

**North Carolina Department of
Environment And Natural Resources**

Division of Environmental Health

Michael F. Easley, Governor
William G. Ross, Jr., Secretary
Linda C. Sewall, Director
Michael U. Rhodes, Section Chief



August 7, 2002

TO: Richard Wagoner, RS, Environmental Health Supervisor
Wake County Department of Environmental Services

FROM: Larry D. Michael, RS, MPH, Environmental Specialist
Children's Environmental Health Branch

THROUGH: Ed Norman, MPH, Program Supervisor
Children's Environmental Health Branch

SUBJECT: Clarification of 15A NCAC 18A .2834(b)(4); Reinspecting During the
Provisional Period

This memo is to provide clarification concerning the reinspection of a child care center during the seven-day provisional period referenced in 15A NCAC 18A .2834(b)(4).

To address your first question the Rules of Civil Procedure (N.C.G.S. 1A-1, Rule 6) must be consulted. According to the aforementioned rules, "When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation." Furthermore, the rule also states that the day of the event after which the designated period of time begins to run is not to be included and the last day of the period is to be included, unless it is a weekend or legal holiday. Therefore, when computing the seven-day period in 15A NCAC 18A .2834(b)(4), all days, including weekends and holidays, should be counted. In addition, please remember that the Environmental Health Specialist may extend the provisional period if construction or renovation is necessary to correct any violation.

There is conflict between the intent of 15A NCAC 18A .2834(b)(4) and the language of the rule. According to the Attorney General's Office, a strict legal interpretation of the rule provides that a child care center should have the full seven-day period to correct the applicable provisional item(s). This interpretation is based on the language in the rule that says, in part, that "[t]his provisional period shall not exceed seven days..." The word "exceed," is the key to the Attorney General's Office interpretation which would give a child care center *up to* seven days to correct the problems. However, from a public health perspective, the intent of the rule is to use the seven-day period as a tool providing a quick remedy for serious violations. Therefore, respecting the intent of the rule, if a child care center earns a provisional classification, the Environmental Health Specialist shall reinspect the center after requested by the operator but *within* seven days of the date of the provisional classification, unless, of course, a longer period of time is granted by the EHS. The reinspection shall occur on the last day of the provisional period if the

Richard Wagoner

August 7, 2002

Page 2

Environmental Health Specialist is not contacted by the child care center's operator. For example, a child care center earns a provisional classification on Monday and the operator calls for a reinspection on the following Wednesday. The reinspection should occur after the contact on Wednesday and prior to the close of business the following Monday. However, if the operator fails to contact the Environmental Health Specialist, the reinspection will occur prior to the close of business on Monday (one week after the provisional classification). If conditions which resulted in the provisional classification have not been corrected within the prescribed time, then the child care center shall be classified as disapproved.

The above conflict between the intent and language of the rule will be addressed when the child care sanitation rules are revised in the future.

Thank you for your questions concerning reinspection during the seven-day provisional period. Please contact me at (919) 718-0837 or Larry.Michael@ncmail.net with any additional questions regarding this matter.

cc: Environmental Health Listserv
Bertha Fields, Assistant Attorney General

Rick Wagoner wrote:

In reference to reinspections at CDC's, rule .2834 (4) states that the provisional period shall not exceed seven days unless construction or renovation is necessary to correct any violation, in which case the EHS may allow for a longer provisional period. Does this mean seven business days or seven calendar days? If we visit the center for a reinspection during the seven day period, should we place the center on disapproved if a provisional item has not been corrected?

I have heard from several of my employees that at the recent CDC/Lead meeting, Bert seemed to indicate that a reinspection should not be conducted until the eighth day because failure to correct a provisional item could not result

in a disapproved status until the seven days have expired. It is currently our policy to visit the center within seven calendar days and place the center in disapproved status if a provisional item has not been corrected. Please let me know if we need to change this practice. Your interpretation is appreciated.

Thanks, RW