16.1;  
Eff. January 1, 1992;  
Repealed Eff. January 1, 2005.*

*This Section contains information from 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 at its next meeting should submit those comments by Monday, February 14, 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**

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

**RULES REVIEW COMMISSION  
January 19, 2005  
MINUTES**

The Rules Review Commission met on Wednesday, January 19, 2005, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present were: Jennie Hayman, Thomas Hilliard, Jeffrey Gray, Robert Saunders, Lee Settle, Dana Simpson, John Tart and David Twiddy.

Staff members present were: Joseph DeLuca, Staff Counsel; Bobby Bryan, Rules Review Specialist; and Lisa Johnson, Administrative Assistant.

The following people attended:

John Hoomoni	Department of Labor
Diane Miller	Department of Justice
Barry Gupton	NCDOI
Ron Chiltom	NCDOI
Nancy Pate	DENR
Thomas Allen	DENR/DAQ
Denise Stanford	Board of Pharmacy
John Barkley	Department of Justice
Lisa Martin	NC Home Builders Association
Dana Sholes	OAH
Molly Masich	OAH
Julian Mann	OAH

**APPROVAL OF MINUTES**

The meeting was called to order at 10:06 a.m. with Chairman Hayman presiding.

She reminded the Commissioners of their obligations under the governor's Executive Order #1 to refrain from taking part in consideration of any rules for which they have or may appear to have a conflict of interest.

Chairman Hayman asked for any discussion, comments, or corrections concerning the minutes of the December 16, 2004 meeting. The minutes were approved as written.

**FOLLOW-UP MATTERS**

10A NCAC 22G .0106: DHHS/Medical Assistance – The Commission approved the rewritten rules submitted by the agency.

13 NCAC 7F .0606: Department of Labor – No action was taken.

13 NCAC 15 .0429: Department of Labor – The Commission approved the rewritten rule submitted by the agency.

15A NCAC 2Q .0102: Environmental Management Commission – No action was taken.

21 NCAC 46 .1414; .1814; .2502; .2702-.2704; .3301: Board of Pharmacy – The Commission approved these rules.

21 NCAC 46 .1602; .1612: Board of Pharmacy – The Commission approved the rewritten rules submitted by the agency.

**LOG OF FILINGS**

Chairman Hayman presided over the review of the log of permanent rules. All rules were approved unanimously with the following exceptions:

11 NCAC 08 .1101; .1103; .1105-.1115; .1203; .1204: Home Inspector Licensure Board – These rules were withdrawn by the agency.

**COMMISSION PROCEDURES AND OTHER BUSINESS**

Mr. DeLuca updated the Commission with information concerning the Environmental Management Commission law suit. An April 11, 2005 court date has been scheduled with a tentative deadline of February 25, 2005 for motions and supporting briefs and a March 25, 2005 deadline for a response briefs.

Mr. DeLuca also asked the Commission for guidance on receiving objection and requests for legislative review letters on rules we have not yet received. Chairman Hayman asked Mr. DeLuca to respond to the persons who sent the letters in writing and instruct them on what they should do.

Commissioner Simpson asked whether any hearing date has been scheduled in the Pharmacy Board lawsuit. Neither Mr. DeLuca nor Denise Stanford, attorney for the Pharmacy Board, had any information to report.

The meeting adjourned at 10:49 a.m.

The next meeting of the Commission is Thursday, February 17, 2005 at 10:00 a.m.

Respectfully submitted,  
Lisa Johnson

---

**LIST OF APPROVED PERMANENT RULES  
January 19, 2005 Meeting**

**HHS-MEDICAL ASSISTANCE**

Reconsideration Reviews 10A NCAC 22G .0106

**MENTAL HEALTH, COMMISSION OF**

Definitions 10A NCAC 26E .0102

Persons Required to Register 10A NCAC 26E .0104

Separate Registration for Independent Activities 10A NCAC 26E .0105

Training and Qualification Requirements for Dog Handlers 10A NCAC 26E .0106

Approval of Canine Certification Associations by the Department 10A NCAC 26E .0107

Exemption of Law Enforcement Officials 10A NCAC 26E .0111  
Application Forms: Contents: Signatures 10A NCAC 26E .0113

**LABOR, DEPARTMENT OF**

Go Karts 13 NCAC 15 .0429

**ENVIRONMENTAL MANAGEMENT COMMISSION**

Purpose and Scope 15A NCAC 02D .0801  
Highway Projects 15A NCAC 02D .0803  
Applications 15A NCAC 02Q .0603  
Final Action on Permit Applications 15A NCAC 02Q .0605  
Applicability 15A NCAC 02Q .0701  
Demonstrations 15A NCAC 02Q .0709  
Emission Rates Requiring a Permit 15A NCAC 02Q .0711

**HEALTH SERVICES, COMMISSION FOR**

Approval and Permitting of on-Site wastewater Systems 15A NCAC 18A .1969

**PHARMACY, BOARD OF**

Drug Distribution and Control 21 NCAC 46 .1414  
License by Reciprocity 21 NCAC 46 .1602  
Reinstatement of Licenses and Permits 21 NCAC 46 .1612  
Responsibilities of Pharmacist-Manager 21 NCAC 46 .2502  
Definitions 21 NCAC 46 .2702  
Obtaining a Nuclear Pharmacy Permit 21 NCAC 46 .2703  
Req for Pharmacists Providing Radiopharmaceutical Services 21 NCAC 46 .2704  
Registration 21 NCAC 46 .3301  
Automated Dispensing or Drug Supply Devices 21 NCAC 46 .3401  
General requirements for the use of automated medication ... 21 NCAC 46 .3402  
Multidisciplinary committee for decentralized automated m... 21 NCAC 46 .3403  
Stocking or restocking of an automated medication system 21 NCAC 46 .3404  
Centralized automated medication systems 21 NCAC 46 .3405  
Quality Assurance Program 21 NCAC 46 .3406  
Record Keeping 21 NCAC 46 .3407  
Compliance 21 NCAC 46 .3408

---

**AGENDA**  
**RULES REVIEW COMMISSION**  
**February 17, 2005, 10:00 A.M.**

- I. Call to Order and Opening Remarks
- II. Review of minutes of last meeting
- III. Follow Up Matters
  - (A) Department of Labor – 13 NCAC 07F .0606 (Bryan)

(B) Environmental Management Commission – 15A NCAC 02Q .0102 (Bryan)

(IV) Review of Rules (Log Report #218)

(V) Review of Temporary Rules (if any)

(VI) Commission Business

Next meeting: March 17, 2005

*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.*

**OFFICE OF ADMINISTRATIVE HEARINGS**

**Chief Administrative Law Judge**  
*JULIAN MANN, III*

**Senior Administrative Law Judge**  
*FRED G. MORRISON JR.*

**ADMINISTRATIVE LAW JUDGES**

*Sammie Chess Jr.*  
*Beecher R. Gray*  
*Melissa Owens Lassiter*

*James L. Conner, II*  
*Beryl E. Wade*  
*A. B. Elkins II*

**RULES DECLARED VOID**

04 NCAC 02S .0212 CONSUMPTION: INTOXICATION BY PERMITTEE PROHIBITED  
Pursuant to G.S. 150B-33(b)(9), Administrative Law Judge James L. Conner, II declared 04 NCAC 02S .0212(b) void as applied in NC Alcoholic Beverage Control Commission v. Midnight Sun Investments, Inc. t/a Tiki Cabaret (03 ABC 1732).

20 NCAC 02B .0508 FAILURE TO RESPOND  
Pursuant to G.S. 150B-33(b)(9), Administrative Law Judge Melissa Owens Lassiter declared 20 NCAC 02B .0508 void as applied in Burton L. Russell v. Department of State Treasurer, Retirement Systems Division (03 DST 1715).

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b><u>ABC COMMISSION</u></b>				
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	
ABC Commission v. KOL, Inc, T/A Wards Grocery	04 ABC 0872	Wade	09/21/04	
ABC Commission v. Carlos Salas, T/A Boom Boom Room Night Club	04 ABC 0938	Chess	10/19/04	
ABC Commission v. Ira Staten Price, Jr., T/A Deadwood Miniature Golf	04 ABC 1163	Gray	12/02/04	
<b><u>VICTIMS COMPENSATION</u></b>				
Lonnie Jones v. Dept. Crime Control & Public Safety, Victims Compensation	03 CPS 2320	Conner	07/23/04	
Angelique M. Jones on behalf of a juvenile victim, her son, Jaquial Jones v. Victims Compensation Commission	03 CPS 2353	Conner	07/12/04	
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	
Gregory D. McElrath v. Dept. of Crime Control & Public Safety, Victims Compensation Services Div	04 CPS 1257	Wade	12/22/04	
John Selden Clem v. State Highway Patrol, Trooper C.J. Owens	04 CPS 1705	Chess	11/17/04	
Adrian Lamont Taylor v. Victim Assistance	04 CPS 2134	Morrison	12/30/04	
<b><u>DEPARTMENT OF AGRICULTURE</u></b>				
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	
<b><u>DEPARTMENT OF ADMINISTRATION</u></b>				
Larry Yancey v. GACPD, DOA	04 DOA 0896	Morrison	07/28/04	
<b><u>HEALTH AND HUMAN SERVICES</u></b>				
Bejeer Smiles Child Care Learning Center, Inc. v. DHHS, Div of Child Development	98 DHR 0235	Gray	09/16/04	

**CONTESTED CASE DECISIONS**

Margaret Bollo v. DHHS, Broughton Hospital	03 DHR 0444	Gray	07/21/04
Kristen Lee (Putrell) v. DHHS, Dorothea Dix Hospital	03 DHR 0793	Gray	12/30/04
Walter Ray Nelson, Jr., Karen Marie Nelson v. DHHS	03 DHR 0884	Lassiter	05/18/04
Winter McCotter v. DHHS, Div. of Facility Services, Healthcare Personnel Registry Section	03 DHR 0905	Gray	10/20/04
Blaine Ryan Walsh-Child, Bonnie L. Walsh-Mother v. DHHS, Div. of Medical Assistance	03 DHR 1113	Gray	10/15/04
Olufemi Augustine Ohome v. DHHS, Div. of Facility Services	03 DHR 1062	Lassiter	05/24/04
Karen A. Anders v. DHHS, Div of Facility Services	03 DHR 1217	Gray	09/20/04
Charles Crawford Cox v. DHHS	03 DHR 1546	Lassiter	07/07/04
Bio-Medical Applications of North Carolina, Inc v. DHHS, Div of Facility Services, CON Section and Total Renal Care of NC, LLC	03 DHR 1553	Chess	06/02/04
Tomeeka K. Blount v. DHHS, Caswell Center	03 DHR 1728	Elkins	10/15/04
Lativia L. Gibbs v. DHHS, Div. of Child Development	03 DHR 1746	Smith	07/23/04
Rebecca Stephens Short v. DHHS, Div of Facility Services	03 DHR 1806	Conner	06/11/04
Jacqueline Haltiwanger v. DHHS, Div of Facility Services	03 DHR 1818	Conner	09/24/04
Loretta Kaye Dulakis v. DHHS, Div. of Facility Services	03 DHR 1848	Wade	08/20/04
Pamela Narron (Legal Guardian for) Benjamin Chad Pierce v. DHHS, Div of Mental Health – DD-SA	03 DHR 2377	Conner	07/19/04
Tony Worley v. DHHS, Div of Facility Services	03 DHR 2427	Mann	12/07/04
Mooresville Hospital Management Assoc, Inc d/b/a Lake Norman Reg. Medical Center v. DHHS, Div of Facility Services, CON Section and Novant Health, Inc. (Lessor) and Forsyth Memorial Hospital (Lessee) d/b/a Forsyth Medical Center	03 DHR 2404	Conner	06/08/04
Louvenia Jones, Sheryl Willie – General Power of Attorney v. DHHS, Div of Child Development	03 DHR 2445	Gray	06/15/04
Antonia Marie Collins v. DHHS, Div of Facility Services	03 DHR 2450	Mann	09/15/04
John Michael Thompson v. DHHS, DFS	04 DHR 0046	Lassiter	07/27/04
Donna R. Gardner v. Health Care Personnel Registry, DHHS, Div of Facility Services	04 DHR 0048	Gray	09/17/04
Johnny Rouse v. DHHS, Div of Facility Services	04 DHR 0107	Wade	10/07/04
Alisa Hodges Yarborough v. DHHS, DFS	04 DHR 0176	Elkins	07/19/04
Chinedu Eucharia Akamelu v. DHHS, Division of Facility Services	04 DHR 0185	Elkins	11/23/04
LaDunna K. Brewington v. DHHS, Div of Medical Assistance	04 DHR 0192	Mann	06/09/04
Martha Williams, Kidtz Town v Div of Child Development	04 DHR 0200	Elkins	06/11/04
Mary P. Daniels v. DHHS	04 DHR 0232	Gray	08/09/04
Paulette Simato v. DHHS, Div of Facility Services	04 DHR 0302	Conner	09/22/04
Eula P. Street v. DHHS, DFS	04 DHR 0332	Elkins	07/14/04
Donnell Williams v. Harnet County DSS	04 DHR 0334	Conner	06/28/04
Terry William Waddell v. Medicaid/NC Health Choice	04 DHR 0335	Mann	06/04/04
Peter Young v. DHHS	04 DHR 0372	Conner	10/08/04
Paula Una Simon v. DHHS	04 DHR 0386	Chess	09/10/04
Nathan E. Lang vs DHHS	04 DHR 0439	Conner	06/23/04
Johnny Street v. DHHS	04 DHR 0441	Wade	10/19/04
Phyllis S. Weaver v. DHHS	04 DHR 0457	Conner	07/19/04
Beverly Manago v. DHHS, Division of Facility Services	04 DHR 0473	Chess	11/30/04
Bervin D. Pearson Sr. v. DHHS, Broughton Hospital	04 DHR 0476	Morrison	09/09/04
Tracy M. Anderson v. DHHS, Div. of Facility Services	04 DHR 0501	Conner	09/14/04
Bio-Medical Applications of NC, Inc., v. DHHS, Div. of Facility Services, S CON , Section, Health Systems Management, Inc. (Lessor) and Clayton Dialysis Center., Inc. (Lessee)	04 DHR 0516	Elkins	12/17/04
Ray J. Bobbitt v. Nash County Dept. of Social Services	04 DHR 0529	Elkins	07/13/04
Connie Watt Redice v. DHHS	04 DHR 0546	Lassiter	06/29/04
Edrica Mekoyo v. DHHS, Div. of Facility Services	04 DHR 0560	Gray	09/17/04
Shirly Thaggard v. DHHS, Div. of Facility Services	04 DHR 0588	Morrison	11/05/04
Maggie E. Clinding v. DHHS, Div. of Facility Services	04 DHR 0590	Conner	11/08/04
Judith Marie Carson v. DHHS, Broughton Hospital	04 DHR 0594	Gray	10/08/04
Francho Peoples v. DHHS, Division of Medical Assistance	04 DHR 0596	Elkins	11/23/04
Emelie Kashangura v. DHHS, DFS	04 DHR 0602	Elkins	07/14/04
Rush Street Food Mart, Ghassan Dahir v. DHHS, WIC, Div. of Public Health	04 DHR 0640	Elkins	09/24/04
Zack's Food Mart, Nidal Dahir v. DHHS, WIC, Div of Public Health	04 DHR 0641	Elkins	09/24/04
Sabrina Betts v. NC Health Personnel Registry	04 DHR 0644	Lassiter	06/02/04
Velma J. Thomas, Thomas Child Care v. Div of Child Development	04 DHR 0645	Conner	12/03/04
Amy Hensley v. DHHS	04 DHR 0696	Elkins	09/01/04
Tanisha Mitchell v. DHHS, Div. of Facility Services	04 DHR 0787	Mann	06/23/04
Rudolph Lofton v. Medicaid Program	04 DHR 0788	Wade	11/23/04
Stacey Curtis v. Dorothea Dix Hospital	04 DHR 0791	Lassiter	09/01/04
Michelle Cross v. DHHS	04 DHR 0811	Morrison	11/24/04
Progressive Child Care, Inc. Drake Groves/Director v. Div of Child Development c/o Forsyth County Department of Social Services	04 DHR 0844	Mann	09/22/04
Ryan Draper v. Medical Review of NC, Inc., Div. of Medical Assistance	04 DHR 0856	Morrison	12/30/04
Perry Skinner for Nina Theden v. Value Options (DMA)	04 DHR 0862	Morrison	12/30/04
Tanya H. Dey v. Medicaid	04 DHR 0864	Elkins	11/10/04
Judy W. Dickson v. DHHS, Div. of Facility Services	04 DHR 0865	Elkins	10/11/04
Fox's Tot, Inc., Connie Fox v. DHHS	04 DHR 0881	Elkins	07/20/04
Oyetoun M Oladipo v. Health Care Personnel Registry, DHHS	04 DHR 0887	Morrison	09/23/04
K.E.C., Jr., by parent or guardian, E.D.C v. Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	04 DHR 0967	Mann	12/10/04



**CONTESTED CASE DECISIONS**

Kids Kingdon Christian Learning Center, Inc., v. Div. of Child Development, Regulatory Services Section	04 DHR 0974	Conner	08/10/04
Winfred Keene v. Health Care Personnel Registry Section	04 DHR 0976	Lassiter	10/18/04
Sandra Elaine Patrick v. DHHS, Div of Facility Services	04 DHR 1073	Conner	10/01/04
Roger Penland, Jr v. DHHS, Division of Facility Services	04 DHR 1096	Gray	11/29/04
New Beginnings Childcare v. Div. of Child Dev. & Lee Co. DSS	04 DHR 1112	Lassiter	08/18/04
Roberta Bell v. DHHS, Div of Medical Assistance	04 DHR 1134	Wade	09/15/04
Manley Yates & Cynthis Yates, Ham Grocery, Inc. v. DHHS, WIC	04 DHR 1136	Elkins	09/14/04
Grace A. Wright v. Wake County Human Services Program Integrity – Dedi H. Bateman	04 DHR 1152	Mann	09/23/04
Michael J. Shelton, Pinnacle Homes #2 v. DHHS, Div. of Medical Assistance	04 DHR 1166	Gray	09/03/04
Wade Assisted Living, Inc., T/A Laurie Edwards	04 DHR 1174	Wade	11/08/04
S.H., by his parent/guardian D.H. v. DHHS	04 DHR 1250	Creech	11/30/04
Alicia Colon v. DHHS, Division of Facility Services	04 DHR 1280	Mann	11/16/04
Monica Dockery v. DHHS	04 DHR 1281	Wade	12/02/04
Julia Matheson v. DHHS, Div. of Facility Services	04 DHR 1301	Wade	10/19/04
Martha Abare v. DHHS, Div. of Facility Services	04 DHR 1310	Wade	11/01/04
Lakresha McIver v. Health Care Registry	04 DHR 1330	Elkins	11/10/04
Vonzella Malone v. DHHS, Division of Facility Services	04 DHR 1331	Gray	11/23/04
Renita M. Walton v. DHHS, Div of Facility Services	04 DHR 1359	Wade	10/14/04
Elizabeth D. Hedgepeth v. Dept. of Health Services	04 DHR 1364	Elkins	11/10/04
Cydra Pajiete Seegers v. DHHS, Div. of Facility Services	04 DHR 1366	Mann	11/09/04
Ghazaelleh Abdel-Kader v. DHHS, WIC, Division of Public Health	04 DHR 1373	Gray	12/15/04
Adib Abdullah v. DHHS	04 DHR 1380	Gray	10/22/04
Madeleine C. Pacheco v. DHHS, Div. of Facility Services	04 DHR 1381	Wade	10/14/04
Florence E. Chavis v. DHHS, DFS, Adult Care Licensure Section	04 DHR 1445	Elkins	12/21/04
Angela F. Best v. DHHS, DMA, Third Party Recovery	04 DHR 1527	Morrison	12/21/04
Anita Whitehurst v. MRNC	04 DHR 1620	Chess	12/08/04
Olivera Leross Langston v. Cherry Hospital	04 DHR 1802	Chess	12/09/04

A list of Child Support Decisions may be obtained by accessing the OAH Website: [www.neoah.com/decisions](http://www.neoah.com/decisions).

**DEPARTMENT OF JUSTICE**

Larry Mitchel Batton, Jr. v. Crimianl Justice Educ. & Training Stds. Comm	03 DOJ 1067	Lassiter	06/15/04
Steve A. Matthews v. Sheriff's Educ. & Traning Stds. Comm	03 DOJ 1702	Conner	05/10/04
Tony M. Evans and Kristopher D. Harris v. Criminal Justice Educ. & Training Standards Commission	03 DOJ 2354	Mann	07/19/04
Tony M. Evans and Kristopher D. Harris v. Criminal Justice Educ. & Training Standards Commission	03 DOJ 2355	Mann	07/19/04
Addie Joanne Foreman v. Private Protective Services Board	03 DOJ 2405	Elkins	08/26/04
Charles Robert Branham v. Criminal Justice Educ & Training Stds. Comm.	03 DOJ 2431	Conner	06/22/04
Robert R. Johnson, Jr. v. Sheriff's Education & Training Standards Comm.	04 DOJ 0062	Chess	08/23/04
Bernard Cotton v. DOJ	04 DOJ 0063	Chess	06/03/04
Linnell Davis, Jr. v. Private Protective Services Board	04 DOJ 0299	Elkins	08/26/04
Jason Oneil Rice v. Sheriffs' Education & Training Standards Commission	04 DOJ 0318	Mann	06/24/04
Lisa Anne Weaver v. Criminal Justice Educ. & Training Standards Comm.	04 DOJ 0490	Wade	11/01/04
Guy Wesley Prevette v. Criminal Justice Educ. & Training Standards Comm.	04 DOJ 0511	Chess	07/08/04
Connelly Allen Locklear v. Criminal Justice Educ. & Training Stds. Comm	04 DOJ 0514	Gray	07/15/04
Creo Melvin Mciver, II v. Criminal Justice Educ. & Training Stds. Comm	04 DOJ 0567	Gray	10/15/04
Roger Wayne Alvarico v. Sheriffs' Education & Training Standards Comm	04 DOJ 0636	Gray	11/29/04
Charlie Ray Hunt v. Criminal Justice Educ. & Training Stds. Comm	04 DOJ 0658	Gray	09/20/04
George Williams, Jr., v. Criminal Justice Educ. & Training Standards Comm.	04 DOJ 0688	Wade	10/29/04
Robert Dustin Bryant v. Private Protective Services Board	04 DOJ 0708	Gray	11/16/04
Joshua Adam Greene v. Sheriffs' Education & Training Standards Comm	04 DOJ 0730	Mann	10/08/04
George Eugene White v. Sheriffs' Education & Training Standards Comm	04 DOJ 0732	Wade	10/04/04
Jerry Adrian Crawley v. Sheriffs' Education & Training Standards Comm	04 DOJ 0828	Gray	09/16/04
Maureen Cleary Williams v. Sheriffs' Education & Training Standards Comm	04 DOJ 0829	Mann	07/28/04
Tommy Dwight Hunt v. Sheriffs' Educ & Training Stds. Comm	04 DOJ 0830	Elkins	08/24/04
Michael Lee Millner v. Sheriffs' Educ & Training Stds. Comm	04 DOJ 0831	Gray	12/16/04
David R. Pacheco v. Criminal Justice Educ. & Training Standards Comm	04 DOJ 0966	Gray	11/16/04
Murphy D. Riggan v. Criminal Justice Educ & Training Standards Comm	04 DOJ 0985	Gray	11/19/04
Lance Tyree Rice v. Criminal Justice Educ. & Training Standards Comm	04 DOJ 1013	Morrison	10/29/04
Randall Douglas Hughes v. Criminal Justice Education & Training Standards Comm	04 DOJ 1078	Elkins	09/30/04
Ernest Alvin Gaddy v. Sheriffs' Education and Training Standards Comm	04 DOJ 1153	Wade	12/02/04
Kenneth R. Moore v. Dept of Justice, Company Police Program Comm	04 DOJ 1180	Gray	09/29/04
Robert Wrenn Spencer, Jr., v. Sheriffs' Educ & Training Standards Comm	04 DOJ 1209	Mann	11/09/04
Gordon Shane Smith v. Criminal Justice Education & Training Standards Comm	04 DOJ 1241	Gray	09/29/04
Lance Harviell Patterson v. Private Protective Services Board	04 DOJ 1242	Morrison	10/29/04
Marcus Fuller v. Private Protective Services Board	04 DOJ 1244	Morrison	11/12/04
Reginald Mungo v. Private Protective Services Board	04 DOJ 1268	Morrison	11/04/04
Umba M Bushiri v. Private Protective Services Board	04 DOJ 1269	Morrison	11/12/04
Jacquelyn M. McClaud v. DOJ, Company Police Program	04 DOJ 1398	Lassiter	10/18/04
Adam C. Lentz v. Sheriffs' Educ & Training Standards Comm	04 DOJ 1551	Morrison	11/19/04
Mark James Tucker v. Alarm Systems Licensing Board	04 DOJ 1594	Mann	11/09/04
Johnny Vincentre Schmidt v. Criminal Justice Education & Training Standards Commission	04 DOJ 1632	Elkins	12/21/04

**DEPARTMENT OF TRANSPORTATION**

Harrison Holdings, LLC d/b/a Ultimate Imports v. Dept. & Comm. Of Motor Vehicles	04 DOT 0452	Chess	09/13/04
Virginia Edwards Estate, Gerald Dee Edwards v. In the General Court of Justice Superior Court Division	04 DOT 1326	Morrison	12/17/04

**DEPARTMENT OF TREASURER**

Bryant Lee Deaton v. DOT, Retirement Service Division	02 DST 1029	Gray	09/03/04	19:11 NCR	983
Claudia L. Rapier, Gregory S. Rapier v. DOT, Retirement Systems Division	03 DST 2375	Wade	10/14/04		
Mary Pender v. DOT, Retirement Systems Division	04 DST 0027	Conner	07/23/04		

**DEPARTMENT OF PUBLIC INSTRUCTION**

Alice Bins Rainey, Michele R Rotosky and Madeline Davis Tucker	02 EDC 2310	Lassiter	06/01/04	19:01 NCR	153
Emily H. Thompson v. Dept. of Public Instruction	03 EDC 1958	Chess	09/15/04		
Felder Wayne Poplin v. Dept. of Public Instruction	04 EDC 0824	Mann	10/28/04		
Knowledge Network Solutions v. Dept. of Public Instruction, Office of Information Technology Services	04 EDC 1634	Elkins	11/23/04		

**ENVIRONMENT AND NATURAL RESOURCES**

Beltex Corporation, a Debtor-in Possession v. DENR, Div of Air Quality	00 EHR 1706	Gray	06/18/04		
J.L. Marsh Smith Farms, Inc v. DENR, Div of Air Quality	00 EHR 2116	Gray	06/04/04		
Raymond Wallace, The Golden Mirror vs. Div of Radiation Protection	01 EHR 1558	Mann	06/17/04		
Friends of the Green Swamp, et al, v. DENR, Div. of Water Quality and Riegel Ridge, LLC, and Waste Management of Carolinas, Inc	03 EHR 0058	Conner	08/26/04		
Old Beau Golf Club v. DENR	03 EHR 1260	Conner	07/28/04		
Sandy Mush Properties, Inc v. DENR, Div of Air Quality	03 EHR 1411	Conner	06/28/04		
Ronald Frye v DENR	03 EHR 1636	Gray	06/23/04		
Alliance for Legal Action, Inc, Piedmont Quality of Life Coalition (an unincorporated association), Alberta Anderson, Cameron Anderson, Jean Black, Richard Black, Walter S. Druce, Ron Goga, Gil Happel, Carol Hoppe, Michael Hoppe, Patricia Nussbaum, Christine Peeler, Laura Pollak, Randall Schultz, Roch Smith, Jr., and Vassilia Smith v. Div of Water Quality of DENR And Piedmont Triad Airport Authority	03 EHR 1664	Gray	09/08/04		
Herbert B. Simmons, Sr., v. DENR	03 EHR 1773	Gray	10/21/04		
Robert I. Swinson Sr. v. DENR, Div of Marine Fisheries	03 EHR 2248	Chess	06/10/04		
Winston N. Cahoon v. DENR	03 EHR 2305	Lassiter	07/01/04		
Jimmy Mathis, Mathis Pump & Well v. DENR	03 EHR 2336	Wade	05/25/04		
James D & Jane Lathan Ray; James D. & Brenda W Moser, Jr.; John G. & Sheila A Conner v. DENR, Div. of Coastal Resources and R. Carter Pate	04 EHR 0073 <sup>1</sup>	Wade	08/13/04		
R. Carter Pate v. DENR, Div. of Coastal Resources & Steve Bond	04 EHR 0150 <sup>1</sup>	Wade	08/13/04		
Coy Carter v. DENR, Div of Land Resources	04 EHR 0179	Morrison	10/22/04		
Joseph R. Dunn v. DENR, Division of Water Quality	04 EHR 0201	Conner	12/01/04		
Dennis Graham v. DENR, Division of Water Quality	04 EHR 0402	Conner	12/14/04		
Joseph Glenn Henson v. DENR, Div. of Air Quality	04 EHR 0566	Conner	10/04/04		
Raymond Earl Dail, Sr., and wife, Linda M. Dail, v. DENR, Pamlico Country Health Dept.	04 EHR 0508	Wade	12/02/04		
Big Beaver Drilling Rig v. UST Trust Fund Section Final Agency Decision	04 EHR 0612	Wade	05/25/04		
Wellington by the Sea Homeowner's Association v. DENR, Div of Coastal Management	04 EHR 0674	Wade	12/02/04		
Allied Environmental Services, PLLC Deans Oil Management Company, Hustle Mart #3 v. DENR	04 EHR 0987	Morrison	12/30/04		
Jeffrey D. Cline v. DENR, Division of Waste Management	04 EHR 1148	Morrison	10/29/04		
Brookside Montessori School, Inc v. DENR, Div. of Environmental Health	04 EHR 1219	Gray	08/27/04		
Margaret D. Ryan Exectrixes of the Estate of O.F. Dumas v. DENR, Div. Of Waste Management, UST Section Trust Fund	04 EHR 1475	Gray	12/22/04		
Joy Murray v. DENR, Division of Waste Management	04 EHR 1478	Gray	11/24/04		

**DEPARTMENT OF INSURANCE**

Ellen E. Robinson v. Teachers' and State Employees' Comprehensive Major Medical Plan	03 INS 1649	Wade	01/04/05		
Speros J. Fleggas vs. DOI	04 INS 0251	Elkins	06/10/04		

**MISCELLENOUS**

Alesia Braswell Al Wahshi v. Deborah Mcintyre, Wayne Co, Dept. of Social Services	04 MIS 0146	Gray	06/18/04		
O'marr S. Reid v. Gaston Co. Judicial System and Defendants 1,2,3,4,5,6,7,8,9,10	04 MIS 0682	Elkins	06/22/04		
Larry Yancey v. State Bar Grievance Com., Dept of Justice	04 MIS 0891	Morrison	07/27/04		

**CONTESTED CASE DECISIONS**

Larry Yancey v. State Bar Grievance Com., Dept of Justice	04 MIS 0892	Morrison	07/27/04	
Larry Yancey v. Durham Housing Authority, City of Durham, State of NC	04 MIS 0893	Morrison	07/27/04	
Larry Yancey v. Independent Living Rehab Prog, Div of VRS State of NC	04 MIS 0894	Morrison	07/27/04	
Larry Yancey v. Durham Dept. of Social Services, State of NC	04 MIS 0895	Morrison	07/27/04	
Darrick Lamonte King v. Administrative Office of the Courts	04 MIS 1289	Mann	12/07/04	
Earl Hardy Jr. v. Brunswick County Dept of Social Services	04 MIS 1765	Morrison	12/10/04	
<b><u>OFFICE OF STATE PERSONNEL</u></b>				
Diane Kemp v. Swannanoa Valley Youth Development Center	02 OSP 1552	Gray	12/16/04	
Kathy M Sledge v. DOC	02 OSP 2117	Conner	08/03/04	
James E. Sharpe v. DOT, Div. 14 (Graham County)	03 OSP 0395	Chess	12/02/04	
Pearl A. Wilkins v. NCSU	03 OSP 0400	Gray	07/26/04	
Phillip Harris v. Dept. of Juvenile Justice & Delinquency Prevention	03 OSP 0836	Gray	09/17/04	
Henry Brad Stevens v. Dept. of Crime Control & Public Safety/State Hwy Patrol	03 OSP 1566	Morrison	10/27/04	19:11 NCR 987
Romda Arnold v. Dept of Social Services, William Scarlett	03 OSP 2261	Wade	12/02/04	
Wanda R. Small v. Dept of Social Services, William Scarlett	03 OSP 2262	Wade	12/02/04	
Phyllis Holt v. NCSU	03 OSP 2415	Conner	10/14/04	19:11 NCR 992
James A. Ray v. Mr. Don Shore, Human Resources, UNC Greensboro	03 OSP 2451	Elkins	06/01/04	
James A. Ray v. Sherry Stevens and Facility Services Management., UNC Greensboro	03 OSP 2452	Elkins	06/01/04	
James A. Ray v. Hoyte Phifer and Facility Services Management, UNC Greensboro	03 OSP 2453	Elkins	06/01/04	
Terry H. Mitchell v. Elizabeth City State University	04 OSP 0015	Conner	07/23/04	
Miracle L. Smith v. NC State Highway Patrol	04 OSP 0039	Gray	07/14/04	
Samuel Williams v. DOC, Div of Alcoholism, Chemical Dependency Programs	04 OSP 0194	Mann	06/09/04	
Jerry William Wiley v. Div of Public Health and DHHS	04 OSP 0210	Elkins	06/23/04	
Donnie Gordon v. Southern Correctional Institution	04 OSP 0280	Wade	10/11/04	
James Sturdivant v. UNC Pembroke	04 OSP 0285	Conner	11/17/04	
Lillian Marie Adcock v. UNCG	04 OSP 0380	Lassiter	09/23/04	
Barbara Hoffner v. DOC, Div of Prisons, Central Prison	04 OSP 0415	Chess	06/17/04	
Jeff Nichols v. DOC	04 OSP 0419	Conner	06/29/04	
Adriel Williams v. UNC Chapel Hill	04 OSP 0435	Chess	09/20/04	
Phyllis Holt v. UNC Chapel Hill	04 OSP 0486	Chess	06/01/04	
John V. Smith v. NCSU	04 OSP 0505	Chess	06/17/04	
David Earl Beasley v. NCSU	04 OSP 0513	Gray	08/27/04	
Mark A. Boyce v. Dept. of Commerce	04 OSP 0543	Gray	07/06/04	
Robin P. Fleming v. Broughton Hospital	04 OSP 0551	Conner	12/29/04	
Barbara H. Crisp v. Toe River Health District	04 OSP 0565	Conner	11/19/04	
Eldredia B. Mizelle v. Craven Correctional Institution, Dept. of Corrections, David W. Chester, Capt. Kathryn Brown	04 OSP 0582	Wade	06/24/04	
Bernadine Ralph v. O'Berry Center	04 OSP 0706	Lassiter	06/29/04	
Jesse D. Goodman v. NC A&T University	04 OSP 0719	Lassiter	09/23/04	
James A. Ray v. UNC at Greensboro, Facility Services	04 OSP 0751	Elkins	07/14/04	
Gwendolyn Robertson Horton v. DHHS	04 OSP 0792	Morrison	07/26/04	
Melvin B. Jones v. Elizabeth City State University	04 OSP 0841	Wade	10/14/04	
Lekisha Branch Thorpe v. The Whitaker School	04 OSP 0923	Morrison	09/09/04	
Katrina Pittman v. Kenny Gibbs, Div of Vocational Rehab	04 OSP 0930	Lassiter	08/06/04	
Bonnie J. Winn, RN v. DOC	04 OSP 0955	Creech	12/20/04	
Veronica J. Johnson v. SOS	04 OSP 0961	Morrison	07/23/04	
Gregory Tabron v. John Umstead Hospital	04 OSP 1014	Lassiter	07/26/04	
James Clint Dixon Sr. v. Butner Public Safety, Crime Control & Public Safety	04 OSP 1104	Lassiter	10/08/04	
Emily Deveaugh v. Pender Correctional Institution	04 OSP 1149	Elkins	10/20/04	
Ronnetta Lynn Copeland v. Buncombe County Mental Health Center	04 OSP 1208	Wade	10/28/04	
Sharon Carr v. DHHS, Div of Social Services, Human Resources Gwen Sanders	04 OSP 1270	Mann	09/24/04	
Patricia O'Neal v. Polk Youth Institution	04 OSP 1284	Mann	11/22/04	
Andrea T. Hailey v. Dept. of Correction	04 OSP 1309	Conner	11/19/04	
Michael L. Hillis v. DHHS	04 OSP 1369	Mann	12/08/04	
Lucie J. Riggsbee v. DHHS – Div. of Public Health	04 OSP 1389	Wade	12/02/04	
Diane Barnes v. Dorothea Dix Hospital	04 OSP 1426	Gray	12/30/04	
Frances Shabazz v. UNC	04 OSP 1615	Gray	12/03/04	
Terry M Knotts v. Davie County Inspection	04 OSP 2124	Morrison	12/22/04	
<b><u>UNC HOSPITALS</u></b>				
Carrie Ann Sykes v. Chapel Hill Hospital	04 UNC 0245	Elkins	06/25/04	
Danielle Catoe v. UNC Hospitals	04 UNC 0291	Elkins	06/25/04	
Rex A. Coughenour v. UNC Hospitals	04 UNC 0306	Elkins	06/22/04	
P. Nettles v. UNC Hospitals	04 UNC 0393	Morrison	07/23/04	
P. Nettles v. UNC Hospitals	04 UNC 0393	Morrison	07/23/04	
Garris Faison v. UNC Hospitals	04 UNC 0396	Conner	10/08/04	
Vanessa Bailey v. UNC Hospitals	04 UNC 0440	Conner	08/09/04	
Dennis McCuller v. UNC Hospitals	04 UNC 0458	Chess	08/02/04	
Joe Hatcher v. UNC Hospitals	04 UNC 0480	Morrison	07/23/04	
Catruaal Heggins v. UNC Hospitals	04 UNC 0496	Chess	08/09/04	
Tammy Bottoms v. UNC Hospitals	04 UNC 0502	Elkins	07/21/04	

**CONTESTED CASE DECISIONS**

---

Sandra Lee Petty v. UNC Hospitals	04 UNC 0522	Chess	07/23/04
Thomas Sherman Tate v. UNC Hospitals	04 UNC 0538	Chess	06/15/04
Sherry Smith v. UNC Hospitals	04 UNC 0585	Wade	10/01/04
Tracy Lane v. UNC Hospitals	04 UNC 0601	Gray	07/23/04
Carl Graves, Jr. v. UNC Hospitals	04 UNC 0613	Wade	09/21/04
Betty Tripp v. UNC Hospitals	04 UNC 0660	Wade	10/01/04
Ellen Lamoureux v. UNC Hospitals	04 UNC 0677	Wade	10/01/04
Martha W. Foust v. UNC Hospitals	04 UNC 0680	Morrison	11/18/04
Holly M. Taylor v. UNC Hospitals	04 UNC 0743	Chess	10/04/04
Chris Oduok v. UNC Hospitals	04 UNC 0760	Morrison	07/26/04
Xiaoyan Luo v. UNC Hospitals	04 UNC 0761	Morrison	11/18/04
Pamela L. Chevalier v. UNC Hospitals	04 UNC 0773	Morrison	07/26/04
Ann M Taft v. UNC Hospitals	04 UNC 0781	Morrison	11/23/04
Kuiran Jiao, Zhenghong Fan v. UNC Hospitals	04 UNC 0847	Morrison	12/21/04
Nicole Bissell Curliss v. UNC Hospitals	04 UNC 0849	Morrison	11/18/04
June K. Foushee v. UNC Hospitals	04 UNC 0850	Morrison	11/23/04
Jill Weinstein v. UNC Hospitals	04 UNC 0918	Morrison	11/18/04
Trenda L. Smith v. UNC Hospitals	04 UNC 0951	Morrison	11/23/04
Lisa Stewart v. UNC Hospitals	04 UNC 0960	Morrison	12/10/04
Joyce Miller v. UNC Hospitals	04 UNC 0963	Morrison	11/23/04

\*\*\*\*\*

1 Combined Cases

STATE OF NORTH CAROLINA  
COUNTY OF MOORE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
04 CPS 0935

MS. DARLENE CHALMERS, )  
                                  ) **Petitioner;** )  
                                  ) )  
                                  ) )  
                                  ) **v.** )  
                                  ) )  
                                  ) )  
NORTH CAROLINA CRIME VICTIMS )  
COMPENSATION SERVICES, )  
                                  ) **Respondent.** )

**DECISION**

This contested case came on to be heard before Julian Mann, III, Chief Administrative Law Judge, on 27 September 2004 in the High Point Courthouse, High Point, North Carolina.

**APPEARANCES**

For Petitioner:           Darlene Chalmers, *Pro Se*  
                                  735 West Connecticut Avenue  
                                  Southern Pines, North Carolina 28387

For Respondent:         Donald K. Phillips  
                                  Assistant Attorney General  
                                  North Carolina Department of Justice  
                                  9001 Mail Service Center  
                                  Raleigh, North Carolina 27699-9001

**PETITIONER’S WITNESSES**

1.     Petitioner, Darlene Chalmers.

**RESPONDENT’S WITNESSES**

1.     Jerome L. Underwood, Criminal Investigator, Aberdeen Police Department

**EXHIBITS**

The following exhibits were admitted into evidence on behalf of the Petitioner:

1.     Petitioner’s Exhibit 1—(Pages of victim’s autopsy report).

The following exhibits were admitted into evidence on behalf of the Respondent:

1.     Respondent’s Exhibit 1—(Photocopy of a photograph of the outside of apartment 19B, Magnolia Street Apartments, the location where the victim was shot).
2.     Respondent’s Exhibit 2—(Photocopy of a photograph of the kitchen area inside apartment 19B showing a “baggie” of marijuana).
3.     Respondent’s Exhibit 3—(Photocopy of a photograph of a paper bag found in the kitchen area of apartment 19B containing marijuana and a beer cap).
4.     Respondent’s Exhibit 4—(Photocopy of a photograph of the living room doorway area of apartment 19B that shows alcohol containers inside the room and lack of furniture).
5.     Respondent’s Exhibit 5—(Photocopy of a photograph of the living room/kitchen area of apartment 19B and alcoholic beverages and containers).

6. Respondent's Exhibit 6—(Photocopy of a photograph of kitchen area of apartment 19B where the music and recording equipment had been set up and additional alcoholic beverages and containers found).

**ISSUES PRESENTED**

1. Was the victim participating in a felony at or about the time that his injury occurred pursuant to N.C.G.S. § 15B-11(a)(6)?
2. Did the victim engage in contributory misconduct pursuant to N.C.G.S. § 15B-11(b)(2)?
3. Was the victim participating in a nontraffic misdemeanor at or about the time that his injury occurred pursuant to N.C.G.S. § 15B-11(b)(1)?
4. Did the Petitioner provide substantial evidence within the meaning of N.C.G.S. § 15B-2(12a) of incurring an allowable expense within the meaning of N.C.G.S. § 15B-2(1)?
5. Has Petitioner presented substantial evidence to establish that the requirements for an award have been met pursuant to N.C.G.S. §§ 15B-4(a) and 15B-2(12a)?

Based upon the testimony at the hearing and the whole record, the undersigned makes the following:

**FINDINGS OF FACT**

1. The Petitioner in this case is Darlene Chalmers (hereinafter "Petitioner"). On 19 April 2003, at approximately 11:30 p.m., Petitioner's son, Kenneth Orlando Ross (hereinafter "victim") was with approximately ten other people in Apartment 19B (hereinafter "the apartment"), Magnolia Street Apartments, Aberdeen, North Carolina, when he was shot by Trandon Thomas (hereinafter "offender"). The victim did not live in the apartments. The victim later died at the local hospital. (Hearing Tape 1 of 1, Sides A and B; Respondent's Prehearing Statement).
2. On or about 25 August 2003, Petitioner completed a Victim Compensation Application on behalf of the victim seeking funeral expenses. The application was received by the North Carolina Department of Crime Control and Public Safety, Victim Compensation Services Division, Crime Victims Compensation Commission (hereinafter "Respondent"). Following a thorough investigation and review of the claim, the Respondent denied Petitioner's claim. (Respondent's Prehearing Statement). On 22 March 2004, the Respondent mailed Petitioner a cover letter, Recommendation of Director for Denial, and Determination of Commission Denied explaining the denial and giving notice to Petitioner of her right to appeal. Id.
3. On 2 June 2004, Petitioner submitted a Petition for a Contested Case Hearing (with attached pages) to the Office of Administrative Hearings alleging that the Respondent failed to use proper procedure and otherwise substantially prejudiced her rights. (Petition for a Contested Case Hearing).
4. Detective Jerome L. Underwood, a criminal investigator with the Aberdeen Police Department, testified at the hearing. Detective Underwood is familiar with circumstances surrounding the victim's death and the underlying criminal investigation and prosecution because he was the lead investigator. (Hearing Tape 1 of 1, Side A). Detective Underwood was called to the scene; made observations and took photographs, including Respondent's Exhibits 1-6; collected evidence; inventoried the victim's car; and questioned available witnesses, including the offender. (Hearing Tape 1 of 1, Sides A and B; Respondent's Exhibits 1-6).
5. Furthermore, Detective Underwood followed-up on the criminal proceedings, stated the results of his investigation and findings to the Respondent, and otherwise provided information to the Respondent's investigators concerning the case *sub judice* which Petitioner initiated. (Hearing Tape 1 of 1, Sides A and B).
6. Detective Underwood was dispatched early in the morning of 20 April 2003 to the Magnolia Street Apartment complex by an Aberdeen Police Sergeant who was already there. (Hearing Tape 1 of 1, Side A). When Detective Underwood arrived at the scene he was briefed by other officers. Id. With the assistance of other officers, Detective Underwood immediately began to process the scene, including the apartment. Id. Detective Underwood learned that the victim had already been taken to the hospital. Id. Detective Underwood also learned of potential suspects and witnesses while at the scene. Id.
7. Law enforcement investigations, including Detective Underwood's investigation, revealed that the victim had driven himself and at least two others, including the offender, to the apartment sometime after dark, approximately 7:00 or 8:00 p.m. on the night of 19 April 2003. (Hearing Tape 1 of 1, Sides A and B). The victim went to the apartment voluntarily, in his car, and remained there by choice, with a group of at least ten or more individuals in the apartment listening to "rap" music and making "rap" music recordings.

Id. One individual, who was from Fayetteville, had brought musical and recording equipment and setup the equipment on a table in the kitchen/living room area. (Hearing Tape 1 of 1, Side A).

8. The apartment was very small and there were sparse furnishings. (Hearing Tape 1 of 1, Side A; Respondent's Exhibits 1-6). There was drinking of alcoholic beverages, mostly beer, and marijuana use involved throughout the apartment. Witnesses stated to law enforcement that "everyone" present at the gathering was drinking and smoking marijuana. (Hearing Tape 1 of 1, Sides A and B).

9. There were at least three handguns present inside the apartment. (Hearing Tape 1 of 1, Sides A and B). Some of the handguns were being displayed and used as objects in the "rap" music such as toys or props, to "act out" the music and replicate music videos. Id. Some of the firearms were brought to the apartment by an individual named Latour Lee and displayed to be sold to others at the gathering. Id.

10. Most of the individuals present inside the apartment, including the victim, had prior drug convictions and were known throughout the community, and to law enforcement as being participants in drug activity. (Hearing Tape 1 of 1, Side A). The victim had at least two prior felony drug convictions; a 1997 conviction of Possession with Intent to Sell and Deliver Cocaine and a 2000 conviction for Sale and Delivery of Cocaine. Id. The victim had previously been incarcerated for these drug offenses. Id. Furthermore, approximately one year prior to the victim's death, Detective Underwood stopped a vehicle and detained the victim, who was a passenger. Detective Underwood arrested the driver for Possession with Intent to Sell and Deliver Marijuana and did not charge the victim. Id.

11. At the time the victim was shot, he was with others, at least four to five people, in a small bedroom, which opened into the living room/kitchen area. (Hearing Tape 1 of 1, Sides A and B; Respondent's Exhibits 1-6). All were smoking marijuana and drinking beer. (Hearing Tape 1 of 1, Sides A and B). Meanwhile, several others were recording their songs in the living room/kitchen area or merely "hanging out." Id. The group inside the bedroom, including the victim, had been listening to music and practicing their "rap" songs and movements in preparation for recording in the living room/kitchen area. Id. Groups would take turns practicing and then recording. Id.

12. At least three handguns were in this bedroom and were placed on the window sill. (Hearing Tape 1 of 1, Side B). Before placing the weapons on the window sill, someone removed the magazine of bullets from each handgun in an attempt to render them "safe." Id. Unfortunately, at least one handgun was not fully "cleared" of all possible bullets. Id. A round was mistakenly left in the chamber, even though the magazine had been removed. Id. This, therefore, left the handgun "loaded" with one round. Id. By all accounts, everyone believed the weapons had been unloaded. (Hearing Tape 1 of 1, Sides A and B).

13. The offender began looking at one of the handguns, even though, and unbeknownst to him, it had not been fully "cleared" and rendered "safe." (Hearing Tape 1 of 1, Sides A and B). The offender was holding the weapon and "rapping" to a newly released "rap" video by the artist "50 cent" and was acting out this "rap" while the victim was in the room. (Hearing Tape 1 of 1, Side B). The victim, who was about three feet away, then asked to see the weapon. Id. The offender pointed the gun at the victim in a joking manner believing it to be unloaded and the gun fired, fatally striking the victim. (Hearing Tape 1 of 1, Side A). Witnesses and the offender stated that they truly believed the guns, including the one that led to the victim's death, were unloaded and that the shooting was an accident. (Hearing Tape 1 of 1, Sides A and B).

14. Immediately after the shooting, the occupants of the residence fled the apartment and scattered without calling for help or otherwise rendering assistance to the victim. (Hearing Tape 1 of 1, Side A). Individuals, including Latour Lee, took the handguns with them when they fled. (Hearing Tape 1 of 1, Sides A and B). Detective Underwood believed that the individuals quickly "cleaned up" the apartment after the shooting, thereby removing other evidence of illegal drug use before law enforcement arrival. (Hearing Tape 1 of 1, Side A).

15. As others were running from the area or leaving by car, the individual who had brought the recording and music equipment, and others helping him, made at least three trips to get all of the equipment from the apartment and load and pack the equipment in a car. (Hearing Tape 1 of 1, Side A). They made several trips past the victim but never did anything to assist the victim or call for help. Id. Moreover, given that everyone who had been in the apartment with the victim fled after he was shot, there was no one in the apartment except the victim when law enforcement officers arrived. Id.

16. Police were first called to the Magnolia Street Apartment complex based upon a 911 call made by a neighbor to the apartment. (Hearing Tape 1 of 1, Side B). The neighbor reported a suspicious person running through the apartment complex. Id. Police later determined that this was most likely one of the individuals fleeing the apartment after the victim had been shot. Id. The 911 call by the neighbor did not direct officers to the apartment where the shooting took place nor did it involve a shooting or drug activity. Id. Based on the neighbor's call, when officers responded and arrived at the complex, they checked the area for suspicious persons or activity. Id. Upon observing no disturbance or suspicious activity, the officers cleared the call and then left the complex.

Id. Officers, therefore, had no knowledge of the circumstances of the shooting or the activities that had just taken place in the apartment. Id. No call specifically directed them to the apartment where the victim had been shot. Id. It was not until later, following a separate call, did officers respond back to the apartment complex regarding the shooting. Id.

17. Inside the apartment, Detectives found one magazine from one of the handguns and one shell casing. (Hearing Tape 1 of 1, Side A; Respondent’s Exhibits 1-6). Detectives also found several traces of marijuana; “baggies” (which are used to package marijuana for sale) containing marijuana; alcohol (beer) and alcohol containers. Id.

18. After processing the inside of the apartment, Detective Underwood conducted an inventory search of the victim’s car which was parked just outside of the apartment. (Hearing Tape 1 of 1, Sides A and B). Detective Underwood discovered a .380 caliber Walther PPK handgun wedged and partially concealed between the two front seats of the victim’s car. (Hearing Tape 1 of 1, Side A). At least one of the victim’s car doors was locked. Id. Witnesses stated to authorities that the .380 caliber Walther PPK was the victim’s handgun. (Hearing Tape 1 of 1, Side B).

19. Officers later recovered all three handguns that had been in the bedroom on the window sill, including the one used in the shooting of the victim. (Hearing Tape 1 of 1, Sides A and B). The weapons had been thrown out in various locations by individuals who had been present in the apartment. Id. Approximately two hours after the shooting, Detectives located two of the three handguns on nearby roads. Id. One of these two handguns was later determined to have been previously reported stolen by the Moore County Sheriff’s Department. Id. Latour Lee removed the third handgun from the apartment and threw it into a wooded area in Southern Pines. (Hearing Tape 1 of 1, Side B). This third handgun, which Lee had brought to the apartment, was the weapon that the offender was holding when he shot the victim. (Hearing Tape 1 of 1, Sides A and B).

20. Initially, the offender was charged with Attempted First Degree Murder while the victim was still alive at the hospital and the investigation was beginning. (Hearing Tape 1 of 1, Side A). Based on the totality of the circumstances revealed by further and more complete law enforcement investigations, and the lack of proof of intent to kill by the offender, the offender’s charge was reduced to involuntary manslaughter. (Hearing Tape 1 of 1, Sides A and B). The offender eventually pled guilty to involuntary manslaughter. (Hearing Tape 1 of 1, Side A).

21. The medical examiner’s office performed an autopsy on the victim. (Hearing Tape 1 of 1, Side B; Petitioner’s Exhibit 1). The focus of Detective Underwood’s investigation was identifying the offender and determining the circumstances surrounding the shooting, not centering on possible culpability of victim who could not be charged. (Hearing Tape 1 of 1, Side B). Therefore, a drug screening was not performed on the victim because he was the deceased victim of a crime, not a criminal suspect. Id. The reason that an alcohol screening was performed on the victim in the autopsy is because the medical examiner’s office screens for alcohol automatically regardless of whether authorities request such a screening. Id. Alcohol was found in the victim’s system by the medical examiner. Id. Additional screenings, such as drug screenings are performed by request only. Id. Further blood screenings of the victim were not requested and were not considered imperative to the criminal investigation given the fact that the victim had been shot and killed. Id.

22. The focus of the investigation was the offender and Latour Lee and not the victim because the offender had shot the victim and Lee had attempted to destroy evidence by throwing out the firearms. (Hearing Tape 1 of 1, Side B). Because Detective Underwood treated this investigation as a homicide from the beginning, the victim was not the focus of the investigation. Id.

23. Therefore, neither the Respondent agency nor the case *sub judice* was the focus of the investigation. (Hearing Tape 1 of 1, Side B). The potential culpability of the victim arose only because Petitioner had filed her claim. Id.

24. Detective Underwood believes, based upon the facts of the case, that there is no way that the victim would not have known about the presence of the guns in the apartment or his car. There were guns in the room, they were passing the guns around and looking at them, and one of the individuals in the room was inquiring about purchasing one of the handguns. (Hearing Tape 1 of 1, Side B).

25. According to Detective Underwood, had the victim lived, he could have been charged with at least one felony—Possession of a Firearm by a Convicted Felon. (Hearing Tape 1 of 1, Side A). The victim could also have been charged with Possession of a Controlled Substance (Schedule VI—marijuana) and Possession of a Stolen Firearm, because he was present in the room with the stolen weapon for several hours. Id. The victim’s prior felony convictions prevented him from owning or possessing a firearm. Id.

26. Therefore, in Detective Underwood’s opinion, based upon all of the totality of facts of this case, the victim, who was a convicted felon, was participating in a felony at or about the time of his injury by carrying a handgun partially concealed in his vehicle, and being in a room with multiple weapons, one of which had been stolen. (Hearing Tape 1 of 1, Side B).



27. Furthermore, in Detective Underwood's opinion, based upon the facts of this case, the victim was participating in contributory misconduct because he placed himself in the position he was in. (Hearing Tape 1 of 1, Side B). The victim decided to stay in the apartment and not leave even though he had means to leave; his car. Id. The victim could have left, but he chose not to. Id. There was absolutely no indication that the victim could not have left the apartment. Id. He had taken his car to the apartment. Id. He was there because he wanted to be there and no one forced him to go to the apartment or to remain there. Id.

28. Petitioner testified at the hearing. Petitioner admits that the victim was a convicted felon. Petitioner also admits that her son was at the apartment by choice, marijuana was found in the apartment, and a handgun was found in the victim's car. Petitioner did not provide any bills or evidence of any expenses at the hearing. (Hearing Tape 1 of 1, Sides A and B).

Based upon the foregoing Findings of Fact, the undersigned makes the following:

### CONCLUSIONS OF LAW

Respondent has the authority and responsibility under North Carolina General Statutes Chapter 15B, the "North Carolina Crime Victims Compensation Act," to administer the Act in North Carolina, including the investigation and award or denial of claims.

1. Pursuant to N.C.G.S. § 150-34(a), in making a Decision, the "administrative law judge shall decide the case based upon the preponderance of the evidence, giving due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency." (Emphasis added). Under the totality, deference should be given to the Respondent agency.

2. North Carolina General Statute § 15B-11 lists grounds for denial of a claim for compensation or for reduction of an award. The preponderance of the evidence in this contested case establishes that at least three grounds for denial or reduction of award are present in this case.

3. North Carolina General Statutes §§ 15B-11(b)(1) and (2) allow the Commission to use its discretion ("may deny") to evaluate a claim and make appropriate decisions based on its findings. The Commission already denied Petitioner's claim based upon the victim's participating in a nontraffic misdemeanor at or about the time of his injury, but the facts also present two additional reasons for denial: 1) participation in a felony at or about the time of his injury and 2) engaging in contributory misconduct. N.C.G.S. §§ 15B-11(a)(6), (b)(1), and (2).

4. North Carolina General Statute § 15B-11(a)(6) states that "[a]n award of compensation shall be denied if . . . [t]he victim was participating in a felony at or about the time that the victim's injury occurred." (emphasis added).

5. Pursuant to the provisions of N.C.G.S. § 15B-11(a)(6), if the evidence establishes that the victim was participating in a felony, then the Respondent has no discretion but to deny the claim. The term "participate" is not defined in Chapter 15B but should be given its plain, ordinary, everyday meaning which according to Black's Law Dictionary is "to receive or have a part or share of; to partake of; experience in a common with others; to have or enjoy a part or share in common with others" and to The American Heritage Dictionary it is "to take part; join or share with others" or to "partake of." Black's Law Dictionary 1118 (6th ed 1990) and The American Heritage Dictionary 905 (2d ed. 1985). The provisions of N.C.G.S. § 15B-11(a)(6) do not require that the Respondent prove that the victim was or could have been charged or convicted with a felony but merely "participating." If, however, a victim was convicted of the felony or could have been, then this is certainly substantial evidence to show participation.

6. The evidence in this case establishes that the victim was participating in a felony at or about the time of his injury. North Carolina General Statute § 14-415.1(a) and (b) provides in pertinent part that if an individual has a felony conviction after December 1, 1995 and is off of his own premises:

It shall be unlawful for any person who has been convicted of a felony to purchase, own, possess, or have in his custody, care, or control any firearm or any weapon of mass death and destruction as defined in G.S. 14-288.8(c). For the purposes of this section, a firearm is (i) any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive, or its frame or receiver, or (ii) any firearm muffler or firearm silencer.

The evidence by stipulation establishes that the victim was convicted of at least two prior felonies after December 1, 1995 and did not live at the apartment complex. Furthermore, the evidence demonstrates that the victim was "participating" in this felony in at least two separate incidents. First, the evidence shows that he had in his possession a .380 caliber Walther PPK handgun in his vehicle and exercised custody, care, or control of the handgun based upon the fact that he had the weapon partially concealed in his car beside his seat where he had driven to the apartment and locked at least one door. Based upon this evidence, Detective Underwood could have charged the victim with a violation of N.C.G.S. § 14-415.1. Second, the victim exercised custody, care, or

control of multiple firearms while he was in the small bedroom. Petitioner sought control of the very firearm that the offender was holding when he asked the offender if he could see it. Thus, on at least two occasions the victim did take part, join or share with others to possess or have care, custody, or control of firearms in violation of N.C.G.S. § 14-415.1 and Petitioner's claim shall be denied.

7. North Carolina General Statutes § 15B-11(b)(2) states that “[a] claim may be denied or an award of compensation may be reduced if . . . [t]he claimant or a victim through whom the claimant claims engaged in contributory misconduct.” (emphasis added).

8. Neither “engaged” nor “contributory misconduct” is defined in Chapter 15B. As with “participating,” the term “engage” should be given its plain, ordinary, everyday meaning which according to Black's Law Dictionary is “[t]o employ or involve one's self; to take part in; to embark on” and to The American Heritage Dictionary it is “to involve oneself or become occupied; participate.” Black's Law Dictionary 528 (6th ed 1990) and The American Heritage Dictionary 454 (2d ed. 1985). The term “contributory misconduct” has been addressed by the North Carolina Court of Appeals who held that:

the conduct of the claimant is misconduct if it is not within the accepted norm or standard of proper behavior, which includes unlawful conduct. Consistent with principles of tort law, the test for determining accepted norms and proper behavior is best determined by use of a reasonable man standard or what a reasonable person would have done under similar and like circumstances.

Evans v. North Carolina Dep't of Crime Control & Public Safety, 101 N.C. App. 108, 117, 398 S.E.2d 880, 885 (1990)(emphasis added). The Court went on to say that:

Accordingly, if there is in the record substantial evidence that a person of ordinary prudence would have reasonably foreseen that the conduct in question would lead to an injurious result, and if this conduct was unlawful or if it breached the standard of conduct acceptable to a reasonable person, the Commission should be affirmed in denying or reducing claimant's benefits.

Id. at 118, 398 S.E.2d at 885.

Pursuant to the provisions of N.C.G.S. § 15B-11(b)(2), if the evidence establishes that the victim was engaged in contributory misconduct, then the Respondent has discretion and may deny the claim. Unlike the provisions of N.C.G.S. § 15B-11(a)(6), this statute does mandate that the Respondent must either award or deny a claim. Instead, pursuant to N.C.G.S. § 15B-11(b)(2) “[t]he Commission shall use its discretion in determining whether to deny a claim under this subsection. In exercising its discretion, the Commission may consider whether any proximate cause exists between the injury and the misdemeanor or contributory misconduct.” (Emphasis added).

9. The evidence of this case establishes that the victim was engaged in contributory misconduct. The victim was “involved in” or “became occupied” with conduct that certainly was “not within the accepted norm or standard of proper behavior,” and a reasonable and prudent person would not have so acted “under similar and like circumstances.” Furthermore, but/for the victim's: 1) being a convicted felon of drug crimes; 2) having been incarcerated for those drug convictions; 3) driving his car to the apartment voluntarily; 4) possessing a firearm in his car partially concealed; 5) voluntarily placing himself in a small apartment bedroom where at least three firearms, including a stolen firearm was present; 6) choosing to associate himself with known drug dealers and users, which was the majority of the individuals in the apartment; 7) knowing that he was in an apartment where marijuana and alcohol was being used and consumed by everyone; 8) lack of evidence that he was coerced or forced to go or stay in the apartment and be in that environment; 9) asking to hold a firearm being used as a “toy or prop” in a song by someone who had consumed alcohol or marijuana, he would not have been shot. This mix of guns, felons, alcohol, and marijuana, combined with overconfidence that the guns were unloaded while waving them around trying to imitate someone else, resulted in the victim's unfortunate death.

10. North Carolina General Statutes § 15B-11(b)(1) states that “[a] claim may be denied or an award of compensation may be reduced if . . . [t]he victim was participating in a nontraffic misdemeanor at or about the time that the victim's injury occurred[.]”

11. The victim was participating in more than one nontraffic misdemeanor at or about the time of injury pursuant to the provisions of N.C.G.S. § 15B-11(b)(2). The victim did “participate” by taking part or sharing with others in at least three misdemeanors.

First, the victim participated in possessing drug paraphernalia in violation of N.C.G.S. § 90-113.21. As defined in N.C.G.S. §§ 90-113.21(a) and (a)(9), the “baggies” recovered by officers are by definition drug paraphernalia because they are “equipment, products, or materials . . . used to facilitate . . . violations of the Controlled Substances Act, including . . . packaging, repackaging, storing, [or] containing” and are “. . . containers for packaging small quantities of controlled substances.” By substantial evidence the victim participated because: 1) multiple witnesses stated that the victim had been smoking marijuana and that “everyone” was drinking and smoking marijuana; 2) the victim had prior convictions of the Controlled Substances Act and so did the majority of the

individuals at the apartment; 3) the victim was in the close confines of a small apartment and bedroom where marijuana was present throughout; and 4) actual “baggies” were recovered by officers even though the apartment had been “cleaned” of illegal substances prior to law enforcement arrival.

Second, victim participated in possessing a controlled substance—schedule VI (marijuana) as defined in N.C.G.S. § 90-94 and in violation of N.C.G.S. §§ 90-95(a)(3) and (d) for the same reasons that he was possessing the paraphernalia, most notably that multiple statements by witnesses confirmed his use of the marijuana and marijuana was found by officers throughout the apartment even though the apartment had been “cleaned.”

Finally, the evidence supports that by having the .380 caliber Walther PPK off his premises and between the seats of his car, partially concealed, the victim was participating in carrying a concealed weapon in violation of N.C.G.S. § 14-269(a1).

These three offenses are not found in Chapter 20 (the motor vehicle code) but are located in Chapter 90 (Controlled Substances Act) and Chapter 14 (the criminal code). Therefore, these violations are nontraffic misdemeanors.

13. Petitioner failed to provide that she had incurred an allowable expense within the meaning of N.C.G.S. § 15B-2(1) because the Petitioner provided the Respondent with absolutely no documentation or other evidence at the hearing that she paid any funeral expenses or had any remaining balance.

14. Petitioner has failed to establish that the requirements for an award have been met pursuant to N.C.G.S. §§ 15B-4(a) and 15B-2(12a). Petitioner is, therefore, not entitled to compensation from the Respondent.

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned makes the following:

**DECISION**

Respondent shall **DENY** Petitioner’s claim because the Petitioner did not prove that she is entitled to an award and the victim was: 1) participating in a felony at or about the time of his injury pursuant to N.C.G.S. § 15B-11(a)(6); 2) participating in a nontraffic misdemeanor at or about the time of his injury pursuant to N.C.G.S. § 15B-11(b)(1); and engaging in contributory misconduct pursuant to N.C.G.S. § 15B-11(b)(2).

**NOTICE**

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this decision issued by the undersigned, and to present written arguments to those in the agency who will make the final decision. N.C.G.S. § 150B-36(a). In accordance with N.C.G.S. § 150B-36 the agency shall adopt each finding of fact contained in the Administrative Law Judge’s decision unless the finding is clearly contrary to the preponderance of the admissible evidence. For each finding of fact not adopted by the agency, the agency shall set forth separately and in detail the reasons for not adopting the finding of fact and the evidence in the record relied upon by the agency in not adopting the finding of fact. For each new finding of fact made by the agency that is not contained in the Administrative Law Judge’s decision, the agency shall set forth separately and in detail the evidence in the record relied upon by the agency in making the finding of fact. The agency shall adopt the decision of the Administrative Law Judge unless the agency demonstrates that the decision of the Administrative Law Judge is clearly contrary to the preponderance of the admissible evidence in the official record. The agency that will make the final decision in this case is the North Carolina Crime Victims Compensation Commission.

**ORDER**

It is hereby ordered that the agency making the final decision in this matter serve a copy of the final decision to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, in accordance with N.C.G.S. § 150B-36.

**IT IS SO ORDERED.**

This the 23<sup>rd</sup> day of December, 2004.

\_\_\_\_\_  
Julian Mann, III  
Chief Administrative Law Judge