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**January 16, 2001**

**This issue contains documents officially filed through  
December 20, 2000.**

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**NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM**

*The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision 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. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.*

**TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE**

<b>TITLE</b>	<b>DEPARTMENT</b>	<b>LICENSING BOARDS</b>	<b>CHAPTER</b>
1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Athletic Trainer Examiners	3
4	Commerce	Auctioneers	4
5	Correction	Barber Examiners	6
6	Council of State	Certified Public Accountant Examiners	8
7	Cultural Resources	Chiropractic Examiners	10
8	Elections	Employee Assistance Professionals	11
9	Governor	General Contractors	12
10	Health and Human Services	Cosmetic Art Examiners	14
11	Insurance	Dental Examiners	16
12	Justice	Dietetics/Nutrition	17
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17	Revenue	Hearing Aid Dealers and Fitters	22
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**Note:** Title 21 contains the chapters of the various occupational licensing boards.

**NORTH CAROLINA REGISTER**  
 Publication Schedule for July 2000 – June 2001

Filing Deadlines			Notice of Rule-Making Proceedings	Notice of Text							Temporary Rule
volume & issue number	issue date	last day for filing	earliest register issue for publication of text	earliest date for public hearing	end of required comment period	non-substantial economic impact		substantial economic impact			270 <sup>th</sup> day from issue date
						deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	
15:01	07/03/00	06/12/00	09/01/00	07/18/00	08/02/00	08/21/00	01/24/01	09/01/00	09/20/00	01/24/01	03/30/01
15:02	07/17/00	06/23/00	09/15/00	08/01/00	08/16/00	08/21/00	01/24/01	09/15/00	09/20/00	01/24/01	04/13/01
15:03	08/01/00	07/11/00	10/02/00	08/16/00	08/31/00	09/20/00	01/24/01	10/02/00	10/20/00	01/24/01	04/28/01
15:04	08/15/00	07/25/00	10/16/00	08/30/00	09/14/00	09/20/00	01/24/01	10/16/00	10/20/00	01/24/01	05/12/01
15:05	09/01/00	08/11/00	11/01/00	09/18/00	10/02/00	10/20/00	01/24/01	10/31/00	11/20/00	01/24/01	05/29/01
15:06	09/15/00	08/24/00	11/15/00	10/02/00	10/16/00	10/20/00	01/24/01	11/14/00	11/20/00	01/24/01	06/12/01
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15:08	10/16/00	09/25/00	12/15/00	10/31/00	11/15/00	11/20/00	01/24/01	12/15/00	12/20/00	05/00/02	07/13/01
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15:14	01/16/01	12/20/00	04/02/01	01/31/01	02/15/01	02/20/01	05/00/02	03/19/01	03/20/01	05/00/02	10/13/01
15:15	02/01/01	01/10/01	04/02/01	02/16/01	03/05/01	03/20/01	05/00/02	04/02/01	04/20/01	05/00/02	10/29/01
15:16	02/15/01	01/25/01	05/01/01	03/02/01	03/19/01	03/20/01	05/00/02	04/16/01	04/20/01	05/00/02	11/12/01
15:17	03/01/01	02/08/01	05/01/01	03/16/01	04/02/01	04/20/01	05/00/02	04/30/01	05/21/01	05/00/02	11/26/01
15:18	03/15/01	02/22/01	06/01/01	03/30/01	04/16/01	04/20/01	05/00/02	05/14/01	05/21/01	05/00/02	12/10/01
15:19	04/02/01	03/12/01	06/01/01	04/17/01	05/02/01	05/21/01	05/00/02	06/01/01	06/20/01	05/00/02	12/28/01
15:20	04/16/01	03/26/01	06/15/01	05/01/01	05/16/01	05/21/01	05/00/02	06/15/01	06/20/01	05/00/02	01/11/02
15:21	05/01/01	04/10/01	07/02/01	05/16/01	05/31/01	06/20/01	05/00/02	07/02/01	07/20/01	05/00/02	01/26/02
15:22	05/15/01	04/24/01	07/16/01	05/30/01	06/14/01	06/20/01	05/00/02	07/16/01	07/20/01	05/00/02	02/09/02
15:23	06/01/01	05/11/01	08/01/01	06/18/01	07/02/01	07/20/01	05/00/02	07/31/01	08/20/01	05/00/02	02/26/02
15:24	06/15/01	05/25/01	08/15/01	07/02/01	07/16/01	07/20/01	05/00/02	08/14/01	08/20/01	05/00/02	03/12/02

## 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 closest to (either before or after) the first or fifteenth respectively 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 RULE-MAKING PROCEEDINGS

**END OF COMMENT PERIOD TO A NOTICE OF RULE-MAKING PROCEEDINGS:** This date is 60 days from the issue date. An agency shall accept comments on the notice of rule-making proceeding until the text of the proposed rules is published, and the text of the proposed rule shall not be published until at least 60 days after the notice of rule-making proceedings was published.

**EARLIEST REGISTER ISSUE FOR PUBLICATION OF TEXT:** The date of the next issue following the end of the comment period.

### 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**  
**(1) RULE WITH NON-SUBSTANTIAL ECONOMIC IMPACT:** An agency shall accept comments on the text of a proposed rule for at least 30 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

**(2) RULE WITH SUBSTANTIAL ECONOMIC IMPACT:** An agency shall accept comments on the text of a proposed rule published in the Register and that has a substantial economic impact requiring a fiscal note under G.S. 150B-21.4(b1) for at least 60 days after publication or until the date of any public hearing held on the 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.



*IN ADDITION*

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*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:GS:DCM:par  
DJ 166-012-3  
2000-3905  
2000-4197

*Voting Section*  
*PO. Box 66128*  
Washington, D.C. 20035-6128

November 21, 2000

Robert E. Hornik, Jr., Esq.  
The Brough Law Firm  
1829 East Franklin St., Suite 800-A  
Chapel Hill, NC 27514

Dear Mr. Hornik:

This refers to two annexations (Ordinance Nos. 00-27 and 00-29) and their designation to council wards of the Town of Tarboro in Edgecombe 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 submissions on October 2 and November 1, 2000.

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. In addition, as authorized by Section 5, we reserve the right to reexamine these submissions if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Sincerely,

Joseph D. Rich  
Acting Chief  
Voting Section

*IN ADDITION*

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U.S. Department of Justice

Civil Rights Division

JDR:TFM:NT:par  
DJ 166-012-3  
2000-4022

*Voting Section*  
*P.O. Box 66128*  
Washington, D.C. 20035-6128

December 7, 2000

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

Dear Mr. Weaver:

This refers to the temporary polling place change for Wilson County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on October 16, 2000.

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

Sincerely,

Joseph D. Rich  
Acting Chief  
Voting Section

*IN ADDITION*

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**NARROW THERAPEUTIC INDEX DRUGS DESIGNATED BY THE NORTH CAROLINA SECRETARY OF HUMAN RESOURCES**

Pursuant to G.S. 90-85.27(4a), this is a revised publication from the North Carolina Board of Pharmacy of narrow therapeutic index drugs designated by the North Carolina Secretary of Human Resources upon the advice of the State Health Director, North Carolina Board of Pharmacy, and North Carolina Medical Board:

Carbamazepine: all oral dosage forms

Cyclosporine: all oral dosage forms

Digoxin: all oral dosage forms

Levothyroxine sodium tablets

Lithium(including all salts): all oral dosage forms

Phenytoin (including all salts): all oral dosage forms

Theophylline (including all salts): all oral dosage forms

Warfarin sodium tablets



**DECLARED VOID RULE BY DECISION**

The following cited decision is a recent decision issued by the Office of Administrative Hearings, which invalidates a rule in the North Carolina Administrative Code.

**04 NCAC 02S .0513 – PROHIBITED ACTS: HANDLING AND STORAGE OF LIQUOR**

Beecher R. Gray, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 04 NCAC 02S .0515(3) void as applied in North Carolina Alcoholic Beverage Control Commission v. Kevin Scott Heath, Robinhood Grille, LLC, T/A Robinhood Grille (00 ABC 1026).

## RULE-MAKING PROCEEDINGS

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*A Notice of Rule-making Proceedings is a statement of subject matter of the agency's proposed rule making. The agency must publish a notice of the subject matter for public comment at least 60 days prior to publishing the proposed text of a rule. Publication of a temporary rule serves as a Notice of Rule-making Proceedings and can be found in the Register under the section heading of Temporary Rules. A Rule-making Agenda published by an agency serves as Rule-making Proceedings and can be found in the Register under the section heading of Rule-making Agendas. Statutory reference: G.S. 150B-21.2.*

### TITLE 21 – OCCUPATIONAL LICENSING BOARDS

#### CHAPTER 48 – BOARD OF PHYSICAL THERAPY EXAMINERS

**Notice of Rule-making Proceedings** is hereby given by the NC Board of Physical Therapy Examiners in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

**Citation to Existing Rule Affected by this Rule-making:** 21 NCAC 48A-48G - Other rules may be proposed in the course of the rule-making process.

**Authority for the Rule-making:** G.S. 15A-1331A; 25-3-512; 90-270-24; 90-270.26(1); 90-270-.29; 90-270.30; 90-270.31; 90-270.32; 90-270.33; 90-270.34(A)(1); 90-270.35(4); 90-270.36; 150B-3; 150B-38; 150B-40

**Statement of the Subject Matter:** *Primarily deals with supervision issues and fees.*

**Reason for Proposed Action:** *The proposed rule adoptions and amendments were recommended by the Investigative Committee, the Board's Attorney and a Committee of the Board. The changes are to tighten up the rules and strengthen the language.*

**Comment Procedures:** *Comments will be accepted by Ben Massey, Director of Physical Therapy Examiners, 18 W. Colony Place, Suite 120, Durham, NC 27705.*

**PROPOSED RULES**

*This Section contains the text of proposed rules. At least 60 days prior to the publication of text, the agency published a Notice of Rule-making Proceedings. The agency must accept comments on the proposed rule for at least 30 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. The required comment period is 60 days for a rule that has a substantial economic impact of at least five million dollars (\$5,000,000). Statutory reference: G.S. 150B-21.2.*

**TITLE 21 – OCCUPATIONAL LICENSING BOARDS**

**Notice** is hereby given in accordance with G.S. 150B-21.2 that the State Board of Examiners of Electrical Contractors intends to amend the rules cited as 21 NCAC 18B .0209, .0404. Notice of Rule-making Proceedings was published in the Register on August 1, 2000.

**Proposed Effective Date:** August 1, 2002

**Public Hearing:**

**Date:** February 22, 2001

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

**Location:** State Board of Examiners of Electrical Contractors, 1200 Front St., Suite 105, Raleigh, NC

**Reason for Proposed Action:** The Board has mandated employment of additional investigative personnel which will require an increase of annual license fees. The Board has also directed staff to implement statewide computer-based testing, allowing more frequent examinations at numerous places and dates. The improved availability of examinations to applications will require an increase in examination fees. The proposal would increase the fees to the ceiling set by the General Assembly in the past, and match the current temporary rule in effect.

**Comment Procedures:** All comments should be directed to the Board in writing and addressed to Mr. Robert L. Brooks, Jr., Executive Director, State Board of Examiners of Electrical Contractors, PO Box 16727, Raleigh, NC 27619-8727. Comments must be received on or before March 18, 2001.

**Fiscal Impact**

- State
- Local
- Substantive (≥\$5,000,000)
- None

**CHAPTER 18 – BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS**

**SUBCHAPTER 18B - BOARD'S RULES FOR THE IMPLEMENTATION OF THE ELECTRICAL CONTRACTING LICENSING ACT**

**SECTION .0200 – EXAMINATIONS**

**21 NCAC 18B .0209 FEES**

(a) The combined application and examination fees for the regular qualifying examinations in the various license classifications are as follows:

APPLICATION AND EXAMINATION FEE SCHEDULE: REGULAR

CLASSIFICATION	APPLICATION FEE	EXAMINATION FEE	TOTAL COMBINED FEE
Limited	\$15.00	\$15.00	\$ 30.00
Intermediate	\$30.00	<del>\$30.00</del> 45.00	<del>\$ 60.00</del> 75.00
Unlimited	\$65.00	<del>\$50.00</del> 85.00	<del>\$115.00</del> 150.00
SP-SFD	\$15.00	\$15.00	\$ 30.00
Special Restricted	\$15.00	\$15.00	\$ 30.00

**PROPOSED RULES**

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(b) The combined application and examination fees for a specially-arranged qualifying examination in the various license classifications are as follows:

APPLICATION AND EXAMINATION FEE SCHEDULE:  
SPECIALLY-ARRANGED

CLASSIFICATION	APPLICATION FEE	EXAMINATION FEE	TOTAL COMBINED FEE
All Classifications	\$100.00	\$100.00	\$200.00

(c) The fee for a supervised review of a failed examination with the Board or staff assistance is ten dollars (\$10.00) for all classifications.

(d) The total combined application and examination fees for regular or specially-arranged examinations in all classifications and the fees for examination reviews may be in the form of cash, check or money order made payable to the Board and must accompany the respective applications when filed with the Board.

(e) Application and examination fees received with applications filed for qualifying examinations shall be retained by the Board unless:

- (1) an application is not duly filed as prescribed in Rule .0210 of this Section, in which case the combined application and examination fee shall be returned; or
- (2) the applicant does not take the examination during the examination period applied for and files with the Board a written request for a refund, setting out extenuating circumstances. The Board shall refund the application fee, the examination fee, or both, if it finds extenuating circumstances.

(f) Examination review fees are non-refundable unless the applicant does not take the review and files with the Board a written request for a refund, setting out extenuating circumstance. The Board shall refund the fee if it finds extenuating circumstances.

(g) Any fee retained by the Board shall not be creditable toward the payment of any future application of examination fee or the fee for an examination review.

(h) Extenuating circumstances for the purposes of Paragraphs (e)(2) and (e)(f) of this Rule shall be the applicant's illness, bodily injury or death, or death of the applicant's spouse, child, parent or sibling, or a breakdown of the applicant's transportation to the designated site of the examination or examination review.

Authority G.S. 87-42; 87-43.3; 87-43.4; 87-44.

**21 NCAC 18B .0404 ANNUAL LICENSE FEES**

(a) The annual license fees and license renewal fees for the various license classifications are as follows:

CLASSIFICATION	LICENSE FEE
Limited	\$ 30.00
Intermediate	\$ <del>60.00</del> 75.00
Unlimited	\$ <del>115.00</del> 150.00
SP-SFD	\$ 30.00
Special Restricted	\$ 30.00

(b) License fees may be in the form of cash, check or any money order made payable to the Board and must accompany the applicant's license application or license renewal application when either is filed with the Board.

Authority G.S. 87-42; 87-44.

## TEMPORARY RULES

This Section includes temporary rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code and includes, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 2C .0500 for adoption and filing requirements. Pursuant to G.S. 150B-21.1(e), publication of a temporary rule in the North Carolina Register serves as a notice of rule-making proceedings unless this notice has been previously published by the agency.

### TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

**Rule-making Agency:** *Division of Facility Services*

**Rule Citation:** *10 NCAC 03R .1613, .1615, .2502, .2713, .2715, .3701, .3703, .6301-.6346*

**Effective Date:** *January 1, 2001*

**Findings Reviewed and Approved by:** *Beecher R. Gray*

**Authority for the rulemaking:** *G.S. 131E-176(25); 131E-177(1); 131E-183(b)*

**Reason for Proposed Action:** *Temporary rules must be adopted to implement the 2001 SMFP on January 1, 2001, as recommended by the State Health Coordinating Council and approved by the Governor. Temporary rule-making is necessary because the annual planning process does not leave the Department with the time necessary to utilize the permanent rule-making process.*

**Comment Procedures:** *Questions or comments concerning the rules should be directed to: Jackie Sheppard, Assistant Director/Rule-making Coordinator, Division of Facility Services, 701 Barbour Dr., 2701 Mail Service Center, Raleigh, NC 27699-2701.*

### CHAPTER 03 – FACILITY SERVICES

#### SUBCHAPTER 03R – CERTIFICATE OF NEED REGULATIONS

#### SECTION .1600 - CRITERIA AND STANDARDS FOR CARDIAC CATHETERIZATION EQUIPMENT AND CARDIAC ANGIOPLASTY EQUIPMENT

##### 10 NCAC 03R .1613 DEFINITIONS

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

- (1) "Approved" means the equipment was not in operation prior to the beginning of the review period and had been issued a certificate of ~~need or had been acquired prior to March 18, 1993 in accordance with 1993 N.C. Sess. Laws c. 7, s. 12, need.~~
- (2) "Capacity" of an item of cardiac catheterization equipment or cardiac angioplasty equipment means ~~1370~~ 1500 diagnostic-equivalent procedures per year. One therapeutic cardiac catheterization procedure is valued at 1.75 diagnostic-equivalent procedures. One cardiac catheterization procedure performed on a

- patient age 14 or under is valued at two diagnostic-equivalent procedures. All other procedures are valued at one diagnostic-equivalent procedure.
- (3) "Cardiac angioplasty equipment" shall have the same meaning as defined in G.S. 131E-176(2e).
  - (4) "Cardiac catheterization equipment" shall have the same meaning as defined in G.S. 131E-176(2f).
  - (5) "Cardiac catheterization procedure", for the purpose of determining utilization in a certificate of need review, means a single episode of diagnostic or therapeutic catheterization which occurs during one visit to a cardiac catheterization room, whereby a flexible tube is inserted into the patient's body and advanced into the heart chambers to perform a hemodynamic or angiographic examination or therapeutic intervention of the left or right heart chamber, or coronary arteries. A cardiac catheterization procedure does not include a simple right heart catheterization for monitoring purposes as might be done in an electrophysiology laboratory, pulmonary angiography procedure, cardiac pacing through a right electrode catheter, temporary pacemaker insertion, or procedures performed in dedicated angiography or electrophysiology rooms.
  - (6) "Cardiac catheterization room" means a room or a mobile unit in which there is cardiac catheterization or cardiac angioplasty equipment for the performance of cardiac catheterization procedures. Dedicated angiography rooms and electrophysiology rooms are not cardiac catheterization rooms.
  - (7) "Cardiac catheterization service area" means a geographical area defined by the applicant, which has boundaries that are not farther than 90 road miles from the facility, if the facility has a comprehensive cardiac services program; and not farther than 45 road miles from the facility if the facility performs only diagnostic cardiac catheterization procedures; except that the cardiac catheterization service area of an academic medical center teaching hospital designated in 10 NCAC 3R shall not be limited to 90 road miles.
  - (8) "Cardiac catheterization services" means the provision of diagnostic cardiac catheterization procedures or therapeutic cardiac catheterization procedures performed utilizing cardiac catheterization equipment or cardiac angioplasty equipment in a cardiac catheterization room.
  - (9) "Comprehensive cardiac services program" means a cardiac services program which provides the full range of clinical services associated with the treatment of cardiovascular disease including community outreach, emergency treatment of cardiovascular illnesses, non-invasive diagnostic imaging modalities, diagnostic

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and therapeutic cardiac catheterization procedures, open heart surgery and cardiac rehabilitation services. Community outreach and cardiac rehabilitation services shall be provided by the applicant or through arrangements with other agencies and facilities located in the same city. All other components of a comprehensive cardiac services program shall be provided within a single facility.

- (10) "Diagnostic cardiac catheterization procedure", for the purpose of determining utilization in a certificate of need review, means a cardiac catheterization procedure performed for the purpose of detecting and identifying defects or diseases in the coronary arteries or veins of the heart, or abnormalities in the heart structure, but not the pulmonary artery.
- (11) "Electrophysiology procedure" means a diagnostic or therapeutic procedure performed to study the electrical conduction activity of the heart and characterization of atrial ventricular arrhythmias.
- (12) "Existing" means the equipment was in operation prior to the beginning of the review period.
- (13) "High-risk patient" means a person with reduced life expectancy because of left main or multi-vessel coronary artery disease, often with impaired left ventricular function and with other characteristics as referenced in the American College of Cardiology/American Heart Association Guidelines for Cardiac Catheterization and Cardiac Catheterization Laboratories (1991) report.
- (14) "Mobile equipment" means cardiac angioplasty equipment or cardiac catheterization equipment and transporting equipment which is moved to provide services at two or more host facilities.
- (15) "Percutaneous transluminal coronary angioplasty (PTCA)" is one type of therapeutic cardiac catheterization procedure used to treat coronary artery disease in which a balloon-tipped catheter is placed in the diseased artery and then inflated to compress the plaque blocking the artery.
- (16) "Primary cardiac catheterization service area" means a geographical area defined by the applicant, which has boundaries that are not farther than 45 road miles from the facility, if the facility has a comprehensive cardiac services program; and not farther than 23 road miles from the facility if the facility performs only diagnostic cardiac catheterization procedures; except that the primary cardiac catheterization service area of an academic medical center teaching hospital designated in 10 NCAC 03R shall not be limited to 45 road miles.
- (17) "Therapeutic cardiac catheterization procedure", for the purpose of determining utilization in a certificate of need review, means a cardiac catheterization procedure performed for the purpose of treating or resolving certain anatomical or physiological conditions which have been determined to exist in the heart or coronary arteries or veins of the heart, but not the pulmonary artery.

*History Note: Filed as a Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Authority G.S. 131E-177(1); 131E-183; Eff. January 1, 1987; Amended Eff. November 1, 1996; February 1, 1994; Temporary Amendment Eff. January 1, 1999; Temporary Eff. January 1, 1999 Expired on October 12, 1999; Temporary Amendment Eff. January 1, 2000; Temporary Amendment effective January 1, 2000 amends and replaces a permanent rulemaking originally proposed to be effective August 2000; Temporary Amendment Eff. January 1, 2001; Temporary Amendment effective January 1, 2001 amends and replaces a permanent rulemaking originally proposed to be effective April 1, 2001.*

### 10 NCAC 03R .1615 REQUIRED PERFORMANCE STANDARDS

- (a) An applicant shall demonstrate that the project is capable of meeting the following standards:
  - (1) each proposed item of cardiac catheterization equipment or cardiac angioplasty equipment, including mobile equipment shall be utilized at an annual rate of at least 60 percent of ~~capacity~~, capacity excluding procedures not defined as cardiac catheterization procedures in 10 NCAC 03R .1613(5), measured during the fourth quarter of the third year following completion of the project;
  - (2) if the applicant proposes to perform therapeutic cardiac catheterization procedures, each of the applicant's therapeutic cardiac catheterization teams shall be performing at an annual rate of at least 100 therapeutic cardiac catheterization procedures, during the third year of operation following completion of the project;
  - (3) if the applicant proposes to perform diagnostic cardiac catheterization procedures, each diagnostic cardiac catheterization team shall be performing at an annual rate of at least 200 diagnostic-equivalent cardiac catheterization procedures by the end of the third year following completion of the project;
  - (4) at least 50 percent of the projected cardiac catheterization procedures shall be performed on patients residing within the primary cardiac catheterization service area;
- (b) An applicant proposing to acquire mobile cardiac catheterization or mobile cardiac angioplasty equipment shall:
  - (1) demonstrate that each existing item of cardiac catheterization equipment and cardiac angioplasty equipment, excluding mobile equipment, located in the proposed primary cardiac catheterization service area of each host facility shall have been operated at a level of at least 80 percent of capacity during the 12 month period reflected in the most recent licensure form on file with the Division of Facility Services;
  - (2) demonstrate that the utilization of each existing or approved item of cardiac catheterization equipment and cardiac angioplasty equipment, excluding mobile

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equipment, located in the proposed primary cardiac catheterization service area of each host facility shall not be expected to fall below 60 percent of capacity due to the acquisition of the proposed cardiac catheterization, cardiac angioplasty, or mobile equipment;

- (3) demonstrate that each item of existing mobile equipment operating in the proposed primary cardiac catheterization service area of each host facility shall have been performing at least an average of four diagnostic-equivalent cardiac catheterization procedures per day per site in the proposed cardiac catheterization service area in the 12 month period preceding the submittal of the application;
- (4) demonstrate that each item of existing or approved mobile equipment to be operating in the proposed primary cardiac catheterization service area of each host facility shall be performing at least an average of four diagnostic-equivalent cardiac catheterization procedures per day per site in the proposed cardiac catheterization service area in the applicant's third year of operation; and
- (5) provide documentation of all assumptions and data used in the development of the projections required in this Rule.

(c) An applicant proposing to acquire cardiac catheterization or cardiac angioplasty equipment ~~that is not excluding shared fixed and~~ mobile cardiac catheterization or cardiac angioplasty equipment shall:

- (1) demonstrate that ~~each of~~ its existing items of cardiac catheterization and cardiac angioplasty equipment, except mobile equipment, located in the proposed cardiac catheterization service area operated at a level at an average of at least 80% of capacity during the twelve month period reflected in the most recent licensure renewal application form on file with the Division of Facility Services;
- (2) demonstrate that ~~each of~~ its existing items of cardiac catheterization equipment or cardiac angioplasty equipment, except mobile equipment, shall be utilized at an average annual rate of at least 60 percent of capacity, measured during the fourth quarter of the third year following completion of the project; and
- (3) provide documentation of all assumptions and data used in the development of the projections required in this Rule.

(d) An applicant proposing to acquire shared fixed cardiac catheterization or cardiac angioplasty equipment as defined in 10 NCAC 03R .6333(c) shall:

- (1) demonstrate that greater than 200 cardiac catheterization procedures have been performed for each eight hours per week on a mobile cardiac catheterization unit that was operated at a single mobile site in the hospital service system in which the proposed equipment will be located, during the 12 month period reflected in the 2000 Licensure Application or 1999 Inventory of Cardiac

Catheterization Equipment on file with the Division of Facility Services;

- (2) provide documentation of all assumptions and data used in the development of the projections required in this Rule.

~~(d)(e)~~ If the applicant proposes to perform cardiac catheterization procedures on patients age 14 and under, the applicant shall demonstrate that it meets the following additional criteria:

- (1) the facility has the capability to perform diagnostic and therapeutic cardiac catheterization procedures and open heart surgery services on patients age 14 and under;
- (2) the proposed project shall be performing at an annual rate of at least 100 cardiac catheterization procedures on patients age 14 or under during the fourth quarter of the third year following initiation of the proposed cardiac catheterization procedures for patients age 14 and under.

*History Note: Filed as a Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Authority G.S. 131E-177(1); 131E-183; Eff. January 1, 1987; Amended Eff. November 1, 1996; February 1, 1994; Temporary Amendment Eff. January 1, 1999; Temporary Eff. January 1, 1999 Expired on October 12, 1999; Temporary Amendment Eff. January 1, 2000; Temporary Amendment effective January 1, 2000 amends and replaces a permanent rulemaking originally proposed to be effective August 2000; Temporary Amendment Eff. January 1, 2001; Temporary Amendment effective January 1, 2001 amends and replaces a permanent rulemaking originally proposed to be effective April 1, 2001.*

### SECTION .2500 - CRITERIA AND STANDARDS FOR SUBSTANCE ABUSE/CHEMICAL DEPENDENCY TREATMENT BEDS

#### 10 NCAC 03R .2502 DEFINITIONS

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

- (1) "Chemical dependency treatment beds" shall have the same meaning as defined in G.S. 131E-176(5b).
- (2) "Detoxification beds" means chemical dependency treatment beds that are used during the period of time when the patient is withdrawing from psycho-active substances under medical direction.
- (3) "Intensive treatment beds" means chemical dependency treatment beds that are not detoxification beds.
- ~~(4) "Service Area" means the geographical area from which the proponent draws or proposes to draw its clients.~~
- ~~(5)(4)~~ "Clinical staff members" means the employees of a chemical dependency treatment program who provide treatment or rehabilitation services to a patient.
- ~~(6)(5)~~ "Aftercare plan" means a component of a treatment plan which provides continued contact with

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the patient after completion of the structured treatment process in order to maintain or improve on the patient's recovery progress.

*History Note:* Authority G.S. 131E-177(1); 131E-183; Eff. March 1, 1983;  
Amended Eff. November 1, 1996; October 1, 1984.  
Temporary Amendment Eff. January 1, 2001.

### SECTION .2700 - CRITERIA AND STANDARDS FOR MAGNETIC RESONANCE IMAGING SCANNER

#### 10 NCAC 03R .2713 DEFINITIONS

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

- (1) "Approved MRI scanner" means an MRI scanner which was not operational prior to the beginning of the review period but which had been issued a certificate of ~~need or had been acquired prior to March 18, 1993 in accordance with 1993 N.C. Sess. Laws c. 7, s. 12. need.~~
- (2) "Existing MRI scanner" means an MRI scanner in operation prior to the beginning of the review period.
- (3) "Magnetic Resonance Imaging" (MRI) means a non-invasive diagnostic modality in which electronic equipment is used to create tomographic images of body structure. The MRI scanner exposes the target area to nonionizing magnetic energy and radio frequency fields, focusing on the nuclei of atoms such as hydrogen in the body tissue. Response of selected nuclei to this stimulus is translated into images for evaluation by the physician.
- (4) "Magnetic resonance imaging scanner" (MRI Scanner) is defined in G.S. 131E-176(14e).
- (5) "Mobile MRI scanner" means an MRI scanner and transporting equipment which is moved to provide services at two or more host facilities.
- (6) "MRI procedure" means a single discrete MRI study of one patient.
- (7) "MRI service area" means the Magnetic Resonance Imaging Planning Areas, as defined in 10 NCAC 03R ~~.6253(f)~~ .6304 which are the same for both mobile and fixed MRI scanners.
- (8) "MRI study" means one or more scans relative to a single diagnosis or symptom.

*History Note:* Filed as a Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;  
Authority G.S. 131E-177(1); 131E-183(b);  
Eff. February 1, 1994;  
Temporary Amendment Eff. January 1, 1999;  
Temporary Eff. January 1, 1999 Expired on October 12, 1999;  
Temporary Amendment Eff. January 1, 2000;  
Temporary Amendment effective January 1, 2000 amends and replaces a permanent rulemaking originally proposed to be effective August 2000;  
Temporary Amendment Eff. January 1, 2001:

Temporary Amendment effective January 1, 2001 amends and replaces a permanent rulemaking originally proposed to be effective April 1, 2001.

#### 10 NCAC 03R .2715 REQUIRED PERFORMANCE STANDARDS

- (a) An applicant proposing to acquire a mobile magnetic resonance imaging (MRI) scanner shall:
  - (1) demonstrate that all existing MRI scanners, except those moved to provide services at more than one site, operating in the MRI service area(s) in which the proposed MRI scanner will be located performed at least 2900 MRI procedures in the last year;
  - (2) project annual utilization in the third year of operation of at least 2900 MRI procedures per year, for each MRI scanner or mobile MRI scanner to be operated by the applicant in the MRI service area(s) in which the proposed MRI scanner will be located;
  - (3) demonstrate that all MRI scanners, except mobile, located in the MRI service area(s) in which the proposed MRI scanner will be located, shall be performing at least 2900 MRI procedures per year in the applicant's third year of operation;
  - (4) demonstrate that all mobile MRI scanners located in the MRI service area(s) in which the proposed MRI scanner will be located, performed at least an average of eight procedures per day per site in the proposed MRI service area(s) in the last year and shall be performing at least an average of eight procedures per day per site in the MRI service area(s) in the applicant's third year of operation;
  - (5) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.
- (b) An applicant proposing to acquire a magnetic resonance imaging (MRI) scanner ~~that is not a mobile MRI scanner for which the need determination in the SMFP was based on the utilization of fixed MRI scanners,~~ shall:
  - (1) demonstrate that its existing MRI scanners, except mobile MRI scanners, operating in the proposed MRI service area in which the proposed MRI scanner will be located performed an average of at least 2900 MRI procedures per scanner in the last ~~year, with the exception that applicants proposing to acquire an MRI scanner to replace MRI services provided pursuant to a service agreement with a mobile provider shall demonstrate that 2080 MRI procedures were performed at the applicant's facility in the last year.~~ year;
  - (2) project annual utilization in the third year of operation of at least 2900 MRI procedures per ~~year, year~~ for the proposed MRI scanner and an average of 2900 procedures per scanner for all other each MRI scanner scanners or mobile MRI ~~scanner scanners~~ to be operated by the applicant in the MRI service area(s) in which the proposed equipment will be located; and
  - (3) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.



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(c) An applicant proposing to acquire a magnetic resonance imaging (MRI) scanner for which the need determination in the SMFP was based on utilization of mobile MRI scanners, shall:

- (1) project annual utilization in the third year of operation of at least 2080 MRI procedures per year, for the proposed MRI scanner and an average of 2900 MRI procedures per scanner for all other MRI scanners or mobile MRI scanners to be operated by the applicant in the MRI service area(s) in which the proposed equipment will be located; and
- (2) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.

*History Note:* Filed as a Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Authority G.S. 131E-177(1); 131E-183(b);

Eff. February 1, 1994;

Temporary Amendment Eff. January 1, 1999;

Temporary Eff. January 1, 1999 Expired on October 12, 1999;

Temporary Amendment Eff. January 1, 2000;

Temporary amendment effective January 1, 2000 amends and replaces a permanent rulemaking originally proposed to be effective August 2000;

Temporary Amendment Eff. January 1, 2001;

Temporary amendment effective January 1, 2001 amends and replaces a permanent rulemaking originally proposed to be effective April 1, 2001.

### SECTION .3700 - CRITERIA AND STANDARDS FOR POSITRON EMISSION TOMOGRAPHY SCANNER

#### 10 NCAC 03R .3701 DEFINITIONS

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

- (1) "Approved positron emission tomography (PET) scanner" means a PET scanner which was not operational prior to the beginning of the review period but which had been issued a certificate of ~~need or had been acquired prior to March 18, 1993 in accordance with 1993 N.C. Sess. Laws c. 7, s. 12, need.~~
- (2) "Cyclotron" means an apparatus for accelerating protons or neutrons to high energies by means of a constant magnet and an oscillating electric field.
- (3) "Existing PET scanner" means a PET scanner in operation prior to the beginning of the review period.
- (4) "PET procedure" means a single discrete study of one patient involving one or more PET scans.
- (5) "PET scan" means an image-scanning sequence derived from a single administration of a PET radiopharmaceutical, equated with a single injection of the tracer. One or more PET scans comprise a PET procedure.
- (6) "PET scanner service area" means ~~a geographic area defined by the applicant from which patients to be admitted to the service will originate. the Pet Scanner Service Area as defined in 10 NCAC 03R .6304(r).~~

- (7) "Positron emission tomographic scanner" (PET) is defined in G.S. 131E-176(19a).
- (8) "Radioisotope" means a radiochemical which directly traces biological processes when introduced into the body.

*History Note:* Filed as a Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Authority G.S. 131E-177(1); 131E-183(b);

Eff. January 4, 1994;

Temporary Amendment Eff. January 1, 2001.

#### 10 NCAC 03R .3703 REQUIRED PERFORMANCE STANDARDS

An applicant proposing to acquire a PET scanner shall demonstrate that:

- (1) all equipment, supplies and pharmaceuticals proposed for the service have been certified for use by the U.S. Food and Drug Administration or will be used under an institutional review board whose membership is consistent with U.S. Department of Health and Human Services' regulations;
- (2) ~~each the proposed~~ PET scanner ~~proposed for clinical use~~ shall be utilized at an annual rate of at least ~~1,524~~ 1,220 clinical procedures ~~within its proposed PET scanner service area~~ by the end of the third year following completion of the project. The applicant shall describe all assumptions and methodologies used in making these projections;
- (3) ~~if the PET scanner will be used for clinical purposes, all its~~ existing clinical PET scanners operating in the applicant's proposed PET scanner service area in which the proposed PET scanner will be located performed ~~1,524~~ an average of 1,220 clinical procedures per scanner during the twelve ~~months immediately prior to the date on which the application was filed; month period reflected in the 2000 Licensure Application on file with the Division of Facility Services;~~
- (4) ~~if the PET scanner will be used for clinical purposes, all its~~ existing and approved ~~clinical~~ PET scanners ~~in the applicant's~~ in the PET scanner service area ~~will shall~~ perform an average of at least ~~1,524~~ 1,220 clinical procedures per PET scanner during the third year following completion of the project. All assumptions and methodologies used in making these projections shall be described in the application; and
- (5) each PET scanner and cyclotron shall be operated in a physical environment that conforms to federal standards, manufacturers specifications, and licensing requirements. The following shall be addressed:
  - (a) quality control measures and assurance of radioisotope production of generator or cyclotron-produced agents;
  - (b) quality control measures and assurance of PET tomograph and associated instrumentation;
  - (c) radiation protection and shielding;
  - (d) radioactive emission to the environment; and

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(e) radioactive waste disposal.

**RELATED TO THE 2001 STATE MEDICAL FACILITIES PLAN**

*History Note:* Filed as a Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;  
*Authority* G.S. 131E-177(1); 131E-183(b);  
*Eff.* January 4, 1994;  
*Temporary Amendment Eff.* January 1, 2001.

Rules .6301 through .6304 and .6306 through .6346 of this Section apply to certificate of need applications for which the scheduled review period begins during calendar year 2001. In addition, Rule .6305 of this Section shall be used to implement procedures described within it during calendar year 2001.

*History Note:* Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);  
*Temporary Adoption Eff.* January 1, 2001.

**SECTION .6300 – PLANNING POLICIES AND NEED DETERMINATIONS FOR 2001**

**10 NCAC 03R .6301 APPLICABILITY OF RULES**

**10 NCAC 03R .6302 CERTIFICATE OF NEED REVIEW SCHEDULE**

The Department of Health and Human Services (DHHS) has established the following review schedules for certificate of need applications.

(1) Ambulatory Surgical Facilities (in accordance with the need determination in 10 NCAC 03R .6308)

<u>Ambulatory Surgery Service Area</u>	<u>CON Beginning Review Date</u>
<u>Area 24 (Greene, Lenoir, Martin and Pitt Counties)</u>	<u>September 1, 2001</u>

(2) Heart-Lung Bypass Machine (in accordance with the need determination in 10 NCAC 03R .6310)

<u>Hospital Service System</u>	<u>CON Beginning Review Date</u>
<u>Gaston Memorial</u>	<u>August 1, 2001</u>

(3) Fixed Cardiac Catheterization Equipment (in accordance with the need determination in 10 NCAC 03R .6311)

<u>County</u>	<u>CON Beginning Review Date</u>
<u>Pasquotank</u>	<u>March 1, 2001</u>
<u>Johnston</u>	<u>July 1, 2001</u>

(4) Shared Fixed Cardiac Catheterization Equipment (in accordance with the need determination in 10 NCAC 03R .6312)

<u>Hospital Service System</u>	<u>CON Beginning Review Date</u>
<u>Lake Norman Regional</u>	<u>April 1, 2001</u>

(5) Positron Emission Tomography Scanners (in accordance with the need determination in 10 NCAC 03R .6314)

<u>Health Service Area (HSA)</u>	<u>CON Beginning Review Date</u>
<u>I</u>	<u>October 1, 2001</u>
<u>III</u>	<u>April 1, 2001</u>
<u>IV</u>	<u>July 1, 2001</u>
<u>V</u>	<u>November 1, 2001</u>
<u>VI</u>	<u>March 1, 2001</u>

(6) Magnetic Resonance Imaging Scanners (in accordance with the need determinations in 10 NCAC 03R .6320)

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<u>Magnetic Resonance Imaging Scanners</u> <u>Service Area</u>	<u>CON Beginning</u> <u>Review Date</u>
<u>3 (Buncombe, Madison, McDowell, Mitchell, Yancey)</u>	<u>August 1, 2001</u>
<u>13 (Caswell, Durham, Granville, Person, Vance, Warren)</u>	<u>November 1, 2001</u>
<u>17 (Anson, Mecklenburg, Union)</u>	<u>October 1, 2001</u>
<u>19 (Franklin, Harnett, Johnston, Lee, Wake)</u>	<u>March 1, 2001</u>
<u>21 (Bladen, Brunswick, Columbus, Duplin, New Hanover, Pender)</u>	<u>July 1, 2001</u>

(7) Magnetic Resonance Imaging Scanners (in accordance with the need determination in 10 NCAC 03R .6321)

<u>Magnetic Resonance Imaging Scanners</u> <u>Service Area</u>	<u>CON Beginning</u> <u>Review Date</u>
<u>15 (Davidson, Guilford, Randolph &amp; Rockingham)</u>	<u>August 1, 2001</u>
<u>17 (Anson, Mecklenburg, Union)</u>	<u>April 1, 2001</u>

(8) Nursing Care Beds (in accordance with the need determination in 10 NCAC 03R .6322)

<u>County</u>	<u>CON Beginning</u> <u>Review Date</u>
<u>Davie</u>	<u>August 1, 2001</u>
<u>Wayne</u>	<u>May 1, 2001</u>

(9) Medicare-Certified Home Health Agencies or Offices (in accordance with the need determination in 10 NCAC 03R .6323)

<u>County</u>	<u>CON Beginning</u> <u>Review Date</u>
<u>Pamlico</u>	<u>November 1, 2001</u>

(10) Hospice Home Care Program Need Determination (in accordance with the need determination in 10 NCAC 03R .6326)

<u>County</u>	<u>CON Beginning</u> <u>Review Date</u>
<u>Wake</u>	<u>May 1, 2001</u>

(11) Adolescent Residential Chemical Dependency (Substance Abuse) Treatment Beds (in accordance with the need determination in 10 NCAC 03R .6329)

<u>Mental Health Planning Region</u>	<u>CON Beginning</u> <u>Review Date</u>
<u>Western Region</u>	<u>June 1, 2001</u>

(12) Chemical Dependency (Substance Abuse) Beds – Adult Detox-Only Beds (in accordance with the need determination in 10 NCAC 03R .6330)

<u>Mental Health Planning Area</u>	<u>CON Beginning</u> <u>Review Date</u>
<u>1 (Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain)</u>	<u>June 1, 2001</u>
<u>4 (Henderson, Transylvania)</u>	<u>June 1, 2001</u>
<u>5 (Alexander, Burke, Caldwell, McDowell)</u>	<u>June 1, 2001</u>

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6	<u>(Rutherford, Polk)</u>	<u>June 1, 2001</u>
7	<u>(Cleveland, Gaston, Lincoln)</u>	<u>June 1, 2001</u>
10	<u>(Rowan, Stanly, Cabarrus, Union)</u>	<u>June 1, 2001</u>
11	<u>(Surry, Yadkin, Iredell)</u>	<u>June 1, 2001</u>
13	<u>(Rockingham)</u>	<u>June 1, 2001</u>
15	<u>(Alamance, Caswell)</u>	<u>June 1, 2001</u>
16	<u>(Orange, Person, Chatham)</u>	<u>July 1, 2001</u>
18	<u>(Vance, Granville, Franklin, Warren)</u>	<u>July 1, 2001</u>
19	<u>(Davidson)</u>	<u>June 1, 2001</u>
21	<u>(Bladen, Columbus, Robeson, Scotland)</u>	<u>July 1, 2001</u>
24	<u>(Johnston)</u>	<u>July 1, 2001</u>
25	<u>(Wake)</u>	<u>July 1, 2001</u>
29	<u>(Wayne)</u>	<u>July 1, 2001</u>
30	<u>(Wilson, Greene)</u>	<u>July 1, 2001</u>
31	<u>(Edgecombe, Nash)</u>	<u>July 1, 2001</u>
32	<u>(Halifax)</u>	<u>July 1, 2001</u>
33	<u>(Carteret, Craven, Jones, Pamlico)</u>	<u>July 1, 2001</u>
34	<u>(Lenoir)</u>	<u>July 1, 2001</u>
36	<u>(Bertie, Gates, Hertford, Northampton)</u>	<u>July 1, 2001</u>
37	<u>(Beaufort, Hyde, Martin, Tyrrell, Washington)</u>	<u>July 1, 2001</u>
38	<u>(Camden, Chowan, Currituck, Dare, Pasquotank, Perquimans)</u>	<u>July 1, 2001</u>
39	<u>(Duplin, Sampson)</u>	<u>July 1, 2001</u>

(13) Intermediate Care Facilities for the Mentally Retarded (in accordance with need determination in 10 NCAC 03R .6331.

<u>Mental Health Planning Area</u>	<u>CON Beginning</u> <u>Review Date</u>
<u>Statewide demonstration project, in any HSA except HSA IV</u>	<u>February 1, 2001</u>

(14) There are 11 categories of projects for certificate of need review. The DHHS shall determine the appropriate review category or categories for all applications submitted pursuant to 10 NCAC 03R .0304. For proposals which include more than one category, the DHHS may require the applicant to submit separate applications. If it is not practical to submit separate applications, the DHHS shall determine in which category the application shall be reviewed. The review of an application for a certificate of need shall commence in the next applicable review schedule after the application has been determined to be complete. The 11 categories are:

(a) Category A. Proposals submitted by acute care hospitals, except those proposals included in Categories B through H and Categories J and K, including but not limited to the following types of projects: renovation, construction, equipment, and acute care services.

(b) Category B. Proposals for nursing care beds; new continuing care retirement communities applying for exemption under 10 NCAC 03R .6337; and relocations of nursing care beds under 10 NCAC 03R .6339 or 10 NCAC 03R .6341.

(c) Category C. Proposals for new psychiatric facilities; psychiatric beds in existing health care facilities; new intermediate care facilities for the

mentally retarded (ICF/MR) and ICF/MR beds in existing health care facilities; new substance abuse and chemical dependency treatment facilities; substance abuse and chemical dependency treatment beds in existing health care facilities.

(d) Category D. Proposals for new dialysis stations in response to the "county need" or "facility need" methodologies; and relocations of existing dialysis stations to another county.

(e) Category E. Proposals for new or expanded inpatient rehabilitation facilities and inpatient rehabilitation beds in other health care facilities; and new or expanded ambulatory surgical facilities except those proposals included in Category H.

(f) Category F. Proposals for new Medicare-certified home health agencies or offices, new hospices, new hospice inpatient facility beds, and new hospice residential care facility beds.

(g) Category G. Proposals for conversion of hospital beds to nursing care under 10 NCAC 03R .6336.

(h) Category H. Proposals for bone marrow transplantation services, burn intensive care services, neonatal intensive care services, open heart surgery services, solid organ transplantation services, air ambulance equipment, cardiac angioplasty equipment, cardiac catheterization equipment, heart-lung bypass machines, gamma knives, lithotriptors, magnetic resonance imaging

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scanners, positron emission tomography scanners, major medical equipment as defined in G.S. 131E-176 (14f), diagnostic centers as defined in G.S. 131E-176 (7a), and oncology treatment centers as defined in G.S. 131E-176 (18a).

- (i) Category I. Proposals involving cost overruns; expansions of existing continuing care retirement communities which are licensed by the Department of Insurance at the date the application is filed and are applying under 10 NCAC 03R .6337 for exemption from need determinations in 10 NCAC 03R .6322; relocations within the same county of existing health service facilities, beds or dialysis stations which do not involve an increase in the number of health service facility beds or stations; relocations of nursing care beds from State Psychiatric Hospitals to local communities pursuant to 10 NCAC 03R .6340; reallocation of beds or services; Category A proposals submitted by Academic Medical Center Teaching Hospitals designated prior to January 1, 1990; proposals submitted pursuant to 10 NCAC 03R .6332(c) by Academic Medical Center Teaching Hospitals designated prior to January 1, 1990; acquisition of

replacement equipment that does not result in an increase in the inventory; and any other proposal not included in Categories A through H and Categories J and K.

- (j) Category J. Proposals for demonstration projects.
- (k) Category K. Proposals for conversion of acute care hospitals to long-term acute care hospitals.
- (15) A service, facility, or equipment for which a need determination is identified in Items (1) through (13) of this Rule shall have only one scheduled review date and one corresponding application filing deadline in the calendar year as specified in these items, even though the following review schedule shows multiple review dates for the broad category. Applications for certificates of need for new institutional health services not specified in Items (1) through (13) of this Rule shall be reviewed pursuant to the following review schedule, with the exception that no reviews are scheduled if the need determination is zero. Need determinations for additional dialysis stations pursuant to the "county need" or "facility need" methodologies shall be reviewed in accordance with 10 NCAC 03R .6324 or 10 NCAC 03R .6325.

<u>CON Beginning Review Date</u>	<u>Review Categories for HSA I, II, III</u>	<u>Review Categories for HSA IV, V, VI</u>
<u>January 1, 2001</u>	<u>D</u>	<u>D</u>
<u>February 1, 2001</u>	<u>A, E, G, I, J</u>	<u>J</u>
<u>March 1, 2001</u>	<u>--</u>	<u>A, E, G, H, I</u>
<u>April 1, 2001</u>	<u>B, F, H, I</u>	<u>--</u>
<u>May 1, 2001</u>	<u>--</u>	<u>B, F, I</u>
<u>June 1, 2001</u>	<u>A, C, I, K</u>	<u>K</u>
<u>July 1, 2001</u>	<u>--</u>	<u>A, C, H, I</u>
<u>August 1, 2001</u>	<u>B, E, H, I</u>	<u>--</u>
<u>September 1, 2001</u>	<u>D</u>	<u>B, D, E, I</u>
<u>October 1, 2001</u>	<u>A, F, H, I</u>	<u>--</u>
<u>November 1, 2001</u>	<u>--</u>	<u>A, F, H, I</u>
<u>December 1, 2001</u>	<u>C, I</u>	<u>C, I</u>

For purposes of Magnetic Resonance Imaging (MRI) scanners reviews only, Anson County in MRI Area 17 is considered to be in HSA III and Caswell County in MRI Area 13 is considered to be in HSA IV.

- (16) In order to give the DHHS sufficient time to provide public notice of review and public notice of public hearings as required by G.S. 131E-185, the deadline for filing certificate of need applications is 5:00 p.m. on the 15<sup>th</sup> day of the month preceding the "CON Beginning Review Date." In instances when the 15<sup>th</sup> day of the month falls on a weekend or holiday, the filing deadline is 5:00 p.m. on the next business day. The filing

deadline is absolute and applications received after the deadline shall not be reviewed in that review period.

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);  
Temporary Adoption Eff. January 1, 2001.*

**10 NCAC 03R .6303 MULTI-COUNTY GROUPINGS**  
(a) Health Service Areas. The Department of Health and Human Services (DHHS) has assigned the counties of the state to the following health service areas for the purpose of scheduling applications for certificates of need:

<u>HEALTH SERVICE AREAS (HSA)</u>					
<u>I</u>	<u>II</u>	<u>III</u>	<u>IV</u>	<u>V</u>	<u>VI</u>
<u>County</u>	<u>County</u>	<u>County</u>	<u>County</u>	<u>County</u>	<u>County</u>

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<u>Alexander</u>	<u>Alamance</u>	<u>Cabarrus</u>	<u>Chatham</u>	<u>Anson</u>	<u>Beaufort</u>
<u>Alleghany</u>	<u>Caswell</u>	<u>Gaston</u>	<u>Durham</u>	<u>Bladen</u>	<u>Bertie</u>
<u>Ashe</u>	<u>Davidson</u>	<u>Iredell</u>	<u>Franklin</u>	<u>Brunswick</u>	<u>Camden</u>
<u>Avery</u>	<u>Davie</u>	<u>Lincoln</u>	<u>Granville</u>	<u>Columbus</u>	<u>Carteret</u>
<u>Buncombe</u>	<u>Forsyth</u>	<u>Mecklenburg</u>	<u>Johnston</u>	<u>Cumberland</u>	<u>Chowan</u>
<u>Burke</u>	<u>Guilford</u>	<u>Rowan</u>	<u>Lee</u>	<u>Harnett</u>	<u>Craven</u>
<u>Caldwell</u>	<u>Randolph</u>	<u>Stanly</u>	<u>Orange</u>	<u>Hoke</u>	<u>Currituck</u>
<u>Catawba</u>	<u>Rockingham</u>	<u>Union</u>	<u>Person</u>	<u>Montgomery</u>	<u>Dare</u>
<u>Cherokee</u>	<u>Stokes</u>		<u>Vance</u>	<u>Moore</u>	<u>Duplin</u>
<u>Clay</u>	<u>Surry</u>		<u>Wake</u>	<u>New Hanover</u>	<u>Edgecombe</u>
<u>Cleveland</u>	<u>Yadkin</u>		<u>Warren</u>	<u>Pender</u>	<u>Gates</u>
<u>Graham</u>				<u>Richmond</u>	<u>Greene</u>
<u>Haywood</u>				<u>Robeson</u>	<u>Halifax</u>
<u>Henderson</u>				<u>Sampson</u>	<u>Hertford</u>
<u>Jackson</u>				<u>Scotland</u>	<u>Hyde</u>
<u>McDowell</u>					<u>Jones</u>
<u>Macon</u>					<u>Lenoir</u>
<u>Madison</u>					<u>Martin</u>
<u>Mitchell</u>					<u>Nash</u>
<u>Polk</u>					<u>Northampton</u>
<u>Rutherford</u>					<u>Onslow</u>
<u>Swain</u>					<u>Pamlico</u>
<u>Transylvania</u>					<u>Pasquotank</u>
<u>Watauga</u>					<u>Perquimans</u>
<u>Wilkes</u>					<u>Pitt</u>
<u>Yancey</u>					<u>Tyrrell</u>
					<u>Washington</u>
					<u>Wayne</u>
					<u>Wilson</u>

(b) Mental Health Planning Areas. The DHHS has assigned the counties of the state to the following Mental Health Planning Areas for purposes of the State Medical Facilities Plan:

**MENTAL HEALTH PLANNING AREAS**

<u>Area Number</u>	<u>Constituent Counties</u>
<u>1</u>	<u>Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain</u>
<u>2</u>	<u>Buncombe, Madison, Mitchell, Yancey</u>
<u>3</u>	<u>Alleghany, Ashe, Avery, Watauga, Wilkes</u>
<u>4</u>	<u>Henderson, Transylvania</u>
<u>5</u>	<u>Alexander, Burke, Caldwell, McDowell</u>
<u>6</u>	<u>Rutherford, Polk</u>
<u>7</u>	<u>Cleveland, Gaston, Lincoln</u>
<u>8</u>	<u>Catawba</u>
<u>9</u>	<u>Mecklenburg</u>
<u>10</u>	<u>Cabarrus, Rowan, Stanly, Union</u>
<u>11</u>	<u>Surry, Yadkin, Iredell</u>
<u>12</u>	<u>Forsyth, Stokes, Davie</u>
<u>13</u>	<u>Rockingham</u>
<u>14</u>	<u>Guilford</u>
<u>15</u>	<u>Alamance, Caswell</u>
<u>16</u>	<u>Orange, Person, Chatham</u>
<u>17</u>	<u>Durham</u>
<u>18</u>	<u>Vance, Granville, Franklin, Warren</u>
<u>19</u>	<u>Davidson</u>
<u>20</u>	<u>Anson, Hoke, Montgomery, Moore, Richmond</u>
<u>21</u>	<u>Bladen, Columbus, Robeson, Scotland</u>
<u>22</u>	<u>Cumberland</u>

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- 23 Lee, Harnett
- 24 Johnston
- 25 Wake
- 26 Randolph
- 27 Brunswick, New Hanover, Pender
- 28 Onslow
- 29 Wayne
- 30 Wilson, Greene
- 31 Edgecombe, Nash
- 32 Halifax
- 33 Carteret, Craven, Jones, Pamlico
- 34 Lenoir
- 35 Pitt
- 36 Bertie, Gates, Hertford, Northampton
- 37 Beaufort, Hyde, Martin, Tyrrell, Washington
- 38 Camden, Chowan, Currituck, Dare, Pasquotank, Perquimans
- 39 Duplin, Sampson

(c) Mental Health Planning Regions. The DHHS has assigned the counties of the state to the following Mental Health Planning Regions for purposes of the State Medical Facilities Plan:

MENTAL HEALTH PLANNING REGIONS (Area Number and Constituent Counties)

Western (W)

- 1 Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain
- 2 Buncombe, Madison, Mitchell, Yancey
- 3 Alleghany, Ashe, Avery, Watauga, Wilkes
- 4 Henderson, Transylvania
- 5 Alexander, Burke, Caldwell, McDowell
- 6 Rutherford, Polk
- 7 Cleveland, Gaston, Lincoln
- 8 Catawba
- 9 Mecklenburg
- 10 Cabarrus, Rowan, Stanly, Union

North Central (NC)

- 11 Surry, Yadkin, Iredell
- 12 Forsyth, Stokes, Davie
- 13 Rockingham
- 14 Guilford
- 15 Alamance, Caswell
- 16 Orange, Person, Chatham
- 17 Durham
- 18 Vance, Granville, Franklin, Warren

South Central (SC)

- 19 Davidson
- 20 Anson, Hoke, Montgomery, Moore, Richmond
- 21 Bladen, Columbus, Robeson, Scotland
- 22 Cumberland
- 23 Lee, Harnett
- 24 Johnston
- 25 Wake
- 26 Randolph

Eastern (E)

- 27 Brunswick, New Hanover, Pender
- 28 Onslow
- 29 Wayne

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- [30 Wilson, Greene](#)
- [31 Edgecombe, Nash](#)
- [32 Halifax](#)
- [33 Carteret, Craven, Jones, Pamlico](#)
- [34 Lenoir](#)
- [35 Pitt](#)
- [36 Bertie, Gates, Hertford, Northampton](#)
- [37 Beaufort, Hyde, Martin, Tyrrell, Washington](#)
- [38 Camden, Chowan, Currituck, Dare, Pasquotank, Perquimans](#)
- [39 Duplin, Sampson](#)

[\(d\) Radiation Oncology Treatment Center Planning Areas. The DHHS has assigned the counties of the state to the following Radiation Oncology Treatment Center Planning Areas for purposes of the State Medical Facilities Plan:](#)

**[RADIATION ONCOLOGY TREATMENT CENTER PLANNING AREAS](#)**

<a href="#"><u>Area Number</u></a>	<a href="#"><u>Constituent Counties</u></a>
<a href="#"><u>1</u></a>	<a href="#"><u>Cherokee, Clay, Graham, Jackson, Macon, Swain</u></a>
<a href="#"><u>2</u></a>	<a href="#"><u>Buncombe, Haywood, Madison, McDowell, Mitchell, Yancey</u></a>
<a href="#"><u>3</u></a>	<a href="#"><u>Ashe, Avery, Watauga</u></a>
<a href="#"><u>4</u></a>	<a href="#"><u>Henderson, Polk, Transylvania</u></a>
<a href="#"><u>5</u></a>	<a href="#"><u>Alexander, Burke, Caldwell, Catawba</u></a>
<a href="#"><u>6</u></a>	<a href="#"><u>Rutherford, Cleveland, Gaston, Lincoln</u></a>
<a href="#"><u>7</u></a>	<a href="#"><u>Mecklenburg, Anson, Union</u></a>
<a href="#"><u>8</u></a>	<a href="#"><u>Iredell, Rowan</u></a>
<a href="#"><u>9</u></a>	<a href="#"><u>Cabarrus, Stanly</u></a>
<a href="#"><u>10</u></a>	<a href="#"><u>Alleghany, Forsyth, Davidson, Davie, Stokes, Surry, Wilkes, Yadkin</u></a>
<a href="#"><u>11</u></a>	<a href="#"><u>Guilford, Randolph, Rockingham</u></a>
<a href="#"><u>12</u></a>	<a href="#"><u>Alamance, Chatham, Orange</u></a>
<a href="#"><u>13</u></a>	<a href="#"><u>Durham, Caswell, Granville, Person, Vance, Warren</u></a>
<a href="#"><u>14</u></a>	<a href="#"><u>Moore, Hoke, Lee, Montgomery, Richmond, Scotland</u></a>
<a href="#"><u>15</u></a>	<a href="#"><u>Cumberland, Bladen, Sampson, Robeson</u></a>
<a href="#"><u>16</u></a>	<a href="#"><u>New Hanover, Brunswick, Columbus, Pender</u></a>
<a href="#"><u>17</u></a>	<a href="#"><u>Wake, Franklin, Harnett, Johnston</u></a>
<a href="#"><u>18</u></a>	<a href="#"><u>Lenoir, Duplin, Wayne</u></a>
<a href="#"><u>19</u></a>	<a href="#"><u>Craven, Carteret, Onslow, Jones, Pamlico</u></a>
<a href="#"><u>20</u></a>	<a href="#"><u>Nash, Halifax, Wils on, Northampton, Edgecombe</u></a>
<a href="#"><u>21</u></a>	<a href="#"><u>Pitt, Beaufort, Bertie, Greene, Hertford, Hyde, Martin, Washington</u></a>
<a href="#"><u>22</u></a>	<a href="#"><u>Pasquotank, Camden, Chowan, Currituck, Dare, Gates, Perquimans, Tyrrell</u></a>

[\(e\) Ambulatory Surgical Facility Planning Areas. The DHHS has assigned the counties of the state to the following Ambulatory Surgical Facility Planning Areas for purposes of the State Medical Facilities Plan:](#)

**[AMBULATORY SURGICAL FACILITY PLANNING AREAS](#)**

<a href="#"><u>Area</u></a>	<a href="#"><u>Constituent Counties</u></a>
<a href="#"><u>1</u></a>	<a href="#"><u>Alamance</u></a>
<a href="#"><u>2</u></a>	<a href="#"><u>Alexander, Iredell</u></a>
<a href="#"><u>3</u></a>	<a href="#"><u>Alleghany, Surry, Wilkes</u></a>
<a href="#"><u>4</u></a>	<a href="#"><u>Anson, Gaston, Mecklenburg, Union</u></a>
<a href="#"><u>5</u></a>	<a href="#"><u>Ashe, Avery, Watauga</u></a>
<a href="#"><u>6</u></a>	<a href="#"><u>Beaufort, Hyde</u></a>
<a href="#"><u>7</u></a>	<a href="#"><u>Bertie, Gates, Hertford</u></a>
<a href="#"><u>8</u></a>	<a href="#"><u>Bladen, Cumberland, Robeson, Sampson</u></a>
<a href="#"><u>9</u></a>	<a href="#"><u>Brunswick, Columbus, Duplin, New Hanover, Pender</u></a>
<a href="#"><u>10</u></a>	<a href="#"><u>Buncombe, Haywood, Madison, Mitchell, Yancey</u></a>
<a href="#"><u>11</u></a>	<a href="#"><u>Burke, McDowell, Rutherford</u></a>
<a href="#"><u>12</u></a>	<a href="#"><u>Cabarrus, Rowan, Stanly</u></a>
<a href="#"><u>13</u></a>	<a href="#"><u>Caldwell, Catawba, Lincoln</u></a>



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- 14 Camden, Currituck, Dare, Pasquotank, Perquimans
- 15 Carteret, Craven, Jones, Onslow, Pamlico
- 16 Caswell, Chatham, Orange
- 17 Cherokee, Clay, Graham, Jackson, Macon, Swain
- 18 Chowan, Tyrrell, Washington
- 19 Cleveland
- 20 Davidson, Davie, Forsyth, Stokes, Yadkin
- 21 Durham, Granville, Person
- 22 Edgecombe, Halifax, Nash, Northampton
- 23 Franklin, Harnett, Johnston, Wake
- 24 Greene, Lenoir, Martin, Pitt
- 25 Guilford, Randolph, Rockingham
- 26 Henderson, Polk, Transylvania
- 27 Hoke, Lee, Montgomery, Moore, Richmond, Scotland
- 28 Vance, Warren
- 29 Wayne
- 30 Wilson

(f) Magnetic Resonance Imaging (MRI) Scanners Service Areas for both fixed and mobile MRI scanners. The DHHS has assigned the counties of the state to the following Magnetic Resonance Imaging Scanners Service Areas for purposes of the State Medical Facilities Plan for both fixed and mobile MRI scanners.

**MAGNETIC RESONANCE IMAGING PLANNING AREAS**

<u>Area Number</u>	<u>Constituent Counties</u>
<u>1</u>	<u>Cherokee, Clay, Graham, Jackson, Macon, Swain</u>
<u>2</u>	<u>Haywood</u>
<u>3</u>	<u>Buncombe, Madison, McDowell, Mitchell, Yancey</u>
<u>4</u>	<u>Ashe, Avery, Watauga</u>
<u>5</u>	<u>Alexander, Burke, Caldwell, Catawba, Lincoln</u>
<u>6</u>	<u>Cleveland, Rutherford</u>
<u>7</u>	<u>Henderson, Polk, Transylvania</u>
<u>8</u>	<u>Gaston</u>
<u>9</u>	<u>Cabarrus, Montgomery, Rowan, Stanly</u>
<u>10</u>	<u>Iredell</u>
<u>11</u>	<u>Alleghany, Davie, Forsyth, Stokes, Surry, Wilkes, Yadkin</u>
<u>12</u>	<u>Alamance</u>
<u>13</u>	<u>Durham, Caswell, Granville, Person, Vance, Warren</u>
<u>14</u>	<u>Chatham, Orange</u>
<u>15</u>	<u>Davidson, Guilford, Randolph, Rockingham</u>
<u>16</u>	<u>Richmond, Scotland</u>
<u>17</u>	<u>Anson, Mecklenburg, Union</u>
<u>18</u>	<u>Cumberland, Hoke, Moore, Robeson, Sampson</u>
<u>19</u>	<u>Franklin, Harnett, Johnston, Lee, Wake</u>
<u>20</u>	<u>Lenoir, Wayne, Wilson</u>
<u>21</u>	<u>Bladen, Brunswick, Columbus, Duplin, New Hanover, Pender</u>
<u>22</u>	<u>Carteret, Craven, Jones, Onslow, Pamlico</u>
<u>23</u>	<u>Beaufort, Bertie, Greene, Hyde, Martin, Pitt, Washington</u>
<u>24</u>	<u>Edgecombe, Halifax, Nash, Northampton</u>
<u>25</u>	<u>Camden, Chowan, Currituck, Dare, Gates, Hertford, Pasquotank, Perquimans, Tyrrell</u>

*History Note:* Authority G.S. 131E-176(25); 131E-177(1); 131E-183(1);  
Temporary Adoption Eff. January 1, 2001

**10 NCAC 03R .6304 SERVICE AREAS AND PLANNING AREAS**

(a) An acute care bed's service area is the acute care bed planning area in which the bed is located. The acute care bed

planning areas are the hospital service systems which are defined as follows:

(1) hospitals that are in the same city or within 10 miles of one another are in the same hospital service system;

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(2) hospitals that are under common ownership and within the same county are in the same hospital service system; or

(3) a 10-mile radius around a hospital that is not included in one of the groups of hospitals described in Subparagraphs (1) or (2) of this Rule is a hospital service system.

(b) A rehabilitation bed's service area is the rehabilitation bed planning area in which the bed is located. The rehabilitation bed planning areas are the health service areas which are defined in 10 NCAC 03R .6303(a).

(c) An ambulatory surgical facility's service area is the ambulatory surgical facility planning area in which the facility is located. The ambulatory surgical facility planning areas are the multi-county groupings as defined in 10 NCAC 03R .6303(e).

(d) A radiation oncology treatment center's and linear accelerator's service area is the radiation oncology treatment center and linear accelerator planning area in which the facility is located. The radiation oncology treatment center and linear accelerator planning areas are the multi-county groupings as defined in 10 NCAC 03R .6303(d).

(e) A magnetic resonance imaging scanner's service area is the magnetic resonance imaging planning area in which the scanner is located. The magnetic resonance imaging planning areas are the multi-county groupings as defined in 10 NCAC 03R .6303(f).

(f) A nursing care bed's service area is the nursing care bed planning area in which the bed is located. Each of the 100 counties in the State is a separate nursing care bed planning area.

(g) A Medicare-certified home health agency office's service area is the Medicare-certified home health agency office planning area in which the office is located. Each of the 100 counties in the State is a separate Medicare-certified home health agency office planning area.

(h) A dialysis station's service area is the dialysis station planning area in which the dialysis station is located. Each of the 100 counties in the State is a separate dialysis station planning area.

(i) A hospice's service area is the hospice planning area in which the hospice is located. Each of the 100 counties in the State is a separate hospice planning area.

(j) A hospice inpatient facility bed's service area is the hospice inpatient facility bed planning area in which the bed is located. Each of the 100 counties in the State is a separate hospice inpatient facility bed planning area.

(k) A psychiatric bed's service area is the psychiatric bed planning area in which the bed is located. The psychiatric bed planning areas are the Mental Health Planning Regions which are defined in 10 NCAC 03R .6303(c).

(l) With the exception of chemical dependency (substance abuse) detoxification-only beds, a chemical dependency treatment bed's service area is the chemical dependency treatment bed planning area in which the bed is located. The chemical dependency (substance abuse) treatment bed planning areas are the Mental Health Planning Regions which are defined in 10 NCAC 03R .6303(c).

(m) A chemical dependency detoxification-only bed's service area is the chemical dependency detoxification-only bed

planning area in which the bed is located. The chemical dependency (substance abuse) detoxification-only bed planning areas are the Mental Health Planning Areas which are defined in 10 NCAC 03R .6303(b).

(n) An intermediate care bed for the mentally retarded's service area is the intermediate care bed for the mentally retarded planning area in which the bed is located. The intermediate care bed for the mentally retarded planning areas are the Mental Health Planning Areas which are defined in 10 NCAC 03R .6303(b).

(o) A heart-lung bypass machine's service area is the heart-lung bypass machine planning area in which the heart-lung bypass machine is located. The heart-lung bypass machine planning areas are the hospital service systems, as defined in 10 NCAC 03R .6304(a).

(p) A unit of fixed cardiac catheterization and cardiac angioplasty equipment's service area is the fixed cardiac catheterization and cardiac angioplasty equipment planning area in which the equipment is located. Each of the 100 counties in the State is a separate fixed cardiac catheterization and cardiac angioplasty equipment planning area.

(q) A unit of shared fixed cardiac catheterization and cardiac angioplasty equipment's service area is the shared fixed cardiac catheterization and cardiac angioplasty planning area in which the equipment is located. The shared fixed cardiac catheterization and cardiac angioplasty planning areas are the hospital service systems, as defined in 10 NCAC 03R .6304(a).

(r) A positron emission tomography scanner's service area is the health service area (HSA) in which the scanner is located. The health service areas are the multi-county groupings as defined in 10 NCAC 03R .6303(a).

*History Note: Authority G.S. 131E-176(25); 131E-177(I); 131E-183(1);*

*Temporary Adoption Eff. January 1, 2001.*

### 10 NCAC 03R .6305 REALLOCATIONS AND ADJUSTMENTS

#### (a) REALLOCATIONS

(1) Reallocations shall be made only to the extent that need determinations in 10 NCAC 03R .6306 through .6331 indicate that need exists after the inventories are revised and the need determinations are recalculated.

(2) Beds or services which are reallocated once in accordance with this Rule shall not be reallocated again. Rather, the Medical Facilities Planning Section shall make any necessary changes in the next annual State Medical Facilities Plan.

(3) Dialysis stations that are withdrawn, relinquished, not applied for, decertified, denied, appealed, or pending the expiration of the 30 day appeal period shall not be reallocated. Instead, any necessary redetermination of need shall be made in the next scheduled publication of the Dialysis Report.

(4) Appeals of Certificate of Need Decisions on Applications. Need determinations of beds or services for which the CON Section decision to approve or deny

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the application has been appealed shall not be reallocated until the appeal is resolved:

(A) Appeals Resolved Prior to August 17: If such an appeal is resolved in the calendar year prior to August 17, the beds or services shall not be reallocated by the CON Section; rather the Medical Facilities Planning Section shall make the necessary changes in the next annual State Medical Facilities Plan, except for dialysis stations which shall be processed pursuant to Subparagraph (a) (3) of this Rule.

(B) Appeals Resolved on or After August 17: If such an appeal is resolved on or after August 17 in the calendar year, the beds or services, except for dialysis stations, shall be made available for a review period to be determined by the CON Section, but beginning no earlier than 60 days from the date that the appeal is resolved. Notice shall be mailed by the Certificate of Need Section to all persons on the mailing list for the State Medical Facilities Plan, no less than 45 days prior to the due date for receipt of new applications.

(5) Withdrawals and Relinquishments. Except for dialysis stations, a need determination for which a certificate of need is issued, but is subsequently withdrawn or relinquished, is available for a review period to be determined by the Certificate of Need Section, but beginning no earlier than 60 days from:

(A) the last date on which an appeal of the notice of intent to withdraw the certificate could be filed if no appeal is filed,

(B) the date on which an appeal of the withdrawal is finally resolved against the holder; or

(C) the date that the Certificate of Need Section receives from the holder of the certificate of need notice that the certificate has been voluntarily relinquished.

Notice of the scheduled review period for the reallocated services or beds shall be mailed by the Certificate of Need Section to all persons on the mailing list for the State Medical Facilities Plan, no less than 45 days prior to the due date for submittal of the new applications.

(6) Need Determinations for which No Applications are Received

(A) Services or Beds with Scheduled Review in the Calendar Year on or Before September 1: The Certificate of Need Section shall not reallocate the services or beds in this category for which no applications were received, because the Medical Facilities Planning Section will have sufficient time to make any necessary changes in the determinations of need for these services or beds in the next annual State Medical Facilities Plan, except for dialysis stations.

(B) Services or Beds with Scheduled Review in the Calendar Year After September 1: Except for

dialysis stations, a need determination in this category for which no application has been received by the last due date for submittal of applications shall be available to be applied for in the second Category I review period in the next calendar year for the applicable HSA. Notice of the scheduled review period for the reallocated beds or services shall be mailed by the Certificate of Need Section to all persons on the mailing list for the State Medical Facilities Plan, no less than 45 days prior to the due date for submittal of new applications.

(7) Need Determinations not Awarded because Application Disapproved:

(A) Disapproval in the Calendar Year prior to August 17: Need determinations or portions of such need for which applications were submitted but disapproved by the Certificate of Need Section before August 17, shall not be reallocated by the Certificate of Need Section. Instead the Medical Facilities Planning Section shall make the necessary changes in the next annual State Medical Facilities Plan if no appeal is filed, except for dialysis stations.

(B) Disapproval in the Calendar Year on or After August 17: Need determinations or portions of such need for which applications were submitted but disapproved by the Certificate of Need Section on or after August 17, shall be reallocated by the Certificate of Need Section, except for dialysis stations. A need in this category shall be available for a review period to be determined by the Certificate of Need Section but beginning no earlier than 95 days from the date the application was disapproved, if no appeal is filed. Notice of the scheduled review period for the reallocation shall be mailed by the Certificate of Need Section to all persons on the mailing list for the State Medical Facilities Plan, no less than 80 days prior to the due date for submittal of the new applications.

(8) Reallocation of Decertified ICF/MR Beds. If an ICF/MR facility's Medicaid certification is relinquished or revoked, the ICF/MR beds in the facility shall be reallocated by the Department of Health and Human Services, Division of Facility Services, Medical Facilities Planning Section pursuant to the provisions of the following Sub-parts. The reallocated beds shall only be used to convert five-bed ICF/MR facilities into six-bed facilities.

(A) If the number of five-bed ICF/MR facilities in the mental health planning region in which the beds are located equals or exceeds the number of reallocated beds, the beds shall be reallocated solely within the planning region after considering the recommendation of the Regional Team of Developmental Disabilities Services Directors.

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(B) If the number of five-bed ICF/MR facilities in the mental health planning region in which the beds are located is less than the number of reallocated beds, the Medical Facilities Planning Section shall reallocate the excess beds to other planning regions after considering the recommendation of the Developmental Disabilities Section in the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. The Medical Facilities Planning Section shall then allocate the beds among the planning areas within those planning regions after considering the recommendation of the appropriate Regional Teams of Developmental Disabilities Services Directors.

(C) The Department of Health and Human Services, Division of Facility Services, Certificate of Need Section shall schedule reviews of applications for these beds pursuant to Subparagraph (a)(5) of this Rule.

**(b) CHANGES IN NEED DETERMINATIONS**

(1) The need determinations in 10 NCAC 03R .6306 through 10 NCAC 03R .6331 shall be revised continuously by the Medical Facilities Planning Section throughout the calendar year to reflect all changes in the inventories of:

(A) the health services listed at G.S. 131E-176 (16)f;

(B) health service facilities;

(C) health service facility beds;

(D) dialysis stations;

(E) the equipment listed at G.S. 131E-176 (16)f1; and

(F) mobile medical equipment;

as those changes are reported to the Medical Facilities Planning Section. However, need determinations in 10 NCAC 03R .6306 through .6331 shall not be reduced if the relevant inventory is adjusted upward 30 days or less prior to the first day of the applicable review period.

(2) Inventories shall be updated to reflect:

(A) decertification of Medicare-certified home health agencies or offices, intermediate care facilities for the mentally retarded, and dialysis stations;

(B) delicensure of health service facilities and health service facility beds;

(C) demolition, destruction, or decommissioning of equipment as listed at G.S. 131E-176(16) f1 and G. S. 131E-176(16)(s);

(D) elimination or reduction of a health service as listed at G.S. 131E-176(16) (f);

(E) psychiatric beds licensed pursuant to G.S. 131E-184(c);

(F) certificates of need awarded, relinquished, or withdrawn, subsequent to the preparation of the inventories in the State Medical Facilities Plan; and  
(G) corrections of errors in the inventory as reported to the Medical Facilities Planning Section.

(3) Any person who is interested in applying for a new institutional health service for which a need

determination is made in 10 NCAC 03R .6306 through 10 NCAC 03R .6331 may obtain information about updated inventories and need determinations from the Medical Facilities Planning Section.

(4) Need determinations resulting from changes in inventory shall be available for a review period to be determined by the Certificate of Need Section, but beginning no earlier than 60 days from the date of the action identified in Subparagraph (b)(2) of this Rule, except for dialysis stations which shall be determined by the Medical Facilities Planning Section and published in the next Dialysis Report. Notice of the scheduled review period for the need determination shall be mailed by the Certificate of Need Section to all persons on the mailing list for the State Medical Facilities Plan, no less than 45 days prior to the due date for submittal of the new applications.

*History Note:* Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);

*Temporary Adoption Eff. January 1, 2001.*

**10 NCAC 03R .6306 ACUTE CARE BED NEED DETERMINATION (REVIEW CATEGORY A)**

It is determined that there is no need for additional acute care beds anywhere in the State.

*History Note:* Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);

*Temporary Adoption Eff. January 1, 2001.*

**10 NCAC 03R .6307 REHABILITATION BED NEED DETERMINATION (REVIEW CATEGORY E)**

It is determined that there is no need for additional rehabilitation beds in any HSA.

*History Note:* Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);

*Temporary Adoption Eff. January 1, 2001.*

**10 NCAC 03R .6308 AMBULATORY SURGICAL FACILITIES NEED DETERMINATION (REVIEW CATEGORY E)**

It is determined that there is a need for one additional ambulatory surgical facility with two operating rooms in Ambulatory Surgery Service Area 24. It is determined that there is no need for additional Ambulatory Surgical Facilities in any other Ambulatory Surgical Facility Planning Area.

*History Note:* Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);

*Temporary Adoption Eff. January 1, 2001.*

**10 NCAC 03R .6309 OPEN HEART SURGERY SERVICES NEED DETERMINATIONS (REVIEW CATEGORY H)**

It is determined that there is no need for additional open heart surgery services anywhere in the State.

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*History Note:* Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);  
Temporary Adoption Eff. January 1, 2001.

**10 NCAC 03R .6310 HEART-LUNG BYPASS MACHINES NEED DETERMINATION (REVIEW CATEGORY H)**

It is determined that there is a need for one additional heart-lung bypass machine in the Gaston Memorial Hospital Service System. It is determined that there is no need for additional heart-lung bypass machines anywhere else in the State.

*History Note:* Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);  
Temporary Adoption Eff. January 1, 2001.

**10 NCAC 03R .6311 FIXED CARDIAC CATHETERIZATION EQUIPMENT AND FIXED CARDIAC ANGIOPLASTY EQUIPMENT NEED DETERMINATIONS (REVIEW CATEGORY H)**

(a) It is determined that there is a need for one additional fixed unit of cardiac catheterization equipment in Pasquotank County and for one additional fixed unit of cardiac catheterization equipment in Johnston County. It is determined that there is no need for additional fixed units of cardiac catheterization equipment in any other county.

(b) It is determined that there is no need for additional fixed cardiac angioplasty equipment anywhere in the State.

*History Note:* Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);  
Temporary Adoption Eff. January 1, 2001.

**10 NCAC 03R .6312 SHARED FIXED CARDIAC CATHETERIZATION EQUIPMENT NEED DETERMINATION (REVIEW CATEGORY H)**

It is determined that there is a need for one unit of shared fixed cardiac catheterization equipment as defined in 10 NCAC 03R .6333(c) in the Lake Norman Regional Hospital Service System. It is determined that there is no need for additional units of shared fixed cardiac catheterization equipment anywhere else in the State.

*History Note:* Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);  
Temporary Adoption Eff. January 1, 2001.

**10 NCAC 03R .6313 BURN INTENSIVE CARE SERVICES NEED DETERMINATION (REVIEW CATEGORY H)**

It is determined that there is no need for additional burn intensive care services anywhere in the State.

*History Note:* Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);  
Temporary Adoption Eff. January 1, 2001.

**10 NCAC 03R .6314 POSTRON EMISSION TOMOGRAPHY SCANNERS NEED DETERMINATION (REVIEW CATEGORY H)**

(a) It is determined that there is a need for one additional fixed positron emission tomography (PET) scanner in each of the following health service areas (HSAs). It is determined that there is no need for an additional fixed PET scanner in health service area II.

<u>Health Service Area (HSA)</u>	<u>PET Scanner Need Determination</u>
<u>I</u>	<u>1</u>
<u>III</u>	<u>1</u>
<u>IV</u>	<u>1</u>
<u>V</u>	<u>1</u>
<u>VI</u>	<u>1</u>

(b) Any hospital in the HSA may apply for a certificate of need to acquire this fixed PET scanner provided there is documentation that the applicant is providing open heart surgery, and comprehensive cancer services, including radiation oncology, medical oncology, and surgical oncology, is serving patients from a multi-county area and is a teaching site for providing post graduate medical education.

(c) The provider with utilization at or above 80% capacity during the 12 month period reflected in the 2000 Hospital Licensure Application, and any other hospital within the same HSA may apply for a certificate of need to purchase one additional fixed PET scanner for which a need is determined, provided there is documentation that the applicant is providing open heart surgery and comprehensive cancer services, including radiation oncology, medical oncology, and surgical oncology,

and, is serving patients from a multi-county area, and is a teaching site for providing post graduate medical education.

(d) It is determined that there is no need for mobile PET scanners anywhere in the State.

(e) It is determined that there is no need for coincidence cameras anywhere in the State.

(f) It is determined that there is no need for hybrid machines anywhere in the State.

*History Note:* Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);  
Temporary Adoption Eff. January 1, 2001.

**10 NCAC 03R .6315 BONE MARROW TRANSPLANTATION SERVICES NEED**

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**DETERMINATION (REVIEW CATEGORY H)**

It is determined that there is no need for additional allogeneic or autologous bone marrow transplantation services anywhere in the State.

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);*  
Temporary Adoption Eff. January 1, 2001.

**10 NCAC 03R .6316 SOLID ORGAN TRANSPLANTATION SERVICES NEED DETERMINATION (REVIEW CATEGORY H)**

It is determined that there is no need for new solid organ transplantation services anywhere in the State.

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);*  
Temporary Adoption Eff. January 1, 2001.

**10 NCAC 03R .6317 GAMMA KNIFE UNIT NEED DETERMINATION (REVIEW CATEGORY H)**

It is determined that there is no need for additional gamma knife units anywhere in the State.

**10 NCAC 03R .6320 MAGNETIC RESONANCE IMAGING SCANNERS NEED DETERMINATION BASED ON FIXED MRI SCANNER UTILIZATION (REVIEW CATEGORY H)**

It is determined that there is a need for eight additional fixed Magnetic Resonance Imaging (MRI) Scanners based on fixed MRI Scanner utilization in the following Magnetic Resonance Imaging Scanners Service Areas. It is determined that there is no need for an additional fixed MRI Scanner in any other service area in the State, except as otherwise provided in 10 NCAC 03R. 6321.

Magnetic Resonance Imaging Scanners Service Areas (Constituent Counties)	MRI Scanners Need Determination
<u>3 (Buncombe, Madison, McDowell, Mitchell, Yancey)</u>	<u>3</u>
<u>13 (Caswell, Durham, Granville, Person, Vance, Warren)</u>	<u>1</u>
<u>17 (Anson, Mecklenburg, Union)</u>	<u>2</u>
<u>19 (Franklin, Harnett, Johnston, Lee, Wake)</u>	<u>1</u>
<u>21 (Bladen, Brunswick, Columbus, Duplin, New Hanover, Pender)</u>	<u>1</u>

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);*  
Temporary Adoption Eff. January 1, 2001.

**10 NCAC 03R .6321 MAGNETIC RESONANCE IMAGING SCANNERS NEED DETERMINATION BASED ON MOBILE MRI SCANNER UTILIZATION (REVIEW CATEGORY H)**

It is determined that there is a need for two additional fixed Magnetic Resonance Imaging (MRI) Scanners based on utilization of mobile MRI Scanners in the following Magnetic Resonance Imaging Scanners Service Areas. It is determined that there is no need for an additional fixed MRI Scanner in any other service area in the State, except as otherwise provided in 10 NCAC 03R .6320.

Magnetic Resonance Imaging Scanners Service Areas (Constituent Counties)	MRI Scanners Need Determination
<u>15 (Davidson, Guilford, Randolph &amp; Rockingham)</u>	<u>1</u>
<u>17 (Anson, Mecklenburg, Union)</u>	<u>1</u>

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);*  
Temporary Adoption Eff. January 1, 2001.

**10 NCAC 03R .6322 NURSING CARE BED NEED DETERMINATION (REVIEW CATEGORY B)**

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It is determined that the counties listed in this Rule need additional Nursing Care Beds as specified. It is determined that there is no need for additional Nursing Care Beds in any other county.

<u>County</u>	<u>Number of Nursing Care Beds Needed</u>
<u>Davie</u>	<u>30</u>
<u>Wayne</u>	<u>60</u>

*History Note:* Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b); Temporary Adoption Eff. January 1, 2001.

**10 NCAC 03R .6323 MEDICARE-CERTIFIED HOME HEALTH AGENCY OFFICE NEED DETERMINATION (REVIEW CATEGORY F)**

It is determined that there is a need in Pamlico County for one Medicare-certified home health agency or office. It is determined that there is no need for additional Medicare-certified home health agencies or offices in any other county.

*History Note:* Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b); Temporary Adoption Eff. January 1, 2001.

**10 NCAC 03R .6324 DIALYSIS STATION NEED DETERMINATION METHODOLOGY FOR REVIEWS BEGINNING JANUARY 1, 2001**

(a) The Medical Facilities Planning Section (MFPS) issued an "Amended September 2000 Semiannual Dialysis Report" on October 12, 2000. Data used for need determinations, and their sources, are as follows:

- (1) Numbers of dialysis patients, by type, county and facility, from the Southeastern Kidney Council, Inc. (SEKC) as of June 30, 2000 supplemented by data from the Mid-Atlantic Renal Coalition, Inc.;
- (2) Certificate of need decisions, decisions appealed, appeals settled, and awards, from the Certificate of Need Section, DFS.;
- (3) Facilities certified for participation in Medicare, from the Certification Section, DFS; and
- (4) Need determinations for which certificate of need decisions have not been made, from MFPS records.

Need determinations in this report shall be an integral part of the State Medical Facilities Plan.

(b) Need for new dialysis stations shall be determined as follows:

- (1) County Need
  - (A) The average annual rate (%) of change in total number of dialysis patients resident in each county from the end of 1995 to the end of 1999 is multiplied by the county's June 30, 2000 total number of patients in the Amended SDR, and the product is added to each county's most recent total number of patients reported in the Amended SDR. The sum is the county's projected total June 30, 2001 patients.
  - (B) The percent of each county's total patients who were home dialysis patients on June 30, 2000 is

multiplied by the county's projected total June 30, 2001 patients, and the product is subtracted from the county's projected total June 30, 2001 patients. The remainder is the county's projected June 30, 2001 in-center dialysis patients;

- (C) The projected number of each county's June 30, 2001 in-center patients is divided by 3.2. The quotient is the projection of the county's June 30, 2001 in-center dialysis stations;
  - (D) From each county's projected number of June 30, 2001 in-center stations is subtracted the county's number of stations certified for Medicare, CON-approved and awaiting certification, awaiting resolution of CON appeals, and the number represented by need determinations in previous State Medical Facilities Plans or Semiannual Dialysis Reports for which CON decisions have not been made. The remainder is the county's June 30, 2001 projected station surplus or deficit.
  - (E) If a county's June 30, 2001 projected station deficit is 10 or greater and the Amended SDR shows that utilization of each dialysis facility in the county is 80% or greater, the June 30, 2001 county station need determination is the same as the June 30, 2001 projected station deficit. If a county's June 30, 2001 projected station deficit is less than 10 or if the utilization of any dialysis facility in the county is less than 80%, the county's June 30, 2001 station need determination is zero.
- (2) Facility Need

A dialysis facility located in a county for which the result of the County Need methodology is zero in the Amended September Semiannual Dialysis Report (SDR) is determined to need additional stations to the extent that:

- (A) Its utilization, reported in the Amended SDR, is 3.2 patients per station or greater;
- (B) Such need, calculated as follows, is reported in an application for a certificate of need:
  - (i) The facility's number of in-center dialysis patients reported in the March 2000 SDR (SDR<sub>1</sub>) is subtracted from the number of in-center dialysis patients reported in the Amended SDR (SDR<sub>2</sub>). The difference is multiplied by 2 to project the net in-center

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- change for one year. Divide the projected net in-center change for the year by the number of in-center patients from SDR<sub>1</sub> to determine the projected annual growth rate;
- (ii) The quotient from Subpart (b)(2)(B)(i) of this Rule is divided by 12;
- (iii) The quotient from Subpart (b)(2)(B)(ii) of this Rule is multiplied by the number of months from the most recent month reported in the Amended SDR until the end of calendar 2000;
- (iv) The product from Subpart (b)(2)(B)(iii) of this Rule is multiplied by the number of the facility's in-center patients reported in the Amended SDR and that product is

- added to such reported number of in-center patients; and
- (v) The sum from Subpart (b)(2)(B)(iv) of this Rule is divided by 3.2, and from the quotient is subtracted the facility's current number of certified and pending stations as recorded in the Amended SDR. The remainder is the number of stations needed.
- (C) The facility may apply to expand to meet the need established in Subpart (b)(2)(B)(v) of this Rule, up to a maximum of 10 stations.
- (c) The schedule for publication of the Amended September 2000 Semiannual Dialysis Report (SDR) and for receipt of certificate of need applications for the January 1, 2001 Review Period shall be as follows:

<u>Data for Period Ending</u>	<u>Corrected SEKC Report</u>	<u>Publication of Amended SDR</u>	<u>Receipt of CON Applications for Need Determinations affected by Amended Patient Data</u>	<u>Beginning Review Date for Need Determinations affected by Amended Patient Data</u>
<u>June 30, 2000</u>	<u>Oct. 4, 2000</u>	<u>Oct. 12, 2000</u>	<u>December 15, 2000</u>	<u>January 1, 2001</u>

- (d) An application for a certificate of need pursuant to this Rule shall be considered consistent with G.S. 131E-183(a)(1) only if it demonstrates a need by utilizing one of the methods of determining need outlined in this Rule.
- (e) An application for a new End Stage Renal Disease facility shall not be approved unless it documents the need for at least 10 stations based on utilization of 3.2 patients per station per week.
- (f) Home patients shall not be included in determination of need for new stations.

- (4) Need determinations for which certificate of need decisions have not been made, from MFPS records, Need determinations in this report shall be an integral part of the State Medical Facilities Plan.
- (b) Need for new dialysis stations shall be determined as follows:

(1) County Need

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b); Temporary Adoption Eff. January 1, 2001.*

**10 NCAC 03R .6325 DIALYSIS STATION NEED DETERMINATION METHODOLOGY FOR REVIEWS BEGINNING SEPTEMBER 1, 2001**

(a) The Medical Facilities Planning Section (MFPS) shall determine need for new dialysis stations once during calendar year 2001, and shall make a report of such determinations available to all who request it. This report shall be called the North Carolina 2001 Transitional Dialysis Report (TDR). Data to be used for such determinations, and their sources, are as follows:

- (1) Numbers of dialysis patients, by type, county and facility, from the Southeastern Kidney Council, Inc. (SEKC) and the Mid-Atlantic Renal Coalition, Inc. as of December 31, 2000 for the June 2001 TDR;
- (2) Certificate of need decisions, decisions appealed, appeals settled, and awards, from the Certificate of Need Section, DFS;
- (3) Facilities certified for participation in Medicare, from the Certification Section, DFS; and

- (A) The average annual rate (%) of change in total number of dialysis patients resident in each county from the end of 1996 to the end of 2000 is multiplied by the county's 2000 year end total number of patients in the TDR, and the product is added to each county's most recent total number of patients reported in the TDR. The sum is the county's projected total 2001 patients;
- (B) The percent of each county's total patients who were home dialysis patients at the end of 2000 is multiplied by the county's projected total 2001 patients, and the product is subtracted from the county's projected total 2001 patients. The remainder is the county's projected 2001 in-center dialysis patients;
- (C) The projected number of each county's 2001 in-center patients is divided by 3.2. The quotient is the projection of the county's 2001 in-center dialysis stations;
- (D) From each county's projected number of 2001 in-center stations is subtracted the county's number of stations certified for Medicare, CON-approved and awaiting certification, awaiting resolution of CON appeals, and the number represented by need determinations in previous State Medical Facilities Plans or Semiannual Dialysis Reports for which



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CON decisions have not been made. The remainder is the county's 2001 projected surplus or deficit; and

(E) If a county's 2001 projected station deficit is ten or greater and the TDR shows that utilization of each dialysis facility in the county is 80% or greater, the 2001 county station need determination is the same as the 2001 projected station deficit. If a county's 2001 projected station deficit is less than 10 or if the utilization of any dialysis facility in the county is less than 80%, the county's 2001 station need determination is zero.

(2) Facility Need

A dialysis facility located in a county for which the result of the County Need methodology is zero in the TDR is determined to need additional stations to the extent that:

(A) Its utilization, reported in the current TDR, is 3.2 patients per station or greater;

(B) Such need, calculated as follows, is reported in an application for a certificate of need:

(i) The facility's number of in-center dialysis patients reported in the previous SDR (SDR<sub>1</sub>) is subtracted from the number of in-center dialysis patients reported in the current TDR. The difference is multiplied by 2 to project the net in-center change for one year. Divide the projected net in-center change for the year by the number

of in-center patients from SDR<sub>1</sub> to determine the projected annual growth rate;

(ii) The quotient from Subpart (b)(2)(B)(i) of this Rule is divided by 12;

(iii) The quotient from Subpart (b)(2)(B)(ii) of this Rule is multiplied by the number of months from the most recent month reported in the current TDR until the end of calendar 2001;

(iv) The product from Subpart (b)(2)(B)(iii) of this Rule is multiplied by the number of the facility's in-center patients reported in the current TDR and that product is added to such reported number of in-center patients; and

(v) The sum from Subpart (b)(2)(B)(iv) of this Rule is divided by 3.2, and from the quotient is subtracted the facility's current number of certified and pending stations as recorded in the current TDR. The remainder is the number of stations needed.

(C) The facility may apply to expand to meet the need established in Subpart (b)(2)(B)(v) of this Rule, up to a maximum of 10 stations.

(c) The schedule for publication of the "North Carolina 2001 Transitional Dialysis Report" and for receipt of certificate of need applications based on that report shall be as follows:

<u>Data for</u> <u>Period Ending</u>	<u>Due Date for</u> <u>SEKC Report</u>	<u>Publication</u> <u>of TDR</u>	<u>Receipt of</u> <u>CON Applications</u>	<u>Beginning</u> <u>Review Date</u>
<u>Dec. 31, 2000</u>	<u>May 10, 2001</u>	<u>June 1, 2001</u>	<u>August 15, 2001</u>	<u>September 1, 2001</u>

(d) An application for a certificate of need pursuant to this Rule shall be considered consistent with G.S. 131E-183(a)(1) only if it demonstrates a need by utilizing one of the methods of determining need outlined in this Rule.

(e) An application for a new End Stage Renal Disease facility shall not be approved unless it documents the need for at least 10 stations based on utilization of 3.2 patients per station per week.

(f) Home patients shall not be included in determination of need for new stations.

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);*  
*Temporary Adoption Eff. January 1, 2001.*

**10 NCAC 03R .6326 HOSPICE CARE NEED DETERMINATION (REVIEW CATEGORY F)**

It is determined that there is a need in Wake County for one additional Hospice Home Care Program. It is determined that there is no need for additional Hospice Home Care Programs in any other county.

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);*

*Temporary Adoption Eff. January 1, 2001.*

**10 NCAC 03R .6327 HOSPICE INPATIENT FACILITY BED NEED DETERMINATION (REVIEW CATEGORY F)**

(a) Single Counties. Single counties with a deficit projected in the State Medical Facilities Plan of six or more hospice inpatient facility beds are determined to have a bed need equal to the projected deficit. It is determined that there is no need for additional single county hospice inpatient facility beds.

(b) Contiguous Counties. It is determined that any combination of two or more contiguous counties taken from the following list shall have a need for new hospice inpatient facility beds if the combined bed deficit for the grouping of contiguous counties totals six or more beds. Each county in a grouping of contiguous counties must have a deficit of at least one and no more than five beds. The need for the grouping of contiguous counties shall be the sum of the deficits in the individual counties. For purposes of this Rule, "contiguous counties" shall mean a grouping of North Carolina counties which includes the county in which the new hospice inpatient facility is proposed to be located and any one or more of the North Carolina counties which have a common border with that county, even if the borders only touch

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at one point. No county may be included in a grouping of contiguous counties unless it is listed in the following table:

<u>County</u>	<u>Hospice Inpatient Bed Deficit</u>
<u>Alexander</u>	1
<u>Beaufort</u>	1
<u>Bladen</u>	1
<u>Brunswick</u>	1
<u>Cabarrus</u>	1
<u>Columbus</u>	1
<u>Craven</u>	1
<u>Cumberland</u>	4
<u>Davidson</u>	2
<u>Duplin</u>	1
<u>Durham</u>	3
<u>Edgecombe</u>	1
<u>Gaston</u>	4
<u>Halifax</u>	1
<u>Haywood</u>	1
<u>Hertford</u>	1
<u>Iredell</u>	1
<u>Jackson</u>	1
<u>Johnston</u>	1
<u>Lenoir</u>	1
<u>Lincoln</u>	1
<u>McDowell</u>	1
<u>Mecklenburg</u>	4
<u>Mitchell</u>	1
<u>Moore</u>	2
<u>Nash</u>	1
<u>Onslow</u>	1
<u>Pitt</u>	1
<u>Polk</u>	1
<u>Randolph</u>	3
<u>Richmond</u>	5
<u>Robeson</u>	2
<u>Rockingham</u>	2
<u>Rowan</u>	2
<u>Rutherford</u>	2
<u>Sampson</u>	1
<u>Scotland</u>	2
<u>Stanly</u>	1
<u>Stokes</u>	1
<u>Surry</u>	2
<u>Transylvania</u>	1
<u>Union</u>	2
<u>Watauga</u>	1
<u>Wilkes</u>	1
<u>Wilson</u>	1
<u>Yadkin</u>	1

*History Note:* Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);  
Temporary Adoption Eff. January 1, 2001.

**10 NCAC 03R .6328 PSYCHIATRIC BED NEED  
DETERMINATION (REVIEW CATEGORY C)**

It is determined that there is no need for additional psychiatric beds in any Mental Health Planning Region.

*History Note:* Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);  
Temporary Adoption Eff. January 1, 2001.

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**10 NCAC 03R .6329 CHEMICAL DEPENDENCY (SUBSTANCE ABUSE) TREATMENT BED NEED DETERMINATION (REVIEW CATEGORY C)**

(a) It is determined that there is a need for six additional chemical dependency (substance abuse) residential treatment beds for adolescents in the Western Mental Health Planning Region. It is determined that there is no need for additional chemical dependency (substance abuse) residential treatment beds for adolescents in any other mental health planning region in the State.

(b) It is determined that there is no need for additional chemical dependency (substance abuse) residential treatment beds for adults anywhere in the State.

(c) It is determined that there is no need for additional chemical dependency (substance abuse) inpatient treatment beds for adolescents anywhere in the State.

(d) It is determined that there is no need for additional chemical dependency (substance abuse) inpatient treatment beds for adults anywhere in the State.

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);  
Temporary Adoption Eff. January 1, 2001.*

**10 NCAC 03R .6330 CHEMICAL DEPENDENCY (SUBSTANCE ABUSE) ADULT DETOX-ONLY BED NEED DETERMINATION (REVIEW CATEGORY C)**

(a) Adult Detox-Only Beds. It is determined that there is a need for additional detox-only beds for adults. The following table lists the mental health planning areas that need detox-only beds for adults and identifies the number of such beds needed in each planning area. It is determined that there is no need for additional detox-only beds for adults in any other mental health planning area.

<u>Mental Health Planning Areas</u>	<u>Mental Health Planning Regions</u>	<u>Number of Detox-Only Beds Needed</u>
<u>1 Smoky Mountain</u>	<u>W</u>	<u>10</u>
<u>4 Trend</u>	<u>W</u>	<u>10</u>
<u>5 Foothills</u>	<u>W</u>	<u>10</u>
<u>6 Rutherford-Polk</u>	<u>W</u>	<u>10</u>
<u>7 Gaston-Lincoln-Cleveland</u>	<u>W</u>	<u>10</u>
<u>10 Rowan-Stanly-Cabarrus-Union</u>	<u>W</u>	<u>10</u>
<u>11 Surry-Yadkin-Iredell</u>	<u>NC</u>	<u>2</u>
<u>13 Rockingham</u>	<u>NC</u>	<u>10</u>
<u>15 Alamance-Caswell</u>	<u>NC</u>	<u>6</u>
<u>16 O-P-C</u>	<u>NC</u>	<u>2</u>
<u>18 V-G-F-W</u>	<u>NC</u>	<u>10</u>
<u>19 Davidson</u>	<u>SC</u>	<u>10</u>
<u>21 Southeastern</u>	<u>SC</u>	<u>5</u>
<u>24 Johnston</u>	<u>SC</u>	<u>7</u>
<u>25 Wake</u>	<u>SC</u>	<u>10</u>
<u>29 Wayne</u>	<u>E</u>	<u>4</u>
<u>30 Wilson-Greene</u>	<u>E</u>	<u>10</u>
<u>31 Edgecombe-Nash</u>	<u>E</u>	<u>6</u>
<u>32 Halifax</u>	<u>E</u>	<u>10</u>
<u>33 Neuse</u>	<u>E</u>	<u>10</u>
<u>34 Lenoir</u>	<u>E</u>	<u>10</u>
<u>36 Roanoke-Chowan</u>	<u>E</u>	<u>4</u>
<u>37 Tideland</u>	<u>E</u>	<u>5</u>
<u>38 Albemarle</u>	<u>E</u>	<u>10</u>
<u>39 Duplin-Sampson</u>	<u>E</u>	<u>10</u>

(b) "Detox-only beds for adults" are chemical dependency treatment beds that are occupied exclusively by persons who are 18 years of age or older who are experiencing physiological withdrawal from the effects of alcohol or other drugs.

(c) Detox-only beds for adults may be developed outside of the mental health planning area in which they are needed if:

- (1) The beds are developed in a contiguous mental health planning area that is within the same mental health planning region, as defined by 10 NCAC 03R .6303(c); and
- (2) The program board in the planning area in which the beds are needed and the program board in the planning area in which the beds are to be developed each adopt a

resolution supporting the development of the beds in the contiguous planning area.

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);  
Temporary Adoption Eff. January 1, 2001.*

**10 NCAC 03R .6331 INTERMEDIATE CARE BEDS FOR THE MENTALLY RETARDED NEED DETERMINATION (REVIEW CATEGORY C)**

(a) Adult Intermediate Care Beds for the Mentally Retarded. It is determined that there is a need for 15 additional Adult Intermediate Care Beds for the Mentally Retarded (ICF/MR beds). The 15 beds are part of a demonstration project for adults with autism. The project is available statewide, in any HSA except HSA IV.

(b) The beds are reallocated for development of a program on a single site, not in Health Service Area IV, that shall combine a residential setting with a vocational training setting for adults with autism. The program shall also provide opportunities for training of professionals from across the State, and shall include the study of treatment methods and collection of data regarding the success of treatment in the development of adults with autism. The beds shall be available to serve a population from across the State. The program shall have an established relationship with an academic or medical teaching facility to insure the collection of data and the training of professionals to care for adults with autism, in conjunction with the goals and objectives of that institution. The program shall maintain a collaborative working relationship with the original demonstration project developed in Chatham County. The program shall combine treatment, social skills training, vocational training, research and the training of professionals.

(c) The project shall operate for minimum of five years from the certification of all 15 of the ICF/MR beds in order to obtain adequate data. The approved applicant shall collect and submit periodic progress reports for monitoring purposes to the Certificate of Need Section and the Medical Facilities Planning Section, in the manner and at such times as specified. Additionally, at the end of five years of operation, the approved applicant shall arrange for an independent evaluation of the effectiveness of the program focusing on qualitative, as well as quantitative factors. The evaluation report shall be submitted to the North Carolina State Health Coordinating Council to be used in assessing the efficacy of authorizing the continued operation of the project.

(d) Beds allocated for this demonstration project are not to be counted in the inventory for projecting future unmet need and are not to count against the ICF/MR need shown in other portions of the State Medical Facilities Plan.

(e) Child/Adolescent Intermediate Care Beds for the Mentally Retarded. It is determined that there is no need for additional Child/Adolescent Intermediate Care Beds for the Mentally Retarded (ICF/MR beds).

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);  
Temporary Adoption Eff. January 1, 2001.*

**10 NCAC 03R .6332 POLICIES FOR GENERAL ACUTE CARE HOSPITALS**

(a) Use of Licensed Bed Capacity Data for Planning Purposes. For planning purposes the number of licensed beds shall be determined by the Division of Facility Services in accordance with standards found in 10 NCAC 03C .3102(d) and Section .6200.

(b) Utilization of Acute Care Hospital Bed Capacity. Conversion of underutilized hospital space to other needed purposes shall be considered an alternative to new construction. Hospitals falling below utilization targets in Paragraph (d) of this Rule are assumed to have underutilized space. Any such hospital proposing new construction must clearly and convincingly demonstrate that it is more cost-effective than conversion of existing space.

(c) Exemption from Plan Provisions for Certain Academic Medical Center Teaching Hospital Projects. Projects for which certificates of need are sought by academic medical center teaching hospitals may qualify for exemption from provisions of 10 NCAC 03R .6306 through .6331.

(1) The State Medical Facilities Planning Section shall designate as an Academic Medical Center Teaching Hospital any facility whose application for such designation demonstrates the following characteristics of the hospital:

- (A) serves as a primary teaching site for a school of medicine and at least one other health professional school, providing undergraduate, graduate and postgraduate education;
- (B) houses extensive basic medical science and clinical research programs, patients and equipment; and
- (C) serves the treatment needs of patients from a broad geographic area through multiple medical specialties.

(2) Exemption from the provisions of 10 NCAC 03R .6306 through .6331 shall be granted to projects submitted by Academic Medical Center Teaching Hospitals designated prior to January 1, 1990 which projects comply with one of the following conditions:

- (A) necessary to complement a specified and approved expansion of the number or types of students, residents or faculty, as certified by the head of the relevant associated professional school; or
- (B) necessary to accommodate patients, staff or equipment for a specified and approved expansion of research activities, as certified by the head of the entity sponsoring the research; or
- (C) necessary to accommodate changes in requirements of specialty education accrediting bodies, as evidenced by copies of documents issued by such bodies.

(3) A project submitted by an Academic Medical Center Teaching Hospital under this policy that meets one of the above conditions shall also demonstrate that the Academic Medical Center Teaching Hospital's teaching or research need for the proposed project cannot be achieved effectively at any non-Academic Medical

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Center Teaching Hospital provider which currently offers the service for which the exemption is requested and which is within 20 miles of the Academic Medical Center Teaching Hospital.

(4) Any health service facility or health service facility bed that results from a project submitted under this policy after January 1, 1999 shall be excluded from the inventory of that health service facility or health service facility bed in the State Medical Facilities Plan.

(d) Reconversion to Acute Care. Facilities that have redistributed beds from acute care bed capacity to psychiatric,

rehabilitation, or nursing care use, shall obtain a certificate of need to convert this capacity back to acute care. Applicants proposing to reconvert psychiatric, rehabilitation, or nursing care beds back to acute care beds shall demonstrate that the hospital's average annual utilization of licensed acute care beds as reported in the most recent licensure renewal application form is equal to or greater than the target occupancies shown below, but shall not be evaluated against the acute care bed need determinations shown in 10 NCAC 03R .6306.

Licensed Acute Care Bed Capacity

1 - 49  
50 - 99  
100 - 199  
200 - 699  
700 +

Percent Occupancy

65%  
70%  
75%  
80%  
81.5%

(e) Replacement of Acute Care Bed Capacity. The evaluation of proposals for either partial or total replacement of acute care beds (i.e., construction of new space for existing acute care beds) shall be evaluated against the utilization of the total number of acute care beds in the applicant's hospital in relation to

utilization targets which follow. Any hospital proposing replacement of acute care beds must clearly demonstrate the need for maintaining the acute care bed capacity proposed within the application.

Total Licensed Acute Care Beds

1 - 49  
50 - 99  
100 - 199  
200 - 699  
700 +

Target Occupancy (Percent)

65%  
70%  
75%  
80%  
81.5%

(f) Heart-Lung Bypass Machines for Emergency Coverage. To protect cardiac surgery patients, who may require emergency procedures while scheduled procedures are underway, a need is determined for one additional heart-lung bypass machine whenever a hospital is operating an open heart surgery program with only one heart-lung bypass machine. The additional machine is to be used to assure appropriate coverage for emergencies and in no instance shall this machine be scheduled for use at the same time as the machine used to support scheduled open heart surgery procedures. A certificate of need application for a machine acquired in accordance with this provision shall be exempt from compliance with the performance standards set forth in 10 NCAC 03R .1715(2).

catheterization equipment, as that term is defined in 10 NCAC 03R .1613(14).

(c) Shared fixed cardiac catheterization equipment means fixed equipment that is used to perform both cardiac catheterization procedures and angiography procedures.

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);  
Temporary Adoption Eff. January 1, 2001.*

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);  
Temporary Adoption Eff. January 1, 2001.*

**10 NCAC 03R .6333 POLICIES FOR CARDIAC CATHETERIZATION EQUIPMENT AND SERVICES**

(a) Mobile cardiac catheterization equipment, as defined in 10 NCAC 03R .1613(14), and services shall only be approved for development on hospital sites.

(b) Fixed cardiac catheterization equipment means cardiac catheterization equipment that is not mobile cardiac

**10 NCAC 03R .6334 POLICIES FOR TRANSPLANTATION SERVICES**

(a) Allogeneic Bone Marrow Transplantation Services. Allogeneic bone marrow transplants shall be provided only in facilities having the capability of doing human leucocyte antigens (HLA) matching and of management of patients having solid organ transplants. At their present stage of development it is determined that allogeneic bone marrow transplantation services shall be limited to Academic Medical Center Teaching Hospitals.

(b) Solid Organ Transplantation Services. Solid organ transplant services shall be limited to Academic Medical Center Teaching Hospitals at this stage of the development of this service and availability of solid organs.

*History Note: Authority G.S. 131E-176(25); 131E-177(1);*

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131E-183(b);

Temporary Adoption Eff. January 1, 2001.

**10 NCAC 03R .6335 POLICY FOR MRI SCANNERS**  
Magnetic Resonance Imaging Scanners. "Fixed magnetic resonance imaging (MRI) scanners" means MRI Scanners that are not mobile MRI Scanners, as that term is defined in 10 NCAC 03R .2713(5).

*History Note:* Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);

Temporary Adoption Eff. January 1, 2001.

**10 NCAC 03R .6336 POLICY FOR PROVISION OF HOSPITAL-BASED LONG-TERM CARE NURSING CARE**

(a) A certificate of need may be issued to a hospital which is licensed under G.S. 131E, Article 5, and which meets the conditions set forth below and in 10 NCAC 03R .1100, to convert up to 10 beds from its licensed acute care bed capacity for use as hospital-based long-term nursing care beds without regard to determinations of need in 10 NCAC 03R .6322 if the hospital:

- (1) is located in a county which was designated as non-metropolitan by the U. S. Office of Management and Budget on January 1, 2001; and
- (2) on January 1, 2001, had a licensed acute care bed capacity of 150 beds or less.

The certificate of need shall remain in force as long as the Department of Health and Human Services determines that the hospital is meeting the conditions outlined in this Rule.

(b) "Hospital-based long-term nursing care" is defined as long-term nursing care provided to a patient who has been directly discharged from an acute care bed and cannot be immediately placed in a licensed nursing facility because of the unavailability of a bed appropriate for the individual's needs. Beds developed under this Rule are intended to provide placement for residents only when placement in other long-term care beds is unavailable in the geographic area. Hospitals which develop beds under this Rule shall discharge patients to other nursing facilities with available beds in the geographic area as soon as possible where appropriate and permissible under applicable law. Necessary documentation including copies of physician referral forms (FL 2) on all patients in hospital-based nursing units shall be made available for review upon request by duly authorized representatives of licensed nursing facilities.

(c) For purposes of this Rule, beds in hospital-based long-term nursing care shall be certified as a "distinct part" as defined by the Health Care Financing Administration. Beds in a "distinct part" shall be converted from the existing licensed bed capacity of the hospital and shall not be reconverted to any other category or type of bed without a certificate of need. An application for a certificate of need for reconverting beds to acute care shall be evaluated against the hospital's service needs utilizing target occupancies shown in 10 NCAC 03R .6332(d), without regard to the acute care bed need shown in 10 NCAC 03R .6306.

(d) A certificate of need issued for a hospital-based long-term nursing care unit shall remain in force as long as the following conditions are met:

- (1) the beds shall be certified for participation in the Title XVIII (Medicare) and Title XIX (Medicaid) Programs;
- (2) the hospital discharges residents to other nursing facilities in the geographic area with available beds when such discharge is appropriate and permissible under applicable law; and
- (3) patients admitted shall have been acutely ill inpatients of an acute hospital or its satellites immediately preceding placement in the unit.

(e) The granting of beds for hospital-based long-term nursing care shall not allow a hospital to convert additional beds without first obtaining a certificate of need.

(f) Where any hospital, or the parent corporation or entity of such hospital, any subsidiary corporation or entity of such hospital, or any corporation or entity related to or affiliated with such hospital by common ownership, control or management:

- (1) applies for and receives a certificate of need for long-term care bed need determinations in 10 NCAC 03R .6322; or
- (2) currently has nursing home beds licensed as a part of the hospital under G.S. 131E, Article 5; or
- (3) currently operates long-term care beds under the Federal Swing Bed Program (P.L. 96-499);

such hospital shall not be eligible to apply for a certificate of need for hospital-based long-term care nursing beds under this Rule. Hospitals designated by the State of North Carolina as Critical Access Hospitals pursuant to Section 1820(f) of the Social Security Act, as amended, which have not been allocated long-term care beds under provisions of G.S. 131E-175 through 131E-190, may apply to develop beds under this Rule. However, such hospitals shall not develop long-term care beds both to meet needs determined in 10 NCAC 03R .6322 and this Rule.

(g) Beds certified as a "distinct part" under this Rule shall be counted in the inventory of existing long-term care beds and used in the calculation of unmet long-term care bed need for the general population of a planning area. Applications for certificates of need pursuant to this Rule shall be accepted only for the February 1 review cycle from counties in HSA I, II, III and only for the March 1 review cycle from counties in HSA IV, V and VI. Beds awarded under this Rule shall be deducted from need determinations for the county as shown in 10 NCAC 03R .6322. The Department of Health and Human Services shall monitor this program and ensure that patients affected by this Rule are receiving appropriate services, and that conditions under which the certificate of need was granted are being met.

*History Note:* Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);

Temporary Adoption Eff. January 1, 2001.

**10 NCAC 03R .6337 POLICY FOR PLAN EXEMPTION FOR CONTINUING CARE RETIREMENT COMMUNITIES**

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(a) Qualified continuing care retirement communities may include from the outset, or add or convert bed capacity for long-term nursing care without regard to the bed need shown in 10 NCAC 03R .6322. To qualify for such exemption, applications for certificates of need shall show that the proposed long-term nursing bed capacity:

- (1) Will only be developed concurrently with, or subsequent to, construction on the same site of facilities for both of the following levels of care:
    - (A) independent living accommodations (apartments and homes) for persons who are able to carry out normal activities of daily living without assistance; such accommodations may be in the form of apartments, flats, houses, cottages, and rooms; and
    - (B) licensed adult care home beds for use by persons who, because of age or disability require some personal services, incidental medical services, and room and board to assure their safety and comfort.
  - (2) Will be used exclusively to meet the needs of persons with whom the facility has continuing care contracts (in compliance with the Department of Insurance statutes and rules) who have lived in a non-nursing unit of the continuing care retirement community for a period of at least 30 days. Exceptions shall be allowed when one spouse or sibling is admitted to the nursing unit at the time the other spouse or sibling moves into a non-nursing unit, or when the medical condition requiring nursing care was not known to exist or be imminent when the individual became a party to the continuing care contract.
  - (3) Reflects the number of beds required to meet the current or projected needs of residents with whom the facility has an agreement to provide continuing care, after making use of all feasible alternatives to institutional nursing care.
  - (4) Will not be certified for participation in the Medicaid program.
- (b) One half of the long-term nursing beds developed under this exemption shall be excluded from the inventory used to project bed need for the general population. All long-term nursing beds developed pursuant to the provisions of S.L. 1983, c. 920, or S.L. 1985, c. 445 shall be excluded from the inventory.

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);  
Temporary Adoption Eff. January 1, 2001.*

### **10 NCAC 03R .6338 POLICY FOR DETERMINATION OF NEED FOR ADDITIONAL NURSING BEDS IN SINGLE PROVIDER COUNTIES**

When a long-term care facility with fewer than 80 nursing care beds is the only nursing care facility within a county, it may apply for a certificate of need for additional nursing beds in order to bring the minimum number of beds available within the county to no more than 80 nursing beds without regard to the nursing bed need determination for that county as listed in 10 NCAC 03R .6322.

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);  
Temporary Adoption Eff. January 1, 2001.*

### **10 NCAC 03R .6339 POLICY FOR RELOCATION OF CERTAIN NURSING FACILITY BEDS**

A certificate of need to relocate existing licensed nursing facility beds to another county(ies) may be issued to a facility licensed as a nursing facility under G.S. 131E, Article 6, Part A, provided that the conditions set forth in this Rule and in 10 NCAC 03R .1100 and the review criteria in G.S. 131E-183(a) are met.

- (1) A facility applying for a certificate of need to relocate nursing facility beds shall demonstrate that:
  - (a) it is a non-profit nursing facility supported by and directly affiliated with a particular religion and that it is the only nursing facility in North Carolina supported by and affiliated with that religion;
  - (b) the primary purpose for the nursing facility's existence is to provide long-term care to followers of the specified religion in an environment which emphasizes religious customs, ceremonies, and practices;
  - (c) relocation of the nursing facility beds to one or more sites is necessary to more effectively provide long-term nursing care to followers of the specified religion in an environment which emphasizes religious customs, ceremonies, and practices;
  - (d) the nursing facility is expected to serve followers of the specified religion from a multi-county area; and
  - (e) the needs of the population presently served shall be met adequately pursuant to G.S. 131E-183.
- (2) Exemption from the provisions of 10 NCAC 03R .6322 shall be granted to a nursing facility for purposes of relocating existing licensed nursing beds to another county provided that it complies with all of the criteria listed in this Rule.
- (3) Any certificate of need issued under this Rule shall be subject to the following conditions:
  - (a) the nursing facility shall relocate beds in at least two stages over a period of at least six months or such shorter period of time as is necessary to transfer residents desiring to transfer to the new facility and otherwise make acceptable discharge arrangements for residents not desiring to transfer to the new facility; and
  - (b) the nursing facility shall provide a letter to the Licensure and Certification Section, on or before the date that the first group of beds are relocated, irrevocably committing the facility to relocate all of the nursing facility beds for which it has a certificate of need to relocate; and
  - (c) subsequent to providing the letter to the Licensure and Certification Section described in Subparagraph (3)(b) of this Rule, the nursing facility shall accept no new patients in the beds which are being relocated, except new patients

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who, prior to admission, indicate their desire to transfer to the facility's new location(s).

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);  
Temporary Adoption Eff. January 1, 2001.*

**10 NCAC 03R .6340 POLICY FOR TRANSFER OF BEDS FROM STATE PSYCHIATRIC HOSPITAL NURSING FACILITIES TO COMMUNITY FACILITIES**

(a) Beds in State Psychiatric Hospitals that are certified as nursing facility beds may be relocated to licensed nursing facilities. However, before nursing facility beds are transferred out of the State Psychiatric Hospitals, appropriate services shall be available in the community. State hospital nursing facility beds that are relocated to licensed nursing facilities shall be closed within 90 days following the date the transferred beds become operational in the community. Licensed nursing facilities proposing to operate transferred beds shall commit to serve the type of residents who are normally placed in nursing facility beds at the State psychiatric hospitals. To help ensure that relocated beds will serve those persons who would have been served by State psychiatric hospitals in nursing facility beds, a certificate of need application to transfer nursing facility beds from a State hospital shall include a written memorandum of agreement between the Director of the applicable State psychiatric hospital; the Chief of Adult Community Mental Health Services and the Chief of Institutional Services in the Division of MH/DD/SAS; the Secretary of Health and Human Services; and the person submitting the proposal.

(b) This Rule does not allow the development of new nursing care beds. Long-term nursing care beds transferred from State Psychiatric Hospitals to the community pursuant to 10 NCAC 03R .6340(a) shall be excluded from the inventory.

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);  
Temporary Adoption Eff. January 1, 2001.*

**10 NCAC 03R .6341 POLICIES FOR RELOCATION OF NURSING FACILITY BEDS**

Relocations of existing licensed nursing facility beds are allowed only within the host county and to contiguous counties currently served by the facility, except as provided in 10 NCAC 03R .6339. Certificate of need applicants proposing to relocate licensed nursing facility beds shall:

- (1) demonstrate that the proposal shall not result in a deficit in the number of licensed nursing facility beds in the county that would be losing nursing facility beds as a result of the proposed project, as reflected in the State Medical Facilities Plan in effect at the time the certificate of need review begins; and
- (2) demonstrate that the proposal shall not result in a surplus of licensed nursing facility beds in the county that would gain nursing facility beds as a result of the proposed project, as reflected in the State Medical Facilities Plan in effect at the time the certificate of need review begins.

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);  
Temporary Adoption Eff. January 1, 2001.*

**10 NCAC 03R .6342 POLICIES FOR MEDICARE-CERTIFIED HOME HEALTH SERVICES**

(a) Need Determination Upon Termination of County's Sole Medicare-Certified Home Health Agency. When a home health agency's board of directors, or in the case of a public agency, the responsible public body, votes to discontinue the agency's provision of Medicare-Certified home health services and to decertify the office and

- (1) the agency is the only Medicare-Certified home health agency with an office physically located in the county; and
- (2) the agency is not being lawfully transferred to another entity;

need for a new Medicare-Certified home health agency office in the county is thereby established through this paragraph. Following receipt of written notice of such decision from the home health agency's chief administrative officer, the Certificate of Need Section shall give public notice of the need for one Medicare-Certified home health agency office in the county, and the dates of the review of applications to meet the need. Such notice shall be given no less than 45 days prior to the final date for receipt of applications in a newspaper serving the county and to Medicare-Certified home health agencies located outside the county reporting serving county patients in the most recent licensure applications on file.

(b) Need Determination for at Least One Medicare-Certified Home Health Agency per County. When a county has no Medicare-Certified home health agency office physically located within the county's borders, need for a new Medicare-Certified home health agency office in the county is thereby established through this paragraph.

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);  
Temporary Adoption Eff. January 1, 2001.*

**10 NCAC 03R .6343 POLICY FOR RELOCATION OF DIALYSIS STATIONS**

Relocations of existing dialysis stations are allowed only within the host county and to contiguous counties currently served by the facility. Certificate of need applicants proposing to relocate dialysis stations shall:

- (1) demonstrate that the proposal shall not result in a deficit in the number of dialysis stations in the county that would be losing stations as a result of the proposed project, as reflected in the most recent Dialysis Report; and
- (2) demonstrate that the proposal shall not result in a surplus of dialysis stations in the county that would gain stations as a result of the proposed project, as reflected in the most recent Dialysis Report.

*History Note: Authority G.S. 131E-176(25); 131E-177(1);*



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131E-183(b);  
Temporary Adoption Eff. January 1, 2001.

**10 NCAC 03R .6344 POLICIES FOR PSYCHIATRIC INPATIENT FACILITIES**

(a) Transfer of Beds from State Psychiatric Hospitals to Community Facilities. Beds in the State psychiatric hospitals used to serve short-term psychiatric patients may be relocated to community facilities. However, before beds are transferred out of the State psychiatric hospitals, appropriate services and programs shall be available in the community. State hospital beds which are relocated to community facilities shall be closed within 90 days following the date the transferred beds become operational in the community. Facilities proposing to operate transferred beds shall commit to serve the type of short-term patients normally placed at the State psychiatric hospitals. To help ensure that relocated beds will serve those persons who would have been served by the State psychiatric hospitals, a proposal to transfer beds from a State hospital shall include a written memorandum of agreement between the area MH/DD/SAS program serving the county where the beds are to be located, the Secretary of Health and Human Services, and the person submitting the proposal.

(b) Allocation of Psychiatric Beds. A hospital submitting a Certificate of Need application to add inpatient psychiatric beds shall convert excess licensed acute care beds to psychiatric beds. In determining excess licensed acute care beds, the hospital shall subtract the average occupancy rate for its licensed acute care beds over the previous 12-month period from the appropriate target occupancy rate for acute care beds listed in 10 NCAC 03R .6332(d) and multiply the difference in the percentage figure by the number of its existing licensed acute care beds to calculate the excess licensed acute care beds.

(c) Linkages Between Treatment Settings. An applicant applying for a certificate of need for psychiatric inpatient facility beds shall document that the affected area mental health, developmental disabilities and substance abuse authorities have been contacted and invited to comment on the proposed services.

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);  
Temporary Adoption Eff. January 1, 2001.

**10 NCAC 03R .6345 POLICY FOR CHEMICAL DEPENDENCY TREATMENT FACILITIES**

In order to establish linkages between treatment settings, an applicant applying for a certificate of need for chemical dependency treatment beds, as defined in G.S. 131E-176(5b), shall document that the affected area mental health, developmental disabilities and substance abuse authorities have been contacted and invited to comment on the proposed services.

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);  
Temporary Adoption Eff. January 1, 2001.

**10 NCAC 03R .6346 POLICIES FOR INTERMEDIATE CARE FACILITIES FOR MENTALLY**

**RETARDED**

In order to establish linkages between treatment settings, an applicant applying for a certificate of need for intermediate care beds for the mentally retarded shall document that the affected area mental health, developmental disabilities and substance abuse authorities have been contacted and invited to comment on the proposed services.

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);  
Temporary Adoption Eff. January 1, 2001.

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**Rule-making Agency:** Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services

**Rule Citation:** 10 NCAC 14G .0102; 14J .0201, .0203-.0207, .0211-.0212; 14P .0101-.0102; 14Q .0101, .0303; 14R .0101, .0104-.0105, .0108-.0109

**Effective Date:**  
January 1, 2001 - 10 NCAC 14G .0102; 14J .0201, .0203-.0207; 14P .0101-.0102; 14Q .0101, .0303; 14R .0101, .0104-.0105  
February 1, 2001 - 10 NCAC 14J .0211-.0212; 14R .0108-.0109

**Findings Reviewed and Approved by:** Julian Mann, III

**Authority for the rulemaking:** G.S. 143B-147(a)(5)

**Reason for Proposed Action:** HB 1520 requires the Commission for MHDDAS to adopt rules to emphasize alternatives to the use of physical restraint, seclusion and isolation time-out for clients being served. It also requires the collection of data on the use of restraints and seclusion to reflect for each incidence, the type of procedure used, the length of time employed, alternatives considered or employed, and the effectiveness of the procedure or alternative employed. In addition, the Bill sets forth specific requirements for personnel and intensive staff training.

**Comment Procedures:** Any interested person may submit written comments on the proposed rule by mailing the comments to Mary Eldridge, Chief of Advocacy, Client Rights and Quality Improvement, Division of MHDDAS, 3009 Mail Service Center, Raleigh, NC 27699-3009.

**CHAPTER 14 – MENTAL HEALTH: GENERAL**

**SUBCHAPTER 14G – COMMITTEES AND PROCEDURES**

**SECTION .0100 – PURPOSE: SCOPE: DEFINITIONS**

**10 NCAC 14G .0102 DEFINITIONS**

(a) In addition to the definitions contained in this Rule, the terms defined in G.S. 122C-3, 122C-4 and 122C-53(f) also apply

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to all rules in Subchapters 14G, 14H, 14I, and 14J of this Chapter.

(b) As used in the rules in Subchapters 14G, 14H, 14I and 14J of this Chapter, the following terms have the meanings specified:

- (1) "Abuse" means the infliction of physical or mental pain or injury by other than accidental means, or unreasonable confinement, or the deprivation by an employee of services which are necessary to the mental and physical health of the client. Temporary discomfort that is part of an approved and documented treatment plan or use of a documented emergency procedure shall not be considered abuse.
- (2) "Basic necessities" means the essential items or substances needed to support life and health which include, but are not limited to, a nutritionally sound diet balanced during three meals per day, access to water and bathroom facilities at frequent intervals, seasonable clothing, medications to control seizures, diabetes and other like physical health conditions, and frequent access to social contacts.
- (3) "Client record" means any record made of confidential information.
- (4) "Clinically privileged" means authorization by the State Facility Director for a qualified professional to provide specific treatment/habilitation services to clients, within well-defined limits, based on the professional's education, training, experience, competence and judgment.
- (5) "Complaint" means an informal verbal or written expression of dissatisfaction, discontent, or protest by a client concerning a situation within the jurisdiction of the state facility. A complaint would usually but not necessarily precede a grievance.
- (6) "Consent" means concurrence by a client or his legally responsible person following receipt of sufficient information by the qualified professional who will administer the proposed treatment or procedure. Informed consent implies that the client or his legally responsible person was provided with sufficient information concerning proposed treatment, including both benefits and risks, in order to make an educated decision with regard to such treatment.
- (7) "Dangerous articles or substances" means, but is not limited to, any weapon or potential weapon, heavy blunt object, sharp objects, potentially harmful chemicals, or drugs of any sort, including alcohol.
- (8) "Deputy Director" means a member of the management staff of the Division with responsibility for the state facilities relative to a specific disability area. Such directors may include the Deputy Director of Mental Health, Deputy Director of Mental Retardation, Deputy Director of Substance Abuse, or such deputy's designee.
- (9) "Director of Clinical Services" means Medical Director, Director of Medical Services or such person acting in the position of Director of Clinical Services, or his designee.
- (10) "Division Director" means the Director of the Division or his designee.
- (11) "Emergency" means a situation in a state facility in which a client is in imminent danger of causing abuse or injury to self or others, or when substantial property damage is occurring as a result of unexpected and severe forms of inappropriate behavior, and rapid intervention by the staff is needed. [See Subparagraph (b)(22) of this Rule for definition of medical emergency].
- (12) "Emergency surgery" means an operation or surgery performed in a medical emergency [as defined in Subparagraph (b)(22) of this Rule] where informed consent cannot be obtained from an authorized person, as specified in G.S. 90-21.13, because the delay would seriously worsen the physical condition or endanger the life of the client.
- (13) "Exclusionary time-out" means the removal of a client to a separate area or room from which exit is not barred for the purpose of modifying behavior.
- (14) "Exploitation" means the use of a client or his resources for another person's profit, business or advantage. "Exploitation" includes borrowing, taking or using personal property from a client with or without the client's permission.
- (15) "Forensic Division" means the inpatient facility at Dorothea Dix Hospital which serves clients who are:
  - (A) admitted for the purpose of evaluation for capacity to proceed to trial;
  - (B) found not guilty by reason of insanity;
  - (C) determined incapable of proceeding to trial; or
  - (D) deemed to require a more secure environment to protect the health, safety and welfare of clients, staff and the general public.
- (16) "Grievance" means a formal written complaint by or on behalf of a client concerning a circumstance would usually but not necessarily follow a complaint.
- (17) "Human Rights Committee" means a committee, appointed by the Secretary, to act in a capacity regarding the protection of client rights.
- (18) "Independent psychiatric consultant" means a licensed psychiatrist not on the staff of the state facility in which the client is being treated. The psychiatrist may be in private practice, or be employed by another state facility, or be employed by a facility other than a state facility as defined in G.S. 122C-3(14).
- (19) "Interpreter services" means specialized communication services provided for the hearing impaired by certified interpreters.
- (20) "Involuntary client" means a person admitted to any regional psychiatric hospital or alcoholic rehabilitation center under the provisions of Article 5, Parts 7, 8 or 9 of G.S. 122C and includes but it is not limited to clients detained pending a district court hearing and clients involuntarily committed after a district court hearing. This term shall also include individuals who are defendants in criminal actions and are being evaluated in a state facility for mental responsibility or mental

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competency as a part of such criminal proceedings as specified in G.S. 15A-1002 unless a valid order providing otherwise is issued from a court of competent jurisdiction and the civil commitment of defendants found not guilty by reason of insanity as specified in G.S. 15A-1321.

- (21) "Isolation time-out" means the removal of a client to a separate room from which exit is barred but which is not locked and where there is continuous supervision by staff for the purpose of modifying behavior.
- (22) "Major physical injury" means damage caused to the body resulting in substantial bleeding or contusion of tissues; fracture of a bone; damage to internal organs; loss of consciousness; loss of normal neurological function (inability to move or coordinate movement); or any other painful condition caused by such injury.
- (23) "Medical emergency" means a situation where the client is unconscious, ill, or injured, and the reasonably apparent circumstances require prompt decisions and actions in medical or other health care, and the necessity of immediate health care treatment is so reasonably apparent that any delay in the rendering of the treatment would seriously worsen the physical condition or endanger the life of the client.
- (24) "Minimal risk research" means that the risks of harm anticipated in the proposed research are not greater, considering probability and magnitude, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.
- (25) "Minor client" means a person under 18 years of age who has not been married or who has not been emancipated by a decree issued by a court of competent jurisdiction or is not a member of the armed forces.
- (26) "Neglect" means the failure to provide care or services necessary to maintain the mental health, physical health and well-being of the client.
- (27) "Neuroleptic medication" means a category of psychotropic drugs used to treat schizophrenia and related disorders. Neuroleptics are the only category of psychotropic drugs with long-term side effects of major consequence (e.g., tardive dyskinesia). Examples of neuroleptic medications are Chlorpromazine, Thioridazine and Haloperidol.
- (28) "Normalization" means the principle of helping the client to obtain an existence as close to normal as possible, taking into consideration the client's disabilities and potential, by making available to him patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society.
- (29) "Person standing in loco parentis" means one who has put himself in the place of a lawful parent by assuming the rights and obligations of a parent without formal adoption.

(30) "Physical Restraint" means the application or use of any manual method of restraint that restricts freedom of movement; or the application or use of any physical or

mechanical device that restricts freedom of movement or normal access to one's body, including material or equipment attached or adjacent to the client's body that he or she cannot easily remove. Holding a client in a therapeutic hold or any other manner that restricts his or her movement constitutes manual restraint for that client. Mechanical devices may restrain a client to a bed or chair, or may be used as ambulatory restraints. Examples of mechanical devices include cuffs, ankle straps, sheets or restraining shirts, arm splints, posey mittens, and helmets. Excluded from this definition of physical restraint are physical guidance, gentle physical prompting techniques, escorting and therapeutic holds used solely for the purpose of escorting a client who is walking; soft ties used solely to prevent a medically ill client from removing intravenous tubes, indwelling catheters, cardiac monitor electrodes, or similar medical devices; and prosthetic devices or assistive technology which are designed and used to increase client adaptive skills.

~~(30)~~(31) "Protective devices" means an intervention which provides support for weak and feeble clients or enhances the safety of behaviorally disordered clients. Such devices may include posey vests, geri-chairs or table top chairs to provide support and safety for clients with major physical handicaps; devices such as helmets and mittens for self-injurious behaviors; or devices such as soft ties used to prevent medically ill clients from removing intravenous tubes, indwelling catheters, cardiac monitor electrodes, or similar medical devices. As provided in Rule .0207 of Subchapter 14J, the use of a protective device for behavioral control shall comply with the requirements specified in Rule .0203 of Subchapter 14J.

~~(31)~~(32) "Psychosurgery" means surgical procedures for the intervention in or alteration of a mental, emotional or behavior disorder.

~~(32)~~(33) "Psychotropic medication" means medication with the primary function of treating mental illness, personality or behavior disorders. It includes, but is not limited to, antipsychotics, anti-depressants, minor tranquilizers and lithium.

~~(33)~~(34) "Qualified professional" means any person with appropriate training or experience in the professional fields of mental health care, mental illness, mental retardation, or substance abuse, including but not limited to, physicians, psychologists, social workers, registered nurses, qualified mental retardation professionals and qualified alcoholism or drug abuse professionals, as these terms are defined in 10 NCAC 14K .0103, "Licensure Rules for Mental Health, Mental Retardation and Other Developmental Disabilities, and Substance Abuse Facilities", division publication APSM 40-2. In addition, qualified professionals shall include special education instructors, physical therapists, occupational therapists, speech therapists and any other recognized professional group designated by the State Facility Director.

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~~(34)~~(35) "Regional alcoholic rehabilitation center" means a state facility for substance abusers as specified in G.S. 122C-181(a)(3).

~~(35)~~(36) "Regional mental retardation center" means a state facility for the mentally retarded as specified in G.S. 122C-181(a)(2).

~~(36)~~(37) "Regional psychiatric hospital" means a state facility for the mentally ill as specified in G.S. 122C-181(a)(1).

~~(37)~~(38) "Representative payee" means the person, group, or facility designated by a funding source, such as Supplemental Security Income (SSI), to receive and handle funds according to the guidelines of the source on behalf of a client.

~~(38)~~(39) "Research" means inquiry involving a trial or special observation made under conditions determined by the investigator to confirm or disprove an hypothesis or to explicate some principle or effect.

~~(39)~~(40) "Respite client" means a client admitted to a mental retardation center for a short-term period, normally not to exceed 30 days. The primary purpose of such admission is to provide a temporary interval of rest or relief for the client's regular caretaker.

~~(40)~~(41) "Responsible professional" shall have the meaning as specified in G.S. 122C-3 except the "responsible professional" shall also be a qualified professional as defined in Subparagraph (b)(32) in this Rule.

~~(41) "Restraint" means the limitation of one's freedom of movement. In accordance with G.S. 122C-60, restraint includes the following:~~

~~(A) mechanical restraint which is restraining a client with the intent of controlling behavior with mechanical devices which include, but are not limited to, cuffs, ankle straps, sheets or restraining shirts. This does not include handcuffs used for the purpose of escorting forensic clients;~~

~~(B) physical restraint which is restraining a client by physically holding or subduing the client until he is calm.~~

(42) "Seclusion" means isolating a client in a separate locked room for the purpose of controlling a client's behavior, except that in the Forensic Division at Dorothea Dix Hospital, seclusion shall not include the routine use of locked rooms, isolation of clients admitted for evaluation of capacity to proceed to trial who are considered to be an escape risk, or separation of juveniles requiring separation from adult clients.

(43) "State Facility Director" means the chief administrative officer or manager of a state facility or his designee.

(44) "Strike" means, but is not limited to, hitting, kicking, slapping or beating whether done with a part of one's body or with an object.

(45) "Timeout" means the removal of a client from other clients to another space within the same activity area for the purpose of modifying behavior.

(46) "Treatment" means the act, method, or manner of habituating or rehabilitating, caring for or managing a client's physical or mental problems.

(47) "Treatment plan" means a written individual plan of treatment or habilitation for each client to be undertaken by the treatment team and includes any documentation of restriction of client's rights.

(48) "Treatment team" means an interdisciplinary group of qualified professionals sufficient in number and variety by discipline to adequately assess and address the identified needs of the client.

(49) "Unit" means an integral component of a state facility distinctly established for the delivery of one or more elements of service to which specific staff and space are assigned, and for which responsibility has been clearly assigned to a director, supervisor, administrator, or manager.

(50) "Voluntary client" means a person admitted to a state facility under the provisions of Article 5, Parts 2, 3, 4 or 5 of G.S. 122C.

*History Note: Authority G.S. 122C-3; 122C-4; 122C-51; 122C-53(f); 131E-67; 143B-147; Eff. October 1, 1984; Amended Eff. June 1, 1990; April 1, 1990; July 1, 1989; Temporary Amendment Eff. January 1, 1998; Amended Eff. April 1, 1999; Temporary Amendment Eff. January 1, 2001.*

### SUBCHAPTER 14J – TREATMENT OR HABILITATION RIGHTS

#### SECTION .0200 – PROTECTIONS REGARDING CERTAIN PROCEDURES

##### 10 NCAC 14J .0201 LEAST RESTRICTIVE ALTERNATIVE AND PROHIBITED PROCEDURES

(a) It shall be a goal of each state facility to provide services using the least restrictive, most appropriate and effective positive treatment modality for each client.

(b) The use of a restrictive intervention procedure designed to reduce a behavior shall always be accompanied by positive treatment or habilitation methods which shall include:

(1) the teaching and reinforcement of behaviors that are non-injurious;

(2) the improvement of conditions associated with non-injurious behaviors, such as an enriched educational and social environment; and

(3) the alteration or elimination of environmental conditions that are reliably correlated with self-injury.

~~(a)~~(c) Each state facility shall develop policies relative to prohibited interventions. Such policies shall specify:

(1) those interventions which have been prohibited by statute or rule which shall include:

(A) any intervention which would be considered corporal punishment under G.S. 122C-59;

(B) the contingent use of painful body contact;

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- (C) substances administered to induce painful bodily reactions exclusive of Antabuse;
  - (D) electric shock (excluding medically administered electroconvulsive therapy);
  - (E) insulin shock; and
  - (F) psychosurgery.
- (2) those interventions specified in this Subchapter determined by the State Facility Director to be unacceptable for use in the state facility. Such policies shall specify interventions prohibited by funding sources including the use of seclusion or the emergency use of isolation time out in an ICF/MR facility.
- ~~(b)(d)~~ In addition to the procedures prohibited in Paragraph ~~(a)(c)~~ of this Rule, the State Facility Director shall specify other procedures which shall be prohibited.

*History Note: Authority G.S. 122C-51; 122C-57; 122C-59; 131E-67; 143B-147;  
Eff. October 1, 1984;  
Amended Eff. November 1, 1993; July 1, 1989;  
Temporary Amendment Eff. January 1, 2001.*

### 10 NCAC 14J .0203 GENERAL POLICIES REGARDING INTERVENTIVE PROCEDURES

- (a) This Rule governs the policies and requirements regarding the use of the following interventions:
- (1) seclusion;
  - (2) ~~mechanical-physical~~ restraints ~~(other than protective devices as covered in Rule .0207 of this Section)~~ including:
    - (A) ~~mechanical restraint~~ restraints (including protective devices used for behavioral control as specified in Rule .0207(b) of this Section); to a bed, chair or other nonmoveable object, or
    - (B) ~~ambulatory manual~~ restraints;
  - (3) isolation time out;
  - (4) exclusionary time out for more than 15 minutes;
  - (5) time out for more than one hour;
  - (6) contingent withdrawal or delay of access to personal possessions or goods to which the client would ordinarily be entitled;
  - (7) consistent deprivation of items or cessation of an activity which the client is scheduled to receive (other than basic necessities); and
  - (8) overcorrection which the client resists.
- (b) The State Facility Director shall develop policies and procedures for those interventions determined to be acceptable for use in the state facility. Such policies and procedures shall include that:
- (1) appropriate positive alternatives and less restrictive alternatives are considered and used whenever possible prior to the use of seclusion, physical restraint or isolation time out; and
  - (2) appropriate consideration is given to the client's health status before, during and after utilization of a restrictive intervention, including:
    - (A) review of the client's health history or the comprehensive health assessment conducted upon

admission to a facility. The health history or comprehensive health assessment shall include the identification of pre-existing medical conditions or any disabilities and limitations that would place the client at greater risk during the use of restrictive interventions;

- (B) a health status check immediately prior to the use of a restrictive intervention which shall include observation of the client's breathing, and a health status check immediately following application of a mechanical restraint which shall include assessment of the client's circulation, range of motion in the extremities, vital signs, and physical and psychological status and comfort;
- (C) continuous monitoring by an individual trained and certified in the use of cardiopulmonary resuscitation of the client's health status during the use of manual restraint; and
- (D) continued monitoring by an individual trained and certified in the use of cardiopulmonary resuscitation of the client's health status for a minimum of 30 minutes subsequent to the termination of a restrictive intervention.

~~(4)(3)~~ procedures for ensuring that the competent adult client or legally responsible person of a minor client or incompetent adult client is informed in a manner he or she can understand:

- (A) of the general types of intrusive interventions that are authorized for use by the state facility; and
- (B) that the legally responsible person can request notification of each use of an intervention as specified in this Rule, in addition to those situations required by G.S. 122C-62;

~~(2)(4)~~ provisions for humane, secure and safe conditions in areas used for the intervention, such as adequate ventilation, light, and a room temperature consistent with the rest of the state facility;

~~(3)(5)~~ appropriate attention paid to the need for fluid intake and the provision of regular meals, bathing, and the use of the toilet. Such attention shall be documented in the client record; and

~~(4)(6)~~ procedures for assuring that when an intervention as specified in this Rule has been used with a client three or more times in a calendar month, the following requirements are met:

- (A) A treatment/habilitation plan shall be developed within 10 working days of the third intervention. The treatment/habilitation plan shall include, but not be limited to:
  - (i) indication of need;
  - (ii) specific description of problem behavior;
  - (iii) specific goals to be achieved and estimated duration of procedures;
  - (iv) specific early interventions to prevent tension from escalating to the point of loss of control whenever possible;

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- (v) consideration, whenever possible, for client's preference for the type of physical restraint to be used;
  - (vi) specific procedure(s) to be employed;
  - (vii) specific methodology of the intervention;
  - (viii) methods for measuring treatment efficacy;
  - (ix) guidelines for discontinuation of the procedure;
  - (x) the accompanying positive treatment or habilitation methods which shall be at least as strong as the negative aspects of the plan;
  - (xi) specific limitations on approved uses of the intervention per episode, per day and requirements for on-site assessments by the responsible professional; and
  - (xii) description of any requirements in Rule .0206 of this Section to be incorporated into the plan.
- (B) In emergency situations, with the approval of the State Facility Director, the treatment/habilitation team may continue to use the intervention until the planned intervention is addressed in the treatment/habilitation plan.
- (C) The treatment/habilitation team shall explain the intervention and the reason for the intervention to the client and the legally responsible person, if applicable, and document such explanation in the client record.
- (D) Before implementation of the planned intervention, the treatment/habilitation ~~team~~ team with the participation of the client and legally responsible person if applicable, shall approve the treatment/habilitation plan and consent shall be obtained as specified in Rule .0210~~(d)~~(e) in this Section.
- (E) The use of the intervention shall be reviewed at least ~~monthly~~ by the treatment/habilitation team and at least quarterly, if still in effect, by a designee of the State Facility Director. The designee of the State Facility Director may not be a member of the client's treatment/habilitation team. Reviews shall be documented in the client record.
- (F) Treatment/habilitation plans which include these interventions shall be subject to review by the Human Rights Committee in compliance with confidentiality rules as specified in 10 NCAC 14G.
- (G) Each treatment/habilitation team shall maintain a record of the use of the intervention. Such records or reports shall be available to the Human Rights Committee and internal client advocate within the constraints of 10 NCAC 18D .0215 and G.S. 122C-53(g).
- (H) The State Facility Director shall follow the Right to Refuse Treatment Procedures as specified in Section .0300 of this Subchapter.

- (I) The interventions specified in this Rule shall never be the sole treatment modality designed to eliminate the target behavior. The interventions are to be used consistently and shall always be accompanied by positive treatment or habilitation methods.
- (c) Whenever the interventions as specified in this Subchapter result in the restriction of a right specified in G.S. 122C-62(b) and (d), procedures specified in G.S. 122C-62(e) shall be followed. Exception to this Rule includes the use of seclusion, physical restraint and isolation time out, which is regulated in Rule .0206 of this Section.
- (d) The State Facility Director shall assure by documentation in the personnel records that state facility employees who authorize interventions shall be privileged to do so, and state facility employees who implement interventions shall be appropriately trained and shall demonstrate competence in the area of such interventions, as well as in the use of alternative approaches.
- (e) The State Facility Director shall maintain a statistical record that reflects the frequency and duration of the individual uses of interventions specified in this Rule. This statistical record shall be made available to the Human Rights Committee and the Division at least quarterly.

*History Note: Authority G.S. 122C-51; 122C-53; 122C-60; 122C-62; 131E-67; 143B-147; Eff. October 1, 1984; Amended Eff. November 1, 1993; July 1, 1989; Temporary Amendment Eff. January 1, 2001.*

### 10 NCAC 14J .0204 INDICATIONS FOR USE OF SECLUSION AND ISOLATION TIME OUT

Seclusion and isolation time out shall be used only:

- (1) in those situations specified in G.S. 122C-60, which include:
  - (a) when the client is in imminent danger of causing injury to self or others;
  - (b) when substantial property damage is occurring; or
  - (c) as a measure of therapeutic treatment as specified in Rule .0211 of this Section; and
- (2) after less restrictive measures have been attempted and have proven ineffective. Less restrictive measures that shall be considered include:
  - (a) counseling;
  - (b) environmental changes;
  - (c) education techniques; and
  - (d) interruptive or re-direction techniques.
- (3) after appropriate consideration of the client's health status as specified in Rule .0203(b) of this Section.

*History Note: Authority G.S. 122C-51; 122C-53; 122C-60; 122C-62; 131E-67; 143B-147; Eff. October 1, 1984; Amended Eff. November 1, 1993; April 1, 1990; July 1, 1989; Temporary Amendment Eff. January 1, 2001.*

### 10 NCAC 14J .0205 INDICATIONS FOR USE OF PHYSICAL RESTRAINTS

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Restraints Physical restraints shall be used only:

- (1) when the client is in imminent danger of causing injury to self or others; ~~or~~
- (2) when substantial property damage is occurring; or
- ~~(2)~~(3) as a measure of therapeutic treatment as specified in Rule .0211 of this Section; and
- (4) after appropriate consideration of the client's health status as specified in Rule .0203(b) of this Section; and
- ~~(3)~~(5) after ~~seclusion or isolation time out a less restrictive alternative~~ has been attempted, or clinically has been determined and documented to be clinically inappropriate or inadequate to avoid injury. Less restrictive alternatives that shall be considered include but are not limited to:
  - (a) counseling;
  - (b) environmental changes;
  - (c) education techniques; and
  - (d) interruptive or re-direction techniques.

*History Note:* Authority G.S. 122C-51; 122C-53; 122C-60; 131E-67; 143B-147;  
*Eff. October 1, 1984;*  
*Amended Eff. November 1, 1993; July 1, 1989;*  
*Temporary Amendment Eff. January 1, 2001.*

### 10 NCAC 14J .0206 PROCEDURES: SECLUSION, PHYSICAL RESTRAINTS, OR ISOLATION TIME OUT

(a) This Rule delineates the procedures to be followed for use of seclusion, physical restraints, or isolation time out in addition to the procedures specified in Rule .0203 of this Section.

(b) This Rule governs the use of physical or behavioral interventions which are used to terminate a behavior or action in which a client is in imminent danger of injury to self or other persons or when substantial property damage is occurring, or which are used as a measure of therapeutic treatment. Such interventions include seclusion, isolation time out, and mechanical-physical restraints listed in Subparagraphs (a)(1), (2) and (3) of Rule .0203 of this Section.

(c) Seclusion, physical restraints, or isolation time out may only be used when other less restrictive alternatives are not feasible, as delineated in Rules .0204 and .0205 of this Section.

(d) If determined to be acceptable for use within the state facility, the State Facility director shall establish written policies and procedures that govern the use of seclusion, physical restraints, or isolation time out which shall include the following:

- (1) techniques for seclusion, physical restraints, or isolation time out which are written and approved;
- (2) provision, to both new clinical and habilitation staff as part of in-service training, and as a condition of continued employment, for those authorized to use or apply intrusive interventions which shall include, but not be limited to:
  - (A) competency-based training and periodic reviews on the use of seclusion, physical restraints, or isolation time out; and

- (B) skills for less intrusive interventions specified in Rules .0203 and .0204 of this Section;
- (3) process for ~~identifying~~ identifying, training, assessing the competence of and privileging state facility employees who are authorized to use such interventions;
- (4) provisions that a qualified or responsible professional shall:
  - (A) meet with the client and review the use of the intervention as soon as possible but at least within one hour after the initiation of its use;
  - (B) verify the inadequacy of appropriate positive alternatives and less restrictive intervention techniques;
  - (C) document in the client record evidence of approval or disapproval of continued use; and
  - (D) inspect to ensure that any devices to be used are in good repair and free of tears and protrusions;
- (5) procedures for documenting the intervention which occurred to include, but not be limited to:
  - (A) consideration that was given to the health status of the client prior to the use of the restrictive intervention;
  - ~~(A)~~(B) the rationale for the use of the intervention which addresses attempts at and inadequacy of appropriate positive alternatives and less restrictive intervention techniques; this shall contain a description of the specific behaviors justifying the use of seclusion, physical restraints, or isolation time out;
  - ~~(B)~~(C) notation of the frequency, intensity, and duration of the behavior and any precipitating circumstances contributing to the onset of the behavior;
  - ~~(C)~~(D) description of the intervention and the date, time and duration of its use;
  - ~~(D)~~(E) estimated amount of additional time needed in seclusion, physical restraint or isolation time out;
  - ~~(E)~~(F) signature and title of the state facility employee responsible for the use of the intervention; and
  - ~~(F)~~(G) the time that the client was met with by the responsible professional;
- (6) procedures for the notification of others to include:
  - (A) those to be notified as soon as possible but no more than one working day after the behavior has been controlled to include:
    - (i) the treatment/habilitation team, or its designee, after each use of the intervention;
    - (ii) a designee of the State Facility Director; and
    - (iii) the internal client advocate, in accordance with the provisions of G.S. 122C-53(g); and
  - (B) immediate notification ~~in a timely fashion~~ of the legally responsible person of a minor client or an

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incompetent adult client when such notification has been requested.

(e) Seclusion, physical restraint and isolation time out shall not be employed as ~~punishment~~ coercion, punishment, or retaliation or for the convenience of staff or due to inadequate staffing or be used in a manner that causes harm or pain to the client. Care shall be taken to minimize any physical or mental discomfort in the use of these interventions.

(f) Whenever a client is in seclusion, physical restraint or isolation time out ~~for more than 24 continuous hours~~, the client's rights, as specified in G.S. 122C-62, are restricted. The documentation requirements in this Rule shall satisfy the requirements specified in G.S. 122C-62(e) for restriction of rights.

(g) Whenever seclusion, physical restraint or isolation time out is used more than three times in a calendar month:

- (1) a pattern of behavior has developed and future emergencies can be reasonably predicted; and
- (2) dangerous behavior can no longer be considered unanticipated; and
- (3) emergency procedures shall be addressed as a planned intervention in the treatment/habilitation plan.

(h) In addition to the requirements in this Rule, additional safeguards as specified in Rule .0210 of this Section shall be initiated whenever:

- (1) a client exceeds spending 40 hours, or more than one episode of 24 or more continuous hours of time in emergency seclusion, physical restraint or isolation time out in a calendar month; or
- (2) seclusion, physical restraint or isolation time out is:
  - (A) used as a measure of therapeutic treatment as specified in G.S. 122C-60; and
  - (B) limited to specific planned behavioral interventions designed for the extinction of dangerous, aggressive or undesirable behaviors.

(i) The written approval of the State Facility Director or designee shall be required when seclusion, physical restraint or isolation time out is utilized for longer than 24 continuous hours.

(j) Standing orders or PRN orders shall not be used to authorize the use of seclusion, physical restraint or isolation time out.

(k) The client shall be removed from seclusion, physical restraint or isolation time out when:

- (1) the client no longer demonstrates the behavior which precipitated the seclusion, physical restraint or isolation time out; however,
- (2) the client shall be removed immediately from seclusion, physical restraint or isolation time out if monitoring of the health status of the client indicates that there is a significant risk to the health or safety of the client;  
~~(2) in no case shall the client remain in seclusion, restraint or isolation time out longer than an hour after gaining behavioral control; and~~
- (3) if the client is unable to gain self-control within the time frame specified in the authorization, a new authorization shall be obtained.

(l) Whenever seclusion, physical restraints or isolation time out are used on an emergency basis prior to inclusion in the

treatment/ habilitation plan, the following procedures shall be followed:

- (1) A state facility employee authorized to administer emergency interventions may employ such procedures for up to 15 minutes without further authorization.
- (2) A qualified professional may authorize the continued use of seclusion, physical restraints, or isolation time out for up to one hour from the initial employment of the intervention if the qualified professional:
  - (A) has experience and training in the use of seclusion, physical restraints, or isolation time out; and
  - (B) has been privileged to employ and authorize such interventions .
- (3) If a qualified professional is not immediately available to conduct a face-to-face assessment of the client, but after discussion with the state facility employee, the qualified professional concurs that the intervention is justified for longer than 15 minutes, then the qualified professional:
  - (A) may verbally authorize the continuation of the intervention for up to one hour;
  - (B) shall meet with and assess the client within one hour after authorizing the continued use of the intervention; and
  - (C) shall immediately consult with the professional responsible for the client's treatment/habilitation plan, if the intervention needs to be continued for longer than one hour.
- (4) The responsible professional shall authorize the continued use of seclusion, physical restraints, or isolation time out for periods over one hour.
- (5) If the responsible professional is not immediately available to conduct a clinical assessment of the ~~client,~~ client but but, after consideration of the health status of the client and discussion with the qualified ~~professional~~ professional, concurs that the intervention is justified for longer than one hour the responsible professional:
  - (A) may verbally authorize the continuation of the intervention until an onsite assessment of the client can be made; however,
  - (B) if such authorization cannot be obtained, the intervention shall be discontinued.
- (6) If the responsible professional and the qualified professional are the same person, the documentation requirements of this Rule may be done at the time of the documentation required by Subparagraph .0206(d)(5) of this Section.
- (7) The responsible professional, or if the responsible professional is unavailable, the on-service or covering professional, shall meet with and assess the client within three hours after the client is first placed in seclusion, physical restraints, or isolation time out, and document:
  - (A) the reasons for continuing seclusion, physical restraints, or isolation time out; and
  - (B) the client's response to the intervention. In addition, the responsible professional shall provide an evaluation of the episode and propose



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recommendations regarding specific means for preventing future episodes. Clients who have been placed in seclusion, physical restraints, or isolation time out and released in less than three hours shall be examined by the responsible professional who authorized the intervention no later than 24 hours after the episode.

- (8) Each incident shall be reviewed by the treatment team, which shall include possible alternative actions and specific means for preventing future episodes.
- (m) While the client is in seclusion, physical restraint or isolation time out, the following precautions shall be followed:
- (1) Whenever a client is in seclusion:
- (A) periodic observation of the client shall occur at least every 15 minutes to assure the safety of the client. Observation ~~may~~ shall include direct line of sight or the use of video surveillance that ensures that the client is within the view of the state facility employee observing the client;
- (B) appropriate attention shall be paid to the provision of regular meals, bathing and the use of the toilet; and
- (C) such observation and attention shall be documented in the client record.
- (2) Whenever a client is in physical restraint, the facility shall provide:
- (A) the degree of observation needed to assure the safety of ~~those~~ the client placed in physical restraint. The degree of observation needed is determined at the time of application of the restraint after consideration of the following:
- (i) the type of physical restraint used;
- (ii) the individual ~~patient~~ situation; ~~client's situation~~ situation, including the health status of the client; and
- (iii) the existence of any specific manufacturer's warning concerning the safe use of a particular product;
- Observation ~~may~~ shall include direct line of sight or the use of video surveillance that ensures that the client is within the view of the state facility employee observing the client. In no instance shall observation be less frequent than at 15-minute intervals.
- (B) appropriate attention to the provision of regular meals, bathing and the use of the toilet; ~~and~~
- (C) documentation of the above observation and attention in the client ~~record~~ record; ~~and~~
- (D) If monitoring of the health status of the client indicates that there is a risk to the safety of the client, a state facility employee immediately shall seek medical attention for the client.
- (3) Whenever a client is in isolation time out there shall be:
- (A) a state facility employee in attendance with no other immediate responsibility than to monitor the client who is placed in isolation time out;

- (B) continuous observation and verbal interaction with the client when appropriate to prevent tension from escalating; and
- (C) documentation of such observation and verbal interaction in the client record.

(4) Whenever a client is simultaneously in seclusion and physical restraint, the client shall be continuously monitored by an assigned staff member. Monitoring shall be conducted face to face or by both video and audio equipment that is continuously monitored by a staff person who is in close proximity to the client. The use of video and audio equipment does not eliminate the requirement to assess frequently the client's needs and health status.

- (n) Reviews and reports on the use of seclusion, physical restraints, or isolation time out shall be conducted as follows:
- (1) the State Facility Director or designee shall review all uses of seclusion, physical restraints, or isolation time out in a timely fashion and investigate unusual patterns of utilization to determine whether such patterns are unwarranted. ~~unwarranted~~; and At least quarterly, the State Facility Director or designee shall review all uses of seclusion and physical restraint to monitor effectiveness, identify trends and take corrective action where necessary.
- (2) each State Facility Director shall maintain a log which includes the following information on each use of seclusion, physical restraints, or isolation time out:
- (A) name of the client;
- (B) name of the responsible professional;
- (C) date of each intervention;
- (D) time of each intervention;
- (E) duration of each ~~intervention~~ intervention;
- (F) name of the state facility employee who implemented the restrictive intervention;
- (G) date and time of the debriefing and planning conducted with the client and the legally responsible person if applicable and staff to eliminate or reduce the probability of the future use of restrictive interventions; and
- (H) negative effects of the restrictive intervention, if any, on the health status of the client.
- (o) Nothing in this Rule shall be interpreted to prohibit the use of voluntary seclusion, physical restraints, or isolation time out at the client's request; however, the procedures in Paragraphs (a) through (n) of this Rule shall apply.

*History Note: Authority G.S. 122C-51; 122C-53; 122C-57; 122C-60; 122C-62; 131E-67; 143B-147; Eff. October 1, 1984; Amended Eff. July 1, 1994; January 4, 1994; November 1, 1993; April 1, 1990; Temporary Amendment Eff. January 1, 2001.*

### 10 NCAC 14J .0207 PROTECTIVE DEVICES

- (a) Whenever protective devices that cannot be removed at will by the client are utilized ~~for~~ as physical restraint of clients, the state facility shall:

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- (1) assure that the protective restraint shall be used only to promote the client's physical safety;
  - (2) assure that the factors putting the client's physical safety at risk are fully explored and addressed in treatment planning with the participation of the client and legally responsible person is applicable;
  - (3) document the utilization of protective restraint in the client's nursing care plan, when applicable, and treatment/habilitation plan;
  - (4) document what appropriate positive alternatives and less restrictive alternatives were considered, whether those alternatives were tried, and why those alternatives were unsuccessful;
  - (5) assure that the protective restraint is used only upon the written order of a qualified professional that specifies the type of protective restraint device and the duration and circumstances under which the protective restraint device is used;
  - (6) assure and document that the staff applying the protective restraint is properly trained and has demonstrated competence to do so;
  - (7) inspect to ensure that the devices are in good repair and free of tears and protrusions;
  - (8) determine, at the time of application of the protective restraint device, the degree of observation needed to assure the safety of those placed in restraints:
    - (A) The type of protective restraint device used, the individual patient situation, and the existence of any specific manufacturer's warning concerning the safe use of a particular product should all be considered in determining the degree of observation needed.
    - (B) Observation may shall include direct line of sight or the use of video surveillance.
    - (C) In no instance should observation be less frequent than at 30-minute intervals.
  - (9) assure that whenever the client is restrained and subject to injury by another client, a state facility employee shall remain present with the client continuously;
  - (10) assure that the person is released as needed, but at least every two hours;
  - (11) re-evaluate need for and impact on client of protective restraint at least every 30 days; and
  - (12) assure that observations and interventions shall be documented in the client record.
- (b) In addition to the requirements specified in Paragraph (a) of this Rule, protective devices used for behavioral control shall comply with the requirements specified in Rule .0203 of this Section.

*History Note:* Authority G.S. 122C-51; 122C-57; 131E-67; 143B-147;  
Eff. October 1, 1984;  
Amended Eff. November 1, 1993; July 1, 1989;  
Temporary Amendment Eff. January 1, 2001.

### 10 NCAC 14J .0211 TRAINING: EMPHASIS ON ALTERNATIVES TO RESTRICTIVE INTERVENTIONS

- (a) Facilities shall implement policies and practices that emphasize the use of alternatives to physical restraint, seclusion, and isolation time-out.
- (b) Persons providing services to people with disabilities (such as service providers, employees, students, volunteers) shall not be alone with them until they have demonstrated competence by successfully completing training in client rights, communication skills and other strategies for creating an environment in which the likelihood of imminent danger of abuse or injury to a person with disabilities or others, or to property is prevented or reduced.
- (c) The training shall be completed by each person providing services within 30 days of beginning to provide services to people with disabilities.
- (d) Training shall be competency-based. It shall include measurable learning objectives, appropriate and measurable testing (written and by observation of behavior) on those objectives, and measurable methods to determine passing or failing the course.
- (e) Formal refresher training shall be completed at least annually by each service provider.
- (f) Content of the training that the service provider plans to use shall be approved by the Division of MH/DD/SAS.
- (g) Acceptable training programs shall include, but not be limited to, appropriate presentation of:
  - (1) knowledge and understanding of the people being served;
  - (2) recognizing and interpreting human behavior;
  - (3) recognizing the effect of internal and external stressors that may affect people with disabilities;
  - (4) strategies for building positive relationships with people with disabilities;
  - (5) recognizing environmental and organizational factors that may affect people with disabilities;
  - (6) recognizing the importance, and assisting people with disabilities in making decisions about their life;
  - (7) skills in assessing individual risk for escalating behavior;
  - (8) client rights as defined in North Carolina G.S. 122C, Article 3 and rules contained in the North Carolina Administrative Code 10 NCAC 14G, H, I, J, Human Rights For Clients In State Facilities, and 10 NCAC 14P, Q, R, S, Client Rights in Community Mental Health, Developmental Disabilities and Substance Abuse Services;
  - (9) communication strategies for defusing and de-escalating potentially dangerous behavior; and
  - (10) positive behavioral supports (providing means for people with disabilities to choose activities which directly oppose or replace behaviors which are unsafe).
- (h) Service providers shall maintain documentation of initial and refresher training for at least three years.
  - (1) Documentation shall include:
    - (A) who participated in the training and the outcomes (pass/fail);
    - (B) when and where they attended; and
    - (C) instructor's name.
  - (2) The Division of MH/DD/SAS may request and review this documentation at any time.

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### **(i) Qualifications of Trainers:**

- (1) demonstrated competence by 100% correct on testing in training program aimed at preventing, reducing and eliminating the need for physical restraint, seclusion and isolation time-out;
- (2) demonstrated competence by passing grade on testing in instructor training program;
- (3) training shall be competency-based and shall include measurable learning objectives, appropriate and measurable testing (written and by observation of behavior) on those objectives, and measurable methods to determine passing or failing the course;
- (4) content of the instructor training that the service provider plans to employ shall be approved by the Division of MH/DD/SAS;
- (5) acceptable instructor training programs shall include but not be limited to appropriate presentation of:
  - (A) understanding the adult learner;
  - (B) methods for teaching content of the course;
  - (C) methods for evaluating trainee performance; and
  - (D) documentation procedures.
- (6) coached experience teaching training program aimed at preventing, reducing and eliminating the need for physical restraint, seclusion and isolation time-out at least one time, with a positive review by the coach;
- (7) successfully teaching training program aimed at preventing, reducing and eliminating the need for physical restraint, seclusion and isolation time-out at least once annually;
- (8) successful completion of refresher instructor training at least every two years; and
- (9) providers shall maintain documentation of initial and refresher instructor training for at least three years.
  - (A) Documentation shall include:
    - (i) who participated in the training and the outcomes (pass/fail);
    - (ii) when and where attended; and
    - (iii) instructor's name.
  - (B) The Division of MH/DD/SAS may request and review this documentation at any time.

### **(j) Qualifications of Coaches:**

- (1) meets all preparation requirements as a trainer;
- (2) experience includes teaching, at least three times, the course which is being coached;
- (3) demonstrated competence at coaching by successful completion of coaching or train-the-trainer instruction; and
- (4) documentation shall be the same preparation as for trainers.

*History Note: Authority G.S 143B-147;  
Temporary Adoption Eff. February 1, 2001.*

### **10 NCAC 14J .0212 TRAINING IN PHYSICAL RESTRAINT, SECLUSION, ISOLATION TIME-OUT**

(a) Physical restraint, seclusion and isolation time-out may be employed only by staff who have been trained and have demonstrated competence in the proper use of and alternatives to

these procedures. Facilities shall ensure that staff authorized to employ and terminate these procedures are retrained at least annually and demonstrated competence.

(b) Persons providing direct care to people with disabilities shall not be alone with them and shall not be privileged to use physical restraint, seclusion and isolation time-out until they have demonstrated competence by successfully completing this training.

(c) A prerequisite for taking this training is demonstrating competence by successful completion of training in preventing, reducing and eliminating the need for physical restraint, seclusion and isolation time-out.

(d) Training shall be competency-based. That is, it shall include measurable learning objectives, appropriate and measurable testing (written and by observation of behavior) on those objectives and measurable methods to determine passing or failing the course.

(e) Formal refresher training shall be completed by each service provider periodically (minimum annually).

(f) Content of the training that the service provider plans to employ shall be approved by the Division of MH/DD/SAS.

(g) Acceptable training programs shall include, but not be limited to, appropriate presentation of:

- (1) refresher information on alternatives to the use of physical restraint, seclusion and isolation time-out;
- (2) guidelines on when to intervene (understanding imminent danger to self and others);
- (3) emphasis on safety and respect for the rights and dignity of all persons involved (using concepts of least restrictive interventions and incremental steps in an intervention);
- (4) strategies for the safe implementation of physical restraint, seclusion and isolation time-out;
- (5) health status checks before, during and after use of physical restraint, seclusion and isolation time-out, including but not limited to, monitoring vital indicators, physical and psychological status and comfort, and when to seek medical assistance;
- (6) prohibited procedures;
- (7) debriefing strategies, including importance and purpose; and
- (8) documentation methods and procedures.

(h) Providers of training shall maintain documentation for at least three years of the following:

- (1) initial and refresher training which shall include:
  - (A) who participated in the training and the outcomes (pass/fail);
  - (B) when and where they attended; and
  - (C) instructor's name.
- (2) The Division of MH/DD/SAS may request and review this documentation at any time;

### **(i) Qualifications of Trainers:**

- (1) competence demonstrated by 100% correct on testing in training program aimed at preventing, reducing and eliminating the need for physical restraint, seclusion and isolation time-out;

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- (2) competence demonstrated by 100% correct on testing in training program teaching use of physical restraint, seclusion and isolation time-out;
- (3) competence demonstrated by a passing grade on testing in instructor training program;
- (4) Training shall be competency-based and shall include measurable learning objectives, appropriate and measurable testing (written and by observation of behavior) on those objectives, and measurable methods to determine passing or failing the course;
- (5) content of the instructor training that the service provider plans to employ shall be approved by the Division of MH/DD/SAS;
- (6) acceptable instructor training programs shall include, but not be limited to, appropriate presentation of:
  - (A) understanding the adult learner;
  - (B) methods for teaching content of the course;
  - (C) evaluation of trainee performance; and
  - (D) documentation procedures.
- (7) currently privileged to use physical restraint, seclusion and isolation time-out;
- (8) currently certified in CPR;
- (9) coached experience teaching the use of physical restraint, seclusion and isolation time-out at least two times with a positive review by the coach;
- (10) successfully teaching program on use of physical restraint, seclusion and isolation time-out at least once annually;
- (11) successful completion of refresher instructor training at least every two years; and
- (12) providers of initial and refresher instructor training shall maintain documentation for at least three years.
  - (A) Documentation shall include:
    - (i) who participated in the training and the outcome (pass/fail);
    - (ii) when and where they attended; and
    - (iii) instructor's name.
  - (B) The Division of MH/DD/SAS may request and review this documentation at any time.
- (j) Qualifications of Coaches:
  - (1) meets all preparation requirements as a trainer;
  - (2) experience includes teaching, at least three times, the course which is being coached;
  - (3) demonstrated competence at coaching by successful completion of coaching or train-the-trainer instruction; and
  - (4) documentation shall be the same preparation as for trainers.

*History Note: Authority G.S. 143B-147;  
Temporary Adoption Eff. February 1, 2001.*

### SUBCHAPTER 14P – PROCEDURES AND GENERAL INFORMATION

#### SECTION .0100 – GENERAL POLICIES AND PROCEDURES

#### 10 NCAC 14P .0101 SCOPE

~~(a)–These Rules, 10 NCAC 14P, 14Q, 14R and 14S, set forth procedures governing the protection of client rights in each public or private facility that provides mental health, developmental disabilities and substance abuse services, with the exception of a State-operated facility. In addition to these Rules, the governing body shall comply with the provisions of G.S. 122C, Article 3, regarding client rights.~~

~~(b) A facility is deemed to be in compliance with these Rules if the facility is accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the Council on Accreditation of Rehabilitation Facilities (CARF), or is certified by the Health Care Financing Administration (HCFA) as an Intermediate Care Facility for the Mentally Retarded (ICF/MR).~~

~~(c) When any of the accrediting bodies as specified in (b) of this Rule set client rights standards which become effective after January 1, 1992, the Division shall present to the Commission an analysis of the comparability of those standards with 10 NCAC 14P through 14S.~~

*History Note: Authority G.S. 122C-51; 131E-67; 143B-17; 143B-147;  
Eff. February 1, 1991;  
Amended Eff. January 1, 1992;  
Temporary Amendment Eff. January 1, 2001.*

#### 10 NCAC 14P .0102 DEFINITIONS

(a) The definitions contained in this Rule, and the terms defined in G.S. 122C-3, G.S. 122C-4 and G.S. 122C-53(f) also apply to all rules in Subchapters 14P, 14Q, 14R and 14S.

(b) As used in these Rules, the following terms have the meanings specified:

- (1) "Abuse" means the infliction of mental or physical pain or injury by other than accidental means, or unreasonable confinement, or the deprivation by an employee of services which are necessary to the mental or physical health of the client. Temporary discomfort that is part of an approved and documented treatment plan or use of a documented emergency procedure shall not be considered abuse.
- (2) "Basic necessity" means an essential item or substance needed to support life and health which includes, but is not limited to, a nutritionally sound balanced diet consisting of three meals per day, access to water and bathroom facilities at frequent intervals, seasonable clothing, medications prescribed by a physician, time for sleeping and frequent access to social contacts.
- (3) "Client advocate" means the term as defined in G.S. 122C-3. For the purpose of these Rules, a client advocate may be a facility employee who is not directly involved in the treatment/habilitation of a specific client, but who is assigned, in addition to other duties, to act as an advocate for that client.
- (4) "Consent" means acceptance or agreement by a client or legally responsible person following receipt of sufficient information from the qualified professional who will administer the proposed treatment or

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- procedure. Consent implies that the client or legally responsible person was provided with sufficient ~~information~~ information, in a manner that the client or legally responsible person can understand, concerning proposed treatment, including both benefits and risks, in order to make a decision with regard to such treatment.
- (5) "Day/night facility" means a facility wherein a service is provided on a regular basis, in a structured environment, and is offered to the same individual for a period of three or more hours within a 24-hour period.
- (6) "Director of Clinical Services" means Medical Director, Director of Medical Services, or other qualified professional designated by the governing body as the Director of Clinical Services.
- (7) "Emergency" means a situation in which a client is in imminent danger of causing abuse or injury to self or others or when substantial property damage is occurring as a result of unexpected and severe forms of inappropriate behavior and rapid intervention by the staff is needed.
- (8) "Exploitation" means the illegal or unauthorized use of a client or a client's resources for another person's profit, business or advantage.
- (9) "Facility" means the term as defined in G.S. 122C-3. For the purpose of these Rules, when more than one type of service is provided by the facility, each service shall be specifically addressed by required policy and procedures when applicable.
- (10) "Governing body" means, in the case of a corporation, the board of directors; in the case of an area authority, the area board; and in all other cases, the owner of the facility.
- (11) "Governor's Advocacy Council for Persons with Disabilities (GACPD)" means the council legislatively mandated to provide protection and advocacy systems and promote employment for all persons with disabilities in North Carolina.
- (12) "Intervention Advisory Committee" means a group established by the governing body in a facility that utilizes restrictive interventions as specified in Rule .0104 of Subchapter 14R.
- (13) "Involuntary client" means an individual who is admitted to a facility in accordance with G.S. 122C, Article 5, Parts 6 through 12.
- (14) "Isolation time-out" means the removal of a client for a period of 30 minutes or more to a separate room from which exit is barred by staff, but not locked, and where there is continuous supervision by staff, for the purpose of modifying behavior.
- (15) "Minor client" means a person under 18 years of age who has neither been married nor been emancipated by a decree issued by a court of competent jurisdiction.
- (16) "Neglect" means the failure to provide care or services necessary to maintain the mental or physical health and well-being of the client.
- (17) "Neuroleptic medication" means the category of psychotropic drugs which is used to treat schizophrenia and related disorders. Examples of neuroleptic medications are Chlorpromazine, Thioridazine and Haloperidol.
- (18) "Normalization" means the utilization of culturally valued resources to establish or maintain personal behaviors, experiences and characteristics that are culturally normative or valued.
- (19) "Physical Restraint" means the application or use of any manual method of restraint that restricts freedom of movement; or the application or use of any physical or mechanical device that restricts freedom of movement or normal access to one's body, including material or equipment attached or adjacent to the client's body that he or she cannot easily remove. Holding a client in a therapeutic hold or other manner that restricts his or her movement constitutes manual restraint for that client. Mechanical devices may restrain a client to a bed or chair, or may be used as ambulatory restraints. Examples of mechanical devices include cuffs, ankle straps, sheets or restraining shirts, arm splints, posey mittens, and helmets. Excluded from this definition of physical restraint are physical guidance, gentle physical prompting techniques, and escorting a client who is walking; soft ties used solely to prevent a medically ill client from removing intravenous tubes, indwelling catheters, cardiac monitor electrodes, or similar medical devices; and prosthetic devices or assistive technology which are designed and used to increase client adaptive skills.
- ~~(19) "Physical restraint" means the limitation of one's freedom of movement and includes the following:~~
- ~~(A) "Mechanical intervention" which means restraint of a client with the intent of controlling behavior with mechanical devices which include, but are not limited to, cuffs, ankle straps, sheets or restraining shirts;~~
- ~~(B) "Physical intervention" which means restraint of a client by physically holding or subduing the client until calm. As used in these Rules, the term physical intervention does not apply to the use of professionally recognized methods for therapeutic holds of brief duration (15 minutes or less); and~~
- ~~(C)(20) "Protective device" which means an intervention that provides support for a medically fragile client or enhances the safety of a self-injurious client. Such devices may include geri-chairs or table top chairs to provide support and safety for a client with a major physical handicap; devices such as seizure helmets or helmets and mittens for self-injurious behaviors; prosthetic devices or assistive technology which are designed to increase client adaptive skills; or soft ties used to prevent a medically ill client from removing intravenous tubes, indwelling catheters, cardiac monitor electrodes, or similar medical devices. Except as provided in Rule .0105(b) of Subchapter 14R, a protective device is not a mechanical intervention restraint device as defined in Subparagraph Paragraph (19) (A) of this Rule only when it is used for the~~

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purpose or with the intent of controlling unacceptable behavior, as provided in Rule .0105(b) of Subchapter 14R.

~~(20)~~(21) "Privileged" means authorization through governing body procedures for a facility employee to provide specific treatment or habilitation services to clients, based on the employee's education, training, experience, competence and judgment.

~~(21)~~(22) "Responsible professional" means the term as defined in G.S. 122C-3 except the "responsible professional" shall also be a qualified professional as defined in G.S. 122C-3.

~~(22)~~(23) "Restrictive intervention" means an intervention procedure which presents a significant risk of mental or physical harm to the client and, therefore, requires additional safeguards. Such ~~an intervention is either interventions~~ include the emergency or planned use of ~~seclusion; or seclusion, physical restraint restraint, excluding (including the use of protective devices; devices~~ for the purpose or with the intent of controlling unacceptable behavior), or isolation time-out; or time-out, and any combination thereof.

~~(23)~~(24) "Seclusion" means isolating a client in a separate locked room for the purpose of controlling a client's behavior.

~~(24)~~(25) "Treatment" means the process of providing for the physical, emotional, psychological and social needs of a client through services.

~~(25)~~(26) "Treatment/habilitation plan" means the term as defined in 10 NCAC 14V .0103.

~~(26)~~(27) "Treatment or habilitation team" means an interdisciplinary group of qualified professionals sufficient in number and variety by discipline to assess and address the identified needs of a client and which is responsible for the formulation, implementation and periodic review of the client's treatment/habilitation plan.

~~(27)~~(28) "24-Hour Facility" means a facility wherein service is provided to the same client on a 24-hour continuous basis, and includes residential and hospital facilities.

~~(28)~~(29) "Voluntary client" means an individual who is admitted to a facility upon his own application or that of the legally responsible person, in accordance with G.S. 122C, Article 5, Parts 2 through 5.

*History Note:* Authority G.S. 122C-3; 122C-4; 122C-51; 122C-53(f); 122C-60; 131E-67; 143B-147;

*Eff. February 1, 1991;*

*Amended Eff. January 1, 1992;*

*Temporary Amendment Eff. January 1, 2001.*

### SUBCHAPTER 14Q – GENERAL RIGHTS

#### SECTION .0100 – GENERAL POLICIES AND PROCEDURES

##### 10 NCAC 14Q .0101 POLICY ON RIGHTS RESTRICTIONS AND INTERVENTIONS

(a) The governing body shall develop policy that assures the implementation of G.S. 122C-59, G.S. 122C-65, and G.S. 122C-66.

(b) The governing body shall develop and implement policy to assure that:

- (1) all instances of alleged or suspected abuse, neglect or exploitation of clients are reported to the County Department of Social Services as specified in G.S. 108A, Article 6 or G.S. 7A, Article 44; and
- (2) procedures and safeguards are instituted in accordance with sound medical practice when a medication that is known to present serious risk to the client is prescribed. Particular attention shall be given to the use of neuroleptic medications.

(c) In addition to those procedures prohibited in Rule .0102(1) of Subchapter 14R, the governing body of each facility shall develop and implement policy that identifies:

- (1) any restrictive intervention that is prohibited from use within the facility; and
- (2) in a 24-hour facility, the circumstances under which staff are prohibited from restricting the rights of a client.

(d) If the governing body allows the use of restrictive interventions or if, in a 24-hour facility, the restrictions of client rights specified in G.S. 122C-62(b) and (d) are allowed, the policy shall identify:

- (1) the permitted restrictive interventions or allowed restrictions;
- (2) the individual responsible for informing the client; and
- (3) the due process procedures for an involuntary client who refuses the use of restrictive interventions.

(e) If restrictive interventions are allowed for use within the facility, the governing body shall develop and implement policy that assures compliance with Subchapter 14R, Section .0100, which includes:

- (1) the designation of an ~~individual~~ individual who has been trained and who has demonstrated competence to use restrictive interventions, to provide written authorization for the use of restrictive interventions in excess of 24 continuous hours;
- (2) the designation of an individual to be responsible for reviews of the use of restrictive interventions; and
- (3) the establishment of a process for appeal for the resolution of any disagreement over the planned use of a restrictive intervention.

~~(f) If restrictive interventions are allowed for use within the facility, the governing body shall develop and implement policies which require that:~~

- ~~(1) appropriate positive alternatives and less restrictive interventions are considered and are used whenever possible prior to the use of more restrictive interventions; and~~
- ~~(2) appropriate consideration is given to the client's health status before, during and after utilization of a restrictive intervention, including:~~
  - ~~(A) review of the client's health history or the comprehensive health assessment conducted upon admission to a facility. The health history or~~

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comprehensive health assessment shall include the identification of pre-existing medical conditions or any disabilities and limitations that would place the client at greater risk during the use of restrictive interventions;

(B) a health status check immediately prior to the use of a restrictive intervention which shall include observation of the client's breathing, and a health status check immediately following the initiation of the use of a physical restraint which shall include assessment of the client's circulation, range of motion in the extremities, vital signs, and physical and psychological status and comfort;

(C) continuous monitoring by an individual trained and certified in the use of cardiopulmonary resuscitation of the client's health status during the use of manual restraint; and

(D) continued monitoring by an individual trained and certified in the use of cardiopulmonary resuscitation of the client's health status for a minimum of 30 minutes subsequent to the termination of a restrictive intervention.

*History Note: Authority G.S. 122C-51; 143B-147;  
Eff. February 1, 1991;  
Amended Eff. January 1, 1992;  
Temporary Amendment Eff. January 1, 2001.*

### SECTION .0300 - GENERAL CIVIL, LEGAL AND HUMAN RIGHTS

#### 10 NCAC 14Q .0303 INFORMED CONSENT

(a) Each client, or legally responsible person, shall be ~~informed~~ informed, in a manner that the client or legally responsible person can understand, about:

- (1) the alleged benefits, potential risks, and possible alternative methods of treatment/habilitation; and
- (2) the length of time for which the consent is valid and the procedures that are to be followed if he chooses to withdraw consent. The length of time for a consent for the planned use of a restrictive intervention shall not exceed six months.

(b) A consent required in accordance with G.S. 122C-57(f) or for planned interventions by the rules in Subchapter 14R, Section .0100, shall be obtained in writing. Other procedures requiring written consent shall include, but are not limited to, the prescription or administration of the following drugs:

- (1) Antabuse; and
- (2) Depo-Provera when used for non-FDA approved uses.

(c) Each voluntary client or legally responsible person has the right to consent or refuse treatment/habilitation in accordance with G.S. 122C-57(d). A voluntary client's refusal of consent shall not be used as the sole grounds for termination or threat of termination of service unless the procedure is the only viable treatment/habilitation option available at the facility.

(d) Documentation of informed consent shall be placed in the client's record.

*History Note: Authority G.S. 122C-51; 122C-57; 131E-67; 143B-147;  
Eff. February 1, 1991;  
Amended Eff. January 4, 1993; January 1, 1992;  
Temporary Amendment Eff. January 1, 2001.*

### SUBCHAPTER 14R – TREATMENT OR HABILITATION RIGHTS

#### SECTION .0100 – PROTECTIONS REGARDING INTERVENTIONS PROCEDURES

#### 10 NCAC 14R .0101 LEAST RESTRICTIVE ALTERNATIVE

(a) ~~Each facility shall~~ provide services using the least restrictive, most appropriate and effective positive treatment ~~modality.~~ modality shall be a goal for each facility.

(b) The use of a restrictive intervention procedure designed to reduce a behavior shall always be accompanied by positive treatment or habilitation methods which shall include:

- (1) the deliberative teaching and reinforcement of behaviors which are non-injurious;
- (2) the improvement of conditions associated with non-injurious behaviors such as an enriched educational and social environment; and
- (3) the alteration or elimination of environmental conditions which are reliably correlated with self-injury.

*History Note: Authority G.S. 122C-51; 122C-53; 131E-67; 143B-147;  
Eff. February 1, 1991;  
Amended Eff. January 1, 1992;  
Temporary Amendment Eff. January 1, 2001.*

#### 10 NCAC 14R .0104 SECLUSION, PHYSICAL RESTRAINT AND ISOLATION TIME OUT

(a) This Rule governs the use of restrictive interventions which shall include:

- (1) seclusion;
- (2) physical restraint, ~~excluding~~ including protective devices when used for the purpose or with the intent of controlling unacceptable behavior; ~~and~~
- (3) isolation ~~time-out.~~ time-out; ~~and~~
- (4) any combination thereof, including simultaneous use of seclusion and physical restraint.

(b) The use of restrictive interventions shall be limited to:

- (1) emergency situations, in order to terminate a behavior or action in which a client is in imminent danger of abuse or injury to self or other persons or when substantial property damage is occurring; or
- (2) as a planned measure of therapeutic treatment as specified in Paragraph ~~(g)~~(f) of this Rule.

(c) Restrictive interventions shall not be employed as a means of coercion, punishment or retaliation by staff or for the convenience of staff or due to inadequacy of staffing. Restrictive interventions shall not be used in a manner that causes harm or abuse.

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(d) In accordance with Rule .0101 of Subchapter 14Q, the governing body shall have policy that delineates the permissible use of restrictive interventions within a facility.

(e) Within a facility where restrictive interventions may be used, the policy and procedures shall be in accordance with the following provisions: ~~provisions of Subparagraph (1) or (2) of this Paragraph.~~

~~(1) The governing body of the facility may develop its own policy. Such policy and facility procedures shall be submitted to and approved by the Commission and shall ensure:~~

~~(A) timely notice and explanations to the person who is legally responsible;~~

~~(B) valid opportunities to consent to or refuse planned interventions;~~

~~(C) the intervention is justified, properly time limited, and that appropriate positive and less restrictive alternatives are thoroughly, systematically and continuously considered and used;~~

~~(D) when the restrictive intervention is used on a recurring or planned basis, it will be incorporated into a treatment/habilitation plan;~~

~~(E) implementation by trained staff, closely supervised by a qualified professional;~~

~~(F) manner, conditions and location of the intervention are safe and humane;~~

~~(G) implementation is monitored and the monitoring results are disseminated to assure follow through, continuing justification and timely adjustment to meet changing circumstances; and~~

~~(H) that the safeguards in this Rule are documented.~~

~~(2) If the governing body chooses not to develop its own policy, facility policy shall include provisions that specify:~~

(1) the requirement that positive and less restrictive alternatives are considered and attempted whenever possible prior to the use of more restrictive interventions;

(2) appropriate consideration is given to the client's health status before, during and after utilization of a restrictive intervention, including:

(A) review of the client's health history or the client's comprehensive health assessment conducted upon admission to a facility. The health history or comprehensive health assessment shall include the identification of pre-existing medical conditions or any disabilities and limitations that would place the client at greater risk during the use of restrictive interventions;

(B) a health status check immediately prior to the use of a restrictive intervention which shall include observation of the client's breathing, and a health status check immediately following initiation of the use of a physical restraint which shall include assessment of the client's circulation, range of motion in the extremities, vital signs, and physical and psychological status and comfort;

(C) continuous monitoring by an individual trained and certified in the use of cardiopulmonary resuscitation of the client's health status during the use of manual restraint; and

(D) continued monitoring by an individual trained and certified in the use of cardiopulmonary resuscitation of the client's health status for a minimum of 30 minutes subsequent to the termination of a restrictive intervention.

~~(A)(3)~~ the process for identifying, training, assessing competence and privileging facility employees who may authorize and implement restrictive interventions;

~~(B)(4)~~ the duties and responsibilities of qualified or responsible professionals regarding the use of restrictive interventions;

~~(C)(5)~~ the person responsible for documentation when restrictive interventions are used;

~~(D)(6)~~ the person responsible for the notification of others when restrictive interventions are used; and

~~(E)(7)~~ the person responsible for the identification of a client with a reasonably foreseeable physical checking the client's health status and assessing the possible consequences of consequence to the use of physical restraint a restrictive intervention and, in such cases there shall be procedures regarding:

~~(i)(A)~~ documentation if a client with has a physical disability or has had past surgical procedures surgery that would make affected nerves and bones sensitive to injury; and

~~(ii)(B)~~ the identification and documentation of alternative emergency procedures, if needed.

~~(f) If the governing body chooses to comply with Subparagraph (e)(2) of this Rule, the following provisions shall be applicable:~~

~~(1)(8)~~ Any room used for seclusion or isolation time-out shall meet the following criteria:

(A) the room shall be designed and constructed to ensure the health, safety and well-being of the client;

(B) the floor space shall not be less than 50 square feet, with a ceiling height of not less than eight feet;

(C) the floor and wall coverings, as well as any contents of the room, shall have a one-hour fire rating and shall not produce toxic fumes if burned;

(D) the walls shall be kept completely free of objects;

(E) a lighting fixture, equipped with a minimum of a 75 watt bulb, shall be mounted in the ceiling and be screened to prevent tampering by the client;

(F) one door of the room shall be equipped with a window mounted in a manner which allows inspection of the entire room;

(G) glass in any windows shall be impact resistant and shatterproof;

(H) the room temperature and ventilation shall be comparable and compatible with the rest of the facility; ~~and~~

(I) in a lockable room the lock shall be interlocked with the fire alarm system so that the door automatically unlocks when the fire alarm is



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activated if the room is to be used for ~~seclusion.~~  
seclusion; and

- (J) if the room is to be used for simultaneous seclusion and physical restraint, there must be both video and audio equipment that can be used for continuous monitoring by nearby staff when face to face monitoring is not used; all areas of the room in which a client is restrained shall be visible through the video monitor.

~~(9)~~(9) Whenever a restrictive intervention is utilized, documentation shall be made in the client record to include, at a minimum:

- (A) notation of the client's health status;  
~~(A)~~(B) notation of the frequency, intensity and duration of the behavior which led to the intervention, and any precipitating circumstance contributing to the onset of the behavior;  
~~(B)~~(C) the rationale for the use of the intervention, the appropriate positive or less restrictive interventions considered and used and which also addresses the inadequacy of less restrictive intervention ~~techniques; techniques that were used;~~  
~~(C)~~(D) a description of the intervention and the date, time and duration of its use;  
~~(D)~~(E) a description of accompanying positive methods of intervention; and  
~~(E)~~(F) signature and title of the facility employee who initiated, and of the employee who further authorized, the use of the intervention.

~~(10)~~(10) The emergency use of restrictive interventions shall be limited, as follows:

- (A) a facility employee privileged to administer emergency interventions may employ such procedures for up to 15 minutes without further authorization;
- (B) the continued use of such interventions shall be authorized only by the responsible professional or another qualified professional who is privileged to use and to authorize the use of the restrictive intervention based on experience and training;
- (C) the responsible or qualified professional shall meet with and conduct an assessment that includes the health status of the client and write a continuation authorization as soon as possible after the time of initial employment of the intervention. If the responsible professional or a qualified professional is not immediately available to conduct an assessment of the client, but concurs that the intervention is justified after discussion with the facility employee, continuation of the intervention may be verbally authorized until an on-site assessment of the client can be made; and
- (D) a verbal authorization shall not exceed 24 hours after the time of initial employment of the intervention.

~~(11)~~(11) The following precautions and actions shall be employed whenever a client is in:

- (A) seclusion or physical restraint, excluding including a protective devices; device when used for the purpose or with the intent of controlling unacceptable behavior; periodic observation of the client shall occur at least every 15 minutes, or more often as necessary, to assure the safety of the client; appropriate attention shall be paid to the provision of regular meals, bathing, and the use of the toilet; and such observation and attention shall be documented in the client record;

- (B) isolation ~~time-out; time-out;~~ there shall be a facility employee in attendance with no other immediate responsibility than to monitor the client who is placed in isolation time-out; there shall be continuous observation and verbal interaction with the client when appropriate; and such observation shall be documented in the client record;

- (C) physical restraint, excluding including protective ~~devices; devices when used for the purpose or with the intent of controlling unacceptable behavior,~~ and the client may be subject to injury; a facility employee shall remain present with the client continuously; and

- (D) simultaneous physical restraint and seclusion; the client shall be continuously monitored by an assigned staff member. Monitoring shall be conducted face to face or by both video and audio equipment that is continuously monitored by a staff person who is in close proximity to the client. The use of video and audio equipment does not eliminate the requirement to assess frequently the client's needs and health status.

- ~~(12)~~(12) The use of a restrictive intervention shall be discontinued immediately at any indication of risk to the client's health or safety or immediately as soon as therapeutically appropriate but in no case later than 30 minutes after the client gains behavioral control. If the client is unable to gain behavioral control within the time frame specified in the authorization of the intervention, a new authorization must be obtained.

- ~~(13)~~(13) The written approval of the designee of the governing body shall be required when a restrictive intervention is utilized for longer than 24 continuous hours.

- ~~(14)~~(14) The use of a restrictive intervention in excess of 24 continuous hours shall be considered a restriction of the client's rights as specified in G.S. 122C-62(b) or (d). The documentation requirements in this Rule shall satisfy the requirements specified in G.S. 122C-62(e) for rights restrictions.

~~(15)~~(15) When any restrictive intervention is utilized for a client, notification of others shall occur as follows:

- (A) those to be notified as soon as possible but no more than 72-24 hours after the behavior has been controlled to include:

- (i) the treatment or habilitation team, or its designee, after each use of the intervention; and

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(ii) a designee of the governing body.

(B) ~~in a timely fashion~~, the legally responsible person of a minor client or an incompetent adult client shall be notified immediately when such notification has been requested.

~~(9)~~(16) The facility shall conduct reviews and reports on any and all use of restrictive interventions, including:

(A) a regular review by a designee of the governing ~~body;~~ body, and review by the Client Rights Committee, in compliance with confidentiality rules as specified in 10 NCAC 14G;

(B) an investigation of any unusual or possibly unwarranted patterns of utilization; and

(C) documentation of the following shall be maintained on a log:

- (i) name of the client;
- (ii) name of the responsible professional;
- (iii) date of each intervention;
- (iv) time of each intervention;
- (v) type of intervention;
- (vi) duration of each intervention; ~~and~~
- (vii) ~~reason for use of the intervention.~~ intervention;

(viii) appropriate positive and less restrictive alternatives that were used or that were considered but not used and why those alternatives were not used;

(ix) debriefing and planning conducted with the client and legally responsible person if applicable and staff to eliminate or reduce the probability of the future use of restrictive interventions; and

(x) negative effects of the restrictive intervention, if any, on the health status of the client.

~~(10)~~(17) Nothing in this Rule shall be interpreted to prohibit the use of voluntary restrictive interventions at the client's request; however, the procedures in this Rule shall apply with the exception of Subparagraph (f)(3) of this Rule.

~~(e)~~(f) The restrictive intervention shall be considered a planned intervention and shall be included in the client's treatment/habilitation plan whenever it is used:

- (1) more than four times, or for more than 40 hours, in 30 consecutive days;
- (2) in a single episode for 24 or more continuous hours in an emergency; or
- (3) as a measure of therapeutic treatment designed to reduce dangerous, aggressive, self-injurious, or undesirable behaviors to a level which will allow the use of less restrictive treatment or habilitation procedures.

~~(h)~~(g) When a restrictive intervention is used as a planned intervention, facility policy shall specify:

- (1) ~~The~~the requirement that a consent or approval shall be considered valid for no more than six months and that the decision to continue the specific intervention shall

be based on clear and recent behavioral evidence that the intervention is having a positive impact and continues to be needed;

(2) ~~Prior~~prior to the initiation or continued use of any planned intervention, the following written notifications, consents and approvals shall be obtained and documented in the client record:

(A) approval of the plan by the responsible professional and the treatment and habilitation team, if applicable, shall be based on an assessment of the client and a review of the documentation required by Subparagraph ~~(e)(1)(H) or (f)(2)–(e)(9) and (e)(14)~~ of this Rule –whichever is applicable; if applicable;

(B) consent of the client or legally responsible person, after participation in treatment planning and after the specific intervention and the reason for it have been explained in accordance with 10 NCAC 14Q .0201;

(C) notification of a client advocate that the specific intervention has been planned for the client and the rationale for utilization of the intervention; and

(D) physician approval, after an initial medical examination, when the plan includes a specific intervention with reasonably foreseeable physical consequences. In such cases, periodic planned monitoring by a physician shall be incorporated into the plan.

(3) ~~Within~~within 30 days of initiation of the use of a planned intervention, the Intervention Advisory Committee established in accordance with Rule .0107 of this Section, by majority vote, may recommend approval or disapproval of the plan or may abstain from making a recommendation;

(4) ~~At~~within any time during the use of a planned intervention, if requested, the Intervention Advisory Committee shall be given the opportunity to review the treatment/habilitation plan;

(5) ~~If~~if any of the persons or committees specified in Subparagraphs (h)(2) or (h)(3) of this Rule do not approve the initial use or continued use of a planned intervention, the intervention shall not be initiated or continued. Appeals regarding the resolution of any disagreement over the use of the planned intervention shall be handled in accordance with governing body policy;

(6) ~~Documentation~~documentation in the client record regarding the use of a planned intervention shall indicate:

(A) debriefing with staff, the client and the legally responsible person if applicable;

~~(A)~~(B) weekly evaluation of the planned intervention by staff who implement the intervention; and

~~(B)~~(C) review, every two weeks, by a qualified professional.

*History Note: Authority G.S. 122C-51; 122C-53; 122C-60; 122C-62; 131E-67; 143B-147;*

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Eff. February 1, 1991;

Amended Eff. January 4, 1993; January 1, 1992;

Temporary Amendment Eff. January 1, 2001.

### 10 NCAC 14R .0105 PROTECTIVE DEVICES

(a) Whenever a protective device is utilized for a client, the governing body shall develop and implement policy to ensure that:

- (1) the necessity for the protective device has been assessed and the device is applied by a facility employee who has been trained and has demonstrated competence and has been privileged in the utilization of protective devices;
- (2) the use of appropriate positive alternatives and less restrictive alternatives have been reviewed and the protective device is the least restrictive appropriate measure;
- (3) the client is frequently observed and provided opportunities for toileting, exercise, etc. as needed. When a protective device limits the client's freedom of movement, the client shall be observed at least every hour. Whenever the client is restrained and subject to injury by another client, a facility employee shall remain present with the client continuously. Observations and interventions shall be documented in the client record;
- (4) protective devices are cleaned at regular intervals; and
- (5) for facilities operated by or under contract with an area program, the utilization of protective devices in the treatment/habilitation plan shall be subject to review by the Client Rights Committee, as required in 10 NCAC ~~14V .0504, 18L .0434~~. Copies of this Rule and other pertinent rules are published as Division publication STANDARDS FOR AREA PROGRAMS AND THEIR CONTRACT AGENCIES, APSM 35-1, RULES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE SERVICES, APSM 30-1, and may be purchased at a cost of ~~six dollars (\$6.00)~~ five dollars and seventy-five cents (\$5.75) per copy.

(b) The use of any protective device for the purpose or with the intent of controlling unacceptable behavior shall be considered a mechanical restraint and shall comply with the requirements of Rule .0104 of this Section.

*History Note:* Authority G.S. 122C-51; 122C-53; 122C-60; 131E-67; 143B-147;

Eff. February 1, 1991;

Amended Eff. January 4, 1993; January 1, 1992;

Temporary Amendment Eff. January 1, 2001.

### 10 NCAC 14R .0108 TRAINING ON ALTERNATIVES TO RESTRICTIVE INTERVENTIONS

(a) Facilities shall implement policies and practices that emphasize the use of alternatives to restrictive interventions.

(b) Persons providing services to people with disabilities (such as service providers, employees, students, volunteers) may not be alone with them until they have demonstrated competence by

successfully completing training in client rights, communication skills and other strategies for creating an environment in which the likelihood of imminent danger of abuse or injury to a person with disabilities or others or property damage is prevented or reduced.

(c) The training shall be completed by each person providing services within 30 days of beginning to provide services to people with disabilities.

(d) Training must be competency-based. That is, it must include measurable learning objectives, appropriate and measurable testing (written and by observation of behavior) on those objectives, and measurable methods to determine passing or failing the course.

(e) Formal refresher training must be completed by each service provider periodically (minimum annually).

(f) Content of the training that the service provider wishes to employ must be approved by the Division of MHDDSAS.

(g) Acceptable training programs will include, but are not limited to, appropriate presentation of:

(1) knowledge and understanding of the people being served;

(2) recognizing and interpreting human behavior;

(3) recognizing the effect of internal and external stressors that may affect people with disabilities;

(4) strategies for building positive relationships with persons with disabilities, recognizing environmental and organizational factors that may affect people with disabilities;

(5) recognizing the importance of and assisting in the person's involvement in making decisions about his/her life;

(6) skills in assessing individual risk for escalating behavior;

(7) client rights as defined in NC state laws and rules;

(8) communication strategies for defusing and de-escalating potentially dangerous behavior; and

(9) positive behavioral supports (providing means for people with disabilities to choose activities which directly oppose or replace behaviors which are unsafe).

(h) Service providers shall maintain documentation of initial and refresher training for at least three years.

(1) Documentation shall include:

(A) who participated in the training and the outcomes (pass/fail);

(B) when and where they attended; and

(C) instructor's name.

(2) The Division of MH/DD/SAS may review/request this documentation at any time.

(i) Qualifications of Trainers

(1) Demonstrated competence by 100% correct on testing in training program aimed at preventing, reducing, and eliminating the need for restrictive interventions.

(2) Demonstrated competence by passing grade on testing in instructor training program;

(A) Training must be competency-based. That is, it shall include measurable learning objectives, appropriate and measurable testing (written and by observation of behavior) on those objectives, and

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measurable methods to determine passing or failing the course.

(B) Content of the instructor training that the service provider wishes to employ must be approved by the Division of MH/DD/SAS.

(C) Acceptable instructor training programs will include but are not limited to appropriate presentation of:

- (i) understanding the adult learner;
- (ii) methods for teaching content of the course;
- (iii) methods for evaluating trainee performance; and
- (iv) documentation procedures.

(3) Coached experience teaching training program aimed at preventing, reducing, and eliminating the need for restrictive interventions at least one time and positive review by the coach.

(4) Successfully teaching training program aimed at preventing, reducing, eliminating the need for restrictive interventions at least once annually.

(5) Successful completion of refresher instructor training at least every two years.

(6) Providers must maintain documentation of initial and refresher instructor training for at least three years.

(A) Documentation shall include:

- (i) Who participated in the training and the outcomes (pass/fail);
- (ii) When and where they attended; and
- (iii) Instructor's name.

(B) The Division of MH/DD/SAS may review or request this documentation at anytime.

*History Note: Authority G.S. 143B-147;  
Temporary Adoption Eff. February 1, 2001.*

**10 NCAC 14R .0109 TRAINING: ALTERNATIVES TO RESTRICTIVE INTERVENTIONS**

(a) Definitions contained in this Rule, and the terms defined in G.S. 122C-3, G.S. 122C-4 and G.S. 122C-53(f) also apply to all rules in Subchapters 14P, 14Q, 14R and 14S.

(b) Demonstrated competence in the proper use of and alternatives to these procedures. Facilities shall ensure that staff authorized to employ and terminate these procedures are retrained and have demonstrated competence at least annually.

(c) Persons providing direct care to people with disabilities may not be alone with them, and they may not privileged to use restrictive interventions until they have demonstrated competence by successfully completing this training.

(d) A pre-requisite for taking this training is demonstrating competence by successful completion of training in preventing, reducing, and eliminating the need for restrictive interventions.

(e) Training must be competency-based. That is, it must include measurable learning objectives, appropriate and measurable testing (written and by observation of behavior) on those objectives and measurable methods to determine passing or failing the course.

(f) Formal refresher training must be completed by each service provider periodically (minimum annually).

(g) Content of the training that the service provider wishes to employ must be approved by the Division of MH/DD/SAS.

(h) Acceptable training programs will include, but are not limited to, appropriate presentation of:

- (1) refresher information on alternatives to the use of restrictive interventions;
- (2) guidelines on when to intervene (understanding imminent danger to self and others);
- (3) emphasis on safety and respect for the rights and dignity of all persons involved (using concepts of least restrictive interventions and incremental steps in an intervention);
- (4) strategies for the safe implementation of restrictive interventions;
- (5) health status checks before, during and after use of physical restraint and seclusion, including but not limited to, monitoring vital indicators, physical and psychological status and comfort and when to seek medical assistance;
- (6) prohibited procedures;
- (7) debriefing strategies, including their importance and purpose; and
- (8) documentation methods/procedures.

(i) Providers of training must maintain documentation for three years of the following:

- (1) documentation for initial and refresher training;
- (2) who participated in the training and the outcomes (pass/fail);
- (3) when and where they attended; and
- (4) instructor's name.

(j) The Division of MH/DD/SAS may review/request this documentation at any time.

(k) Qualifications of Trainers

- (1) competence demonstrated by 100% correct on testing in training program aimed at preventing, reducing and eliminating the need for restrictive interventions;
- (2) competence demonstrated by 100% correct on testing in training program teaching;
- (3) competence demonstrated by passing grade on testing in instructor training program;
- (4) training must be competency-based. That is, it must include measurable learning objectives, appropriate and measurable testing (written and by observation of behavior) on those objectives, and measurable methods to determine passing or failing the course;
- (5) content of the instructor training that the service provider wishes to employ must be approved by the Division of MH/DD/SAS.

(l) Acceptable instructor training programs shall include, but not be limited to, appropriate presentation of:

- (1) understanding the adult learner;
- (2) methods for teaching content of the course;
- (3) evaluation of trainee performance; and
- (4) documentation procedures.

(m) The instructor shall:

- (1) be currently privileged to use restrictive interventions;

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- (2) be currently certified in CPR;
- (3) have coached experience teaching the use of restrictive interventions at least two times with a positive review by the coach;
- (4) have successfully taught a program on use of restrictive interventions at least once annually; and
- (5) have successful completion of refresher instructor training at least every two years.
- (n) Providers of instructor training and refresher training must maintain documentation for at least three years which includes:
  - (1) who participated in the training and the outcome (pass/fail);
  - (2) when and where they attended; and
  - (3) instructor's name.
- (o) The Division of MH/DD/SAS may review/request this documentation at any time.

History Note: Authority G.S. 143B-147; Temporary Adoption Eff. February 1, 2001.

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Rule-making Agency: Commission for Mental Health, Developmental Disabilities and Substance Abuse Services

Rule Citation: 10 NCAC 14V .0104; .0202-.0204; .0206; .0208; .0304; .0801-.0803; .6002

Effective Date: January 3, 2001

Findings Reviewed and Approved by: Julian Mann

Authority for the rulemaking: G.S. 122C-3; 122C-25; 122C-26; 122C-112; 122C-131; 122C-146; 130A-361; 143B-147

Reason for Proposed Action: Governor Hunt's initiative requires the agency to implement measures to improve the health, safety and welfare of clients. Imposing more intensive staffing, training, and death reporting requirements will ensure the initiative is met.

Comment Procedures: Any interested person may submit written comments on the proposed rule by mailing the comments to Cindy Kornegay, Program Accountability Section, 3012 Mail Service Center, Raleigh, NC 27699-3012.

CHAPTER 14 – MENTAL HEALTH: GENERAL

SUBCHAPTER 14V – RULES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE FACILITIES AND SERVICES

10 NCAC 14V .0104 STAFF DEFINITIONS

The following credentials and qualifications apply to staff described in this Subchapter:

- (1) "Certified counselor" means a counselor who is certified as such by the North Carolina Counseling

- Association as a Licensed Professional Counselor (LPC).
- (2) "Certified alcoholism counselor (CAC)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.
- (3) "Certified drug abuse counselor (CDAC)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.
- (4) "Certified substance abuse counselor (CSAC)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.
- (5) "Clinical" means having to do with the active direct treatment/habilitation of a client.
- (6) "Clinical staff member" means a professional who provides active direct treatment/habilitation to a client.
- (7) "Clinical/professional supervision" means regularly scheduled assistance by a qualified mental health professional, a qualified substance abuse professional or a qualified developmental disabilities professional to a staff member who is providing direct, therapeutic intervention to a client or clients. The purpose of clinical supervision is to ensure that each client receives appropriate treatment or habilitation which is consistent with accepted standards of practice and the needs of the client.
- (8) "Clinical social worker" means a social worker who is licensed as such by the N.C. Board of Social Work.
- (9) "Director" means the individual who is responsible for the operation of the facility.
- ~~(9)~~(10) "Licensed Psychologist" means an individual who is licensed to practice psychology in the State of North Carolina.
- ~~(10)~~(11) "Nurse" means a person licensed to practice in the State of North Carolina either as a registered nurse or as a licensed practical nurse.
- (12) "Paraprofessional" means any individual who is designated by the facility or agency director to provide care, treatment, habilitation, or rehabilitation of a person or persons with one or more disability, but does not meet the definition for qualified professional or professional. Such individual must have met core competencies and skills applicable to the services provided, as determined by the Division of Mental Health, Developmental Disabilities and Substance Abuse Services qualifying him or her to provide care, treatment, habilitation, or rehabilitation relative to the person who has disability specific needs; and must function under the supervision of a qualified professional.
- (13) "Professional" means an individual who has met the minimum formal education or licensure or certification requirements to become a qualified professional and has demonstrated competencies in providing services in the professional category for which the individual is

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licensed or certified, but has not met the experience requirements.

~~(14)~~(14) "Psychiatric nurse" means an individual who is licensed to practice as a registered nurse in the State of North Carolina by the North Carolina Board of Nursing and who is a graduate of an accredited master's level program in psychiatric mental health nursing with two years of experience, or has a master's degree in behavioral science with two years of supervised clinical experience, or has four years of experience in psychiatric mental health nursing.

~~(12)~~(15) "Psychiatric social worker" means an individual who holds a master's degree in social work from an accredited school of social work and has two years of clinical social work experience.

~~(13)~~(16) "Psychiatrist" means an individual who is licensed to practice medicine in the State of North Carolina and who has completed an accredited training program in psychiatry.

~~(14)~~(17) "Qualified alcoholism professional" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board or who is a graduate of a college or university with a baccalaureate or advanced degree in a human service related field with documentation of at least two years of supervised experience in the profession of alcoholism counseling.

~~(15)~~(18) "Qualified client record manager" means an individual who is a graduate of a curriculum accredited by the Council on Medical Education and Registration of the American Health Information Management Association and who is currently registered or accredited by the American Health Information Management Association.

~~(16)~~(19) "Qualified developmental disabilities professional" means an individual who is:

- (a) a graduate of a college or university with a baccalaureate degree in a discipline related to developmental disabilities and at least one year of supervised habilitative experience in working with individuals with developmental disabilities;
- (b) a graduate of a college or university with a baccalaureate degree in a human service related field and at least two years of supervised habilitative experience in working with individuals with developmental disabilities; or
- (c) a graduate of a college or university with a baccalaureate degree in a field other than one related to developmental disabilities or human services and at least three years of supervised habilitative experience in working with individuals with developmental disabilities.

~~(17)~~(20) "Qualified drug abuse professional" means an individual who is:

- (a) certified as such by the North Carolina Substance Abuse Professional Certification Board;
- (b) a graduate of a college or university with an advanced degree in a human service related field

with documentation of at least one year of supervised experience in the profession of drug abuse counseling; or

- (c) a graduate of a college or university with a baccalaureate or advanced degree in a human service related field with documentation of at least two years of supervised experience in the profession of drug abuse counseling.

~~(18)~~(21) "Qualified mental health professional" means an individual who is:

- (a) a psychiatrist, psychiatric nurse, licensed psychologist, or a psychiatric social worker;
- (b) a graduate of a college or university with an advanced degree in a related human service field and two years of supervised clinical experience in mental health services; or
- (c) a graduate of a college or university with a baccalaureate degree in a related human service field and four years of supervised clinical experience in mental health services.

(22) "Qualified professional" means, in addition to the definition contained in G.S. 122C-3(31), any individual as specified in Subparagraphs (8), (9), (10), (13), (14), (15), (16), (18), (19), (20), or (22) of this Rule.

~~(19)~~(23) "Qualified substance abuse professional" means an individual who is:

- (a) certified as such by the North Carolina Substance Abuse Professional Certification Board; or
- (b) a graduate of a college or university with an advanced degree in a human service related field with documentation of at least one year of supervised experience in the profession of alcoholism and drug abuse Counseling; or
- (c) a graduate of a college or university with a baccalaureate degree in a human service related field with documentation of at least two years of supervised experience in the profession of alcoholism and drug abuse counseling.

*History Note:* Authority G.S. 122C-3; 122C-25; 122C-26; 143B-147;

*Eff. May 11, 1996;*

*Temporary Amendment Eff. January 3, 2001.*

**10 NCAC 14V .0202 PERSONNEL REQUIREMENTS**

(a) All facilities shall have a written job description for each staff position, which:

- (1) specifies the minimum level of education, competency, work experience, and other appropriate qualifications for the position;
- (2) specifies the actual duties and responsibilities of the position;
- (3) is signed by the staff member and director; and
- (4) is retained in the staff member's file.

(b) All facilities shall ensure that each staff member or any other person who provides care or services to clients on behalf of the facility:

- (1) is at least 18 years of age;

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(2) is able to read, write, and understand and follow directions;

(3) meets the minimum level of education, competency, work experience, skills, and other appropriate qualifications for the position; and

(4) has no known history of abuse, neglect, or exploitation of children or vulnerable adults.

(c) In addition to the qualifications specified in Paragraph (b) of this Rule, and except as modified in Section .6000 and other Sections of this Subchapter, an individual serving as director of a facility licensed under this Subchapter shall have education, training, and at least one years' experience related to the management and operation of a similar type of facility working with priority populations.

(d) All facilities or services shall require that all applicants for employment disclose any criminal conviction. The impact of this information on a decision regarding employment shall be based upon the offense in relationship to the job for which the applicant is applying.

(e) Staff of a facility or a service shall be currently licensed, registered or certified in accordance with applicable state laws, as appropriate for the services provided.

(f) A ~~file~~ personnel record shall be maintained for each individual employed indicating the training, experience, and other qualifications for the position, including privileging information, when applicable, and verification appropriate to licensure, registration or certification.

(g) Continuing education shall be ~~documented in each employee's file.~~

(h) ~~Orientation programs shall be provided.~~ New employee training programs shall be provided and, at a minimum, shall consist of the following:

(1) General organizational orientation;

(2) Training on client rights and confidentiality;

(3) Training on use of restrictive interventions and alternatives if facility policy permits such use;

(4) Training on medication administration or assisting in self-administration, if applicable;

(5) Training related to specific populations served such as mentally ill, developmentally disabled, substance abusers or clients with dual diagnoses ; and

(6) Training in infectious diseases and blood-borne pathogens.

(i) Staff training including training in infectious diseases and blood-borne pathogens.

(j) Except as permitted under 10 NCAC 14V .5602(b) of this Subchapter, at least one staff member shall be available in the a facility at all times when a client is present. That staff member shall be ~~who is~~ trained in basic first aid including seizure management, currently certified to provide cardiopulmonary resuscitation, ~~seizure management,~~ and trained in the Heimlich maneuver or other approved Red Cross First Aid techniques or its equivalent for relieving airway obstruction. ~~shall be available at all times.~~

(k) The governing body may require medical statements from all direct care ~~staff, except those in facilities that provide only periodic services.~~ When in these Rules, a medical statement is required, the following shall apply:

(1) The staff member shall submit to the program at the time of initial approval and annually thereafter a medical statement from a licensed physician, nurse practitioner, or physician's assistant.

(2) The medical statement may be in any written form but shall be signed by the physician, nurse practitioner, or physician's assistant and indicate the general ~~good~~ physical and mental health of the individual, the evidence of the absence of any indication of active tuberculosis and communicable diseases, or any other condition that poses a threat to clients.

(3) The facility or program shall keep the most recent medical statement on file.

(k) The facility shall comply with G.S. 131E-256 and supporting Rules 10 NCAC 3B .1001 and .1002.

*History Note: Authority G.S. 122C-26;*

*Eff. May 1, 1996;*

*Temporary Amendment Eff. January 3, 2001.*

### 10 NCAC 14V .0203 PRIVILEGING AND TRAINING OF QUALIFIED PROFESSIONALS AND PROFESSIONALS

(a) Unless otherwise restricted by the facility, qualified professionals shall be deemed fully privileged to perform those duties contained in the job description.

(b) Unless otherwise restricted by the facility, professionals shall be deemed privileged to perform duties included in the job description under supervision of a qualified professional. Duties not specified in the job description shall be privileged by the facility's current privileging process.

(c) Qualified professionals who are providing professional supervision shall receive specific professional supervision skills training approved by DMH/DD/SAS within six months of employment.

(d) Professionals who are providing supervision shall receive specific professional supervision skills training approved by DMH/DD/SAS within six months of employment.

*History Note: Authority G.S. 122C-26;*

*Temporary Adoption Eff. January 3, 2001.*

### 10 NCAC 14V .0204 TRAINING AND SUPERVISION OF PARAPROFESSIONALS

There shall be no privileging requirements for paraprofessionals:

(1) Paraprofessionals shall be supervised directly by a professional or indirectly supervised by a qualified professional. For purposes of this Rule, indirect supervision refers to the delegation of supervisory responsibilities by the qualified professional to the professional.

(2) All supervisory personnel must complete a supervisory training program approved by DMH/DD/SAS.

(3) Paraprofessionals shall demonstrate knowledge, skills and abilities required to serve the client based on the client's individualized treatment or habilitation plan.

*History Note: Authority G.S. 122C-26;*

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Temporary Adoption Eff. January 3, 2001.

### 10 NCAC 14V .0206 CLIENT RECORDS

(a) A client record shall be maintained for each individual admitted to the facility, which shall contain, but need not be limited to:

- (1) an identification face sheet which includes:
  - (A) name (last, first, middle, maiden);
  - (B) client record number;
  - (C) date of birth;
  - (D) race, gender and marital status;
  - (E) admission date; and
  - (F) discharge date;
- (2) documentation of mental illness, developmental disabilities or substance abuse diagnosis coded according to DSM IV;
- (3) documentation of the screening and assessment;
- (4) treatment/habilitation or service plan;
- (5) emergency information for each client which shall include the name, address and telephone number of the person to be contacted in case of sudden illness or accident and the name, address and telephone number of the client's preferred physician;
- (6) a signed statement from the client or legally responsible person granting permission to seek emergency care from a hospital or physician;
- (7) documentation of services provided;
- (8) documentation of progress toward outcomes;
- (9) if applicable:
  - (A) documentation of physical disorders diagnosis according to International Classification of Diseases (ICD-9-CM);
  - (B) medication orders;
  - (C) orders and copies of lab tests; and
  - (D) documentation of medication and administration errors and adverse drug reactions.

(b) Each facility shall ensure that information relative to AIDS or related conditions is disclosed only in accordance with the communicable disease laws as specified in G.S. 130A-143.

*History Note: Authority G.S. 122C-26; 143B-147; Eff. May 1, 1996; Recodified from 10 NCAC 14V .0204 to 10 NCAC 14V .0206 Eff. January 3, 2001.*

### 10 NCAC 14V .0208 CLIENT SERVICES

- (a) Facilities that provide activities for clients shall assure that:
- (1) space and supervision is provided to ensure the safety and welfare of the clients;
  - (2) activities are suitable for the ages, interests, and treatment/habilitation needs of the clients served; and
  - (3) clients participate in planning or determining activities.
- (b) Facilities or programs designated or described in these Rules as "24-hour" shall make services available 24 hours a day, every day in the year, unless otherwise specified in the rule.
- (c) Facilities that serve or prepare meals for clients shall ensure that the meals are nutritious.

(d) When clients who have a physical handicap are transported, the vehicle shall be equipped with secure adaptive equipment.

(e) When two or more preschool children who require special assistance with boarding or riding in a vehicle are transported in the same vehicle, there shall be one adult, other than the driver, to assist in supervision of the children.

~~(f) Any client services provided by individuals who do not meet the criteria for a qualified professional as defined in these Rules shall be supervised by a qualified professional.~~

*History Note: Authority G.S. 122C-26; 122C-112; 122C-146;*

*130A-361; 143B-147;*

*Eff. May 1, 1996;*

*Recodified from 10 NCAC 14V .0206 to 10 NCAC 14V .0208 Eff. January 3, 2001;*

*Temporary Amendment Eff. January 3, 2001.*

### 10 NCAC 14V .0304 FACILITY DESIGN AND EQUIPMENT

(a) Privacy: Facilities shall be designed and constructed in a manner that will provide clients privacy while bathing, dressing or using toilet facilities.

(b) Safety: Each facility shall be designed, constructed and equipped in a manner that ensures the physical safety of clients, staff and visitors.

- (1) All hallways, doorways, entrances, ramps, steps and corridors shall be kept clear and unobstructed at all times.
- (2) All mattresses purchased for existing or new facilities shall be fire retardant.
- (3) Electrical, mechanical and water systems shall be maintained in operating condition.
- (4) In areas of the facility where clients are exposed to hot water, the temperature of the water shall be maintained between 100 - 116 degrees Fahrenheit.

~~(4)(5)~~ All indoor areas to which clients have routine access shall be well-lighted. Lighting shall be adequate to permit occupants to comfortably engage in normal and appropriate daily activities such as reading, writing, working, sewing and grooming.

(c) Comfort Zone: Each 24-hour facility shall provide heating and air-cooling equipment to maintain a comfort range between 68 and 80 degrees Fahrenheit.

- (1) This requirement shall not apply to therapeutic (habilitative) camps and other 24-hour facilities for six or fewer clients.
- (2) Facilities licensed prior to October 1, 1988 shall not be required to add or install cooling equipment if not already installed.

(d) Indoor space requirements: Facilities licensed prior to October 1, 1988 shall satisfy the minimum square footage requirements in effect at that time. Unless otherwise provided in these Rules, residential facilities licensed after October 1, 1988 shall meet the following indoor space requirements:

- (1) Client bedrooms shall have at least 100 square feet for single occupancy and 80 square feet per client when more than one client occupies the bedroom.



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- (2) Where bassinets and portable cribs for infants are used, a minimum of 40 square feet per bassinet or portable crib shall be provided.
  - (3) No more than two clients may share an individual bedroom regardless of bedroom size.
  - (4) In facilities with overnight accommodations for persons other than clients, such accommodations shall be separate from client bedrooms.
  - (5) No client shall be permitted to sleep in an unfinished basement or in an attic.
  - (6) In a residential facility licensed under residential building code standards and without elevators, bedrooms above or below the ground level shall be used only for individuals who are capable of moving up and down the steps independently.
  - (7) Minimum furnishings for client bedrooms shall include a separate bed, bedding, pillow, bedside table, and storage for personal belongings for each client.
  - (8) Only clients of the same sex may share a bedroom except for children age six or below, and married couples.
  - (9) Children and adolescents shall not share a bedroom with an adult.
  - (10) At least one full bathroom for each five or fewer persons including staff of the facility and their family shall be included in each facility.
  - (11) Each facility, except for a private home provider, shall have a reception area for clients and visitors and private space for interviews and conferences with clients.
  - (12) The area in which therapeutic and habilitative activities are routinely conducted shall be separate from sleeping areas.
- (e) Where strict conformance with current requirements would be impractical, or because of extraordinary circumstances, new programs, or unusual conditions, DFS may approve alternate methods, procedures, design criteria and functional variations from the physical plant requirements when the facility can effectively demonstrate to DFS's satisfaction that the:
- (1) intent of the physical plant requirements are met; and
  - (2) variation does not reduce the safety or operational effectiveness of the facility.

*History Note:* Authority G.S. 122C-26; 143B-147; Eff. May 1, 1996; Temporary Amendment Eff. January 3, 2001.

### SECTION .0800 – DEATH REPORTING

#### 10 NCAC 14V .0801 SCOPE

- (a) For purposes of this Section, facilities licensed in accordance with G.S. 122C-2, state facilities operating in accordance with G.S. 122C Article 4, Part 5 and inpatient psychiatric units of hospitals licensed under G.S. 131E shall report client deaths to the Division of Facility Services.
- (b) Client deaths occurring in facilities not licensed in accordance with G.S. 122C-2 or state facilities operating in accordance with G.S. 122C, Article 4, Part 5 shall be reported to

the Division of Mental Health, Developmental Disabilities and Substance Abuse Services.

*History Note:* Authority G.S. 122C-26; 122C-131; Temporary Adoption Eff. January 1, 2001.

#### 10 NCAC 14V .0802 DEFINITIONS

In addition to the definitions contained in G.S. 122C-3 and 10 NCAC 14V .0103 of this Subchapter, the following definitions shall apply with respect to this Section:

- (1) "Accident" means an unexpected, unnatural or irregular event contributing to a client's death and includes, but is not limited to, medication errors, falls, fractures, choking, elopement, exposure, poisoning, drowning, burns or thermal injury, electrocution, misuse of equipment, motor vehicle accidents, and natural disasters.
- (2) "Immediately" means at once, at or near the present time, without delay.
- (3) "Violence" means physical force exerted for the purpose of violating, damaging, abusing or injuring.

*History Note:* Authority G.S. 122C-26; 122C-131; Temporary Adoption Eff. January 1, 2001.

#### 10 NCAC 14V .0803 REPORTING REQUIREMENTS

- (a) Upon learning of the death of a client currently receiving services, a facility shall file a report in accordance with G.S. 122C-31 and these rules. A facility shall be deemed to have learned of a death when any facility staff obtains information that the death occurred.
- (b) A written notice containing the information listed under Paragraph (d) of this Rule shall be made immediately for deaths occurring within seven days of physical restraint or seclusion of a client.
- (c) A written notice containing the information under Paragraph (d) of this Rule shall be made within three days of any death resulting from violence, accident, suicide or homicide.
- (d) Written notice may be submitted in person, telefacsimile or electronic mail. If the reporting facility does not have the capacity or capability to submit a written notice immediately, the information contained in the notice can be reported by telephone following the same time requirements under Subparagraph (b) and (c) of this Rule until such time the written notice can be submitted. The notice shall include at least the following information:

- (1) Reporting facility: Name, address, county, license number (if applicable), Medicare/Medicaid provider number (if applicable), facility director and telephone number, name and title of person preparing report, first person to learn of death and first staff to receive report of death, facility telephone number, and date and time report prepared;
- (2) Client information: Name, client record number, unit/ward (if applicable), Medicare/Medicaid number (if applicable), date of birth, age, height, weight, sex, race, competency, admitting diagnoses, primary or secondary mental illness, developmental disability or

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substance abuse diagnoses, primary/secondary physical illness/conditions diagnosed prior to death, date(s) of last two medical examinations (if known), date of most recent admission to a State operated psychiatric, developmental disability or substance abuse facility (if known), and date of most recent admission to an acute care hospital for physical illness (if known):

- (3) Circumstances of death: place and address where decedent died, date and time death was discovered, physical location decedent was found, cause of death (if known), whether or not decedent was restrained at the time of death or within seven days of death and if so, a description of the type of restraint and its usage, whether or not decedent was in seclusion at the time of death or within seven days of death and if so, a description of the seclusion episode(s), and a description of events surrounding the death; and
- (4) Other information: list of other authorities such as law enforcement or the County Department of Social Services that have been notified, have investigated or are in the process of investigating the death or events related to the death.

(e) The facility shall submit a written report, using a form pursuant to G.S. 122C-31(f). The facility shall provide, fully and accurately, all information sought on the form. If the facility is unable to obtain any information sought on the form, or if any such information is not yet available, the facility shall so explain on the form.

(f) In addition, the facility shall:

- (1) notify the appropriate division immediately whenever it has reason to believe that information provided may be erroneous, misleading, or otherwise unreliable;
- (2) submit to the appropriate division, immediately after it becomes available, any information required by this Rule that was previously unavailable; and
- (3) provide, upon request by the appropriate division, other information the facility obtains regarding the death, including, but not limited to, death certificates, autopsy reports, and reports by other authorities.

(g) With regard to any client death under circumstances described in G.S. 130A-383, a facility shall notify the appropriate law enforcement authorities so the medical examiner of the county in which the body is found can be notified. Documentation of such notification shall be maintained by the facility and be made available for review by the appropriate division upon request.

(h) In deaths not under the jurisdiction of the medical examiner, the facility shall notify the decedent's next-of-kin, or other individual authorized according to G.S. 130A-398, that an autopsy may be requested as designated in G.S. 130A-389.

(i) If the circumstances surrounding any client death reveal reason to believe that one or more disabled adults at the facility may be abused, neglected or exploited and in need of protective services, the facility shall initiate the procedures outlined in G.S. 108A-6.

(j) If the circumstances surrounding any client death reveal reason to believe that one or more juveniles at the facility may be abused, neglected or exploited and in need of protective

services, the facility shall initiate the procedures outlined in G.S. 7B-3.

*History Note: Authority G.S. 122C-26; 122C-131; Temporary Adoption Eff. January 1, 2001.*

### 10 NCAC 14V .6002 STAFF

(a) Each facility shall delineate in writing the numbers and qualification of its personnel.

(b) Each facility shall have a designated director. The director shall be an individual who is a graduate of a college or university and who meets at least one of the following additional qualification criteria:

- (1) Has an advanced degree in a related human service field and two years of management or supervisory experience in inpatient mental health services; or
- (2) Has a baccalaureate degree in a related human service field and four years of management or supervisory experience in inpatient mental health services; or
- (3) Has an advanced degree in a field related to the management of health care facilities and two years of management experience in inpatient mental health services.

(~~b~~)(c) Each facility shall have a designated medical director. In a substance abuse facility, the medical director shall be a physician with at least two years experience in the treatment of substance abuse.

(~~e~~)(d) A physician shall be present in the facility or on call 24 hours per day.

(~~d~~)(e) A physician shall supervise the treatment of each client.

(~~e~~)(f) Staff coverage in a psychiatric facility shall include at least one of each of the following: psychiatrist;

- (1) licensed practicing psychologist;
- (2) psychiatric social worker;
- (4) psychiatric nurse; and
- (5) the services of a qualified mental health professional readily available by telephone or page.

(~~f~~)(g) Staff Coverage in a substance abuse facility shall include at a minimum:

- (1) one full-time certified alcoholism, drug abuse or substance abuse counselor for every 10 or fewer clients. If the facility falls below this prescribed ratio and is unable to employ an individual who is certified because of unavailability of certified persons in the facility's hiring area, then it may employ an uncertified person, provided that this employee meets the certification requirements within a maximum of 26 months from the date of his employment;
- (2) at least one registered nurse on duty during each shift;
- (3) at least two direct care staff members on duty at all times;
- (4) one direct care staff member for each 20 or fewer clients on duty at all times in facilities serving adults;
- (5) a minimum of one staff member for each five or fewer minor clients on duty during the hours 7:00 a.m. to 11:00 p.m.; and

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(6) at least one staff member on duty trained in substance abuse withdrawal and symptoms of secondary complications to substance abuse.

History Note: Authority G.S. 122C-26; 143B-147; Eff. May 1, 1996; Temporary Amendment Eff. January 3, 2001.

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Rule-making Agency: North Carolina Medical Care Commission

Rule Citation: 10 NCAC 42C .3003

Effective Date: January 1, 2001

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 131D-2; 131D-4.5; 143B-165; S.L. 99-0334

Reason for Proposed Action: The adult care home industry provides various levels of care to frail and vulnerable members of our population. Two critical moments in the delivery of that care occur during admission and at discharge/transfer. This Rule outlines some of the requirements pertaining to the discharge or transfer of a resident. Failure to adopt these rules could jeopardize the smooth transition of services from one facility to another provider.

Comment Procedures: Written comments may be submitted to Doug Barrick, Division of Facility Services, Adult Care Licensure Section, 2708 Mail Service Center, Raleigh, NC 27699-2708.

CHAPTER 42 – INDIVIDUAL AND FAMILY SUPPORT

SUBCHAPTER 42C – LICENSING OF FAMILY CARE HOMES

SECTION .3000 – REFUND POLICIES

10 NCAC 42C .3003 SETTLEMENT OF COST OF CARE

(a) If the resident, after being notified by the home of its intent to discharge him in accordance with Rule .2505(a) .2506 of this Subchapter, moves out of the home before the ~~two weeks (14 days)~~ 30-days has elapsed, he shall receive a refund equal to the cost of care for the remainder of the month minus any nights spent in the home during the ~~two-week~~ 30-day period. The refund ~~is to shall~~ be made within ~~14~~ 30 days from the date of notice. ~~for a resident who is returning to an independent living arrangement in the community and within 30 days from the date of notice for all other circumstances where a resident is leaving the home.~~

(b) If the resident, after giving written notice to the home of his intent to leave in accordance with Rule .2505(b) .2506 of this

Subchapter, moves out of the home before the two weeks (14 days) has elapsed, the resident owes the administrator an amount equal to the cost of care for the 14 days. If the two weeks' period for a resident receiving State-County Special Assistance extends into another month and the resident moves early, the former home is entitled to the required payment before the new home receives any payment. The resident shall be refunded the remainder of any advance payment following settlement of the cost of care. The refund ~~is to shall~~ be made within 14 days from the date of notice for a resident who is returning to an independent living arrangement in the community and within 30 days from the date of notice for all other circumstances where a resident is leaving the home.

(c) When there is an exception to the notice as provided in Rule .2505(e) .2506 of this Subchapter to protect the health or safety of the resident or others in the home, the resident is only required to pay for any nights spent in the home. A refund ~~is to shall~~ be made within 14 days from the date of notice for a resident who is returning to an independent living arrangement in the community and within 30 days from the date of notice for all other circumstances where a resident is leaving the home.

(d) When a resident leaves the home with the intent of returning to it, the following apply:

- (1) The home may reserve the resident's bed for a set number of days with the written agreement of the administrator and the resident or his responsible person and thereby expect payment for the days the bed is held;
(2) If, after leaving the home, the resident decides not to return to it, the resident or someone acting on his behalf may be required by the home to provide a two weeks' (14 day) written notice that he is not returning;
(3) Requirement of the two weeks' notice, if it is to be applied by the home, ~~must shall~~ be a part of the written agreement and explained by the administrator to the resident and his family or responsible person before signing;
(4) On notice by the resident or someone acting on his behalf that he will not be returning to the facility, the administrator ~~must shall~~ refund the remainder of any advance payment to the resident or his responsible person, minus an amount equal to the cost of care for the two weeks (14 days) covered by the agreement. The refund ~~is to shall~~ be made within 14 days from the date of notice for a resident who is returning to an independent living arrangement in the community and within 30 days from the date of notice for all other circumstances where a resident is leaving the home;
(5) In no situation involving a recipient of State-County Special Assistance may a home expect payment for more than 30 days since State-County Special Assistance is not authorized unless the resident is actually residing in the facility or it is anticipated that he will return to the facility within 30 days; and
(6) Exceptions to the two weeks' notice, if required by the home, are cases where returning to the home would jeopardize the health or safety of the resident or others in the home as certified by the resident's physician or

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approved by the county department of social services, and in the case of the resident's death. In these cases, the administrator ~~must~~ shall refund the rest of any advance payment calculated beginning with the day the home is notified.

(e) If a resident dies, the administrator of his estate or the Clerk of Superior Court, when no administrator for his estate has been appointed, ~~must~~ shall be given a refund equal to the cost of care for the month minus any nights spent in the home during the month. This is to be done within 30 days after the resident's death.

History Note: Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 99-0334; Eff. January 1, 1977; Readopted Eff. October 31, 1977; Amended Eff. July 1, 1990; June 1, 1987; April 1, 1984; Temporary Amendment Eff. January 1, 2001.

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Rule-making Agency: North Carolina Medical Care Commission

Rule Citation: 10 NCAC 42C .3702

Effective Date: January 1, 2001

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 131D-2; 131D-4.3; 131D-4.5; 143B-153; S.L. 99-0334

Reason for Proposed Action: The adult care home industry provides various levels of care to frail and vulnerable members of our population. Two critical moments in the delivery of that care occur during admission and at discharge/transfer. This Rule outlines some of the requirements pertaining to the admission of resident. Failure to adopt these rules could jeopardize the development of an appropriate plan of care and, thus, jeopardize the ability to identify the necessary services to provide quality care.

Comment Procedures: Written comments may be submitted to Doug Barrick, Division of Facility Services, Adult Care Licensure Section, 2708 Mail Service Center, Raleigh, NC 27699-2708.

CHAPTER 42 – INDIVIDUAL AND FAMILY SUPPORT

SUBCHAPTER 42C – LICENSING OF FAMILY CARE HOMES

SECTION .3700 – RESIDENT ASSESSMENT AND CARE

10 NCAC 42C .3702 RESIDENT CARE PLAN

(a) ~~Effective January 1, 2002, The~~ facility shall assure a care plan is developed for each resident in conjunction with the ~~initial~~

resident ~~assessment evaluation to be completed within 30 calendar days of admission according to Rule .3701 of this Section~~ and revised as needed based on annual assessments and any reassessments of the resident. ~~Prior to January 1, 2002, the administrator shall assure a care plan is developed in conjunction with the admission assessment to be completed within 72 hours of admission according to Rule .3701 of this Section and revised as needed based on annual assessments and any reassessments of the resident.~~ For the purposes of this Subchapter, the care plan is an individualized, written program of personal care for each resident.

- (b) The care plan shall include the following: (1) a statement of the care or service to be provided based on the assessment or reassessment; and (2) frequency of the service provision. (c) The assessor shall sign the care plan upon its completion. (d) The facility shall assure that the resident's physician authorizes personal care services and certifies the following by signing and dating the care plan within 15 calendar days of completion of the assessment: (1) the resident is under the physician's care; and (2) the resident has a medical diagnosis with associated physical or mental limitations that justify the personal care services specified in the care plan.

History Note: Authority G.S. 131D-2; 131D-4.3; 131D-4.5; 143B-153; S.L. 99-0334; Temporary Adoption Eff. January 1, 1996; Eff. May 1, 1997; Temporary Amendment Eff. January 1, 2001.

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Rule-making Agency: North Carolina Medical Care Commission

Rule Citation: 10 NCAC 42D .2401-.2403

Effective Date: January 1, 2001

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 90-288; 131D-2; 143B-165; S.L. 99-0334; S.L. 99-0443

Reason for Proposed Action: House Bill 512 (S.L. 0443) established certification requirements for adult care home administrators and Senate Bill 10 (S.L. 0334) mandated temporary rulemaking to address specific qualifications of staff who shall be on duty in adult care homes to assure safe and quality care for residents.

Comment Procedures: Written comments may be submitted to Doug Barrick, Division of Facility Services, Adult Care Licensure Section, 2708 Mail Service Center, Raleigh, NC 27699-2708.

CHAPTER 42 – INDIVIDUAL AND FAMILY SUPPORT

SUBCHAPTER 42D – LICENSING OF HOMES FOR THE AGED AND INFIRM

10 NCAC 42D .2401 ADMINISTRATOR CERTIFICATION AND RENEWAL

(a) The administrator of an adult care home shall be certified by the Department under the provisions of G.S. 90-20A. An applicant administrator shall submit documentation, according to Guidelines for Applicant Administrators, that the qualifications specified in G.S. 90-288.14 have been met. Copies of these guidelines may be obtained at no charge by contacting the Adult Care Licensure Section, Division of Facility Services, 2708 Mail Service Center, Raleigh, NC 27699-2708.

(b) The certification shall be renewed by the Department every two years upon the submission of a renewal application according to G.S. 90-288.15(b) and Certification Renewal Guidelines, including documentation that the administrator has completed at least 30 hours of continuing education related to the management of adult care homes and care of aged and disabled persons. Copies of these guidelines may be obtained at no charge by contacting the Adult Care Licensure Section at the address specified in Paragraph (a) of this Rule.

History Note: Authority G.S. 90-288; 131D-2; 143B-165; S.L. 99-0334; S.L. 99-0443; Temporary Adoption Eff. January 1, 2001.

10 NCAC 42D .2402 QUALIFYING EDUCATION AND EXPERIENCE

(a) The equivalent of two years of coursework at an accredited college, community college or university, as provided for in G.S. 90-288.14(3), shall be 60 semester hours or 96 quarter hours which shall be completed prior to applying for certification. All education credits shall be documented by an official college transcript.

(b) A combination of education and experience in lieu of the two-year education equivalent as specified in G.S. 90-288.14(3) shall comply with the following:

- (1) successful completion of the equivalent of one year of college level study (30 semester hours or 48 quarter hours) from an accredited college, community college or university; and
(2) two years of supervisory experience in a licensed adult care home, nursing home or other health or residential care setting within five years preceding the date of the application for certification. For the purposes of this Section, supervisory experience means having direct responsibility for the supervision of a least one full-time employee.

History Note: Authority G.S. 90-288; 131D-2; 143B-165; S.L. 99-0334; S.L. 99-0443; Temporary Adoption Eff. January 1, 2001.

10 NCAC 42D .2403 ADMINISTRATOR-IN-TRAINING PROGRAM

(a) The 120-hour administrator-in-training program as required in G.S. 90-288.14(4) shall meet the following requirements:

- (1) A minimum of 75 hours of coursework with at least 14 classroom hours conducted by an on-site instructor. The curriculum for the 75 hours of coursework shall consist of at least the following:
(A) 14 hours of instruction in assisted living in North Carolina and laws, rules, policies and procedures that impact the operations of adult care homes in North Carolina;
(B) 34 hours of instruction in organizational, human resources and physical environment management; and
(C) 27 hours of instruction in business and financial management and resident care management.
(2) A minimum of 140 hours of combined internship/AIT coursework under a qualified preceptor, according to guidelines established by the Department, with a credit of .32 hours for each of the 140 hours for a total of 45 credit hours.

(b) The person or entity seeking approval of the 75 hours coursework required in Part (a)(1) of this Rule and the 140 hours of combined internship/AIT coursework as required in Part (a)(2) of this Rule shall submit a written request to the Department containing information on courses, instructors and policies as specified in the Administrator-in-Training Curriculum Approval Guidelines. Copies of these guidelines may be obtained at no cost by contacting the Adult Care Licensure Section, Division of Facility Services, 2708 Mail Service Center, Raleigh, NC 27699-2708.

(c) Preceptors for the 140 hours of combined internship/AIT coursework required in Part (a)(2) of this Rule shall be approved according to the Administrator-in-Training Preceptor Approval Guidelines which may be obtained at no cost by contacting the Adult Care Licensure Section at the address specified in Paragraph (b) of this Rule.

(d) Licensed nursing home administrators shall be deemed to have met the administrator-in-training program requirements specified in this Rule.

History Note: Authority G.S. 90-288; 131D-2; 143B-165; S.L. 99-0334; S.L. -0443; Temporary Adoption Eff. January 1, 2001.

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Rule-making Agency: Commission for Mental Health, Developmental Disabilities and Substance Abuse Services

Rule Citation: 10 NCAC 45H .0205

Effective Date: February 15, 2001

Findings Reviewed and Approved by: Julian Mann

Authority for the rulemaking: G.S. 90-88; 90-92; 143B-147

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**Reason for Proposed Action:** *With the issuance of these final rules, the Drug Enforcement Administration (DEA) places Modafinil and Zaleplon into Schedule IV of the Controlled Substances Act. As a result of this Rule, control and criminal sanction of Schedule IV will be applicable to the manufacture, distribution, importation and exportation of Modafinil and Zaleplon and products containing each substance.*

**Comment Procedures:** *Any interested person may submit written comments on the proposed rule by mailing the comments to John Womble, Regulatory Branch, 3016 Mail Service Center, Raleigh, NC 27699-3016.*

**CHAPTER 45 – COMMISSION FOR MENTAL HEALTH,  
DEVELOPMENTAL DISABILITIES AND SUBSTANCE  
ABUSE SERVICES**

**SUBCHAPTER 45H – DRUG TREATMENT FACILITIES**

**SECTION .0200 – SCHEDULES OF CONTROLLED  
SUBSTANCES**

**10 NCAC 45H .0205 SCHEDULE IV**

(a) Schedule IV shall consist of the drugs and other substances by whatever official name, common or usual name, chemical name or brand name designated listed in this Rule. Each drug or substance has been assigned the Drug Enforcement Administration controlled substances code number set forth opposite it.

(b) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Alprazolam	2882
(2) Barbitol	2145
(3) Bromazepam	2748
(4) Camazepam	2749
(5) Chloral betaine	2460
(6) Chloral hydrate	2465
(7) Chlordiazepoxide	2744
(8) Clobazam	2751
(9) Clonazepam	2737
(10) Clorazepate	2768
(11) Clotiazepam	2752
(12) Cloxazolam	2753
(13) Delorazepam	2754
(14) Diazepam	2765
(15) Estazolam	2756
(16) Ethchlorvynol	2540
(17) Ethinamate	2545
(18) Ethyl loflazepate	2758
(19) Fludiazepam	2759
(20) Flunitrazepam	2763
(21) Flurazepam	2767
(22) Halazepam	2762
(23) Haloxazolam	2771

(24) Ketazolam	2772
(25) Loprazolam	2773
(26) Lorazepam	2885
(27) Lormetazepam	2774
(28) Mebutamate	2800
(29) Medazepam	2836
(30) Meprobamate	2820
(31) Methohexital	2264
(32) Methylphenobarbital (mephobarbital)	2250
(33) Midazolam	2884
(34) Nimetazepam	2837
(35) Nitrazepam	2834
(36) Nordiazepam	2838
(37) Oxazepam	2835
(38) Oxazolam	2839
(39) Paraldehyde	2585
(40) Petrichloral	2591
(41) Phenobarbital	2285
(42) Pinazepam	2883
(43) Prazepam	2764
(44) Quazepam	2881
(45) Temazepam	2925
(46) Tetrazepam	2886
(47) Triazolam	2887
<del>(48)</del> Zaleplon	2781
<del>(48)</del> (49) Zolpidem	2783

(c) Fenfluramine. Any material compound, mixture or preparation which contains any of the following substances including its salts, isomers (whether optical, position or geometric) and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible:

Fenfluramine	1670
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(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or other preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Cathine [(+)-norpseudoephedrine]	1230
(2) Diethylpropion	1610
(3) Fencamfamin	1760
(4) Fenproporex	1575
(5) Mazindol	1605
(6) Mefenorex	1580
<del>(7)</del> Modafinil	1680
<del>(7)</del> (8) Phentermine	1640
<del>(8)</del> (9) Pemolin (including organometallic complexes and chelates thereof)	1530
<del>(9)</del> (10) Sibutramine	1675

(e) Other Substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substance, including its salts:

(1) Butorphanol (including its optical isomers)	9720
(2) Pentazocine	9709
(3) Pipradrol	1750

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- (4) SPA  
[(-)-1-dimethylamino-1,2-diphenylethane] 1635
- (f) Narcotic Drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation containing limited quantities of any of the following narcotic drugs, or any salt thereof:
  - (1) not more than one milligram of difenoxin and not less than 25 micrograms of atropinesulfate per dosage unit, 9167
  - (2) Dextropropoxyphene (alpha-(8f)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane), 9278
  - (3) Buprenorphine 9064

*History Note:* Authority G.S. 90-88; 90-92; 143B-147; Eff. June 30, 1978; Amended Eff. April 1, 1999; July 1, 1993; January 1, 1989; December 1, 1987; August 1, 1987; Temporary Amendment Eff. May 28, 1998; Temporary Amendment Expired March 12, 1999; Amended Eff. August 1, 2000; Temporary Amendment Eff. February 15, 2001.

**TITLE 16 – DEPARTMENT OF PUBLIC EDUCATION**

**Rule-making Agency:** State Board of Education

**Rule Citation:** 16 NCAC 06H .0111

**Effective Date:** January 1, 2001

**Findings Reviewed and Approved by:** Beecher R. Gray

**Authority for the rulemaking:** G.S. 115C-489.6; 150B-21.1(a7)(2)

**Reason for Proposed Action:** S.L. 2000-69 requires the State Board of Education to administer the qualified zone academy bond program authorized under 26 U.S.C. § 1397E. The act also authorizes the State Board to adopt temporary rules to implement this program.

**Comment Procedures:** Questions or written comments regarding this matter may be directed to Harry E. Wilson, Rule-Making Coordinator, 2086 Education Building, 301 N. Wilmington St., Raleigh, NC 27601-2825; (919) 715-1310.

**CHAPTER 06 – ELEMENTARY AND SECONDARY EDUCATION**

**SUBCHAPTER 06H – FEDERAL PROGRAMS**

16 NCAC 06H .0111 QUALIFIED ZONE ACADEMY

- BONDS**
- (a) Every public school shall be eligible to participate as a qualified zone academy if it meets the requirements set forth in 26 U.S.C. 1397E(d)(4).
  - (b) The minimum amount of bonding authority that the SBE shall allocate to a qualified zone academy shall be five hundred thousand dollars (\$500,000).
  - (c) Each application for authority to issue qualified zone academy bonds shall be executed by both the LEA and the county board of commissioners.

*History Note:* Authority G.S. 115C-489.6; 150B-21.1(a7)(2); Temporary Adoption Eff. January 1, 2001.

**TITLE 19A – DEPARTMENT OF TRANSPORTATION**

**Rule-making Agency:** NC Department of Transportation - Division of Highways

**Rule Citation:** 19A NCAC 02D .0607

**Effective Date:** December 31, 2000

**Findings Reviewed and Approved by:** Beecher R. Gray

**Authority for the rulemaking:** G.S. 20-118(f); 20-119; 136-18(5)

**Reason for Proposed Action:** G.S. 136-18(5) authorizes DOT to promulgate rules governing the safe movement of trucks, tractors, trailers and other heavy vehicles or machinery on highways. G.S. 20-115, et. seq. sets forth weights and dimensions to move loads over the highways. G.S. 20-119 authorizes DOT to issue permits to move vehicles with excessive weight and dimensions. HB 1854, ratified in 2000, changed the statute. On August 7, 2000, DOT filed temporary rules to regulate oversize/overweight vehicles. The changes increased penalties for non-compliance and enforcement criteria. Permit applications increased dramatically; the changes were effective October 1, 2000. The Permit Unit has issued permits far exceeding those before the statutory changes. 19A NCAC 02D .0642, effective October 19, will expire December 31, 2000. Changes in 02D .0607 will allow the department to continue to issue blanket permits for oversize/overweight loads. The blanket permits allow the industry greater movement flexibility and decrease DOT paperwork considerably.

**Comment Procedures:** Any interested person may submit written comments on the proposed rule by mailing the comments to Emily Lee, NC DOT, 1501 Mail Service Center, Raleigh, NC 27699-1501 by April 15, 2001.

**CHAPTER 02 – DIVISION OF HIGHWAYS**

**SUBCHAPTER 02D – HIGHWAY OPERATIONS**

SECTION .0600 – OVERSIZE-OVERWEIGHT PERMITS

**TEMPORARY RULES**

**19A NCAC 02D .0607 PERMITS-WEIGHT, DIMENSIONS AND LIMITATIONS**

(a) Vehicle/vehicle combinations with non-divisible overwidth loads are limited to a maximum width of 15 feet. After review of documentation of variances, the Central Permit Office or the State Maintenance and Equipment Engineer may authorize the issuance of a permit for movement of loads in excess of 15 feet wide in accordance with 19A NCAC 02D .0600 et seq. Exception: A mobile/modular unit with maximum measurements of 13'6" high, 16' wide unit and a 3" gutter edge may be issued a single trip permit in agreement with permit policy. If blades of construction equipment or front end loader buckets cannot be angled to extend no more than 14' across the roadway, they shall be removed. A blade, bucket or other attachment that is an original part of the equipment as manufactured which has been removed to reduce the width or height may be hauled with the equipment without being considered a divisible load except as provided in .0607. A 14' wide mobile/modular home unit with a roof overhang not to exceed a total of 12" may be transported with a bay window, room extension, or porch providing the protrusion does not extend beyond the maximum 12" of roof overhang or the total width of overhang on the appropriate side of the home. Reflective extenders of a design and color approved by the Department of Transportation equal to the width of the roof overhang or protrusion shall be attached to the front and rear of the home to clearly identify the total width of the unit while moving on North Carolina highways. A 16' wide mobile/modular home unit shall not be allowed any protrusions beyond the maximum 3" gutter edge. Authorization to move commodities wider than 15 feet in width may be denied if considered by the issuing agent to be unsafe to the traveling public or if the highway cannot accommodate the move due to width. A single trip permit may be issued vehicle specific not to exceed a width of 15 feet for all movements unless authorized by the Central Permit Office or the State Maintenance and Equipment Engineer. Exception: A mobile/modular unit with maximum measurements of 13' 6" high, 16' wide unit and a 3" gutter edge may be issued a single trip permit in agreement with permit policy. Permits for house moves may be issued as specified in G.S. 20-356 through G.S. 20-372. An annual permit shall be issued vehicle specific not to exceed a maximum width of 12' and a maximum height of 13' 6" for movement on all highways in North Carolina. An annual oversize/overweight permit may be issued valid for unlimited movement without the requirement of an escort vehicle on all North Carolina highways, where permitted by the posted road and bridge limits, for vehicle/vehicle combinations with a minimum extreme wheel base of 51 feet transporting general commodities and which does

not exceed: a width of 12 feet; a height of 13 feet, 6 inches; an overall length of 75 feet; gross weight of 90,000 pounds; and axle weights of 12,000 pounds steer axle, 25,000 pounds single axle, 50,000 pounds tandem axle, and 60,000 pounds for a three or more axle grouping. An annual oversize/overweight permit may be issued valid for unlimited movement without the requirement of an escort on all North Carolina highways, where permitted by the posted road and bridge limits, for four or five axle self-propelled equipment or special mobile equipment capable of traveling at a highway speed of 45 miles per hour with a minimum wheel base of 30 feet and which does not exceed: a width of 10 feet; a height of 13 feet, 6 inches; an overall length of 45 feet with front and/or rear overhang not to exceed a total of 10 feet; gross weight of 90,000 pounds; and axle weights of 20,000 pounds single axle, 50,000 pounds tandem axle, and 60,000 pounds for a three or more axle grouping. An annual oversize/overweight permit may be issued valid for unlimited movement with the requirement of an escort vehicle on all North Carolina highways, where permitted by the posted bridge and load limits, for vehicles/vehicle combinations transporting farm equipment and which does not exceed: a width of 14 feet; a height of 13 feet, 6 inches; and a weight as set forth in G.S. 20-118(b)(3). Mobile/modular homes with a maximum height of 13' 6" being transported from the manufacturer to an authorized North Carolina mobile/modular home dealership are an exception and shall be permitted for a width not to exceed a 14' unit with an allowable roof overhang not to exceed a total of 12". These mobile/modular homes shall be authorized to travel on designated routes approved by the Department of Transportation considering construction work zones, highway lane widths, origin and destination or other factors to ensure safe movement. An annual permit may be issued to the North Carolina licensed mobile/modular home retail dealer and the transporter for delivery of mobile/modular homes not to exceed a maximum width of a 14' unit with a total roof overhang not to exceed 12" and a height of 13' 6". The annual permit shall be valid for delivery of mobile/modular homes within a maximum 25-mile radius of the dealer location. Confirmation of destination for delivery is to be carried in the permitted towing unit readily available for law enforcement inspection.

(b) The maximum weight permitted on a designated route is determined by the bridge capacity of bridges to be crossed during movement. Moves exceeding weight limits for highways or bridge structures may be denied if considered by the issuing agent to be unsafe and if they may cause damage to such highway or structure. A surety bond may be required as determined by the issuing agent to cover the cost of potential damage to pavement, bridges or other damages incurred during the permitted move.

- (1) The maximum single trip and annual permit weight allowed for a specific vehicle or vehicle combination not including off highway construction equipment without an engineering study is:
- |                       |  |
|-----------------------|--|
| Steer Axle            | 12,000 lbs.  |
| Single axle           | 25,000 lbs.  |
| 2 axle tandem         | 50,000 lbs.  |
| 3 or more axle group  | 60,000 lbs.  |
| 3 axle single vehicle | 60,000 lbs. to 70,000 lbs. determined by extreme wheelbase measurement |
| 4 axle single vehicle | 75,000 lbs. to 90,000 lbs. determined by extreme wheelbase measurement |



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5 axle single vehicle 86,000 lbs. to 94,500 lbs.

5 axle vehicle combination minimum 51' extreme wheelbase 112,000 lbs.

6 axle single vehicle 100,000 lbs. to 108,000 lbs. determined by extreme wheelbase measurement.

6 axle vehicle combination 120,000 lbs. minimum 51' extreme wheelbase'

7 axle single vehicle 105,000 to 122,000 lbs. minimum 35' extreme wheelbase

7 axle vehicle combination 122,000 to 132,000 lbs. minimum 40' extreme wheelbase

7 axle vehicle combination with a gross wt. exceeding 132,000 lbs. requires a Department of Transportation Engineering Study.

- (2) The maximum permit weight allowed for self propelled off highway construction equipment with low pressure/flotation tires is:

Single axle 37,000 lbs.

Tandem axle 50,000 lbs.

2 axle single vehicle 65,000 to 70,000 lbs. determined by extreme wheelbase measurement

3 axle single vehicle 75,000 to 80,000 lbs. determined by extreme wheelbase measurement

4 axle single vehicle 80,000 to 90,000 lbs. determined by extreme wheelbase measurement

- (3) A vehicle combination consisting of a power unit and trailer hauling a sealed ship container may qualify for a specific route overweight permit not to exceed 94,500 lbs. provided the vehicle:

(A) Is going to or from a designated seaport (to include in state and out of state) and has been or will be transported by marine shipment;

(B) Is licensed for the maximum allowable weight for a 51' extreme wheelbase measurement specified in G.S. 20-118;

(C) Does not exceed maximum dimensions of width, height and length specified in Chapter 20 of the Motor Vehicle Law;

(D) Is a vehicle combination with at least five axles;

(E) Has proper documentation (shippers bill of lading or trucking bill of lading) of sealed commodity being transported available for law enforcement officer inspection.

- (c) Overlength permits will be limited as follows:

(1) Single trip permits are limited to 105 feet inclusive of the towing vehicle. Approval may be given by the Central Permit Office for permitted loads in excess of 105 feet after review of route of travel. Mobile/modular home units shall not exceed a length of 80 feet inclusive of a 4 foot trailer tongue. Total length inclusive of the towing vehicle is 105 feet.

(2) Annual (blanket) permits will not be issued for lengths to exceed 75 feet. Mobile/modular home permits may be issued for a length not to exceed 105 feet.

(3) Front overhang may not exceed the length of 3' specified in Chapter 20 unless if transported otherwise would create a safety hazard. If the front overhang exceeds 3', an overlength permit may be issued.

- (d) An Overheight Permit Application for heights in excess of 14' must be submitted in writing to the Central Permit Office at least two working days prior to the anticipated date of movement. A 16' wide mobile/modular unit with a maximum 3" gutter edge shall not exceed a height of 13' 6" while traveling on North Carolina highways. The issuance of the permit does not imply nor guarantee the clearance for the permitted load and all vertical clearances shall be checked by the permittee prior to movement underneath.

(e) The move is to be made between sunrise and sunset Monday through Saturday with no move to be made on Sunday. Exception: A 16' wide mobile/modular home unit with a maximum three inch gutter edge is restricted to travel from 9:00 a.m. to 2:30 p.m. Monday through Thursday. Additional time restrictions may be set by the issuing office if it is in the best interest for safety or to expedite flow of traffic. No movement is permitted for a vehicle/vehicle combination after noon on the weekday preceding the six holidays of New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day and no movement is permitted until noon on the weekday following a holiday. If the observed holiday falls on the weekend, travel is restricted from 12:00 noon on the preceding Friday through 12:00 noon on the following Monday. Continuous travel (24 hr/7 day/365 days a year) is authorized for any vehicle/vehicle combination up to but not to exceed a permitted gross weight of 112,000 lbs. provided the permitted vehicle has no other over legal dimension of width, height or length included in the permitted move. Exception: self-propelled equipment may be authorized for continuous travel with properly marked overhang (front and/or rear) not to exceed a total of 10 feet. Permitted vehicles owned or leased by the same company or permitted vehicles originating at the same location shall travel at a distance of not less than two miles apart. Convoy travel is not authorized except as directed by authorized law enforcement escort.

(f) The speed of permitted moves shall be that which is reasonable and prudent for the load, considering weight and bulk, under conditions existing at the time; however, the maximum speed shall not exceed the posted speed limit. A towing unit and mobile/modular home combination shall not exceed a maximum speed of 60 miles per hour. The driver of the permitted vehicle shall avoid creating traffic congestion by periodically relinquishing the traffic way to allow the passage of following vehicles when a build up of traffic occurs.

- (g) Additional safety measures are as follows:

(1) A yellow banner measuring a total length of 7' x 18" high bearing the legend "Oversize Load" in 10" black letters 1.5 inches wide shall be displayed in one or two pieces totaling the required length on the front and rear bumpers of a permitted vehicle/vehicle combination with a width of 10' or greater. A towing unit mobile/modular home combination shall display

## *TEMPORARY RULES*

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banners of the size specified bearing the legend "Oversize -ft. Load" identifying the nominal width of the unit in transport. Escort vehicles shall display banners as previously specified with the exception of length to extend the entire width of the bumpers;

- (2) Red flags measuring 18" square shall be displayed on all sides at the widest point of load for all loads in excess of 8' 6" wide but the flags shall be so mounted as to not increase the overall width of the load;
  - (3) All permitted vehicles/vehicle combinations shall be equipped with tires of the size specified and the required number of axles equipped with operable brakes in good working condition as provided in North Carolina Statutes, Motor Carrier and Housing and Urban Development (HUD) regulations;
  - (4) Rear view mirrors and other safety devices on towing units attached for movement of overwidth loads shall be removed or retracted to conform with legal width when unit is not towing/hauling such vehicle or load;
  - (5) Flashing amber lights shall be used as determined by the issuing permit office.
- (h) The object to be transported shall not be loaded or parked, day or night, on the highway right of way without specific permission from the office issuing the permit after confirmation of an emergency condition.
- (i) No move shall be made when weather conditions render visibility less than 500 feet for a person or vehicle. Moves shall not be made when highway is covered with snow or ice or at any time travel conditions are considered unsafe by the Division of Highways, State Highway Patrol or other Law Enforcement Officers having jurisdiction. Movement of a mobile/modular unit exceeding a width of 10' shall be prohibited when wind velocities exceed 25 miles per hour in gusts.

(j) All obstructions, including traffic signals, signs and utility lines shall be removed immediately prior to and replaced immediately after the move at the expense of the mover, provided arrangements for and approval from the owner is obtained. In no event are trees, shrubs, or official signs to be cut, trimmed or removed without personal approval from the Division of Highways District Engineer having jurisdiction over the area involved. In determining whether to grant approval, the district engineer shall consider the species, age and appearance of the tree or shrub in question and its contribution to the aesthetics of the immediate area.

(k) The Department of Transportation may require escort vehicles accompany oversize or overweight loads. The Department of Transportation shall coordinate with the proper agencies to establish an escort driver training and certification program. Once the program is established, the driver of the escort vehicle is required to be certified according to State regulations. North Carolina may reciprocate with other states that have an accredited escort certification program. Certification credentials are required to be carried in the vehicle readily available for enforcement inspection. The weight, width of load, width of pavement, height, length of combination, length of overhang, maximum speed of vehicle, geographical route of travel, weather conditions and restricted time of travel will be considered to determine escort requirements.

*History Note: Authority G.S. 20-118(f); 20-119; 136-18(5); Board of Transportation Minutes for February 16, 1977 and November 10, 1978; Eff. July 1, 1978; Amended Eff. October 1, 1994; December 29, 1993; October 1, 1991; October 1, 1990; Temporary Amendment Eff. October 1, 2000; Temporary Amendment Eff. December 31, 2000.*

**APPROVED RULES**

*This Section includes the Register Notice citation to Rules approved by the Rules Review Commission (RRC) at its meeting of November 16, 2000 pursuant to G.S. 150B-21.17(a)(1) and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules is 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, unless otherwise noted, will become effective on the 31st legislative day of the 2001 Session of the General Assembly or a later date if specified by the agency unless a bill is introduced before the 31st legislative day that specifically disapproves the rule. If a bill to disapprove a rule is not ratified, the rule will become effective either on the day the bill receives an unfavorable final action or the day the General Assembly adjourns. Statutory reference: G.S. 150B-21.3.*

<b>APPROVED RULE CITATION</b>				<b>REGISTER CITATION TO THE NOTICE OF TEXT</b>
10	NCAC	03R	.0213*	15:02 NCR
10	NCAC	03R	.0305*	15:02 NCR
10	NCAC	03R	.2715*	15:02 NCR
10	NCAC	03R	.6255*	15:02 NCR
10	NCAC	03R	.6278*	15:02 NCR
10	NCAC	03U	.1601*	15:03 NCR
10	NCAC	14V	.3804*	15:02 NCR
10	NCAC	14V	.3816*	15:02 NCR
10	NCAC	46C	.0107*	15:02 NCR
10	NCAC	46D	.0106-.0107*	15:02 NCR
10	NCAC	46D	.0202*	15:02 NCR
10	NCAC	46E	.0111*	15:02 NCR
10	NCAC	46F	.0110*	15:02 NCR
10	NCAC	46G	.0112*	15:02 NCR
10	NCAC	46H	.0106*	15:02 NCR
10	NCAC	46H	.0203*	15:02 NCR
10	NCAC	46H	.0208-.0209*	15:02 NCR
10	NCAC	46H	.0304*	15:02 NCR
10	NCAC	50B	.0311*	15:03 NCR
13	NCAC	01A	.0101-.0104	14:23 NCR
13	NCAC	01A	.0201	14:23 NCR
13	NCAC	01B	.0101-.0103	14:23 NCR
13	NCAC	01B	.0202-.0203	14:23 NCR
13	NCAC	01B	.0301-.0307	14:23 NCR
13	NCAC	01B	.0401-.0405	14:23 NCR
13	NCAC	01B	.0501-.0502	14:23 NCR
13	NCAC	01B	.0602	14:23 NCR
13	NCAC	01B	.0605-.0608	14:23 NCR
13	NCAC	01C	.0101-.0103	14:23 NCR
13	NCAC	01C	.0106	14:23 NCR
13	NCAC	01C	.0201-.0205	14:23 NCR
13	NCAC	07A	.0302*	15:05 NCR
13	NCAC	17	.0101*	15:06 NCR
13	NCAC	17	.0103	15:06 NCR
13	NCAC	17	.0106*	15:09 NCR
13	NCAC	17	.0201-.0202*	15:06 NCR
13	NCAC	17	.0204	15:06 NCR
13	NCAC	17	.0205*	15:06 NCR
14A	NCAC	09H	.0304-.0307	15:05 NCR
14A	NCAC	09H	.0309-.0312	15:05 NCR
14A	NCAC	09H	.0313-.0314*	15:05 NCR
14A	NCAC	09H	.0315	15:05 NCR
14A	NCAC	09H	.0317	15:05 NCR
14A	NCAC	09H	.0319-.0320*	15:05 NCR

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14A	NCAC	09H	.0322	15:05 NCR
14A	NCAC	09H	.0324*	15:05 NCR
15A	NCAC	02B	.0255-.0256*	14:03 NCR
15A	NCAC	02B	.0315	14:24 NCR
15A	NCAC	02C	.0102-.0103*	15:05 NCR
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15A	NCAC	02C	.0107-.0108*	15:05 NCR
15A	NCAC	02C	.0110	15:05 NCR
15A	NCAC	02C	.0111*	15:05 NCR
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15A	NCAC	02C	.0117	15:05 NCR
15A	NCAC	02C	.0118*	15:05 NCR
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15A	NCAC	02D	.0521*	15:03 NCR
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15A	NCAC	02D	.1103-.1104	15:03 NCR
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15A	NCAC	02D	.1411*	14:22 NCR
15A	NCAC	02D	.1416*	14:22 NCR
15A	NCAC	02D	.1806-.1807*	15:03 NCR
15A	NCAC	02N	.0304*	15:02 NCR
15A	NCAC	02Q	.0109	15:03 NCR
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15A	NCAC	02Q	.0316-.0317	15:03 NCR
15A	NCAC	02Q	.0508*	15:03 NCR
15A	NCAC	02Q	.0703	15:03 NCR
15A	NCAC	02Q	.0711	15:03 NCR
15A	NCAC	02Q	.0803*	15:03 NCR
15A	NCAC	02Q	.0805-.0807	15:03 NCR
15A	NCAC	02Q	.0808*	15:03 NCR
15A	NCAC	03I	.0101*	15:05 NCR
15A	NCAC	03J	.0103*	14:20 NCR
15A	NCAC	03J	.0107*	15:05 NCR
15A	NCAC	03J	.0111	15:05 NCR
15A	NCAC	03J	.0209*	14:20 NCR
15A	NCAC	03J	.0402*	15:05 NCR
15A	NCAC	03L	.0301	15:05 NCR
15A	NCAC	03M	.0501	15:05 NCR
15A	NCAC	03M	.0503*	14:20 NCR
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15A	NCAC	03M	.0513*	14:20 NCR
15A	NCAC	03O	.0503*	15:05 NCR
16	NCAC	06C	.0401*	14:21 NCR
16	NCAC	06C	.0402*	14:17 NCR
16	NCAC	06C	.0404	14:21 NCR
16	NCAC	06C	.0501*	14:21 NCR
16	NCAC	06D	.0503*	not required G.S. 150B-21.4, Eff. December 1, 2000
16	NCAC	06G	.0305*	not required G.S. 150B-21.4; Eff. December 1, 2000
16	NCAC	06G	.0310*	not required G.S. 150B-21.4; Eff. December 1, 2000
21	NCAC	12	.0202	15:05 NCR
21	NCAC	12	.0204*	14:06 NCR
21	NCAC	12	.0306	15:05 NCR
21	NCAC	12	.0901	15:05 NCR
21	NCAC	14G	.0103	15:05 NCR

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21	NCAC	14J	.0107*	15:05 NCR
21	NCAC	14K	.0102-.0103*	15:05 NCR
21	NCAC	14K	.0107	15:05 NCR
21	NCAC	14P	.0104	15:05 NCR
21	NCAC	16I	.0104*	14:19 NCR
21	NCAC	16R	.0104*	14:19 NCR
21	NCAC	16W	.0103*	14:19 NCR
21	NCAC	46	.1603	15:04 NCR
21	NCAC	46	.2008	15:04 NCR
21	NCAC	46	.2502*	15:04 NCR
21	NCAC	46	.3201-.3204	15:04 NCR
21	NCAC	46	.3208*	15:04 NCR
21	NCAC	46	.3211	15:04 NCR
21	NCAC	50	.1410	15:06 NCR
21	NCAC	54	.1901*	15:06 NCR
21	NCAC	54	.1903-.1904*	15:06 NCR

**TITLE 10 - DEPARTMENT OF HEALTH  
AND HUMAN SERVICES**

**10 NCAC 03R .0213 HEALTH MAINTENANCE  
ORGANIZATIONS**

- (a) Applications for an exemption under G.S. 131E-180 shall be reviewed pursuant to the review schedule in this Subchapter that is applicable for the new institutional health service for which the inpatient health service facility is requesting the exemption.
- (b) An applicant proposing to request an exemption under G.S. 131E-180 shall complete the certificate of need application form for the new institutional health service for which the exemption is requested and the supplemental form for a health maintenance organization exemption.
- (c) Applications for an exemption shall be filed and reviewed in accordance with 10 NCAC 3R .0305-.0309.
- (d) The Agency shall determine whether the applicant for the exemption is a qualified applicant as defined in G.S. 131E-180(b).
- (e) If the Agency decision is to not grant the exemption, the applicant shall not develop or offer the new institutional health service without first obtaining a certificate of need.
- (f) If a decision is made that a certificate of need is required, the review for the certificate of need shall be conducted in the same review period as for the exemption. The Agency shall determine if the application conforms with the applicable review criteria of G.S. 131E-183(a) and G.S. 131E-183(b). The Agency shall determine which plans, standards and criteria are applicable to the review of the proposal. If the proposal is not consistent with all applicable criteria in G.S. 131E-183(a), the Agency may approve or conditionally approve the proposal for a certificate of need if it conforms with the criteria set forth in G.S. 131E-180(e)(i)-(ii) and G.S. 131E-183(a)(10).

*History Note: Authority G.S. 131E-177; 131E-180;  
Eff. January 1, 1982;  
Amended Eff. November 1, 1996; January 1, 1990; November 1,  
1989; February 1, 1986;  
Temporary Amendment Eff. January 1, 2000;  
Amended Eff. April 1, 2001.*

**10 NCAC 03R .0305 FILING APPLICATIONS**

- (a) An application shall not be reviewed by the agency until it is filed in accordance with this Rule.
- (b) An original and a copy of the application shall be received by the agency no later than 5:00 p.m. on the 15<sup>th</sup> day of the month preceding the scheduled review period. In instances when the 15<sup>th</sup> of the month falls on a weekend or holiday, the filing deadline is 5:00 p.m. on the next business day. An application shall not be included in a scheduled review if it is not received by the agency by this deadline. Each applicant shall transmit, with the application, a fee to be determined according to the following formula:
- (1) With each application proposing the addition of a sixth bed to an existing or approved five bed intermediate care facility for the mentally retarded, the proponent shall transmit a fee in the amount of two thousand dollars (\$2,000).
  - (2) With each application, other than those referenced in Subparagraph (b)(1) of this Rule, proposing no capital expenditure or a capital expenditure of up to, but not including, one million dollars (\$1,000,000), the proponent shall transmit a fee in the amount of three thousand five hundred dollars (\$3,500).
  - (3) With each application, other than those referenced in Subparagraph (b)(1) of this Rule, proposing a capital expenditure of one million dollars (\$1,000,000) or greater, the proponent shall transmit a fee in the amount of three thousand five hundred dollars (\$3,500), plus an additional fee equal to .003 of the amount of the proposed capital expenditure in excess of one million dollars (\$1,000,000). The additional fee shall be rounded to the nearest whole dollar. In no case shall the total fee exceed seventeen thousand five hundred dollars (\$17,500).
- (c) After an application is filed, the agency shall determine whether it is complete for review. An application shall not be considered complete if:
- (1) the requisite fee has not been received by the agency; or

(2) a signed original and copy of the application have not been submitted to the agency on the appropriate application form.

(d) If the agency determines the application is not complete for review, it shall mail notice of such determination to the applicant within five business days after the application is filed and shall specify what is necessary to complete the application. If the agency determines the application is complete, it shall mail notice of such determination to the applicant prior to the beginning of the applicable review period.

(e) Information requested by the agency to complete the application must be received by the agency no later than 5:00 p.m. on the last working day before the first day of the scheduled review period. The review of an application shall commence in the next applicable review period that commences after the application has been determined to be complete.

*History Note: Filed as a Temporary Amendment Eff. August 12, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*

*Filed as a Temporary Amendment Eff. August 11, 1993, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*

*Filed as a Temporary Amendment Eff. July 15, 1983, for a Period of 118 Days, to Expire on November 10, 1983;*

*Authority G.S. 131E-177; 131E-182;*

*Eff. October 1, 1981;*

*Amended Eff. December 1, 1994; January 4, 1994; November 1, 1990; January 1, 1990;*

*Temporary Amendment Eff. January 1, 2000;*

*Amended Eff. April 1, 2001.*

**10 NCAC 03R .2715 REQUIRED PERFORMANCE STANDARDS**

(a) An applicant proposing to acquire a mobile magnetic resonance imaging (MRI) scanner, shall:

- (1) demonstrate that all existing MRI scanners, except those moved to provide services at more than one site, operating in the MRI service area(s) in which the proposed MRI scanner will be located performed at least 2900 MRI procedures in the last year;
- (2) project annual utilization in the third year of operation of at least 2900 MRI procedures per year, for each MRI scanner or mobile MRI scanner to be operated by the applicant in the MRI service area(s) in which the proposed MRI scanner will be located.
- (3) demonstrate that all MRI scanners, except mobile, in the MRI service area(s) in which the proposed MRI scanner will be located, shall be performing at least 2900 MRI procedures per year in the applicant's third year of operation;
- (4) demonstrate that all mobile MRI scanners in the MRI service area(s) in which the proposed MRI scanner will be located, performed at least an average of eight procedures per day per site in the MRI service area(s) in the last year and shall be performing at least an average of eight procedures per day per site in the MRI service area(s) in the applicant's third year of operation;
- (5) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.

(b) An applicant proposing to acquire a magnetic resonance imaging (MRI) scanner that is not a mobile MRI scanner shall:

- (1) demonstrate that its existing MRI scanners, except mobile MRI scanners, operating in the proposed MRI service area in which the proposed MRI scanner will be located performed at least 2900 MRI procedures in the last year, with the exception that applicants proposing to acquire an MRI scanner to replace MRI services provided pursuant to a service agreement with a mobile provider shall demonstrate that 2080 MRI procedures were performed at the applicant's facility in the last year;
- (2) project annual utilization in the third year of operation of at least 2900 MRI procedures per year, for each MRI scanner or mobile MRI scanner to be operated by the applicant in the MRI service area(s) in which the proposed equipment will be located; and
- (3) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.

*History Note: Filed as Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*

*Authority G.S. 131E-177(1); 131E-183(b);*

*Eff. February 4, 1994;*

*Temporary Amendment Eff. January 1, 1999;*

*Temporary Eff. January 1, 1999 Expired on October 12, 1999;*

*Temporary Amendment Eff. January 1, 2000;*

*Temporary Amendment effective January 1, 2000 amends and replaces a permanent rulemaking originally proposed to be effective August 2000;*

*Amended Eff. April 1, 2001.*

**10 NCAC 03R .6255 REALLOCATIONS AND ADJUSTMENTS**

(a) REALLOCATIONS.

- (1) Reallocations shall be made only to the extent that need determinations in 10 NCAC 3R .6256 through 10 NCAC 3R .6281 indicate that need exists after the inventories are revised and the need determinations are recalculated.
- (2) Beds or services which are reallocated once in accordance with this Rule shall not be reallocated again. Rather, the Medical Facilities Planning Section shall make any necessary changes in the next annual State Medical Facilities Plan.
- (3) Dialysis stations that are withdrawn, relinquished, not applied for, decertified, denied, appealed, or pending the expiration of the 30 day appeal period shall not be reallocated. Instead, any necessary redetermination of need shall be made in the next scheduled publication of the Semiannual Dialysis Report.
- (4) Appeals of Certificate of Need Decisions on Applications. Need determinations of beds or services for which the CON Section decision to approve or deny the application has been appealed shall not be reallocated until the appeal is resolved.
  - (A) Appeals Resolved Prior to August 17: If such an appeal is resolved in the calendar year prior to August 17, the beds or services shall not be reallocated by the CON Section; rather the Medical Facilities Planning Section shall make the

necessary changes in the next annual State Medical Facilities Plan, except for dialysis stations which shall be processed pursuant to Subparagraph (a)(3) of this Rule.

- (B) Appeals Resolved on or After August 17: If such an appeal is resolved on or after August 17 in the calendar year, the beds or services, except for dialysis stations, shall be made available for a review period to be determined by the CON Section, but beginning no earlier than 60 days from the date that the appeal is resolved. Notice shall be mailed by the Certificate of Need Section to all persons on the mailing list for the State Medical Facilities Plan, no less than 45 days prior to the due date for receipt of new applications.
- (5) Withdrawals and Relinquishments. Except for dialysis stations, a need determination for which a certificate of need is issued, but is subsequently withdrawn or relinquished, is available for a review period to be determined by the Certificate of Need Section, but beginning no earlier than 60 days from:
  - (A) the last date on which an appeal of the notice of intent to withdraw the certificate could be filed if no appeal is filed;
  - (B) the date on which an appeal of the withdrawal is finally resolved against the holder; or
  - (C) the date that the Certificate of Need Section receives from the holder of the certificate of need notice that the certificate has been voluntarily relinquished.

Notice of the scheduled review period for the reallocated services or beds shall be mailed by the Certificate of Need Section to all persons on the mailing list for the State Medical Facilities Plan, no less than 45 days prior to the due date for submittal of the new applications.
- (6) Need Determinations for which No Applications are Received
  - (A) Services or Beds with Scheduled Review in the Calendar Year on or Before September 1: The Certificate of Need Section shall not reallocate the services or beds in this category for which no applications were received, because the Medical Facilities Planning Section will have sufficient time to make any necessary changes in the determinations of need for these services or beds in the next annual State Medical Facilities Plan, except for dialysis stations.
  - (B) Services or Beds with Scheduled Review in the Calendar Year After September 1: Except for dialysis stations, a need determination in this category for which no application has been received by the last due date for submittal of applications shall be available to be applied for in the second Category I review period in the next calendar year for the applicable HSA. Notice of the scheduled review period for the reallocated beds or services shall be mailed by the Certificate of Need Section to all persons on the mailing list for the State Medical Facilities Plan, no less than

- 45 days prior to the due date for submittal of new applications.
- (7) Need Determinations not Awarded because Application Disapproved.
  - (A) Disapproval in the Calendar Year prior to August 17: Need determinations or portions of such need for which applications were submitted but disapproved by the Certificate of Need Section before August 17, shall not be reallocated by the Certificate of Need Section. Instead the Medical Facilities Planning Section shall make the necessary changes in the next annual State Medical Facilities Plan if no appeal is filed, except for dialysis stations.
  - (B) Disapproval in the Calendar Year on or After August 17: Need determinations or portions of such need for which applications were submitted but disapproved by the Certificate of Need Section on or after August 17, shall be reallocated by the Certificate of Need Section, except for dialysis stations. A need in this category shall be available for a review period to be determined by the Certificate of Need Section but beginning no earlier than 95 days from the date the application was disapproved, if no appeal is filed. Notice of the scheduled review period for the reallocation shall be mailed by the Certificate of Need Section to all persons on the mailing list for the State Medical Facilities Plan, no less than 80 days prior to the due date for submittal of the new applications.
- (8) Reallocation of Decertified ICF/MR Beds. If an ICF/MR facility's Medicaid certification is relinquished or revoked, the ICF/MR beds in the facility shall be reallocated by the Department of Health and Human Services, Division of Facility Services, Medical Facilities Planning Section pursuant to the provisions of the following Sub-parts. The reallocated beds shall only be used to convert five-bed ICF/MR facilities into six-bed facilities.
  - (A) If the number of five-bed ICF/MR facilities in the mental health planning region in which the beds are located equals or exceeds the number of reallocated beds, the beds shall be reallocated solely within the planning region after considering the recommendation of the Regional Team of Developmental Disabilities Services Directors.
  - (B) If the number of five-bed ICF/MR facilities in the mental health planning region in which the beds are located is less than the number of reallocated beds, the Medical Facilities Planning Section shall reallocate the excess beds to other planning regions after considering the recommendation of the Developmental Disabilities Section in the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. The Medical Facilities Planning Section shall then allocate the beds among the planning areas within those planning regions after considering the recommendation of the appropriate Regional Teams of Developmental Disabilities Services Directors.

(C) The Department of Health and Human Services, Division of Facility Services, Certificate of Need Section shall schedule reviews of applications for these beds pursuant to Subparagraph (a)(5) of this Rule.

**(b) CHANGES IN NEED DETERMINATIONS.**

- (1) The need determinations in 10 NCAC 3R .6256 through 10 NCAC 3R .6281 shall be revised continuously by the Medical Facilities Planning Section throughout the calendar year to reflect all changes in the inventories of:
  - (A) the health services listed at G.S. 131E-176 (16)f;
  - (B) health service facilities;
  - (C) health service facility beds;
  - (D) dialysis stations;
  - (E) the equipment listed at G.S. 131E-176 (16)f1; and
  - (F) mobile medical equipment;

as those changes are reported to the Medical Facilities Planning Section. However, need determinations in 10 NCAC 3R .6256 through 10 NCAC 3R .6281 shall not be reduced if the relevant inventory is adjusted upward 30 days or less prior to the first day of the applicable review period.
- (2) Inventories shall be updated to reflect:
  - (A) decertification of home health agencies or offices, intermediate care facilities for the mentally retarded, and dialysis stations;
  - (B) delicensure of health service facilities and health service facility beds;
  - (C) demolition, destruction, or decommissioning of equipment as listed at G.S. 131E-176(16)(f1) and G.S. 131E-176(16)(s);
  - (D) elimination or reduction of a health service as listed at G.S. 131E-176(16)(f1);
  - (E) psychiatric beds licensed pursuant to G.S. 131E-184(c);
  - (F) certificates of need awarded, relinquished, or withdrawn, subsequent to the preparation of the inventories in the State Medical Facilities Plan; and
  - (G) corrections of errors in the inventory as reported to the Medical Facilities Planning Section.
- (3) Any person who is interested in applying for a new institutional health service for which a need determination is made in 10 NCAC 3R .6256 through 10 NCAC 3R .6281 may obtain information about updated inventories and need determinations from the Medical Facilities Planning Section.
- (4) Need determinations resulting from changes in inventory shall be available for a review period to be determined by the Certificate of Need Section, but beginning no earlier than 60 days from the date of the action identified in Subparagraph (b)(2) of this Rule, except for dialysis stations which shall be determined by the Medical Facilities Planning Section and published in the next Semiannual Dialysis Report. Notice of the scheduled review period for the need determination shall be mailed by the Certificate of Need Section to all persons on the mailing list for the State Medical Facilities Plan, no less than 45 days prior to the due date for submittal of the new applications.

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);  
Temporary Adoption Eff. January 1, 2000;  
Eff. April 1, 2001.*

**10 NCAC 03R .6278 HOSPICE INPATIENT FACILITY BED NEED DETERMINATION (REVIEW CATEGORY F)**

(a) Single Counties. Single counties with a deficit projected in the State Medical Facilities Plan of six or more hospice inpatient facility beds are determined to have a bed need equal to the projected deficit. It is determined that there is no need for additional single county hospice inpatient facility beds.

(b) Contiguous Counties. It is determined that any combination of two or more contiguous counties taken from the following list shall have a need for new hospice inpatient facility beds if the combined bed deficit for the grouping of contiguous counties totals six or more beds. Each county in a grouping of contiguous counties must have a deficit of at least one and no more than five beds. The need for the grouping of contiguous counties shall be the sum of the deficits in the individual counties. For purposes of this Rule, "contiguous counties" shall mean a grouping of North Carolina counties which includes the county in which the new hospice inpatient facility is proposed to be located and any one or more of the North Carolina counties which have a common border with that county, even if the borders only touch at one point. No county may be included in a grouping of contiguous counties unless it is listed in the following table:

County	Hospice Inpatient Bed Deficit
Transylvania	1
Haywood	1
Jackson	1
Rutherford	2
Watauga	1
Wilkes	1
Yadkin	1
Stokes	1
Davidson	2
Randolph	2
Rockingham	2
Surry	2
Alexander	1
Cabarrus	2
Gaston	3
Iredell	2
Lincoln	1
Mecklenburg	3
Rowan	1
Stanly	1
Union	2
Lenoir	1
Durham	3
Johnston	1
Bladen	1
Brunswick	1
Columbus	2
Cumberland	3
Moore	2
Richmond	3
Montgomery	1



Robeson	1
Scotland	1
Hoke	1
Bertie	1
Franklin	1
Craven	1
Duplin	1
Edgecombe	1
Hertford	1
Nash	1
Northampton	1
Halifax	1
Onslow	1
Pitt	1
Wilson	1

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b); Temporary Adoption Eff. January 1, 2000; Eff. April 1, 2001.*

**10 NCAC 03U .1601 ADMINISTRATIVE POLICIES REQUIRED**

Centers seeking two through five points for the voluntary enhanced program standards shall have administrative policies and practices which provide for selection and training of staff, communication with and opportunities for participation by parents, operational and fiscal management, and objective evaluation of the program, management and staff in accordance with the rules of this Section.

*History Note: Authority G.S. 110-88(7); 143B-168.3; Eff. January 1, 1986; Amended Eff. April 1, 2001; April 1, 1999; November 1, 1989; July 1, 1988.*

**10 NCAC 14V .3804 PURPOSE AND SCOPE**

(a) These rules set forth procedures for providing, supervising and reporting DWI substance abuse assessments and the treatment and education (ADETS) provided to DWI offenders.

(b) Assessments may be sought either voluntarily on a pre-trial basis, by order of the presiding judge and as a condition for driver license reinstatement.

(c) These Rules apply to any facility that conducts DWI assessments and alcohol and drug education traffic schools (ADETS) or treatment.

(d) In order to perform DWI assessments, a facility shall be authorized by the Division of Mental Health, Developmental Disabilities and Substance Abuse Services to provide services to this population (See Rule .3806); and

- (1) be licensed by the State to provide services to individuals with substance abuse disorders; or
- (2) provide substance abuse services and be exempt from licensure under G.S. 122C-22; and
- (3) follow state DWI laws, administrative rules contained in this Section and the generic rules for substance abuse facilities contained in 10 NCAC 14V .0100 through .0700. The rules can be found in Division publication APSM 30-1, "RULES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE FACILITIES AND SERVICES", and include any subsequent editions and

amendments. This publication may be obtained through the Division of MHDDSAS at a cost of five dollars and seventy-five cents (\$5.75).

*History Note: Authority G.S. 20-179(e)(6); 122C-142.1; Eff. April 1, 2001.*

**10 NCAC 14V .3816 SERVICES FOR NON-ENGLISH SPEAKING OFFENDERS/CLIENTS**

(a) Providers offering services to special populations/language groups shall inform DMHDDSAS in writing and include these services in facility monitoring activities.

(b) When a facility represents to the DMHDDSAS and to the public that it provides assessment and treatment services to DWI offenders of a certain language group, those services must be provided in compliance with applicable rules by staff who not only are qualified to provide the service, but are also fluent in the language of the target group. When such services are available in the county, facilities not able to provide them shall refer persons needing such services to facilities prepared to serve them.

(c) When services described in Paragraph (b) of this Rule are not available in the County:

- (1) a facility may provide DWI assessments with the help of a competent interpreter. The facility must first attempt to locate a Certified Interpreter. If that is not possible, the facility may use an individual whose competence as an interpreter is recognized in the community and who can provide references from persons who are in a position to know, such as a leader in the language/cultural group represented. In no case shall a person of the offender's family or immediate social group be used to interpret.
- (2) It is not acceptable to conduct group and individual treatments services via interpreter.
- (3) When an offender presents for services and speaks only a language in which no Substance Abuse Services are available in the area, the facility must assist the offender in locating acceptable services. If the services of a competent interpreter are available, a Special Plan may be developed which will provide the offender basic information to proceed in resolving the DWI offense. Such special plans must be documented in detail.
- (4) Clients who meet this criteria are clients whose primary/native language is not English and who can not communicate English fluently to complete an assessment or treatment.

*History Note: Authority G.S. 20-17.6(c); 122C-142.1; 143B-147; Eff. April 1, 2001.*

**10 NCAC 46C .0107 RATES FOR SUBSIDIZED CARE**

(a) The payment rate for child care centers, family child care homes, and nonlicensed child care homes shall be established by the Department in accordance with the annual appropriations act.

(b) Centers, as defined in G.S. 110-86(3), which are certified as developmental day centers by the Division of Mental Health/Developmental Disabilities/Substance Abuse Services and serve children who meet the definition of special needs set forth in 10 NCAC 46H .0110 shall be exempt from the provisions of Paragraph (a) of this Rule. These centers shall be

paid the net cost study rates established by the Division of Mental Health/Developmental Disabilities/Substance Abuse Services for developmental day centers for children with special needs. For typically developing children enrolled in developmental day centers, the net cost study rates shall be established by the Division of Mental Health/Developmental Disabilities/Substance Abuse Services. These rates shall exclude those costs associated exclusively with serving children with special needs.

(c) Any approved child care provider not included in Paragraph (b) of this Rule who provides care to children who meet the definition of special needs set forth in 10 NCAC 46H .0110 may be paid a supplemental rate above the provider's approved daily care rate for a particular age group. The supplemental rate shall be based on actual additional documented costs incurred by the provider in serving the child with special needs. The costs shall be determined by the early intervention specialist, the local education agency's exceptional children program specialist, the local purchasing agency, and the provider based on the plan developed to meet the child's individual needs.

(d) The reimbursement of additional fees as charged by centers shall be limited to registration fees. The payment rate for registration fees shall be determined by the Department in accordance with the annual appropriations act. Registration fees may not be paid more than twice per year per child regardless of the type of center.

(e) Purchasing agencies may negotiate with child care center providers for purchase of child care services at payment rates lower than those prescribed by this Rule, only with approval from the Division. Approval shall be granted if it can be determined that a non-negotiated payment rate would have a negative impact on the purchasing agency's ability to purchase subsidized child care services, based on the following factors:

- (1) the number of children on the waiting list for subsidized child care services;
- (2) whether the non-negotiated rates exceed the rates for services paid by private paying families in the service area; and
- (3) the amount of subsidized child care funds available.

(f) Child care services funds shall not be used to pay for services provided by the Department of Health and Human Services, Division of Mental Health/Developmental Disabilities/Substance Abuse Services or the Department of Public Instruction, Division of Exceptional Children's Services for that portion of the service delivery costs which are reimbursed by Division of Mental Health/Developmental Disabilities/Substance Abuse Services or Department of Public Instruction.

*History Note: Authority G.S. 143B-153(8)a; Eff. January 1, 1987; Amended Eff. April 1, 2001; February 1, 1996; December 1, 1992; July 1, 1990.*

**10 NCAC 46D .0106 ALLOCATION**

Funds are allocated in accordance with procedures specified with the appropriation. In the absence of such instructions, the funds will be allocated according to rules adopted by the Secretary. All allocation procedures are kept on file in the Division.

*History Note: Authority G.S. 143B-153(2a);*

*Eff. October 26, 1979;*

*Amended Eff. April 1, 2001; July 1, 1990; February 1, 1986; April 1, 1985.*

**10 NCAC 46D .0107 REIMBURSEMENT**

Local purchasing agencies shall key information regarding expenditures for subsidized child care services into the Division's Subsidized Child Care Reimbursement System on a monthly basis in order for the services to be reimbursed.

*History Note: Authority G.S. 143B-153(2a);*

*Eff. October 26, 1979;*

*Amended Eff. April 1, 2001; July 1, 1990; February 1, 1986; April 1, 1985.*

**10 NCAC 46D .0202 REVIEW CRITERIA FOR START-UP FUNDS**

(a) All proposals for start-up funds shall be submitted on a form designated by the Division.

(b) A concurrent review process will be conducted by the Division's fiscal staff to assure that all budgetary requirements have been addressed in the proposal and that the requesting agency is operating in conformity with generally accepted accounting practices.

(c) All start-up funding shall be subject to the availability of state and federal funds.

*History Note: Authority G.S. 143B-153(2a);*

*Eff. January 16, 1980;*

*Amended Eff. April 1, 2001; February 1, 1986.*

**10 NCAC 46E .0111 APPROVAL AND CONTINUED PARTICIPATION IN THE SUBSIDIZED CHILD CARE PROGRAM**

(a) Application for approval to participate in the state's Subsidized Child Care Program shall be made to the local purchasing agency.

(b) Any center approved for participation in the Subsidized Child Care Program shall continue to be eligible for as long as the center maintains compliance with all of the requirements set forth in this Subchapter.

(c) When a center is found to be out of compliance with any requirement for participation, the Division shall set a time limit for compliance. The Division shall base the time limit on the length of time projected to be needed for the center to comply with the requirement. If the center fails to comply within the set time limit, approval may be terminated.

(d) Upon request for review by a local, state, or federal agency representative, the operator of a center shall provide records pertaining to his or her participation in the state's Subsidized Child Care Program.

*History Note: Authority G.S. 143B-153(2a);*

*Eff. February 1, 1986;*

*Amended Eff. April 1, 2001; February 1, 1996.*

**10 NCAC 46F .0110 CONTINUED PARTICIPATION**

(a) Any family child care home approved for participation in the subsidized child care program shall continue to be eligible for as long as the home maintains compliance with all of the requirements set forth in this Subchapter.

(b) When a home is found to be out of compliance with any requirement for participation, the Division shall set a time limit for compliance. The Division shall base the time limit on the length of time projected to be needed for the home to comply with the requirement. If the home fails to comply within the set time limit, approval shall be terminated.

(c) Upon request for review by a local, state or federal agency representative, the operator of a family child care home shall provide records pertaining to his or her participation in the state's subsidized child care program.

*History Note: Authority G.S. 143B-153(2a); Eff. January 1, 1988; Amended Eff. April 1, 2001; February 1, 1996.*

**10 NCAC 46G .0112 INITIAL APPROVAL**

(a) Approval indicates that all applicable requirements have been met.

(b) Temporary approval may be issued when an arrangement does not comply with all requirements but is expected to meet them within a specified period. Temporary approval for enrollment may be issued for a limited period of time not to exceed 30 days. When a provider requests that temporary approval be extended, and provides evidence or documentation that compliance can be achieved within a mutually agreed upon time period, the purchasing agency may extend the 30 day period.

(c) When a provider fails to achieve compliance before the end of the specified time period described in Paragraph (b) of this Rule, approval may be denied.

(d) Initial approval shall not be issued pending results from criminal records checks of the provider and other household members unless there is no other care arrangement available for the child and local criminal records checks have been submitted to the local purchasing agency.

*History Note: Authority G.S. 143B-153(2a); Eff. February 1, 1993; Amended Eff. April 1, 2001.*

**10 NCAC 46H .0106 SUPPORT FOR PROTECTIVE AND CHILD WELFARE SERVICES**

(a) Child care services shall be provided when needed to enable a child to remain in his own home when receiving protective services for children. The child must be receiving protective services through the local department of social services pursuant to G.S. 7B.

(b) Child care services shall be provided to children who need child care as a support to Child Welfare Services. Child Welfare Services means the protection from abuse, neglect, or dependency; or support to the provision of a safe permanent home as described in G.S. 7B-101; G.S. 7B-300; G.S. 48-1-101; G.S. 108A-14 (11) and (12); G.S. 108A-48; 10 NCAC 41I; and 10 NCAC 41J.

*History Note: Authority G.S. 143B-153; Eff. July 1, 1983; Amended Eff. April 1, 2001.*

**10 NCAC 46H .0203 INCOME ELIGIBLE STATUS**

(a) For the purpose of the rules in this Subchapter, the term "income unit" shall apply to persons who reside in the same

household and who, according to North Carolina law, are responsible for the financial support of the individual whose eligibility for child care services is being determined. Also for the purpose of determining eligibility for child care services, the terms "income unit" and "family" are used interchangeably in the rules in this Subchapter.

(b) When the amount of income available to an individual is a condition of eligibility for child care services, it is necessary to determine the number of persons in the individual's income unit and the amount of the gross income available to the income unit. The number of individuals in the income unit is referred to as the "income unit size" or "family size". These terms are used interchangeably in the rules in this Subchapter. The total amount of the income used to determine child care eligibility is referred to as the "gross income of the income unit" or "family income". These terms are used interchangeably in the rules in this Subchapter.

(c) Child care services may be provided to individuals other than those described in 10 NCAC 46H .0106 and in Rule .0206 of this Section provided the gross annual income of the individual's income unit does not exceed the state's maximum income eligibility limit (as defined in Rule .0204 of this Section) for the number of persons in that income unit.

(d) The following are defined as separate income units for the purposes of determining eligibility and client fees for child care services:

- (1) Biological and adoptive parents and their minor children. A step-parent shall be included in the income unit with his/her spouse when the children in need of care include their biological or adoptive child and step-siblings;
- (2) A minor parent and his or her children;
- (3) Each adult whether related or unrelated, other than spouses; and
- (4) Each child living with anyone other than their biological or adoptive parents.

(e) Income to be considered when computing the gross income of the income unit is as follows:

- (1) Gross earned wages or salary (earnings received for work performed as an employee, including wages, salary, commissions, tips, piece-rate payments, and cash bonuses earned, before any deductions are made for taxes, bonds, pensions, union dues, etc.);
- (2) Adjusted gross income from taxable self-employment income;
- (3) Social Security benefits (includes Social Security pensions, survivors' benefits and permanent disability insurance payments);
- (4) Dividends, interest (on savings or bonds), income from estates or trusts, royalties, adjusted gross rental income on houses, stores or other property;
- (5) Pensions and annuities paid directly by an employer or union or through an insurance company;
- (6) Workers' compensation for injuries incurred at work.;
- (7) Unemployment insurance benefits;
- (8) Alimony (includes direct and indirect payments, such as rent and utility payments);
- (9) Child support, direct or indirect;
- (10) Pensions paid to veterans or survivors of deceased veterans;
- (11) On-the-Job Training (OJT) payments;

- (12) Job Training Partnership Act (JTPA) payments made to an adult;
  - (13) AmeriCorps stipend (living allowance);
  - (14) Armed Forces pay (only the amounts taxable, such as base pay);
  - (15) Work release payments;
  - (16) Cherokee Tribal Per Capita Income paid to adult family members;
  - (17) Work-study payments, if the income is from a program not administered under Title IV of the Higher Education Act or the Bureau of Indian Affairs; and
  - (18) Recurring cash contributions paid directly to the parent.
- (f) The following sources of income shall not be counted when computing the gross income of the income unit:
- (1) Work First Family Assistance;
  - (2) Supplemental Security Income (SSI);
  - (3) Lump sum payments (e.g. Social Security benefits, workers' compensation, alimony, veteran's benefits, HUD);
  - (4) Foster care assistance payments;
  - (5) Adoption Assistance payments;
  - (6) Payments/trust funds under the Indian Claims Commission;
  - (7) Payments from the Alaska Native Claims Settlement Act;
  - (8) Income from sale of personal assets (stocks, bonds, house, car, and insurance);
  - (9) Bank withdrawals;
  - (10) Money borrowed;
  - (11) Tax refunds;
  - (12) Gifts or contributions;
  - (13) Other in-kind contributions from non-legally responsible adults;
  - (14) Emergency Assistance, Low Income Energy Assistance Program, Crisis Intervention Program, General Assistance, or CP&L Share Program payments;
  - (15) Section VIII housing subsidy;
  - (16) Capital gains;
  - (17) Value of food stamp benefits allotted under the Food Stamp Act of 1977;
  - (18) Free and reduced lunch program;
  - (19) Any and all food subsidy programs;
  - (20) Relocation/Acquisition Act payments;
  - (21) Earnings of a dependent child under 18 years of age, unless a minor parent of a child needing child care;
  - (22) Loans, grants, scholarships, money received through job training, Pell or Carl Perkins grants;
  - (23) Home produce utilized for household consumption;
  - (24) Volunteers in Service to America (VISTA) earnings;
  - (25) Payments received as Earned Income Tax Credits or Dependent Care Credits;
  - (26) All subsidized housing and housing allotments, including military housing allotments. If rent is provided by an organization on a regular basis, it shall be counted as income;
  - (27) Money received from an employer as an employee benefit for child care; and
  - (28) Work-study payments, if the income is from the College Work-Study Program administered under Title IV of the Higher Education Act or the Bureau of Indian Affairs. (Likewise, if the income from college work-

study goes directly to the college, it is not counted as income.)

*History Note: Authority G.S. 143B-153; Eff. July 1, 1983; Amended Eff. April 1, 2001; February 1, 1996; July 1, 1992; October 1, 1991.*

**10 NCAC 46H .0208 DETERMINATION OF INCOME ELIGIBILITY**

An individual that applies for child care services shall provide to the local purchasing agency verification of the amount and sources of his or her countable income. The amount and source of income shall be verified by one of the following:

- (1) A copy of a source document; or
- (2) A written statement by the social worker describing either the source document that was reviewed to verify the income or a telephone conversation that confirmed the required information or
- (3) Identification of an existing agency record confirming the required information.

*History Note: Authority G.S. 143B-153; Eff. July 1, 1983; Amended Eff. April 1, 2001.*

**10 NCAC 46H .0209 REQUIREMENTS FOR DETERMINATION AND REDETERMINATION**

The Division shall establish the requirements for application and eligibility determination and redetermination for child care services. Eligibility shall be determined initially in accordance with 10 NCAC 46H .0100 and .0200, and annually thereafter unless a change occurs that impacts eligibility.

*History Note: Authority G.S. 143B-153; Eff. July 1, 1983; Amended Eff. April 1, 2001.*

**10 NCAC 46H .0304 ADJUSTMENTS IN FEES**

- (a) If family medical expenses exceed 10 percent of the family's gross income in any eligibility period, the family's fee shall be reassessed based on the family's adjusted income. The family's income shall be adjusted by deducting the amount of medical expenses that exceed 10 percent of the family's gross income.
- (b) When the approved care plan is for less than full-day care, the assessed fee for the service shall be adjusted by the appropriate percentage relative to the approved care plan.

*History Note: Authority G.S. 143B-153; Eff. July 1, 1983; Amended Eff. April 1, 2001; December 1, 1992; July 1, 1992; July 1, 1990.*

**10 NCAC 50B .0311 RESERVE**

North Carolina has contracted with the Social Security Administration under Section 1634 of the Social Security Act to provide Medicaid to all SSI recipients. Resource eligibility for individuals under any Aged, Blind, and Disabled coverage group is determined based on standards and methodologies in Title XVI of the Social Security Act except as specified in Items (4) and (5) of this Rule. Applicants for and recipients of Medicaid shall use their own resources to meet their needs for living costs

and medical care to the extent that such resources can be made available. Certain resources shall be protected to meet specific needs such as burial and transportation and a limited amount of resources shall be protected for emergencies.

(1) The value of resources currently available to any budget unit member shall be considered in determining financial eligibility. A resource shall be considered available when it is actually available and when the budget unit member has a legal interest in the resource and he, or someone acting in his behalf, can take any necessary action to make it available.

(a) Resources shall be excluded in determining financial eligibility when the budget unit member having a legal interest in the resources is incompetent unless:

- (i) A guardian of the estate, a general guardian or an interim guardian has been lawfully appointed and is able to act on behalf of his ward in North Carolina and in any state in which such resources are located; or
- (ii) A durable power of attorney, valid in North Carolina and in any state in which such resource is located, has been granted to a person who is authorized and able to exercise such power.

(b) When there is a guardian, an interim guardian, or a person holding a valid, durable power of attorney for a budget unit member, but such person is unable, fails, or refuses to act promptly to make the resources actually available to meet the needs of the budget unit member, a referral shall be made to the county department of social services for a determination of whether the guardian or attorney in fact is acting in the best interests of the member and if not, the county department of social services shall contact the clerk of court for intervention. The resources shall be excluded in determining financial eligibility pending action by the clerk of court.

(c) When a Medicaid application is filed on behalf of an individual who:

- (i) is alleged to be mentally incompetent;
- (ii) has or may have a legal interest in a resource that affects the individual's eligibility; and
- (iii) does not have a representative with legal authority to use or dispose of the individual's resources, the individual's representative or family member shall be instructed to file within 30 calendar days a judicial proceeding under G.S. 35A to declare the individual incompetent and appoint a guardian. If the representative or family member either fails to file such a proceeding within 30 calendar days or fails to timely conclude the proceeding, a referral shall be made to the services unit of the county department of

social services for guardianship services. If the allegation of incompetence which has lasted, or is expected to last, 30 consecutive days or more, or until the individual's death, is supported by competent evidence, as specified in Sub-item (1)(f) of this Rule, the resources shall be excluded beginning with the date that such evidence indicates that he became incompetent, except as provided in Sub-items (1)(d) or (1)(e) of this Rule.

(d) The budget unit member's resources shall be counted in determining his eligibility for Medicaid beginning the first day of the month following the month a guardian of the estate, general guardian or interim guardian is appointed, provided that after the appointment, property which cannot be disposed of or used except by order of the court shall continue to be excluded until completion of the applicable procedures for disposition specified in G.S. 1 or G.S. 35A.

(e) When the court rules that the budget unit member is competent or no ruling is made because of the death or recovery of the member, his resources shall be counted except for periods of time for which it can be established by competent evidence specified in Sub-item (1)(f) of this Rule, that the member was in fact incompetent for at least 30 consecutive days, or until his death. Any such showing of incompetence is subject to rebuttal by competent evidence as specified in Sub-item (1)(f) of this Rule.

(f) For purposes of this Rule, competent evidence is limited to the written statement or testimony at a competency hearing of a physician, psychologist, nurse, or social worker with knowledge of the condition of the individual, the basis of that knowledge, the beginning date of incompetence, the reason the individual is incompetent, and if no longer incompetent, when the individual recovered competence.

(2) The limitation of resources held for reserve for the budget unit shall be as follows:

- (a) for Family and Children's related categorically and medically needy cases, three thousand dollars (\$3,000) per budget unit;
- (b) for aged, blind, and disabled cases, two thousand dollars (\$2,000) for a budget unit of one and three thousand dollars (\$3,000) for a budget unit of two.

(3) If the value of countable resources of the budget unit exceeds the reserve allowance for the unit, the case shall be ineligible:

- (a) for Family and Children's related cases and aged, blind or disabled cases protected by grandfathered provisions, and medically needy cases not protected by grandfathered provision, eligibility shall begin on the day countable resources are reduced to allowable limits or excess income is spent down, whichever occurs later;

- (b) for categorically needy aged, blind or disabled cases not protected by grandfathered provisions, eligibility shall begin no earlier than the month countable resources are reduced to allowable limits as of the first moment of the first day of the month.
- (4) Resources counted in the determination of financial eligibility for categorically needy aged, blind and disabled cases is based on resource standards and methodologies in Title XVI of the Social Security Act except for the following methodologies:
  - (a) The value of personal effects and household goods are not counted;
  - (b) Value of tenancy in common interest in real property is not counted; and
  - (c) Value of life estate interest in real property is not counted.
- (5) Resources counted in the determination of financial eligibility for medically needy aged, blind and disabled cases is based on resource standards and methodologies in Title XVI of the Social Security Act except for the following methodologies:
  - (a) The value of personal effects and household goods are not counted.
  - (b) Personal property is not a countable resource if it:
    - (i) is used in a trade or a business; or
    - (ii) is used to produce goods and services for personal use; or
    - (iii) produces a net annual income.
  - (c) Real property not exempted under homesite rules is not a countable resource if it:
    - (i) is used in a trade or business; or
    - (ii) is used to produce goods and services for personal use; or
    - (iii) is non-business income producing property that produces net annual income after operational expenses of at least six percent of equity value per methodologies under Title XVI of the Social Security Act. For purposes of this Sub-item equity of agricultural land, horticultural land, and forestland is the present use value of the land, as defined by G.S. 105-277.1A, et seq., less the amount of debts, liens or other encumbrances.
  - (d) Value of tenancy in common interest in real property is not counted.
  - (e) Value of life estate interest in real property is not counted.
  - (f) Individuals with resources in excess of the resource limit at the first moment of the month may become eligible at the point that resources are reduced to the allowable limit.
- (6) Resources counted in the determination of financial eligibility for categorically needy Family and Children's related cases are:
  - (a) Cash on hand;
  - (b) The balance of savings accounts, including savings of a student saving his earnings for school expenses;
  - (c) The balance of checking accounts less the current monthly income which had been deposited to meet the budget unit's monthly needs when reserve was verified;
  - (d) The portion of lump sum payments remaining after the month of receipt;
  - (e) Cash value of life insurance policies owned by the budget unit;
  - (f) Stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;
  - (g) Patient accounts in long term care facilities;
  - (h) Equity in non-essential personal property limited to:
    - (i) Mobile homes not used as home,
    - (ii) Boats, boat trailers and boat motors,
    - (iii) Campers,
    - (iv) Farm and business equipment;
    - (v) Equity in vehicles in excess of one motor vehicle per adult.
- (7) Resources counted in the determination of financial eligibility for medically needy Family and Children's related cases are:
  - (a) Cash on hand;
  - (b) The balance of savings accounts, including savings of a student saving his earnings for school expenses;
  - (c) The balance of checking accounts less the current monthly income which had been deposited to meet the budget unit's monthly needs when reserve was verified or lump sum income from self-employment deposited to pay annual expenses;
  - (d) Cash value of life insurance policies when the total face value of all policies that accrue cash value exceeds one thousand five hundred dollars (\$1,500);
  - (e) Stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;
  - (f) Patient accounts in long term care facilities;
  - (g) Equity in non-essential, non-income producing personal property limited to:
    - (i) Mobile home not used as home;
    - (ii) Boats, boat trailers and boat motors;
    - (iii) Campers;
    - (iv) Farm and business equipment; and
    - (v) Equity in motor vehicles in excess of one vehicle per adult if not income-producing.

*History Note: Authority G.S. 108A-54; 108A-55; 108A-58; 42 U.S.C. 703, 704 1396; 42 C.F.R. 435.121; 42 C.F.R. 435.210; 42 C.F.R. 435.711; 42 C.F.R. 435.712; 42 C.F.R. 435.734; 42 C.F.R. 435.823; 42 C.F.R. 435.840; 42 C.F.R. 435.841; 42 C.F.R. 435-845; 42 C.F.R. 445.850; 42 C.F.R. 435.851; 45 C.F.R. 233.20; 45 C.F.R. 233.51; Eff. September 1, 1984; Filed as a Temporary Amendment Eff. September 1, 1985, for a period of 92 days to expire on December 1, 1985; Amended Eff. January 1, 1995; November 1, 1994; September 1, 1993; March 1, 1993; Temporary Amendment Eff. September 13, 1999; Temporary Amendment Expired June 27, 2000; Temporary Amendment Eff. September 12, 2000; Amended Eff. March 1, 2001.*

**TITLE 13 - DEPARTMENT OF LABOR**

**13 NCAC 07A .0302 COPIES AVAILABLE**

Copies of the applicable Code of Federal Regulations (CFR) Parts or sections and industry standards referred to in this

Chapter are available for public inspection by contacting the North Carolina Department of Labor (NCDOL), Division of Occupational Safety and Health or the NCDOL Library. The following table provides acquisition locations and the costs of the applicable materials on the date this Rule was adopted:

Referenced Materials	Available for Purchase From	Cost
29 CFR 1903; 29 CFR 1904; 29 CFR 1905; 29 CFR 1908; 29 CFR 1913.10	Division of Occupational Safety & Health <a href="http://www.dol.state.nc.us/">http://www.dol.state.nc.us/</a>	\$1/page requested
29 CFR 1910	Division of Occupational Safety & Health <a href="http://www.dol.state.nc.us/">http://www.dol.state.nc.us/</a>	\$15.90 each
29 CFR 1915; 29 CFR 1917	Division of Occupational Safety & Health <a href="http://www.dol.state.nc.us/">http://www.dol.state.nc.us/</a>	Single copy: Free
29 CFR 1926	Division of Occupational Safety & Health <a href="http://www.dol.state.nc.us/">http://www.dol.state.nc.us/</a>	\$12.72 each
29 CFR 1928	Division of Occupational Safety & Health <a href="http://www.dol.state.nc.us/">http://www.dol.state.nc.us/</a>	Single copy: Free
The above CFR Parts and other CFR Parts	U.S. Government Printing Office Washington, D.C. 20402 (202) 512-1800 <a href="http://www.gpo.gov/">http://www.gpo.gov/</a>	\$34.00/Part
ANSI/NFPA 101-1991	National Fire Protection Association 1 Battery arch Park Quincy, Massachusetts 02269 (617) 770-3000 <a href="http://www.nfpa.org/">http://www.nfpa.org/</a>	\$44.50 each
ANSI standards	American National Standards Institute 11 West 42 <sup>nd</sup> Street New York, New York 10036 (212) 642-4900 <a href="http://www.ansi.org/">http://www.ansi.org/</a>	B30.9: \$100 Z9.2: \$ 55 Z41.1: \$ 40 Z87.1: \$ 35 Z88.2: \$ 50 Z89.2: \$ 35 Z229.1: \$ 45
Federal Specification QQ-P-416	Federal Supply Services Specification Section 470 East L'Enfant Plaza SW, Suite 8100 Washington, DC 20407 (202) 619-8925 <a href="http://www.gsa.gov/fssintro.htm">http://www.gsa.gov/fssintro.htm</a>	\$ 7.00 each
Schedule 30 Bureau of Mines	24 FR 245 pages 10210-10204, December 17, 1959 or Division of Occupational Safety & Health <a href="http://www.msha.gov/">http://www.msha.gov/</a>	\$1.00/page requested
Institute of Makers of Explosives (IME) Publications	1120 Nineteenth St. NW, Suite 310 Washington, DC 20036 (202) 429-9280 <a href="http://www.ime.org">http://www.ime.org</a>	No. 17 \$15.00 No. 20 \$10.00 No. 22 \$10.00

*History Note:* Authority G.S. 95-133; 150B-21.6;  
Eff. August 2, 1993;  
Amended Eff. July 1, 1998; June 1, 1994.  
Temporary Amendment Eff. March 20, 2000;  
Amended Eff. March 15, 2001.

**13 NCAC 17 .0101 DEFINITIONS**

As used in G.S. 95, Article 5A and this Chapter, unless the context clearly requires otherwise:

- (1) "Accept an employer's offer of employment," as used in G.S. 95-47.1(1), means to consent orally or in writing to take the job the employer is offering. This offer or

acceptance may be made directly between the employer and the applicant or may be communicated through a representative of the private personnel service acting as the applicant's agent.

- (2) "Advertising" means any material or method used by a private personnel service for solicitation or promotion of business. This includes, but is not limited to, newspapers, radio, television, the internet, business cards, invoices, letterheads, or other forms that may be used in combination with the solicitation and promotion of business.
- (3) "Communication," as used in G.S. 95-47.1(4), means a written communication.

- (4) "Days" means calendar days.
- (5) "Division" means the Private Personnel Service Office of the North Carolina Department of Labor.
- (6) "Employer fee paid personnel consulting service" means any business that consults with employers in locating and placing employees where the sole obligation for the placement fee is assumed by the employer in all circumstances and the applicant is never obligated for the fee, directly or indirectly, even if the applicant quits or is terminated for cause.
- (7) "Employment agency" or "agency" means a private personnel service as defined in G.S. 95-47.1(16).
- (8) "Existing licensed business," as used in G.S. 95-47.2(f), means any existing licensed private personnel service or job listing service.
- (9) "Indirectly" being responsible for a fee to a private personnel service includes the applicant paying, or repaying, any portion of the fee paid to the private personnel service by the employer or any other person.
- (10) "Material information," as used in G.S. 95-47.2(d)(3)a, and the rules in this Section means any facts or knowledge that are relevant to operating a private personnel service.
- (11) "Meeting between an employer and an applicant" as used in G.S. 95-47.1(10) and the Rules in this Chapter includes but is not limited to interviews in person, conducted by telephonic conference, video conference, or other electronic means.
- (12) "Operate" means to engage in the business of a private personnel service within the State of North Carolina. Within the State of North Carolina includes, but is not limited to, any of the following:
  - (a) Property, offices, or employees located in North Carolina;
  - (b) Use of a North Carolina phone number;
  - (c) Use of a North Carolina address;
  - (d) Interviewing applicants in North Carolina;
  - (e) Placing applicants in North Carolina;
  - (f) Collecting money from applicants in North Carolina;
  - (g) Directing North Carolina applicants to interviews;
  - (h) Directing applicants to interviews with North Carolina employers; and
  - (i) Advertising in North Carolina.
- (13) "Partnership" and "corporation," when used in the context of owners of a private personnel service, mean any similar state-chartered legal entity. Examples of similar state-chartered legal entities include, but are not limited to, limited liability partnerships and limited liability corporations.
- (14) "Person who uses or attempts to use the services of a private personnel service" as used in G.S. 95-47.1(2) includes applicants without regard to how or by whom the contact between the applicant and the private personnel service is initiated.
- (15) "Premises," as used in G.S. 95-47.2(d)(3)c., means the property occupied by any owner or manager of the private personnel service where the business of the private personnel service is conducted. Two businesses occupy the same premises if a person can move from one to the other without traveling through a public area available to non-customers.
- (16) "Private personnel service industry" means all private personnel services that are or may be required to be licensed to operate in the State of North Carolina.
- (17) "Refund policy" means a voluntary refund policy adopted by the private personnel service. It does not mean the fee reimbursement provisions mandated by G.S. 95-47.3A and such a fee reimbursement shall not be considered as a refund policy which would trigger operation of the "Termination of Employment" provisions under Rule .0107(f)(6) of this Section.
- (18) "Responsible for the operation" means to conduct the daily administrative functions required to direct and control the business. This includes, but is not limited to, current and ongoing knowledge and oversight of the following: all placement functions; hours the business operates; hiring, supervision, and dismissal of the business' personnel; the finances and financial records of the business; advertising; job orders; compliance with G.S. 95, Article 5A; and the needs of applicants and employers who work with the business to receive placement and hiring assistance. It further means that the person is available during working hours to answer questions and respond to the needs of applicants, employers, the business' own employees, and the Private Personnel Service Office.
- (19) Except in G.S. 95-47.2(d)(1), in G.S. 95-47.2(d)(3)b.2 and in G.S. 95-47.2(d)(3)b.3, "rules", "regulations", or "rules or regulations" as used in G.S. 95, Article 5A and in this Chapter refer to administrative rules adopted by the Department of Labor pursuant to G.S. 95, Article 5A and G.S. 150B.
- (20) "Temporary help service" means any business which employs persons whom it assigns to assist its customers. The employer-employee relationship exists between the temporary help service and the employee. If a temporary help service ever charges the employee a fee for help in securing employment with an employer other than itself, then the service is a private personnel service.

*History Note: Authority G.S. 95-47.9; Eff. February 27, 1995; Amended Eff. March 1, 2001.*

**13 NCAC 17 .0106 JOB ORDERS**

- (a) Bona Fide Job Order Required. No private personnel service shall offer or hold itself out as being able to secure a specific position of employment for an applicant without having a bona fide job order. A bona fide job order is one which:
  - (1) Is recorded on a form;
  - (2) Contains, at a minimum, the following:
    - (A) Name and title of the person communicating the job order to the private personnel service;
    - (B) Date recorded or last verified, whichever is most recent;
    - (C) Name and address of the employer;
    - (D) Job title and requirements;
    - (E) Wages or salary, including any bonus that is included in the stated anticipated annual earnings;
    - (F) Anticipated hours worked;
    - (G) Any compensation that is based on commission;



- (H) Whether it is the applicant or the employer that is responsible for the placement fee; and
  - (I) Name of the person recording the job order.
- (b) Private Personnel Service Responsible for Explaining Conditions of Employment. At a minimum, the private personnel service shall fully disclose to the applicant all of the required information in Subparagraph (a)(2) of this Rule. The private personnel service shall ask the employer for the following information, at a minimum, and shall disclose it to the applicant if received from the employer:
- (1) Name and title of person to whom the applicant is to report for an interview;
  - (2) Requisite education and experience; and
  - (3) All known conditions of employment, including regular and overtime wages, commissions, benefits, hours, work schedule, whether overtime is expected, whether overtime is included in the expected annual earnings and actual days worked per week.
- (c) Disclosure requirements. Disclosure required by this Rule shall occur prior to the applicant's interview with the employer. The private personnel service shall base its disclosure upon documents received from the employer or conversations with the employer which shall be reduced to writing. Disclosure shall be accurate to the best of the private personnel service's knowledge.
- (d) Commission-based Compensation:
- (1) If an applicant is to be compensated, in whole or in part, by commissions and the employer will be responsible for a potential fee reimbursement, then the job order must also be signed by the employer.
  - (2) A private personnel service may, however, forego the written job order requirement if it is willing to assume liability for a potential fee reimbursement in accordance with G.S. 95-47.4(f) and G.S. 95-47.4(h)(2).
- (e) Job Order Verification. At least once a month, the private personnel service shall verify job orders for which applicants are referred or for which advertisements are placed.

*History Note: Authority G.S. 95-47.3A; 95-47.6; 95-47.9; Eff. February 27, 1995; Amended Eff. March 1, 2001.*

**13 NCAC 17 .0201 ACCEPTING FEES FROM APPLICANT AND EMPLOYER**

If a private personnel service accepts a fee in a single placement from both an applicant and an employer it shall disclose that fact and the fact that it does not represent the applicant exclusively to the applicant. The required disclosures shall be in writing.

*History Note: Authority G.S. 95-47.47.2; 95-47.6; Eff. February 27, 1995; Amended Eff. March 1, 2001.*

**13 NCAC 17 .0202 ACTIVITIES OF BUSINESS CONSIDERED TO BE A PRIVATE PERSONNEL SERVICE**

- (a) A business that engages in the activities below, and is not covered by G.S. 95-47.1(16)a (16)f; shall be considered to be a private personnel service if it:
- (1) operates in North Carolina;
  - (2) operates for profit or is a nonprofit business that charges a fee;

- (3) holds, or may hold, the applicant liable for a direct or indirect fee to the business; and
  - (4) performs one of the following:
    - (A) secures employment for the applicant with any employer other than itself; or
    - (B) by any form of advertising, holds itself out to applicants as able to:
      - (i) secure employment with any employer other than itself; or
      - (ii) provide information or service of any kind purporting to promote, lead to, or result in employment for the applicant with an employer other than the business itself.
- (b) "Secure [or secures] employment for the applicant," as used in Items (a)(4)(A) and (a)(4)(B)(i) of this Rule means find work or a job in any location or for any duration. Examples of a business that secures employment for an applicant may include: employment agency; staffing service; model or talent agency; job listing service; escort service; computer consultant; nurses pool; nurses service; medical care service such as respiratory therapist or home health care agency; companion care service; home, pet, or baby sitting service; nanny or au pair agency; outplacement service; head hunter; retained search business; contingency search business; employee leasing service; career coach; career consultant; or temporary service.
- (c) Examples of activities that "provide information or service of any kind purporting to promote, lead to, or result in employment for the applicant with an employer other than the business itself" as used in Subpart (a)(4)(B)(ii) of this Rule shall include, but not be limited to, the following:
- (1) recommending a specific potential employer to an applicant;
  - (2) preparing a résumé or cover letters to be sent to an employer suggested or recommended by the business;
  - (3) setting up an appointment on behalf of an applicant, or otherwise making contact with a prospective employer on behalf of an applicant;
  - (4) counseling an applicant on techniques for job search, interview, salary or benefits negotiations, or any other job seeking methodology to be used with a potential employer suggested or recommended by the business;
  - (5) advertising to applicants that the business can help the applicant find employment. Examples of such advertising include: "job hunting?" "help people find a job;" "open the floodgates to employment opportunity;" "take care of the pragmatic details of career research" or "take care of creation of a client's personal marketing materials" where the business suggests specific potential employers; provides access to "inside job leads," "unpublished information," or the "hidden job market;" or provides "outplacement;" or
  - (6) conducting industry research for an applicant in order to determine specific potential employers.
- (d) The name of the business, or description of services the business offers, does not control whether the Commissioner finds the service to be a private personnel service.

*History Note: Authority G.S. 95-47.1; 95-47.4; 95-47.6; Eff. February 27, 1995; Amended Eff. March 1, 2001.*

**13 NCAC 17 .0205 DISCLOSURE OF FINANCIAL**

**RELATIONSHIPS**

Unless clearly disclosed in writing in advance, the private personnel service shall not, directly or indirectly, receive a fee from a collection agency (as defined in G.S. 58-70-15) or a loan agency (as defined in G.S. 105-88).

*History Note: Authority: G.S. 95-47.2; 95-47.3; 95-47.3A; 95-47.4; 95-47.6; 95-47.9; Eff. March 1, 2001.*

**TITLE 14A - DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY**

**14A NCAC 09H .0313 TRANSPORTING AND STORING VEHICLES**

- (a) A member shall arrange transportation and safe storage of a vehicle pursuant to this wrecker service Directive.
- (b) A member who authorizes the transportation and storage of a vehicle shall, in every case, immediately notify the appropriate Communications Center and request a wrecker service in accordance with these rules and furnish information necessary to complete a Signal 4 (Report of Vehicle Stored or Recovered). The member shall notify the Communications Center in any case where a rollback should not be dispatched.
- (c) A member shall notify the Communications Center whenever he transports or stores a vehicle. If the vehicle is towed, stored, or removed to the shoulder of the road and left at the scene at the request of or with the consent of the owner, operator, or legal possessor, the member shall mark the applicable entries on the HP-305 and obtain the signature of the person making the request or giving the consent. Refusal to sign the HP-305 shall be deemed a withdrawal of the consent or request to tow. In such a situation, members shall be governed by Rule .0311 of this Section.
- (d) A member shall, when notified by a magistrate of a hearing regarding payment of towing or storage fees, appear in person at the hearing or file HP-305.1 "Affidavit" with the magistrate prior to the hearing.
- (e) When necessary for accident reconstruction or a criminal investigation in which multiple vehicles are involved in an incident a single storage location may be designated. The storage facility of the first wrecker service dispatched shall be used unless otherwise designated by a supervisor.
- (f) When necessary for an accident reconstruction or a criminal investigation, a member may designate at which indoor or other appropriate storage facility a vehicle shall be stored to ensure preservation of the evidence. The storage facility shall be the first wrecker service dispatched unless otherwise designated by a supervisor.
- (g) DWI seized vehicles shall be towed and stored in accordance with instructions from the County School Board or state or regional contractor.

*History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188; Temporary Adoption Eff. June 9, 2000; Eff. April 1, 2001.*

**14A NCAC 09H .0314 NOTIFICATION**

(a) Unless exempted by vehicle seizure law, a registered owner must be notified of the vehicle being towed and stored. In order to accomplish this, the authorizing member shall immediately notify the Communications Center of the following:

- (1) a description of the vehicle;
- (2) the place where the vehicle is stored;
- (3) the procedure the owner must follow to have the vehicle returned to him; and
- (4) the procedure the owner must follow to request a probable cause hearing on the towing.

(b) A member who authorized the towing and/or storage of a vehicle in the absence of the registered owner, shall, as soon as practicable, attempt to notify the owner of such towing and/or storage. The member shall attempt to contact the owner by telephone or request a Telecommunicator to attempt to contact the owner by telephone and provide the owner with the location of the vehicle. At least three attempts must be made for vehicles registered in North Carolina and one attempt for vehicles registered out-of-state. A member or the Telecommunicator must record the person contacted or the attempts made.

(c) Whether or not the owner is reached by telephone, a copy of the HPC-305.2 (Vehicle Towing/Notification, which is computer-generated at the Communications Center) shall be mailed to the last registered owner by the Troop Communications Center. In the absence of an HP-305 signed by the registered owner, Form HPC-305.2 shall be mailed to the owner within 24 hours. A duplicate copy of the HPC-305.2 is also computer-generated and will print automatically in the District office of the member.

(d) Whenever a vehicle with neither a valid registration plate nor registration is towed, in the absence of an HP-305 signed by the registered owner, the authorizing member shall make reasonable efforts, including checking the vehicle identification number, to determine the last known registered owner of the vehicle and to notify him of the information listed in Paragraph (a) of this Rule.

(e) If a vehicle is seized pursuant to G.S. 20-28.3, the appropriate DMV notification form shall be completed and forwarded to DMV and to the statewide contractor within 72 hours.

*History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188; Temporary Adoption Eff. June 9, 2000; Eff. April 1, 2001.*

**14A NCAC 09H .0319 IMPARTIAL USE OF SERVICES**

In order to perform its traffic safety functions, the Patrol is required to use wrecker services to tow disabled, seized, wrecked and abandoned vehicles. Members of the Patrol shall assure the impartial use of wrecker services through strict compliance with these rules. In no event shall any Patrol member recommend any wrecker service motor club, or automobile membership service to the owner or driver of a wrecked or disabled vehicle nor shall any member recommend the services of a particular wrecker service, motor club, or automobile membership service in the performance of his duties. Members shall, whenever possible and practicable, dispatch the wrecker service requested by the motorist requiring such services.

History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188;  
Temporary Adoption Eff. June 9, 2000;  
Eff. April 1, 2001.

**14A NCAC 09H .0320 ROTATION, ZONE, CONTRACT, AND DEVIATION FROM SYSTEM**

(a) The Troop Commander shall arrange for the Telecommunications Center to maintain a rotation wrecker system within each District of the Troop which shall include the following:

- (1) Separate computerized large and small rotation wrecker lists and manual rotation lists for the entire District whereby wrecker services are called in the order they appear on a list;
- (2) A zone system within the District with a rotation wrecker list being maintained in each Rotation Wrecker Zone;
- (3) A zone, contract or other system operated in conjunction with one or more local agencies; or
- (4) A combination of any such system.

(b) It is the policy of the Patrol to use the wrecker service requested by the vehicle owner or person in apparent control of the motor vehicle to be towed. Patrol members shall not attempt to influence the person's choice of wrecker services, but may answer questions and provide factual information. If no such request is made, the Patrol system in place in the Rotation Wrecker Zone will be used, absent an emergency or other legitimate reason.

(c) The Troop Commander, in his discretion, may deviate from any of these rules in emergency situations if there are insufficient wrecker services of the type needed within a District to meet the needs of the Patrol.

(d) The Telecommunicator shall enter in the computerized log the name of the wrecker service contacted and the response by the service to the request. The date and time of the call is automatically recorded in the computerized log as well as the identification number of the Telecommunicator making the entry.

(e) In the event the computerized rotation wrecker list is not in service (CAD down), the member requesting wrecker service shall be notified and a wrecker from the manual rotation wrecker list will be utilized. The Telecommunicator shall refer to the manual list that is maintained by the Telecommunicator Center Supervisor at each Communication Center. The wrecker service name shall be entered on the slip log, the slip log will indicate CAD DOWN.

History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188;  
Temporary Adoption Eff. June 9, 2000;  
Eff. April 1, 2001.

**14A NCAC 09H .0324 HEARING PROCEDURES**

(a) If, the District First Sergeant refuses to include a wrecker service on the rotation wrecker list, the wrecker service may appeal the First Sergeant's decision, in writing, to the Troop Commander within 20 days of receipt of the decision. The Troop Commander may, in his discretion, conduct a hearing or review the record. In either event, he shall render a decision, in writing, within 10 days of receipt of the appeal. The Troop Commander's decision, if unfavorable, may be appealed to the

Office of Administrative Hearings (OAH) pursuant to the provisions of G.S. 150B.

(b) If a District First Sergeant issues a written warning to a wrecker service for a violation of any of these Rules, the wrecker service may, within 20 days of receipt of the warning, submit a written response to the First Sergeant in mitigation, explanation or rebuttal. After considering the mitigation, explanation or rebuttal, the First Sergeant may reconsider, and remove the written warning. Written warnings may not be appealed.

(c) If a District First Sergeant determines that a violation of these rules has occurred, and determines that removal from the rotation wrecker list may be warranted, he shall notify the affected wrecker service, in writing, of this determination and afford the wrecker service an opportunity to be heard. The hearing shall take place within 10 days of actual notice or, if notice is by first class mail, within 13 days of the date the notice is placed in the mail. The hearing shall take place within 10 days of the request for hearing and not less than three days written notice. If a District First Sergeant removes a wrecker service from the rotation wrecker list, the wrecker service may appeal the removal to the Troop Commander (or his designee), in writing, within 20 days of receipt of the notice. The Troop Commander, in his discretion, may conduct a hearing or review the record. If the Troop Commander decides to conduct a hearing, he will give the wrecker service not less than 10 days notice. He shall render a decision, in writing, within 10 days of receipt of the appeal or date of the hearing, whichever occurs last. The Troop Commander's decision, if unfavorable, may be appealed to the Office of Administrative Hearings (OAH) pursuant to the provisions of G.S. 150B.

(d) Hearings conducted by District First Sergeants and/or Troop Commanders shall be informal and no party shall be represented by legal counsel.

(e) A wrecker service that is removed from the rotation wrecker list and subsequently placed back on the list, for any reason, shall not be entitled to additional calls, priority listing or any other form of compensation.

(f) Ordinarily, a wrecker service shall remain on the rotation wrecker list pending a final decision of the Troop Commander. A District First Sergeant, with the concurrence of the Troop Commander, may, however, summarily remove a wrecker service from the rotation wrecker list in those cases where there exists reasonable grounds to believe a violation enumerated in 14A NCAC 09H .0321(a)(12), (a)(20), or (a)(31) or any violation relating to the safe and proper operation of the business or which may jeopardize the public health, safety or welfare.

History Note: Authority G.S. 20-184; 20-185; 20-187; 20-188;  
Temporary Adoption Eff. June 9, 2000;  
Eff. April 1, 2001.

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

**15A NCAC 02B .0255 TAR-PAMLICO RIVER BASIN - NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: AGRICULTURAL NUTRIENT LOADING GOALS**

All persons engaging in agricultural operations in the Tar-Pamlico River Basin, including those related to crops, horticulture, livestock, and poultry, shall collectively achieve and maintain certain nutrient loading levels. A management strategy to achieve this reduction is specified in Rule .0256 of this Section. These Rules apply to livestock and poultry operations above certain size thresholds in the Tar-Pamlico River Basin, in addition to requirements for animal operations set forth in general permits issued pursuant to G.S. 143-215.10C. The nutrient loading goals to be met collectively by the persons specified here are as follows:

- (1) a 30 percent total nitrogen net loading reduction from 1991 loading from agriculture to the basin; and
- (2) no net increase in total phosphorus loading over 1991 levels.

*History Note: Authority G. S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; Eff. April 1, 2001.*

**15A NCAC 02B .0256 TAR-PAMLICO RIVER BASIN-NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: AGRICULTURAL NUTRIENT CONTROL STRATEGY**

(a) **PURPOSE.** The purpose of this Rule is to set forth a process by which agricultural operations in the Tar-Pamlico River Basin will collectively limit their nitrogen and phosphorus loading to the Pamlico estuary. The purpose is to achieve and maintain a 30 percent reduction in collective nitrogen loading from 1991 levels within five to eight years and to hold phosphorus loading at or below 1991 levels within four years of Commission approval of a phosphorus accounting methodology.

- (1) **PROCESS.** This Rule requires farmers in the Basin to implement land management practices that collectively, on a county or watershed basis, will achieve the nutrient goals. Local committees and a Basin committee will develop strategies, coordinate activities and account for progress.
- (2) **LIMITATION.** This Rule may not fully address the agricultural nitrogen reduction goal of the Tar-Pamlico Nutrient Sensitive Waters Strategy in that it does not address atmospheric sources of nitrogen to the Basin, including atmospheric emissions of ammonia from sources located both within and outside of the Basin. As better information becomes available from ongoing research on atmospheric nitrogen loading to the Basin from these sources, and on measures to control this loading, the Commission may undertake separate rule-making to require such measures it deems necessary from these sources to support the goals of the Tar-Pamlico Nutrient Sensitive Waters Strategy.

(b) **APPLICABILITY.** This Rule shall apply to all persons engaging in agricultural operations in the Tar-Pamlico River Basin except certain persons engaged in such operations for educational purposes. Persons engaged for educational purposes shall be those persons involved in secondary school or lesser grade-level activities that are a structured part of an organized program conducted by a public or private educational institution or by an agricultural organization. Educational activities shall not include research activities in support of commercial production. For the purposes of this Rule, agricultural

operations are activities that relate to any of the following pursuits:

- (1) The commercial production of crops or horticultural products. As used in this Rule, commercial shall mean activities conducted primarily for financial profit.
- (2) Research activities in support of such commercial production.
- (3) The production or management of greater than or equal to any of the following amounts of livestock or poultry at any time, excluding nursing young:
  - (A) 5 horses;
  - (B) 20 head of cattle;
  - (C) 25 swine;
  - (D) 15 sheep,
  - (E) 15 goats;
  - (F) 160 turkeys;
  - (G) 1,000 chickens;
  - (H) numbers of any other single species of livestock totaling greater than 4,000 pounds of live weight at any time; or
  - (I) combinations of livestock species where any species' number is greater than or equal to the number given for that species in Parts (b)(3)(A)–(H) of this Rule.

(c) **METHOD FOR RULE IMPLEMENTATION.** This Rule shall be implemented through a cooperative effort between a Basin Oversight Committee and Local Advisory Committees in each county or watershed. The membership, roles and responsibilities of these committees are set forth in Paragraphs (f) and (g) of this Rule. Committees' activities shall be guided by the following constraints:

- (1) The Commission shall determine whether each Local Advisory Committee has achieved its nitrogen reduction goal within five years of the effective date of this Rule, and its phosphorus loading goal within four years of the date that a phosphorus accounting method is approved by the Commission, both based on the accounting process described in Paragraphs (f) and (g) of this Rule. Should the Commission determine that a Local Advisory Committee has not achieved its nitrogen goal within five years, then the Commission shall require additional BMP implementation as needed to ensure that the goal is met within eight years of the effective date of this Rule. The Commission shall similarly review compliance with the phosphorus goal four years after it approves a phosphorus accounting method, and shall require additional BMP implementation as needed to meet that goal within an additional three years from that date. All persons subject to this Rule who have not implemented BMPs in accordance with an option provided in Subparagraphs (d)(1) or (d)(2) of this Rule shall be subject to such further requirements deemed necessary by the Commission for any Local Advisory Committee that has not achieved a nutrient goal.
- (2) Should a committee not form or not follow through on its responsibilities such that a local strategy is not implemented in keeping with Paragraph (g) of this Rule, the Commission may require all persons subject to this Rule in the affected area to implement BMPs as set forth in Paragraph (e) of this Rule.

(d) **OPTIONS FOR MEETING RULE REQUIREMENTS.** Persons subject to this Rule shall register their operations with their Local Advisory Committee according to the requirements of Paragraph (g) of this Rule within one year of the effective date of this Rule. Such persons may elect to implement any BMPs they choose that are recognized by the Basin Oversight Committee as nitrogen-reducing BMPs within five years of the effective date of this Rule. Persons who implement one of the following two options within five years of the effective date of this Rule for nitrogen-reducing BMPs and within four years of the date that a phosphorus accounting method is approved by the Commission shall not be subject to any additional requirements that may be placed on persons under Paragraph (c) of this Rule. Persons subject to this Rule shall be responsible for implementing and maintaining the BMPs used to meet the requirements of this Rule for as long as they continue their agricultural operation. If a person ceases an operation and another person assumes that operation, the new operator shall be responsible for implementing BMPs that meet the requirements of this Paragraph.

(1) Option 1 is to implement site-specific BMPs that are accepted by the Local Advisory Committee as fully satisfying a person's obligations under this Rule based on BMP implementation needs identified in the local nutrient control strategy required under Subparagraph (g)(2) of this Rule and on nutrient reduction efficiencies established by the Basin Oversight Committee as called for under Subparagraphs (f)(2) and (f)(3) of this Rule.

(2) Option 2 is to implement standard BMPs that persons subject to this Rule choose from the alternatives established pursuant to Paragraph (e) of this Rule.

(e) **STANDARD BEST MANAGEMENT PRACTICES (BMPs).** Standard BMPs shall be individual BMPs or combinations of BMPs that achieve at least a 30 percent reduction in nitrogen loading and no increase in phosphorus loading relative to conditions that lack such BMPs. Standard BMPs shall be established for the purposes of this Rule by one of the following processes:

(1) The Soil and Water Conservation Commission may elect to approve, under its own authorities, standard BMP options for the Tar-Pamlico River Basin based on nutrient reduction efficiencies established by the Basin Oversight Committee pursuant to Subparagraph (f)(3) of this Rule and using criteria for nitrogen- and phosphorus-reducing BMPs as described in rules adopted by the Soil and Water Conservation Commission, including 15A NCAC 6E .0104 and 15A NCAC 6F .0104. One purpose of this process is to provide persons subject to this Rule the opportunity to work with the Soil and Water Conservation Commission in its development of standard BMP options; or

(2) In the unlikely event that the Soil and Water Conservation Commission does not approve an initial set of standard BMP options for the Tar-Pamlico River Basin within one year of the effective date of this Rule, then the Environmental Management Commission may approve standard BMP options within eighteen months of the effective date of this Rule. In that event, the standard BMP options approved by the Commission shall be designed to reduce nitrogen and phosphorus loading, as specified at the beginning of Paragraph (e)

of this Rule, from agricultural sources through structural, management, or buffering farming BMPs or animal waste management plan components.

(f) **Basin Oversight Committee.** The Basin Oversight Committee shall have the following membership, role and responsibilities:

(1) **MEMBERSHIP.** The Commission shall delegate to the Secretary the responsibility of forming a Basin Oversight Committee within two months of the effective date of this Rule. Members shall be appointed for five-year terms and shall serve at the pleasure of the Secretary. Until such time as the Commission determines that long-term maintenance of the nutrient loads is assured, the Secretary shall either reappoint members or replace members every five years. The Secretary shall solicit nominations for membership on this Committee to represent each of the following interests, and shall appoint one nominee to represent each interest. The Secretary may appoint a replacement at any time for an interest in Parts (f)(1)(F) through (f)(1)(J) of this Rule upon request of representatives of that interest:

- (A) Division of Soil and Water Conservation;
- (B) United States Department of Agriculture-Natural Resources Conservation Service (shall serve in an "ex-officio" non-voting capacity and shall function as a technical program advisor to the Committee);
- (C) North Carolina Department of Agriculture and Consumer Services;
- (D) North Carolina Cooperative Extension Service;
- (E) Division of Water Quality;
- (F) Environmental interests;
- (G) Basinwide farming interests;
- (H) Pasture-based livestock interests;
- (I) Cropland farming interests; and
- (J) The scientific community with experience related to water quality problems in the Tar-Pamlico River Basin.

(2) **ROLE.** The Basin Oversight Committee shall:

- (A) Develop a tracking and accounting methodology pursuant to Subparagraph (f)(3) of this Rule. A final nitrogen methodology shall be submitted to the Commission for approval within one year after the effective date of this Rule. A final methodology for phosphorus shall be submitted at the earliest date possible as determined by the Basin Oversight Committee with input from the technical advisory committee described in Part (f)(2)(D) of this Rule.
- (B) Identify and implement future refinements to the accounting methodology as needed to reflect advances in scientific understanding, including establishment of nutrient reduction efficiencies for BMPs.
- (C) Appoint a technical advisory committee within 6 months of the effective date of this Rule to inform the Basin Oversight Committee on rule-related issues. The Basin Oversight Committee shall direct the committee to take the following actions at a minimum: monitor advances in scientific understanding related to phosphorus loading, evaluate the need for additional management action

to meet the phosphorus loading goal, and report its findings to the Basin Oversight Committee on an annual basis. The Basin Oversight Committee shall in turn report these findings and its recommendations to the Commission on an annual basis following the effective date of this Rule, until such time as the Commission, with input from the Basin Oversight Committee, determines that the technical advisory committee has fulfilled its purpose. The Basin Oversight Committee shall solicit nominations for this committee from the Division of Soil and Water Conservation, United States Department of Agriculture-Natural Resources Conservation Service, North Carolina Department of Agriculture and Consumer Services, North Carolina Cooperative Extension Service, Division of Water Quality, environmental interests, agricultural interests, and the scientific community with experience related to the committee's charge.

- (D) Review, approve and summarize county or watershed local strategies and present these strategies to the Commission for approval within two years after the effective date of this Rule.
  - (E) Establish minimum requirements for, review, approve and summarize local nitrogen and phosphorus loading annual reports as described under Subparagraph (g)(4) of this Rule, and present these reports to the Commission each October, until such time as the Commission determines that annual reports are no longer needed to assure long-term maintenance of the nutrient goals.
- (3) **ACCOUNTING METHODOLOGY.** The Basin Oversight Committee shall develop an accounting methodology that meets the following requirements:
- (A) The methodology shall quantify baseline total nitrogen and phosphorus loadings from agricultural operations in each county and for the entire basin.
  - (B) The methodology shall include a means of tracking implementation of BMPs, including number, type, and area affected.
  - (C) The methodology shall include a means of estimating incremental nitrogen and phosphorus reductions from actual BMP implementation and of evaluating progress toward the nutrient goals from BMP implementation. The methodology shall include nutrient reduction efficiencies for individual BMPs and combinations of BMPs that can be implemented toward the nitrogen and phosphorus goals.
  - (D) The methodology shall allow for future refinements to the nutrient baseline loading determinations, and to the load reduction accounting methodology.
  - (E) The methodology shall provide for quantification of changes in nutrient loading due to changes in agricultural land use, modifications in agricultural activity, or changes in atmospheric nitrogen loading to the extent allowed by advances in technical understanding.
  - (F) The methodology shall include a method to track maintenance of the nutrient net loads after the initial eight years of this Rule, including tracking

of changes in BMPs and additional BMPs to offset new or increased sources of nutrients from agricultural operations.

(g) **LOCAL ADVISORY COMMITTEES.** The Local Advisory Committees shall have the following membership, roles, and responsibilities:

- (1) **MEMBERSHIP.** The Commission shall delegate to the Directors of the Division of Water Quality and the Division of Soil and Water Conservation the responsibility of forming Local Advisory Committees within two months of the effective date of this Rule. The Directors shall form Local Advisory Committees in each county (or watershed as specified by the Basin Oversight Committee) within the Tar-Pamlico River Basin. Members shall serve for terms of five years at the pleasure of the Environmental Management and Soil and Water Conservation Commissions. Until such time as the Environmental Management Commission determines that long-term maintenance of the nutrient loads is assured, the Directors shall reappoint or replace members every five years. The Directors shall solicit nominations for membership on the Local Advisory Committee that represent each of the following interests, and shall appoint nominees that allow for representation from all interested segments of the agricultural community. The Directors may appoint a replacement at any time for an interest in Part (g)(1)(F) of this Rule upon request of representatives of that interest:
  - (A) Local Soil and Water Conservation District (one);
  - (B) Local United States Department of Agriculture-Natural Resources Conservation Service (one);
  - (C) Local North Carolina Department of Agriculture and Consumer Services (one);
  - (D) Local North Carolina Cooperative Extension Service (one);
  - (E) Local North Carolina Division of Soil and Water Conservation (one); and
  - (F) Local farmers in the county or watershed (at least two and not more than 10).
- (2) **ROLE.** The Local Advisory Committees shall:
  - (A) Conduct a registration process for persons subject to this Rule. This registration process shall be completed within one year after the effective date of this Rule. It shall obtain information that shall allow Local Advisory Committees to develop local strategies in accordance with Subparagraph (g)(3) of this Rule. At minimum, the registration process shall request the type and acreage of agricultural operations, nutrient-reducing BMPs implemented since January 1, 1992 and their operational status, and the acres affected by those BMPs. It shall provide persons with information on requirements and options under this Rule, and on available technical assistance and cost share options;
  - (B) Designate a member agency to compile and retain copies of all individual plans produced to comply with this Rule;
  - (C) Develop local nutrient control strategies for agricultural operations, pursuant to Subparagraph (g)(3) of this Rule, to meet the nitrogen and phosphorus goals assigned by the Basin Oversight

Committee. The nitrogen component of the control strategy shall be submitted to the Basin Oversight Committee no later than twenty-three months from the effective date of this Rule. The phosphorus component of the control strategy shall be submitted within one year of the date that the Commission approves a phosphorus accounting methodology as described in Part (f)(2)(A) of this Rule;

- (D) Ensure that any changes to the design of the local strategy will continue to meet the nutrient goals of this Rule; and
  - (E) Submit annual reports to the Basin Oversight Committee, pursuant to Subparagraph (g)(4) of this Rule, each May until such time as the Commission determines that annual reports are no longer needed to assure long-term maintenance of the nutrient goals.
- (3) **LOCAL NUTRIENT CONTROL STRATEGIES.** The Local Advisory Committees shall be responsible for developing county or watershed nutrient control strategies that meet the following requirements. If a Local Advisory Committee fails to submit a nutrient control strategy as required in Part (g)(2)(C) of this Rule, the Commission may develop one based on the accounting methodology that it approves pursuant to Part (f)(2)(A) of this Rule.
- (A) Local nutrient control strategies shall be designed to achieve the required nitrogen reduction goals within five years after the effective date of this Rule, and to maintain those reductions in perpetuity or until such time as this Rule is revised to modify this requirement. Strategies shall be designed to meet the phosphorus loading goals within four years of the date that the Commission approves a phosphorus accounting methodology as described in Part (f)(2)(A) of this Rule.
  - (B) Local nutrient control strategies shall specify the numbers and types of all agricultural operations within their areas, numbers of BMPs that will be implemented by enrolled operations and acres to be affected by those BMPs, estimated nitrogen and phosphorus reductions, schedule for BMP implementation, and operation and maintenance requirements.
  - (C) Local nutrient control strategies may prioritize BMP implementation to establish the most efficient and effective means of achieving the nutrient goals.
- (4) **ANNUAL REPORTS.** The Local Advisory Committees shall be responsible for submitting annual reports for their counties or watersheds. Annual reports shall be submitted to the Basin Oversight Committee each May until such time as the Commission determines that annual reports are no longer needed to assure long-term maintenance of the nutrient goals. Annual reports shall quantify progress toward the nutrient goals with sufficient detail to allow for compliance monitoring at the farm level. The Basin Oversight Committee shall determine reporting requirements to meet these objectives. Those requirements may include information on BMPs implemented by individual farms, proper BMP

operation and maintenance, BMPs discontinued, changes in agricultural land use or activity, and resultant net nutrient loading changes.

*History Note: Authority G. S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; Eff. April 1, 2001.*

**15A NCAC 02C .0102 DEFINITIONS**

As used herein, unless the context otherwise requires:

- (1) "Abandon" means to discontinue the use of and to seal the well according to the requirements of 15A NCAC 2C .0113 of this Section.
- (2) "Access port" means an opening in the well casing or well head installed for the primary purpose of determining the position of the water level in the well.
- (3) "Agent" means any person who by mutual and legal agreement with a well owner has authority to act in his behalf in executing applications for permits. The agent may be either general agent or a limited agent authorized to do one particular act.
- (4) "ASTM" means the American Society for Testing and Materials.
- (5) "Casing" means pipe or tubing constructed of specified materials and having specified dimensions and weights, that is installed in a borehole, during or after completion of the borehole, to support the side of the hole and thereby prevent caving, to allow completion of a well, to prevent formation material from entering the well, to prevent the loss of drilling fluids into permeable formations, and to prevent entry of contamination.
- (6) "Clay" means a substance comprised of natural, inorganic, finely ground crystalline mineral fragments which, when mixed with water, forms a pasty, moldable mass that preserves its shape when air dried.
- (7) "Commission" means the North Carolina Environmental Management Commission or its successor, unless otherwise indicated.
- (8) "Consolidated rock" means rock that is firm and coherent, solidified or cemented, such as granite, gneiss, limestone, slate or sandstone, that has not been decomposed by weathering.
- (9) "Contamination" means the introduction of foreign materials of such nature, quality, and quantity into the groundwaters as to exceed the groundwater quality standards specified in 15A NCAC 2L (Classifications and Water Quality Standards Applicable to the Groundwaters of North Carolina).
- (10) "Department" means the Department of Environment and Natural Resources.
- (11) "Designed capacity" shall mean that capacity that is equal to the yield that is specified prior to construction of the well.
- (12) "Director" means the Director of the Division of Water Quality.
- (13) "Division" means the Division of Water Quality.
- (14) "Domestic use" means water used for drinking, bathing, or other household purposes, livestock, or gardens.
- (15) "Formation Material" means naturally occurring material generated during the drilling process that is

- composed of sands, silts, clays or fragments of rock and which is not in a dissolved state.
- (16) "GPM" and "GPD" mean gallons per minute and gallons per day, respectively.
- (17) "Grout" shall mean and include the following:
- (a) "Neat cement grout" means a mixture of not more than six gallons of clear, potable water to one 94 pound bag of portland cement. Up to five percent, by weight, of bentonite clay may be used to improve flow and reduce shrinkage.
  - (b) "Sand cement grout" means a mixture of not more than two parts sand and one part cement and not more than six gallons of clear, potable water per 94 pound bag of portland cement.
  - (c) "Concrete grout" means a mixture of not more than two parts gravel to one part cement and not more than six gallons of clear, potable water per 94 pound bag of portland cement. One hundred percent of the gravel must pass through a one-half inch mesh screen.
  - (d) "Gravel cement grout, sand cement grout or rock cutting cement grout" means a mixture of not more than two parts gravel and sand or rock cuttings to one part cement and not more than six gallons of clear, potable water per 94 pound bag of portland cement.
  - (e) "Bentonite grout" means the mixture of no less than one and one-half pounds of commercial bentonite with sufficient clear, potable water to produce a grout weighing no less than 9.4 pounds per gallon of mixture. Non-organic, non-toxic substances may be added to improve particle distribution and pumpability. Bentonite grout may only be used in those instances where specifically approved in this Section and only as recommended by the manufacturer.
  - (f) "Specialty grout" means a mixture of non-organic, non-toxic materials with characteristics of expansion, chemical-resistance, rate or heat of hydration, viscosity, density or temperature-sensitivity applicable to specific grouting requirements. Specialty grouts may not be used without prior approval by the Director. Approval of the use of specialty grouts shall be based on a demonstration that the mixture will not adversely impact human health or the environment.
- (18) "Liner pipe" means pipe that is installed inside a completed and cased well for the purpose of preventing the entrance of contamination into the well or for repairing ruptured or punctured casing or screens.
- (19) "Monitoring well" means any well constructed for the primary purpose of obtaining samples of groundwater or other liquids for examination or testing, or for the observation or measurement of groundwater levels. This definition excludes lysimeters, tensiometers, and other devices used to investigate the characteristics of the unsaturated zone but includes piezometers, a type of monitor well constructed solely for the purpose of determining groundwater levels.
- (20) "Owner" means any person who holds the fee or other property rights in the well being constructed. A well is real property and its construction on land rests ownership in the land owner in the absence of contrary agreement in writing.
- (21) "Pitless adapters" or "pitless units" are devices specifically manufactured to the standards specified under 15A NCAC 2C .0107(i)(5) of this Section for the purpose of allowing a subsurface lateral connection between a well and plumbing appurtenances.
  - (22) "Public water system" means a water system as defined in 15A NCAC 18C (Rules Governing Public Water Supplies).
  - (23) "Recovery well" means any well constructed for the purpose of removing contaminated groundwater or other liquids from the subsurface.
  - (24) "Settleable solids" means the volume of solid particles in a well-mixed one liter sample which will settle out of suspension, in the bottom of an Imhoff Cone, after one hour.
  - (25) "Site" means the land or water area where any facility, activity or situation is physically located, including adjacent or nearby land used in connection with the facility, activity or situation.
  - (26) "Specific capacity" means the yield of the well expressed in gallons per minute per foot of draw-down of the water level (gpm/ft.-dd) per unit of time.
  - (27) "Static water level" means the level at which the water stands in the well when the well is not being pumped and is expressed as the distance from a fixed reference point to the water level in the well.
  - (28) "Suspended solids" means the weight of those solid particles in a sample which are retained by a standard glass microfiber filter, with pore openings of one and one-half microns, when dried at a temperature of 103 to 105 degrees Fahrenheit.
  - (29) "Temporary well" means a well, other than a water supply well, that is constructed to determine aquifer characteristics, and which will be properly abandoned or converted to a permanent well within five days (120 hours) of the completion of drilling of the borehole.
  - (30) "Turbidity" means the cloudiness in water, due to the presence of suspended particles such as clay and silt, that may create esthetic problems or analytical difficulties for determining contamination. Turbidity, measured in Nephelometric Turbidity Units (NTU), is based on a comparison of the cloudiness in the water with that in a specially prepared standard.
  - (31) "Vent" means an opening in the well casing or well head, installed for the purpose of allowing changes in the water level in a well due to natural atmospheric changes or to pumping. A vent can also serve as an access port.
  - (32) "Well" means any excavation that is cored, bored, drilled, jetted, dug or otherwise constructed for the purpose of locating, testing, developing, draining or recharging any groundwater reservoirs or aquifer, or that may control, divert, or otherwise cause the movement of water from or into any aquifer.
  - (33) "Well capacity" shall mean the maximum quantity of water that a well will yield continuously as determined by methods outlined in 15A NCAC 2C .0110.
  - (34) "Well head" means the upper terminal of the well including adapters, ports, valves, seals, and other attachments.



- (35) "Well system" means two or more cross-connected wells.
- (36) "Yield" means the amount of water or other fluid that can be extracted from a well under a given set of conditions.

*History Note: Authority G.S. 87-85; 87-87; 143-214.2; 143-215.3; Eff. February 1, 1976; Amended Eff. April 1, 2001; December 1, 1992; July 1, 1988; March 1, 1985; September 1, 1984.*

**15A NCAC 02C .0103 REGISTRATION**

**Pump Installer Registration:**

- (1) All persons, firms, or corporations engaged in the business of installing or repairing pumps or other equipment in wells shall register bi-annually with the Department.
- (2) Registration shall be accomplished, during the period from April 1 to April 30 of every odd-numbered year, by completing and submitting to the department a registration form provided by the department for this purpose.
- (3) Upon receipt of a properly completed application form, the applicant will be issued a certificate of registration.

*History Note: Authority G.S. 87-87; 143-215.3(a)(1a); 143-355(e); Eff. February 1, 1976; Amended Eff. April 1, 2001; December 1, 1992; July 1, 1988; April 20, 1978.*

**15A NCAC 02C .0105 PERMITS**

(a) It is the finding of the Commission that the entire geographical area of the state is vulnerable to groundwater pollution from improperly located, constructed, operated, altered, or abandoned non-water supply wells and water supply wells not constructed in accordance with the standards set forth in 15A NCAC 2C .0107 of this Section. Therefore, in order to ensure reasonable protection of the groundwater resources, prior permission from the Division must be obtained for the construction of the types of wells enumerated in Paragraph (b) of this Rule.

(b) No person shall locate or construct any of the following wells until a permit has been issued by the Director:

- (1) any water-well or well system with a design capacity of 100,000 gallons per day (gpd) or greater;
- (2) any well added to an existing system where the total design capacity of such existing well system and added well will equal or exceed 100,000 gpd;
- (3) any monitoring well, constructed to assess the impact of an activity not permitted by the state, when installed on property other than that on which the unpermitted activity took place;
- (4) any recovery well;
- (5) any well for recharge or injection purposes;
- (6) any well with a design deviation from the standards specified under the rules of this Subchapter.

(c) The Director may delegate, through a Memorandum of Agreement, to another governmental agency, the authority to permit wells that are an integral part of a facility requiring a permit from the agency. Provided, however, that the permittee

comply with all provisions of this Subchapter, including construction standards and the reporting requirements as specified in 15A NCAC 2C .0114. In the absence of such agreement, all wells specified in Paragraph (b) of this Rule require a well construction permit in addition to any other permits.

(d) An application for a permit shall be submitted by the owner or his agent. In the event that the permit applicant is not the owner of the property on which the well or well system is to be constructed, the permit application must contain written approval from the property owner and a statement that the applicant assumes total responsibility for ensuring that the well(s) will be located, constructed, maintained and abandoned in accordance with the requirements of this Subchapter.

(e) The application shall be submitted to the Division, on forms furnished by the Division, and shall include the following:

- (1) For all wells:
  - (A) the owner's name (facility name);
  - (B) the owner's mailing address (facility address);
  - (C) description of the well type and activity requiring a permit;
  - (D) facility location (map);
  - (E) a map of the facility and general site area, to scale, showing the locations of:
    - (i) all property boundaries, at least one of which is referenced to a minimum of two landmarks such as identified roads, intersections, streams or lakes within 500 feet of proposed well or well system;
    - (ii) all existing wells, identified by type of use, within 500 feet of proposed well or well system;
    - (iii) the proposed well or well system;
    - (iv) any test borings within 500 feet of proposed well or well system; and
    - (v) all sources of known or potential groundwater contamination (such as septic tank systems; pesticide, chemical or fuel storage areas; animal feedlots; landfills or other waste disposal areas) within 500 feet of the proposed well site;
  - (F) the well drilling contractor's name and state certification number, if known;
  - (G) construction diagram of the proposed well(s) including specifications describing all materials to be used, methods of construction and means for assuring the integrity and quality of the finished well(s).
- (2) For water supply wells or well systems with a designed capacity of 100,000 gpd or greater the application shall include, in addition to the information required in Subparagraph (e)(1) of this Rule:
  - (A) the number, yield and location of existing wells in the system;
  - (B) the design capacity of the proposed well(s);
  - (C) any other well construction information or site specific information deemed necessary by the Director for the protection of human health and the environment.
- (3) For those monitoring wells with a design deviation from the specifications of 15A NCAC 2C .0108 of this

Section, in addition to the information required in Subparagraph (e)(1) of this Rule:

- (A) a description of the subsurface conditions sufficient to evaluate the site. Data from test borings, wells pumping tests, etc., may be required as necessary;
- (B) a description of the quantity, character and origin of the contamination;
- (C) justification for the necessity of the design deviation; and
- (D) any other well construction information or site specific information deemed necessary by the Director for the protection of human health and the environment.

- (4) For those recovery wells with a design deviation from the specifications in 15A NCAC 2C .0108 of this Section, in addition to the information required in Subparagraph (e)(1) and Parts (e)(3)(A), (B) and (C) of this Rule, the application shall describe the disposition of any fluids recovered if the disposal of those fluids will have an impact on any existing wells other than those installed for the express purpose of measuring the effectiveness of the recovery well(s).

(f) In the event of an emergency, monitoring wells or recovery wells may be constructed after verbal approval is provided by the Director or his delegate. After-the-fact applications shall be submitted by the driller or owner within ten days after construction begins. The application shall include construction details of the monitoring well(s) or recovery well(s) and include the name of the person who gave verbal approval and the time and date that approval was given.

(g) It shall be the responsibility of the well owner or his agent to see that a permit is secured prior to the beginning of construction of any well for which a permit is required under the rules of this Subchapter.

*History Note: Authority G.S. 87-87; 143-215.1; Eff. February 1, 1976; Amended Eff. April 1, 2001; December 1, 1992; March 1, 1985; September 1, 1984; April 20, 1978.*

**15A NCAC 02C .0107 STANDARDS OF CONSTRUCTION: WATER-SUPPLY WELLS**

(a) Location.

- (1) The well shall not be located in an area generally subject to flooding. Areas which have a propensity for flooding include those with concave slope, alluvial or colluvial soils, gullies, depressions, and drainage ways.
- (2) The minimum horizontal separation between a well, intended for a single-family residence or other non-public water system, and potential sources of groundwater contamination, which exists at the time the well is constructed, shall be as follows unless otherwise specified:

- (A) Septic tank and drainfield 100 ft.
- (B) Other subsurface ground absorption waste disposal system 100 ft.
- (C) Industrial or municipal sludge-spreading or wastewater-irrigation sites 100 ft.
- (D) Water-tight sewage or liquid-waste collection or transfer facility 50 ft.

- (E) Other sewage and liquid-waste collection or transfer facility 100 ft.
  - (F) Cesspools and privies 100 ft.
  - (G) Animal feedlots or manure piles 100 ft.
  - (H) Fertilizer, pesticide, herbicide or other chemical storage areas 100 ft.
  - (I) Non-hazardous waste storage, treatment or disposal lagoons 100 ft.
  - (J) Sanitary landfills 500 ft.
  - (K) Other non-hazardous solid waste landfills, such as Land Clearing and Inert Debris (LCID) landfills 100 ft.
  - (L) Animal barns 100 ft.
  - (M) Building foundations, excluding the foundation of a structure housing the well head 25 ft.
  - (N) Surface water bodies which act as sources of groundwater recharge, such as ponds, lakes and reservoirs 50 ft.
  - (O) All other surface water bodies, such as brooks, creeks, streams, rivers, sounds, bays and tidal estuaries 25 ft.
  - (P) Chemical or petroleum fuel underground storage tanks regulated under 15A NCAC 2N:
    - (i) with secondary containment 50 ft.
    - (ii) without secondary containment 100 ft.
  - (Q) Above ground or under ground storage tanks which contain petroleum fuels used for heating equipment, boilers or furnaces 50 ft.
  - (R) All other potential sources of groundwater contamination 50 ft.
- (3) For a well serving an existing single-family dwelling where lot size or other fixed conditions preclude the separation distances specified in Subparagraph (a)(2) of this Rule, the required separation distances shall be the maximum possible but shall in no case be less than the following:
- (A) Septic tank and drainfield 50 ft.
  - (B) Water-tight sewage or liquid-waste collection or transfer facility 25 ft.
  - (C) Animal barns 50 ft.
  - (D) Cesspool or privies 50 ft.

- (4) A well or well system, serving more than one single-family dwelling but with a designed capacity of less than 100,000 gpd, must meet the separation requirements specified in Subparagraph (a)(2) of this Rule;
  - (5) A well or well system with a designed capacity of 100,000 gpd or greater must be located a sufficient distance from known or anticipated sources of groundwater contamination so as to prevent a violation of applicable groundwater quality standards, resulting from the movement of contaminants, in response to the operation of the well or well system at the proposed rate and schedule of pumping;
  - (6) Actual separation distances must conform with the most stringent of applicable federal, state or local requirements;
  - (7) Wells drilled for public water supply systems regulated by the Division of Environmental Health shall meet the siting and all other requirements of that Division.
- (b) Source of water.
- (1) The source of water for any well intended for domestic use shall not be from a water bearing zone or aquifer that is known to be contaminated;
  - (2) In designated areas described in 15A NCAC 02C .0117 of this Section, the source shall be greater than 35 feet;
- (3) In designated areas described in 15A NCAC 02C .0116 of this Section, the source may be less than 20 feet, but in no case less than 10 feet; and
  - (4) In all other areas the source shall be at least 20 feet below land surface.
- (c) Drilling Fluids and Additives. Drilling Fluids and Additives shall not contain organic or toxic substances or include water obtained from surface water bodies or water from a non-potable supply and may be comprised only of:
- (1) the formational material encountered during drilling; or
  - (2) materials manufactured specifically for the purpose of borehole conditioning or water well construction.
- (d) Casing.
- (1) If steel casing is used, then:
    - (A) The casing shall be new, seamless or electric-resistance welded galvanized or black steel pipe. Galvanizing shall be done in accordance with requirements of ASTM A-120.
    - (B) The casing, threads and couplings shall meet or exceed the specifications of ASTM A-53, A-120 or A589.
    - (C) The minimum wall thickness for a given diameter shall equal or exceed that specified in Table 1;

TABLE 1: MINIMUM WALL THICKNESS FOR STEEL CASING:

Nominal Diameter (in.)	Wall Thickness (in.)
For 3-1/2" or smaller pipe, schedule 40 is required	
4	0.142
5	0.156
5-1/2	0.164
6	0.185
8	0.250
10	0.279
12	0.330
14 and larger	0.375

- (D) Stainless steel casing, threads, and couplings shall conform in specifications to the general requirements in ASTM A-530 and also shall conform to the specific requirements in the ASTM standard that best describes the chemical makeup of the stainless steel casing that is intended for use in the construction of the well;
- (E) Stainless steel casing shall have a minimum wall thickness that is equivalent to standard schedule number 10S;
- (F) Steel casing shall be equipped with a drive shoe if the casing is driven in a consolidated rock formation. The drive shoe shall be made of forged,

high carbon, tempered seamless steel and shall have a beveled, hardened cutting edge. A drive shoe will not be required for wells in which a cement or concrete grout surrounds and extends the entire length of the casing.

- (2) If Thermoplastic Casing is used, then:
  - (A) the casing shall be new;
  - (B) the casing and joints shall meet or exceed all the specifications of ASTM F-480-81, except that the outside diameters will not be restricted to those listed in F-480; and
  - (C) the maximum depth of installation for a given SDR or Schedule number shall not exceed that listed in Table 2 unless the well drilling contractor can

provide the Division, upon request, with written documentation from the manufacturer of the casing

stating that the casing may safely be used at the depth at which it is to be installed.

**TABLE 2: Maximum allowable depths (in feet) of Installation of Thermoplastic Water Well Casing**

Nominal Diameter (in inches)

Schedule number-	2	2.5	3	3.5	4	5	6	8	10	12	14	16
Schedule 40-	485	635	415	315	253	180	130	85	65	65	50	50
Schedule 80-	1460	1685	1170	920	755	550	495	340	290	270	265	255
SDR Number	All Diameters (in inches)											
SDR 41	20											
SDR 32.5	50											
SDR 27.5	100											
SDR 26	95											
SDR 21	185											
SDR 17	355											
SDR 13.5	735											

- (D) The top of the casing shall be terminated by the drilling contractor at least twelve inches above land surface.
- (E) For wells in which the casing will extend into consolidated rock, thermoplastic casing shall be equipped with a coupling, or other device approved by the manufacturer of the casing, that is sufficient to protect the physical integrity of the thermoplastic casing during the processes of seating and grouting the casing and subsequent drilling operations.
- (F) Thermoplastic casing shall not be driven into consolidated rock.
- (3) In constructing any well, all water-bearing zones that are known to contain polluted, saline, or other non-potable water shall be adequately cased and cemented off so that pollution of overlying and underlying groundwater zones will not occur.
- (4) Every well shall be cased so that the bottom of the casing extends to a minimum depth as follows:
  - (A) Wells located within the area described in 15A NCAC 2C .0117 of this Section shall be cased from land surface to a depth of at least 35 feet.
  - (B) Wells located within the area described in 15A NCAC 2C .0116 of this Section shall be cased from land surface to a depth of at least 10 feet.
  - (C) Wells located in any other area shall be cased from land surface to a depth of at least 20 feet.

- (5) The top of the casing shall be terminated by the drilling contractor at least 12 inches above land surface.
- (6) The casing in wells constructed to obtain water from a consolidated rock formation shall be:
  - (A) adequate to prevent any formational material from entering the well in excess of the levels specified in Paragraph (h) of this Rule; and
  - (B) firmly seated at least five feet into the rock.
- (7) The casing in wells constructed to obtain water from an unconsolidated rock formation (such as gravel, sand or shells) shall extend at least one foot into the top of the water-bearing formation.
- (8) Upon completion of the well, the well shall be sufficiently free of obstacles including formation material as necessary to allow for the installation and proper operation of pumps and associated equipment.
- (e) Grouting.
  - (1) Casing shall be grouted to a minimum depth of twenty feet below land surface except that:
    - (A) In those areas designated by the Director to meet the criteria of 15A NCAC 02C .0116 of this Section, grout shall extend to a depth of two feet above the screen or, for open end wells, to the bottom of the casing, but in no case less than 10 feet.
    - (B) In those areas designated in 15A NCAC 02C .0117 of this Section, grout shall extend to a minimum of 35 feet below land surface.

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- (C) The casing shall be grouted as necessary to seal off, from the producing zone(s), all aquifers or zones with water containing organic or other contaminants of such type and quantity as to render water from those aquifers or zones unsafe or harmful or unsuitable for human consumption and general use.
- (2) For large diameter wells cased with concrete pipe or ceramic tile, the following shall apply:
  - (A) The diameter of the bore hole shall be at least six inches larger than the outside diameter of the casing;
  - (B) The annular space around the casing shall be filled with a cement-type grout to a depth of at least 20 feet, excepting those designated areas specified in 15A NCAC 02C .0116 and 15A NCAC 2C .0117 of this Section. The grout shall be placed in accordance with the requirements of this Paragraph.
- (3) Bentonite grout may be used in that portion of the borehole that is at least three feet below land surface. That portion of the borehole above the bentonite grout, up to land surface, shall be filled with a concrete or cement-type grout.
- (4) Grout shall be placed around the casing by one of the following methods:
  - (A) Pressure. Grout shall be pumped or forced under pressure through the bottom of the casing until it fills the annular area around the casing and overflows at the surface; or
  - (B) Pumping. Grout shall be pumped into place through a hose or pipe extended to the bottom of the annular space which can be raised as the grout is applied. The grout hose or pipe should remain submerged in grout during the entire application; or
  - (C) Other. Grout may be emplaced in the annular space by gravity flow in such a way to ensure complete filling of the space to a maximum depth of 20 feet below land surface.
- (5) If an outer casing is installed, it shall be grouted by either the pumping or pressure method.
- (6) The liquid and solid components of all grout mixtures shall be thoroughly blended prior to emplacement below land surface.
- (7) The well shall be grouted within five working days after the casing is set.
- (8) No additives which will accelerate the process of hydration shall be used in grout for thermoplastic well casing.
- (9) Where grouting is required by the provisions of this Section, the grout shall extend outward from the casing wall to a minimum thickness equal to either one-third of the diameter of the outside dimension of the casing or two inches, whichever is greater; excepting, however, that large diameter bored wells shall meet the requirements of Subparagraph (e)(2) of this Rule.
- (f) Well Screens.
  - (1) The well, if constructed to obtain water from an unconsolidated rock formation, shall be equipped with a screen that will adequately prevent the entrance of formation material into the well after the well has been developed and completed by the well contractor.
  - (2) The well screen be of a design to permit the optimum development of the aquifer with minimum head loss consistent with the intended use of the well. The openings shall be designed to prevent clogging and shall be free of rough edges, irregularities or other defects that may accelerate or contribute to corrosion or clogging.
  - (3) Multi-screen wells shall not connect aquifers or zones which have differences in water quality which would result in contamination of any aquifer or zone.
- (g) Gravel-and Sand-Packed Wells.
  - (1) In constructing a gravel-or sand-packed well:
    - (A) The packing material shall be composed of quartz, granite, or similar mineral or rock material and shall be clean, of uniform size, water-washed and free from clay, silt, or other deleterious material.
    - (B) The size of the packing material shall be determined from a grain size analysis of the formation material and shall be of a size sufficient to prohibit the entrance of formation material into the well in concentrations above those permitted by Paragraph (h) of this Rule.
    - (C) The packing material shall be placed in the annular space around the screens and casing by a fluid circulation method, preferably through a conductor pipe to ensure accurate placement and avoid bridging.
    - (D) The packing material shall be adequately disinfected.
    - (E) Centering guides must be installed within five feet of the top packing material to ensure even distribution of the packing material in the borehole.
  - (2) The packing material shall not connect aquifers or zones which have differences in water quality that would result in deterioration of the water quality in any aquifer or zone.
- (h) Well Development.
  - (1) All water supply wells shall be properly developed by the well driller;
  - (2) Development shall include removal of formation materials, mud, drilling fluids and additives such that the water contains no more than:
    - (A) five milliliters per liter of settleable solids; and
    - (B) ten NTUs of turbidity as suspended solids.
  - (3) Development shall not require efforts to reduce or eliminate the presence of dissolved constituents which are indigenous to the ground water quality in that area. Typical dissolved constituents include, but are not limited to, aluminum, calcium, chloride, iron, magnesium, manganese, sodium and sulphate.
- (i) Well Head Completion.
  - (1) Access Port. Every water supply well and such other wells as may be specified by the Commission shall be

equipped with a usable access port or air line. The access port shall be at least one half inch inside diameter opening so that the position of the water level can be determined at any time. Such port shall be installed and maintained in such manner as to prevent entrance of water or foreign material.

- (2) Well Contractor Identification Plate.
  - (A) An identification plate, showing the drilling contractor and certification number and the information specified in Part (i)(2)(E) of this Rule, shall be installed on the well within 72 hours after completion of the drilling.
  - (B) The identification plate shall be constructed of a durable weatherproof, rustproof metal, or equivalent material approved by the Director.
  - (C) The identification plate shall be securely attached to either the aboveground portion of the well casing, surface grout pad or enclosure floor around the casing where it is readily visible.
  - (D) The identification plate shall not be removed by any person.
  - (E) The identification plate shall be stamped or otherwise imprinted with permanent legible markings to show the:
    - (i) total depth of well;
    - (ii) casing depth (ft.) and inside diameter (in.);
    - (iii) screened intervals of screened wells;
    - (iv) packing interval of gravel-or sand-packed wells;
    - (v) yield, in gallons per minute (gpm), or specific capacity in gallons per minute per foot of drawdown (gpm/ft.-dd);
    - (vi) static water level and date measured; and
    - (vii) date well completed.
- (3) Pump Installer Identification Plate.
  - (A) An identification plate, showing the name and registration number of the pump installation contractor, and the information specified in Part (i)(3)(D) of this Rule, shall be securely attached to either the aboveground portion of the well casing, surface grout pad or the enclosure floor if present, within 72 hours after completion of the pump installation;
  - (B) The identification plate shall be constructed of a durable waterproof, rustproof metal, or equivalent material approved by the Director;
  - (C) The identification plate shall not be removed by any person; and
  - (D) The identification plate shall be stamped or otherwise imprinted with permanent legible, markings to show the:
    - (i) date the pump was installed;
    - (ii) the depth of the pump intake; and
    - (iii) the horsepower rating of the pump.
- (4) Valved flow. Every artesian well that flows under natural artesian pressure shall be equipped with a valve so that the flow can be completely stopped. Well

owners shall be responsible for the installation, operation and maintenance of the valve.

- (5) Pitless adapters or pitless units shall be allowed as a method of well head completion under the following conditions:
  - (A) The pitless device shall be manufactured specifically for the purpose of water well construction;
  - (B) Design, installation and performance standards shall be those specified in PAS-1 (Pitless Adapter Standard No. 1) as adopted by the Water System Council's Pitless Adapter Division;
  - (C) The pitless device will be compatible with the well casing;
  - (D) The top of the pitless device shall extend at least eight inches above land surface;
  - (E) The pitless device shall have an access port.
- (6) All openings for piping, wiring, and vents shall enter into the well at least 12 inches above land surface, except where pitless adapters or pitless units are used, and shall be adequately sealed to preclude the entrance of contaminants into the well.

*History Note: Authority G.S. 87-87; 87-88; Eff. February 1, 1976; Amended Eff. April 1, 2001; December 1, 1992; March 1, 1985; September 1, 1984; April 20, 1978.*

**15A NCAC 02C .0108 STANDARDS OF CONSTRUCTION: WELLS OTHER THAN WATER SUPPLY**

- (a) No well shall be located, constructed, operated, or repaired in any manner that may adversely impact the quality of groundwater.
- (b) Injection wells shall conform to the standards set forth in Section .0200 of this Subchapter.
- (c) Monitoring wells and recovery wells shall be located, designed, constructed, operated and abandoned with materials and by methods which are compatible with the chemical and physical properties of the contaminants involved, specific site conditions and specific subsurface conditions. Specific construction standards will be itemized in the construction permit, if such a permit is required, but the following general requirements will apply:
  - (1) The borehole shall not penetrate to a depth greater than the depth to be monitored or the depth from which contaminants are to be recovered.
  - (2) The well shall not hydraulically connect:
    - (A) separate aquifers; or
    - (B) those portions of a single aquifer where known or suspected contamination would occur in separate and definable layers within the aquifer.
  - (3) The well construction materials shall be compatible with the depth of the well and the contaminants to be monitored or recovered.
  - (4) The well shall be constructed in such a manner that water or contaminants from the land surface cannot

- migrate along the borehole annulus into any packing material or well screen area.
- (5) Packing material placed around the screen shall extend at least one foot above the top of the screen. Unless the depth of the screen necessitates a thinner seal; a one foot thick seal, comprised of bentonitic clay or other material approved by the Director, shall be emplaced directly above and in contact with the packing material.
  - (6) Grout shall be placed in the annular space between the outermost casing and the borehole wall from the land surface to the top of the bentonite clay seal above any well screen or to the bottom of the casing for open end wells. To provide stability for the well casing, the uppermost three feet of grout below land surface must be a concrete or cement-type grout.
  - (7) All wells shall be secured, with a locking well cap, to reasonably ensure against unauthorized access and use.
  - (8) All wells shall be afforded reasonable protection against damage during construction and use.
  - (9) Any wells that would flow under natural artesian conditions shall be valved so that the flow can be regulated.
  - (10) The well casing shall be terminated no less than 12 inches above land surface datum unless both of the following conditions are met:
    - (A) site-specific conditions directly related to business activities, such as vehicle traffic, would endanger the physical integrity of the well; and
    - (B) the well head is completed in such a manner so as to preclude surficial contaminants from entering the well.
  - (11) Each well shall have securely affixed an identification plate constructed of a durable material and shall contain the following information:
    - (A) drilling contractor, or pump installation contractor, name and applicable certification or registration numbers;
    - (B) date well completed;
    - (C) total depth of well;
    - (D) a warning that the well is not for water supply and that the groundwater may contain hazardous materials; and
    - (E) depth(s) to the top(s) and bottom(s) of the screen(s).
  - (12) Each well shall be developed such that the level of turbidity or settleable solids does not preclude accurate chemical analyses of any fluid samples collected.
- (d) Wells constructed for the purpose of monitoring or testing for the presence of liquids associated with tanks regulated under 15A NCAC 02N (Criteria and Standards Applicable to Underground Storage Tanks) shall be constructed in accordance with 15A NCAC 02N .0504.
- (e) Wells constructed for the purpose of monitoring for the presence of vapors associated with tanks regulated under 15A NCAC 02N shall:

- (1) be constructed in such a manner as to prevent the entrance of surficial contaminants or water into or alongside the well casing; and
  - (2) be provided with a lockable cap in order to reasonably ensure against unauthorized access and use.
- (f) Temporary wells and all other non-water supply wells shall be constructed in such a manner as to preclude the vertical migration of contaminants within and along the borehole channel.
- (g) For monitoring, sand-or gravel packed wells, centering guides must be evenly distributed in the borehole.

*History Note: Authority G.S. 87-87; 87-88; Eff. February 1, 1976; Amended Eff. April 1, 2001; December 1, 1992; September 1, 1984; April 20, 1978.*

**15A NCAC 02C .0111 DISINFECTION OF WATER SUPPLY WELLS**

All water supply wells shall be disinfected upon completion of construction, maintenance, repairs, pump installation and testing as follows:

- (1) Chlorination.
  - (a) Chlorine shall be placed in the well in sufficient quantities to produce a chlorine residual of at least 100 parts per million (ppm) in the well. A chlorine solution may be prepared by dissolving high test calcium hypochlorite (trade names include HTH, Chlor-Tabs, etc.) in water. Do not use stabilized chlorine tablets or hypochlorite products containing fungicides, algacides, or other disinfectants. Follow manufacturers directions with storing, transporting, and using calcium hypochlorite products. About three ounces of hypochlorite containing 65 percent to 75 percent available chlorine is needed per 100 gallons of water for at least a 100 ppm chlorine residual. As an example, a well having a diameter of six inches, has a volume of about 1.5 gallons per foot. If the well has 200 feet of water, the minimum amount of hypochlorite required would be 9 ounces. (1.5 gallons/foot x 200 feet = 300 gallons at 3 ounces per 100 gallons; 3 ounces x 3 = 9 ounces.)
  - (b) The chlorine shall be placed in the well by one of the following or equivalent methods:
    - (i) Chlorine tablets may be dropped in the top of the well and allowed to settle to the bottom;
    - (ii) Chlorine solutions shall be placed in the bottom of the well by using a bailer or by pouring the solution through the drill rod, hose, or pipe placed in the bottom of the well. The solution shall be flushed out of the drill rod, hose, or pipe by using water or air.
  - (c) Agitate the water in the well to ensure thorough dispersion of the chlorine.
  - (d) The well casing, pump column and any other equipment above the water level in the well shall

be thoroughly rinsed with the chlorine solution as a part of the disinfecting process.

- (e) The chlorine solution shall stand in the well for a period of at least 24 hours.
  - (f) The well shall be pumped until the system is clear of the chlorine before the system is placed in use.
- (2) Other materials and methods of disinfection, at least as effective as those in Item (1) of this Rule, may be used upon prior approval by the Director.

*History Note: Authority G.S. 87-87; 87-88; Eff. February 1, 1976; Amended Eff. April 1, 2001; December 1, 1992; July 1, 1988; September 1, 1984.*

**15A NCAC 02C .0113 ABANDONMENT OF WELLS**

(a) Any well which has been temporarily abandoned, shall be abandoned in accordance with one of the following procedures:

- (1) Upon temporary removal from service or prior to being put into service, the well shall be sealed with a water-tight cap or seal compatible with casing and installed so that it cannot be removed easily by hand.
- (2) The well shall be maintained whereby it is not a source or channel of contamination during temporary abandonment.
- (3) Every temporarily abandoned well shall be protected with a casing.

(b) Any well which has been abandoned permanently shall be abandoned in accordance with the following procedures:

- (1) Procedures for permanent abandonment of wells, other than bored and hand dug wells:
  - (A) All casing and screen materials may be removed prior to initiation of abandonment procedures if such removal will not cause or contribute to contamination of the groundwaters. Any casing not grouted in accordance with 15A NCAC 2C .0107(e) of this Section shall be removed or properly grouted.
  - (B) The entire depth of the well shall be sounded before it is sealed to ensure freedom from obstructions that may interfere with sealing operations.
  - (C) Using a hypochlorite solution (such as HTH), disinfect the well in accordance with 15A NCAC 2C .0111. Do not use a common commercial household liquid bleach, as this is too weak a solution to ensure proper disinfection.
  - (D) In the case of gravel-packed wells in which the casing and screens have not been removed, neat-cement, or bentonite grout shall be injected into the well completely filling it from the bottom of the casing to the top.
  - (E) Wells, other than "bored" wells, constructed in unconsolidated formations shall be completely filled with cement grout, or bentonite grout by introducing it through a pipe extending to the bottom of the well which can be raised as the well is filled.

(F) Wells constructed in consolidated rock formations or that penetrate zones of consolidated rock may be filled with cement grout, bentonite grout, sand, gravel or drill cuttings opposite the zones of consolidated rock. The top of the cement grout, bentonite grout, sand, gravel or cutting fill shall terminate at least 10 feet below the top of the consolidated rock or five feet below the bottom of casing. Cement grout or bentonite grout shall be placed beginning 10 feet below the top of the consolidated rock or five feet below the bottom of casing and extend five feet above the top of consolidated rock. The remainder of the well, above the upper zone of consolidated rock, shall be filled with cement grout or bentonite grout up to land surface. For any well in which the depth of casing or the depth of the bedrock is not known or cannot be confirmed, then the entire length of the well shall be filled with cement grout or bentonite grout up to land surface.

(G) Temporary wells or monitor wells:

- (i) less than 20 feet in depth which do not penetrate the water table shall be abandoned by filling the entire well up to land surface with cement grout, dry clay, bentonite grout, or material excavated during drilling of the well and then compacted in place; and
  - (ii) that penetrate the water table shall be abandoned by completely filling with a bentonite or cement - type grout.
- (2) For bored wells or hand dug wells, constructed into unconsolidated material.
- (A) For wells that do not have standing water in them at any time during the year:
    - (i) Remove all plumbing or piping entering the well, along with any obstructions in the well;
    - (ii) Remove as much of the well casing as possible and then fill the entire well up to land surface with cement grout, concrete grout, bentonite grout, dry clay, or material excavated during drilling of the well and then compacted in place.
  - (B) For wells that do have standing water in them during all or part of the year:
    - (i) Remove all plumbing or piping into the well, along with any obstructions inside the well; and
    - (ii) Remove as much of the well tile casing as possible, but no less than to a depth of three feet below land surface;
    - (iii) Remove all soil or other subsurface material present down to the top of the remaining well casing, and extending to a width of at least 12 inches outside of the well casing on all sides;



- (iv) Using a hypochlorite solution (such as HTH), disinfect the well in accordance with 15A NCAC 2C .0111 of this Subchapter. Do not use a common commercial household liquid bleach, as this is too weak a solution to ensure proper disinfection;
- (v) Fill the well up to the top of the remaining casing with cement grout, concrete grout, bentonite grout, dry clay, or material excavated during drilling of the well and then compacted in place;
- (vi) Pour a one foot thick concrete grout or cement grout plug that fills the entire excavated area above the top of the casing, including the area extending on all sides of the casing out to a width of at least 12 inches on all sides; and
- (vii) Complete the abandonment process by filling the remainder of the well above the concrete or cement plug with additional concrete grout, cement grout, or soil.

(c) Any well which acts as a source or channel of contamination shall be repaired or permanently abandoned within 30 days of receipt of notice from the department.

(d) The drilling contractor shall permanently abandon any well in which the casing has not been installed or from which the casing has been removed, prior to removing his equipment from the site.

(e) The owner shall be responsible for permanent abandonment of a well except that:

- (1) the well driller is responsible for well abandonment if abandonment is required because the driller improperly locates, constructs, repairs or completes the well; or
- (2) the person who installs, repairs or removes the well pump is responsible for well abandonment if that abandonment is required because of improper well pump installation, repair or removal.

*History Note: Authority G.S. 87-87; 87-88; Eff. February 1, 1976; Amended Eff. April 1, 2001; December 1, 1992; September 1, 1984; April 20, 1978.*

#### 15A NCAC 02C .0118 VARIANCE

(a) The Director may grant a variance from any construction standard under the rules of this Section. Any variance will be in writing, and may be granted upon oral or written application to the Director, by the person responsible for the construction of the well for which the variance is sought, if the Director finds facts to support the following conclusions:

- (1) that the use of the well will not endanger human health and welfare or the groundwater;
- (2) that construction in accordance with the standards was not technically feasible in such a manner as to afford a reasonable water supply at a reasonable cost.

(b) The Director may require the variance applicant to submit such information as he deems necessary to make a decision to

grant or deny the variance. The Director may impose such conditions on a variance or the use of a well for which a variance is granted as he deems necessary to protect human health and welfare and the groundwater resources. The findings of fact supporting any variance under this Rule shall be in writing and made part of the variance.

(c) The Director shall respond in writing to a request for a variance within 30 days from the receipt of the variance request.

(d) A variance applicant who is dissatisfied with the decision of the Director may commence a contested case by filing a petition under G.S. 150B-23 within 60 days after receipt of the decision.

*History Note: Authority G.S. 87-87; 87-88; 150B-23; Eff. April 20, 1978; Amended Eff. April 1, 2001; December 1, 1992; September 1, 1988; September 1, 1984.*

#### 15A NCAC 02D .0501 COMPLIANCE WITH EMISSION CONTROL STANDARDS

(a) Purpose and Scope. The purpose of this Rule is to assure orderly compliance with emission control standards found in this Section. This Rule shall apply to all air pollution sources, both combustion and non-combustion.

(b) In determining compliance with emission control standards, means shall be provided by the owner to allow periodic sampling and measuring of emission rates, including necessary ports, scaffolding and power to operate sampling equipment; and upon the request of the Division of Environmental Management, data on rates of emissions shall be supplied by the owner.

(c) Testing to determine compliance shall be in accordance with the following procedures, except as may be otherwise required in Rules .0524, .0606, .1110, or .1111 of this Subchapter.

- (1) Method 1 of Appendix A of 40 CFR Part 60 shall be used to select a suitable site and the appropriate number of test points for the following situations:
  - (A) particulate testing,
  - (B) velocity and volume flow rate measurements,
  - (C) testing for acid mist or other pollutants which occur in liquid droplet form,
  - (D) any sampling for which velocity and volume flow rate measurements are necessary for computing final test results, and
  - (E) any sampling which involves a sampling method which specifies isokinetic sampling. (Isokinetic sampling is sampling in which the velocity of the gas at the point of entry into the sampling nozzle is equal to the velocity adjacent to the nozzle.)

Method 1 shall be applied as written with the following clarifications: Testing installations with multiple breechings may be accomplished by testing the discharge stack(s) to which the multiple breechings exhaust. If the multiple breechings are individually tested, then Method 1 shall be applied to each breeching individually. The Director or his designee may approve a test when test ports in a duct are located less than two diameters downstream from any disturbance (fan, elbow, change in

diameter, or any other physical feature that may disturb the gas flow) or one-half diameter upstream from any disturbance, if the tester demonstrates to the Director, or his designee, that locating test ports beyond these distances are impossible because the duct cannot be modified to meet the specifications of Method 1 or testing at an alternative location is not feasible.

- (2) Method 2 of Appendix A of 40 CFR Part 60 shall be applied as written and used concurrently with any test method in which velocity and volume flow rate measurements are required.
- (3) Sampling procedures for determining compliance with particulate emission control standards shall be in accordance with Method 5 of Appendix A of 40 CFR Part 60. Method 17 of Appendix A of 40 CFR Part 60 may be used instead of Method 5 provided that the stack gas temperature does not exceed 320E F. The minimum time per test point for particulate testing shall be two minutes and the minimum time per test run shall be one hour. The sample gas drawn during each test run shall be at least 30 cubic feet. A number of sources are known to emit organic material (oil, pitch, plasticizers, etc.) which exist as finely divided liquid droplets at ambient conditions. These materials cannot be satisfactorily collected by means of the above Method 5. In these cases the Commission may require the use of Method 5 as proposed on August 17, 1971, in the Federal Register, Volume 36, Number 159.
- (4) The procedures for determining compliance with sulfur dioxide emission control standards for fuel burning sources may be either by determining sulfur content with fuel analysis or by stack sampling. Combustion sources choosing to demonstrate compliance through stack sampling shall follow procedures described in Method 6 of Appendix A of 40 CFR Part 60. When Method 6 of Appendix A of 40 CFR Part 60 is used to determine compliance, compliance shall be determined by averaging six 20-minute samples taken over such a period of time that no more than 20 minutes elapses between any two consecutive samples. If a source chooses to demonstrate compliance by analysis of sulfur in fuel, sampling, preparation, and analysis of fuels shall be in accordance with the following American Society of Testing and Materials (ASTM) methods:

(A) coal:

- (i) Sampling.
  - (I) Sampling Location. A source shall collect the coal from a location in the handling or processing system that provides a sample representative of the fuel bunkered or burned during a boiler operating day. For the purpose of this method, a fuel lot size is defined as the weight of coal bunkered or consumed during each

boiler operating day. For reporting and calculation purposes, the gross sample shall be identified with the calendar day on which sampling began. The Director may approve alternate definitions of fuel sizes if the alternative will provide a more representative sample.

- (II) Sample Increment Collection. A source shall use a coal sampling procedure that meets the requirements of ASTM D 2234 Type I, condition A, B, C and systematic spacing for collection of sample increments. All requirements and restrictions regarding increment distribution and sampling device constraints shall be observed.
- (III) Gross Samples. A source shall use ASTM D 2234, 7.1.2, Table 2 except as provided in 7.1.5.2 to determine the number and weight of increments (composite or gross samples).
  - (ii) Preparation. A source shall use ASTM D 2013 for sample preparation from a composite or gross sample.
  - (iii) Gross Caloric Value (GCV). A source shall use ASTM D 2015 or D 3286 to determine GCV on a dry basis from a composite or gross sample.
  - (iv) Moisture Content. A source shall use ASTM D 3173 to determine moisture from a composite or gross sample.
  - (v) Sulfur Content. A source shall use ASTM D 3177 or D 4239 to determine the percent sulfur on a dry basis from a composite or gross sample.

(B) oil:

- (i) sampling--A sample shall be collected at the pipeline inlet to the fuel burning unit after sufficient fuel has been drained from the line to remove all fuel that may have been standing in the line;
- (ii) heat of combustion (BTU)--ASTM Method D 240 or D 2015;
- (iii) sulfur content--ASTM Method D 129 or D 1552.

The sulfur content and BTU content of the fuel shall be reported on a dry basis. When the test methods described in Parts (A) or (B) of this Subparagraph are used to demonstrate that the ambient air quality standards for sulfur dioxide are being protected, the sulfur content shall be determined at least once per year from a composite of at least three or 24 samples taken at equal time intervals from the fuel being burned over a three-hour or 24-hour period, respectively, whichever is the time period for

which the ambient standard is most likely to be exceeded; this requirement shall not apply to sources that are only using fuel analysis in place of continuous monitoring to meet the requirements of Section .0600 of this Subchapter.

- (5) Sulfuric acid manufacturing plants and spodumene ore roasting plants shall demonstrate compliance with Rules .0517 and .0527, respectively, of this Section by using Method 8 of Appendix A of 40 CFR Part 60. Compliance shall be determined by averaging emissions measured by three one-hour tests.
- (6) All industrial processes not covered under Subparagraph (5) of this Paragraph emitting sulfur dioxide shall demonstrate compliance by sampling procedures described in Method 6 of Appendix A of 40 CFR Part 60. Compliance shall be determined by averaging six 20-minute samples taken over such a period of time that no more than 20 minutes elapses between any two consecutive samples.
- (7) Sampling procedures to demonstrate compliance with emission standards for nitrogen oxides shall be in accordance with the procedures set forth in Method 7 of Appendix A of 40 CFR Part 60.
- (8) Method 9 of Appendix A of 40 CFR 60 shall be used when opacity is determined by visual observation.
- (9) Notwithstanding the stated applicability to new source performance standards or primary aluminum plants, the procedures to be used to determine fluoride emissions are:
  - (A) for sampling emissions from stacks, Method 13A or 13B of Appendix A of 40 CFR Part 60,
  - (B) for sampling emissions from roof monitors not employing stacks or pollutant collection systems, Method 14 of Appendix A of 40 CFR Part 60, and
  - (C) for sampling emissions from roof monitors not employing stacks but equipped with pollutant collection systems, the procedure under 40 CFR 60.8(b), except that the Director of the Division of Environmental Management shall be substituted for the administrator.
- (10) Emissions of total reduced sulfur shall be measured by the test procedure described in Method 16 of Appendix A of 40 CFR Part 60 or Method 16A of Appendix A of 40 CFR Part 60.
- (11) Emissions of mercury shall be measured by the test procedure described in Method 101 or 102 of Appendix B of 40 CFR Part 61.
- (12) Each test (excluding fuel samples) shall consist of three repetitions or runs of the applicable test method. For the purpose of determining compliance with an applicable emission standard the average of results of all repetitions shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances, beyond the owner or operator's

control, and there is no way to obtain another sample, then compliance may be determined using the arithmetic average of the results of the two other runs.

- (13) In conjunction with performing certain test methods prescribed in this Rule, the determination of the fraction of carbon dioxide, oxygen, carbon monoxide and nitrogen in the gas being sampled is necessary to determine the molecular weight of the gas being sampled. Collecting a sample for this purpose shall be done in accordance with Method 3 of Appendix A of 40 CFR Part 60:
  - (A) The grab sample technique may also be used with instruments such as Bacharach Fyrite (trade name) with the following restrictions:
    - (i) Instruments such as the Bacharach Fyrite (trade name) may only be used for the measurement of carbon dioxide.
    - (ii) Repeated samples shall be taken during the emission test run to account for variations in the carbon dioxide concentration. No less than four samples shall be taken during a one-hour test run, but as many as necessary shall be taken to produce a reliable average.
    - (iii) The total concentration of gases other than carbon dioxide, oxygen and nitrogen shall be less than one percent.
  - (B) For fuel burning sources, concentrations of oxygen and nitrogen may be calculated from combustion relations for various fuels.
- (14) For those processes for which the allowable emission rate is determined by the production rate, provisions shall be made for controlling and measuring the production rate. The source shall ensure, within the limits of practicality, that the equipment or process being tested is operated at or near its maximum normal production rate or at a lesser rate if specified by the Director or his delegate. The individual conducting the emission test shall include with his test results, data which accurately represent the production rate during the test.
- (15) Emission rates for wood or fuel burning sources which are expressed in units of pounds per million BTU shall be determined by the "Oxygen Based F Factor Procedure" described in 40 CFR Part 60, Appendix A, Method 19, Section 5. Other procedures described in Method 19 may be used if appropriate. To provide data of sufficient accuracy to use with the F-factor methods, an integrated (bag) sample shall be taken for the duration of each test run. In the case of simultaneous testing of multiple ducts, there shall be a separate bag for each sampling train. The bag sample shall be analyzed with an Orsat analyzer in accordance with Method 3 of Appendix A of 40 CFR Part 60. (The number of analyses and the tolerance between analyses are specified in Method 3.) The specifications indicated in Method 3 for the construction and operation of the bag sampling apparatus shall be followed.

(16) Particulate testing on steam generators that utilize soot blowing as a routine means for cleaning heat transfer surfaces shall be conducted so that the contribution of the soot blowing is represented as follows:

(A) If the soot blowing periods are expected to represent less than 50 percent of the total particulate emissions, one of the test runs shall include a soot blowing cycle.

(B) If the soot blowing periods are expected to represent more than 50 percent of the total particulate emissions then two of the test runs shall each include a soot blowing cycle.

Under no circumstances shall all three test runs include soot blowing. The average emission rate of particulate matter is calculated by the equation:

$$E_{AVG} = E_S S \frac{(A + B)}{AR} + E_N \left( \frac{R - S}{R} - \frac{BS}{AR} \right)$$

$E_{AVG}$  equals the average emission rate in pounds per million Btu for daily operating time.  $E_S$  equals the average emission rate in pounds per million Btu of sample(s) containing soot blowing.  $E_N$  equals the average emission rate in pounds per million Btu of sample(s) with no soot blowing.  $A$  equals hours of soot blowing during sample(s).  $B$  equals hours without soot blowing during sample(s) containing sootblowing.  $R$  equals average hours of operation per 24 hours.  $S$  equals average hours of soot blowing per 24 hours. If large changes in boiler load or stack flow rate occur during soot blowing, other methods of prorating the emission rate may be considered more appropriate; for these tests the Director or his designee may approve an alternate method of prorating.

(17) Emissions of volatile organic compounds shall be measured by the appropriate test procedure in Section .0900 of this Subchapter.

(18) Upon prior approval by the Director or his delegate, test procedures different from those described in this Rule may be used if they will provide equivalent or more reliable results. Furthermore, the Director or his delegate may prescribe alternate test procedures on an individual basis when he considers that the action is necessary to secure reliable test data. In the case of sources for which no test method is named, the Director or his delegate may prescribe or approve methods on an individual basis.

(d) All new sources shall be in compliance prior to beginning operations.

(e) In addition to any control or manner of operation necessary to meet emission standards in this Section, any source of air pollution shall be operated with such control or in such manner that the source shall not cause the ambient air quality standards of Section .0400 of this Subchapter to be exceeded at any point beyond the premises on which the source is located. When controls more stringent than named in the applicable emission

standards in this Section are required to prevent violation of the ambient air quality standards or are required to create an offset, the permit shall contain a condition requiring these controls.

(f) The Bubble Concept. A facility with multiple emission sources or multiple facilities within the same area may choose to meet the total emission limitation for a given pollutant through a different mix of controls than that required by the rules in this Section or Section .0900 of this Subchapter.

(1) In order for this mix of alternative controls to be permitted the Director shall determine that the following conditions are met:

(A) Sources to which Rules .0524, .0530, .0531, .1110 or .1111 of this Subchapter, the federal New Source Performance Standards (NSPS), the federal National Emission Standards for Hazardous Air Pollutants (NESHAPS), regulations established pursuant to Section 111 (d) of the federal Clean Air Act, or state or federal Prevention of Significant Deterioration (PSD) requirements apply, shall have emissions no larger than if there were not an alternative mix of controls;

(B) The facility (or facilities) is located in an attainment area or an unclassified area or in an area that has been demonstrated to be attainment by the statutory deadlines (with reasonable further progress toward attainment) for those pollutants being considered;

(C) All of the emission sources affected by the alternative mix are in compliance with applicable regulations or are in compliance with established compliance agreements; and

(D) The review of an application for the proposed mix of alternative controls and the enforcement of any resulting permit will not require expenditures on the part of the State in excess of five times that which would otherwise be required.

(2) The owner(s) or operator(s) of the facility (facilities) shall demonstrate to the satisfaction of the Director that the alternative mix of controls is equivalent in total allowed emissions, reliability, enforceability, and environmental impact to the aggregate of the otherwise applicable individual emission standards; and

(A) that the alternative mix approach does not interfere with attainment and maintenance of ambient air quality standards and does not interfere with the PSD program; this demonstration shall include modeled calculations of the amount, if any, of PSD increment consumed or created;

(B) that the alternative mix approach conforms with reasonable further progress requirements in any nonattainment area;

(C) that the emissions under the alternative mix approach are in fact quantifiable, and trades among them are even;

(D) that the pollutants controlled under the alternative mix approach are of the same criteria pollutant categories, except that emissions of some criteria pollutants used in alternative emission control

strategies are subject to the limitations as defined in 44 FR 71784 (December 11, 1979), Subdivision D.1.c.ii. The Federal Register referenced in this Part is hereby incorporated by reference and does not include subsequent amendments or editions.

The demonstrations of equivalence shall be performed with at least the same level of detail as The North Carolina State Implementation plan for Air Quality demonstration of attainment for the area in question. Moreover, if the facility involves another facility in the alternative strategy, it shall complete a modeling demonstration to ensure that air quality is protected. Demonstrations of equivalence shall also take into account differences in the level of reliability of the control measures or other uncertainties.

- (3) The emission rate limitations or control techniques of each source within the facility (facilities) subjected to the alternative mix of controls shall be specified in the facility's (facilities') permits(s).
- (4) Compliance schedules and enforcement actions shall not be affected because an application for an alternative mix of controls is being prepared or is being reviewed.
- (5) The Director may waive or reduce requirements in this Paragraph up to the extent allowed by the Emissions Trading Policy Statement published in the Federal Register of April 7, 1982, pages 15076-15086, provided that the analysis required by Paragraph (g) of this Rule shall support any waiver or reduction of requirements. The Federal Register referenced in this Paragraph is hereby incorporated by reference and does not include subsequent amendments or editions.

(g) In a permit application for an alternative mix of controls under Paragraph (f) of this Rule, the owner or operator of the facility shall demonstrate to the satisfaction of the Director that the proposal is equivalent to the existing requirements of the SIP in total allowed emissions, enforceability, reliability, and environmental impact. The Director shall provide for public notice with an opportunity for a request for public hearing following the procedures under 15A NCAC 2Q .0300 or .0500, as applicable.

- (1) If and when a permit containing these conditions is issued under 15A NCAC 2Q .0300 (non-Title V permits), it shall become a part of the state implementation plan (SIP) as an appendix available for inspection at the department's regional offices. Until the U.S. Environmental Protection Agency (EPA) approves the SIP revision embodying the permit containing an alternative mix of controls, the facility shall continue to meet the otherwise applicable existing SIP requirements.
- (2) If and when a permit containing these conditions is issued under 15A NCAC 2Q .0500 (Title V permits), it shall be available for inspection at the department's regional offices. Until the U.S. Environmental Protection Agency (EPA) approves the Title V containing an alternative mix of controls, the facility

shall continue to meet the otherwise applicable existing SIP requirements.

The revision shall be approved by EPA on the basis of the revision's consistency with EPA's "Policy for Alternative Emission Reduction Options Within State Implementation Plans" as promulgated in the Federal Register of December 11, 1989, pages 71780-71788, and subsequent rulings.

(h) The referenced ASTM test methods in this Rule are hereby incorporated by reference and include subsequent amendments and editions. Copies of referenced ASTM test methods or Federal Registers may be obtained from the Division of Air Quality, 1641 Mail Service Center, Raleigh, North Carolina 27699-1641 at a cost of ten cents (\$0.10) per page.

*History Note: Temporary Amendment Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is sooner;*

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);*

*Eff. February 1, 1976;*

*Amended Eff. April 1, 2001; April 1, 1999; July 1, 1996; February 1, 1995; July 1, 1994; August 1, 1991; October 1, 1989.*

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

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

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

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

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

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

- (1) No six-minute period exceeds 87 percent opacity;

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- (2) No more than one six-minute period exceeds 20 percent opacity in any hour; and
- (3) No more than four six-minute periods exceed 20 percent opacity in any 24-hour period.
- (e) Where the presence of uncombined water is the only reason for failure of an emission to meet the limitations of Paragraph (c) or (d) of this Rule, those requirements shall not apply.
- (f) Exception from Opacity Standard in Paragraph (d) of this Rule. Sources subject to Paragraph (d) of this Rule may be allowed to comply with Paragraph (c) of this Rule if:
  - (1) The owner or operator of the source demonstrates compliance with applicable particulate mass emissions standards; and
  - (2) The owner or operator of the source submits necessary data to show that emissions up to those allowed by Paragraph (c) of this Rule will not violate any national ambient air quality standard.

The burden of proving these conditions shall be on the owner or operator of the source and shall be approached in the following manner. The owner or operator of a source seeking an exception shall apply to the Director requesting this modification in its permit. The applicant shall submit the results of a source test within 90 days of application. Source testing shall be by the appropriate procedure as designated by rules in this Subchapter. During this 90-day period the applicant shall submit data necessary to show that emissions up to those allowed by Paragraph (c) of this Rule will not contravene ambient air quality standards. This evidence shall include, as a minimum, an inventory of past and projected emissions from the facility. In its review of ambient air quality, the Division may require additional information that it considers necessary to assess the resulting ambient air quality. If the applicant can thus show that it will be in compliance both with particulate mass emissions standards and ambient air quality standards, the Director shall modify the permit to allow emissions up to those allowed by Paragraph (c) of this Rule.

(g) For sources required to install, operate, and maintain continuous opacity monitoring systems (COMS), compliance with the numerical opacity limits in this Rule shall be determined as follows: excluding startups, shutdowns, and malfunctions approved as such according to procedures approved under Rule .0535 of this Section, the percent of excess emissions (defined as the percentage of monitored operating time in a calendar quarter above the opacity limit) shall not exceed 0.8 percent of the total operating hours. If a source operates less than 500 hours during a calendar quarter, the percent of excess emissions shall be calculated by including hours operated immediately previous to this quarter until 500 operational hours are obtained.

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

**15A NCAC 02D .1402 APPLICABILITY**

- (a) The requirements of this Section shall only apply from May 1 through September 30.
- (b) Rule .1416 of this Section applies statewide effective May 1, 2001.
- (c) With the exceptions stated in Paragraph (g) of this Rule, this Section shall apply to:
  - (1) Charlotte/Gastonia, consisting of Mecklenburg and Gaston Counties in accordance with Paragraph (d) of this Rule;
  - (2) Greensboro/Winston-Salem/High Point, consisting of Davidson, Forsyth, and Guilford Counties and the part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River in accordance with Paragraph (e) of this Rule; or
  - (3) Raleigh/Durham, consisting of Durham and Wake Counties and Dutchville Township in Granville County in accordance with Paragraph (f) of this Rule.
- (d) If a violation of the ambient air quality standard for ozone is measured in accordance with 40 CFR 50.9 in Cabarrus, Gaston, Iredell, Lincoln, Mecklenburg, Rowan, or Union County, North Carolina or York County, South Carolina, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as being necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Gaston or Mecklenburg County or in both counties. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. (For Mecklenburg County, "Director" means for the purpose of notifying permitted facilities in Mecklenburg County, the Director of the Mecklenburg County local air pollution control program.) Compliance shall be in accordance with Rule .1403 of this Section.
- (e) If a violation of the ambient air quality standard for ozone is measured in accordance with 40 CFR 50.9 in Davidson, Forsyth, or Guilford County or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director

shall implement the rules in this Section identified as being necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Davidson, Forsyth, or Guilford County or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River or any combination thereof. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. (For Forsyth County, "Director" means for the purpose of notifying permitted facilities in Forsyth County, the Director of the Forsyth County local air pollution control program.) Compliance shall be in accordance with Rule .1403 of this Section.

(f) If a violation of the ambient air quality standard for ozone is measured in accordance with 40 CFR 50.9 in Durham or Wake County or Dutchville Township in Granville County, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as being necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Durham or Wake County or Dutchville Township in Granville County or any combination thereof. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. Compliance shall be in accordance with Rule .1403 of this Section.

(g) This Section does not apply to any:

- (1) source not required to obtain an air permit under 15A NCAC 2Q .0102 or is an insignificant activity as defined at 15A NCAC 2Q .0103(19);
- (2) incinerator, or thermal or catalytic oxidizer used primarily for the control of air pollution;
- (3) emergency generator;
- (4) emergency use internal combustion engine;
- (5) stationary combustion turbine constructed before January 1, 1979, that has a federally enforceable permit that restricts:
  - (A) its potential emissions of nitrogen oxides to no more than 25 tons between May 1 and September 30;
  - (B) it to burning only natural gas or oil; and

- (C) its hours of operation as described in 40 CFR 96.4 (b)(ii) and (b)(iii);
- (6) facility that is not covered under Rule .1416 of this Section, with a federally enforceable potential to emit nitrogen oxides of:
  - (A) less than 100 tons per year; and
  - (B) less than 560 pounds per calendar day beginning May 1 through September 30 of any year.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. April 1, 1995; Amended Eff. April 1, 2001; April 1, 1997; July 1, 1995; April 1, 1995.*

**15A NCAC 02D .1403 COMPLIANCE SCHEDULES**

- (a) This Rule applies to all sources covered by Paragraph (b) or (c) of Rule .1402 of this Section.
- (b) The owner or operator of a source subject to this Rule because of the applicability of Paragraphs (d), (e), or (f) of Rule .1402 of this Section, shall adhere to the following increments of progress and schedules:
  - (1) If compliance with this Section is to be achieved through a demonstration to certify compliance without source modification:
    - (A) The owner or operator shall notify the Director in writing within six months after the Director's notice in the North Carolina Register that the source is in compliance with the applicable RACT limitation or RACT standard;
    - (B) The owner or operator shall perform any required testing within 12 months after the Director's notice in the North Carolina Register to demonstrate compliance with the applicable RACT limitation in accordance with Rule .1404 of this Section; and
    - (C) The owner or operator shall implement any required recordkeeping and reporting requirements within 12 months after the Director's notice in the North Carolina Register to demonstrate compliance with the applicable RACT standard in accordance with Rule .1404 of this Section.
  - (2) If compliance with this Section is to be achieved through the installation of combustion modification technology or other source modification:
    - (A) The owner or operator shall submit a permit application and a compliance schedule within six months after the Director's notice in the North Carolina Register.
    - (B) The compliance schedule shall contain the following increments of progress:
      - (i) a date by which contracts for installation of the modification shall be awarded or orders shall be issued for purchase of component parts;
      - (ii) a date by which installation of the modification shall begin;
      - (iii) a date by which installation of the modification shall be completed; and

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- (iv) if the source is subject to a RACT limitation, a date by which compliance testing shall be completed.
- (C) Final compliance shall be achieved within three years after the Director's notice in the North Carolina Register unless the owner or operator of the source petitions the Director for an alternative RACT limitation in accordance with Rule .1412 of this Section. If such a petition is made, final compliance shall be achieved within four years after the Director's notice in the North Carolina Register.
- (3) If compliance with this Section is to be achieved through the implementation of an emissions averaging plan as provided for in Rule .1410 of this Section:
- (A) The owner or operator shall abide by the applicable requirements of Subparagraphs (b)(1) and (b)(2) of this Rule for certification or modification of each source to be included under the averaging plan.
- (B) The owner or operator shall submit a plan to implement an emissions averaging plan in accordance with Rule .1410 of this Section within six months after the Director's notice in the North Carolina Register.
- (C) Final compliance shall be achieved within one year after the Director's notice in the North Carolina Register unless implementation of the emissions averaging plan requires the modification of one or more of the averaging sources. If modification of one or more of the averaging sources is required, final compliance shall be achieved within three years.
- (4) If compliance with this Section is to be achieved through the implementation of seasonal fuel switching program as provided for in Rule .1411 of this Section:
- (A) The owner or operator shall make all necessary modifications in accordance with Subparagraph (b)(2) of this Rule.
- (B) The owner or operator shall include a plan for complying with the requirements of Rule .1411 of this Section with the permit application required under Part (A) of this Subparagraph.
- (C) Final compliance shall be achieved within three years after the Director's notice in the North Carolina Register.
- (c) The owner or operator shall certify to the Director, within five days after the deadline for each increment of progress in Paragraph (b) of this Rule, whether the required increment of progress has been met.
- (d) The owner or operator of a source subject to this Rule because of Rule .1416 of this Section shall submit to the Director before October 1, 2003, a description of how the source will comply. If a permit is needed for source modifications or control device installation or modification, the owner or operators shall submit the permit application early enough to receive the permit and make the modification or construct and begin operating the control device before the final compliance dates in Rule .1416 of this Section. The source shall be in compliance with Rule .1416 of this Section and shall install and implement any required monitoring, recordkeeping, and reporting requirements before May 1, 2004. If a permit application is not submitted pursuant to this Rule, the Director shall modify the source's permit by January 1, 2004, to insert the monitoring, recordkeeping, and reporting requirements necessary to show compliance with this Section.
- (e) With such exception as the Director may allow, the owner or operator of any source subject to this Rule shall continue to comply with any applicable requirements for the control of nitrogen oxides until such time as the source complies with applicable rules in this Section or until the final compliance date set forth in this Rule, which ever comes first. The Director may allow the following exceptions:
- (1) testing of combustion control modifications; or
  - (2) adding or testing equipment or methods for the application of a requirement in this Section.
- (f) The owner or operator of any new source of nitrogen oxides not in existence or under construction as of the date the Director notices in the North Carolina Register in accordance with Paragraphs (d), (e), or (f) of Rule .1402 of this Section, shall comply with all applicable rules in this Section upon start-up of the source.
- History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.65; Eff. April 1, 1995; Amended Eff. April 1, 2001; April 1, 1997.*

### **15A NCAC 02D .1404 RECORDKEEPING: REPORTING: MONITORING:**

- (a) The owner or operator of any source subject to the requirements of this Section shall comply with the monitoring, recordkeeping and reporting requirements in Section .0600 of this Subchapter and shall maintain all records necessary for determining compliance with all applicable RACT limitations and standards of this Section for at least five years after.
- (b) When requested by the Director, the owner or operator of any source subject to the requirements of this Section shall submit to the Director any information necessary to determine the compliance status of an affected source.
- (c) Within 30 days of becoming aware of an occurrence of excess emissions from a source subject to the requirements of this Section, the owner or operator shall notify the Director and provide the following information:
- (1) the name and location of the facility;
  - (2) the source that caused the excess emissions;
  - (3) the time and date the excess emissions were discovered;
  - (4) the cause and duration of the excess emissions;
  - (5) for sources subject to a RACT limitation, the estimated rate of emissions and the data and calculations used to determine the magnitude of the excess emissions; and
  - (6) the corrective actions and schedule proposed to correct the conditions causing the excess emissions.
- (d) The owner or operator of a utility boiler covered under Rule .1402(b) of this Section shall install, operate, and maintain a continuous emission monitoring system according to 40 CFR Part 75, Subpart H. The owner or operator of all other sources,



including stationary reciprocating internal combustion engines, subject to the requirements of this Section using a continuous emissions monitoring system to measure emissions of nitrogen oxides shall operate and maintain a continuous emission monitoring system according to 40 CFR, Part 60, Appendix F.

(e) Data from continuous emissions monitoring systems shall be available for at least 95 percent of the operating hours for the applicable averaging period, where four equally spaced readings constitute a valid hour. If data from continuous emission monitoring systems is not available for at least 95 percent of the time that the source is operated, the procedures in 40 CFR 75.33 shall apply.

(f) The owner or operator of a source covered under Rule .1416 of this Section shall report to the Director no later than July 31 the tons of nitrogen oxides emitted during the previous May and June. No later than October 31, the owner or operator shall report to the Director the tons of nitrogen oxides emitted during the previous ozone season. The Division of Air Quality shall make this information publicly available.

(g) When compliance with a limitation established for a source subject to the requirements of this Section is determined using a continuous emissions monitoring system, a 24-hour block average as described under Rule .0606 of this Subchapter shall be recorded for each day from May 1 through September 30 unless a specific rule requires a different averaging time or procedure.

(h) When compliance with a limitation established for a source subject to the requirements of this Section is not determined using a continuous emissions monitoring system, compliance shall be determined using source testing in accordance with 40 CFR, Part 60, Appendix A, or any equivalent test method, approved by the Director. Where source testing is used to determine compliance with a limitation established according to this Section, testing shall be conducted at least annually in accordance with Rule .1415 of this Section.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.65; 143-215.66;  
*Eff.* April 1, 1995;  
*Amended Eff.* April 1, 2001; April 1, 1999.

**15A NCAC 02D .1411 SEASONAL FUEL SWITCHING**

(a) This Rule shall not apply to facilities covered under Rule .1402(b) of this Section.

(b) The owner or operator of a utility or non-utility coal-fired boiler subject to the requirements of this Section as determined by Rule .1402 of this Section may elect to comply by applying seasonal combustion of natural gas according to Paragraph (c) of this Rule. This option is not available to a boiler that used natural gas as its primary fuel in 1990 or has used natural gas as its primary fuel during any year since 1990. Compliance with this Section according to this Rule does not remove or reduce any applicable requirement of the Acid Rain Program.

(c) The owner or operator electing to comply with the requirements of this Section through the seasonal combustion of natural gas shall establish a NO<sub>x</sub> emission limit for October 1 through April 30 that will result in annual NO<sub>x</sub> emissions of less than or equal to the NO<sub>x</sub> that would have been emitted if the

source complied with the applicable limitation for the combustion of coal for the entire calendar year. Compliance with this Section according to this Rule does not remove or reduce any applicable requirement of the Acid Rain Program.

(d) To comply with the requirements of this Section through the seasonal combustion of natural gas, the owner or operator shall submit to the Director the following information:

- (1) the name and location of the facility;
- (2) information identifying the source to use seasonal combustion of natural gas for compliance;
- (3) the maximum heat input rate for each source;
- (4) a demonstration that the source will comply with the applicable RACT limitation for the combustion of coal from May 1 through September 30;
- (5) a demonstration that the source will comply with the NO<sub>x</sub> emission limitation established under Paragraph (c) of this Rule from October 1 through April 30; and
- (6) a written statement from the natural gas supplier providing reasonable assurance that the fuel will be available from May 1 through September 30.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);  
*Eff.* April 1, 1995;  
*Amended Eff.* April 1, 2001.

**15A NCAC 02D .1416 SEASONAL EMISSION RATES FOR BOILERS AT UTILITY COMPANIES**

(a) Carolina Power and Light. The total emissions from all the coal-fired boilers at Carolina Power and Light Company's Asheville, Cape Fear, Lee, Mayo, Roxboro, Sutton, and Weatherspoon facilities shall not exceed 15,863 tons per ozone season for 2004 and each year thereafter.

(b) Duke Power. The total emissions from all the coal-fired boilers at Duke Power Company's Allen, Belews Creek, Buck, Cliffside, Dan River, Marshall, and Riverbend facilities shall not exceed 23,514 tons per season for 2004 and each year thereafter.

(c) Posting of allowable emissions. The Director shall post the allowable emission rates for sources covered under this Rule on the Division's web page.

(d) Monitoring. The owner or operator of a source subject to this Rule shall use continuous emission monitors to show compliance.

(e) Operation of control devices. All emission control devices and techniques installed to comply with this Rule shall be operated beginning May 1 through September 30 in the manner in which they are designed and permitted to be operated.

(f) Violations. If, at the end of the ozone season, the owner or operator of the company whose actual emissions of nitrogen oxides exceed the limit in Paragraph (a) or (b) of this Rule, then that company shall be considered in violation for each day that the aggregate emissions of nitrogen oxides exceeded the allowable emissions in Paragraph (a) or (b) of this Rule beginning May 1 through September 30 of that ozone season. If the company complies with the applicable emission limit under Paragraph (a) or (b) of this Rule, then all coal-fired boilers at facilities listed under Paragraph (a) or (b) of this Rule, as applicable, shall be deemed in compliance with this Rule.

(g) Additional controls. The Environmental Management Commission may specify through rulemaking a specific emission limit lower than that established under this Rule for a specific source if compliance with the lower emission limit is required as part of the State Implementation Plan to attain or maintain the ambient air quality standard for ozone.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.65; 143-215.66; Temporary Adoption Eff. November 1, 2000; Eff. April 1, 2001.*

**15A NCAC 02D .1806 CONTROL AND PROHIBITION OF ODOROUS EMISSIONS**

(a) Purpose. The purpose of this Rule is to provide for the control and prohibition of objectionable odorous emissions.

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

- (1) "Commercial purposes" means activities that require a state or local business license to operate.
- (2) "Temporary activities or operations" means activities or operations that are less than 30 days in duration during the course of a calendar year and do not require an air quality permit.

(c) Applicability. With the exceptions in Paragraph (d) of this Rule, this Rule shall apply to all operations that may produce odorous emissions that can cause or contribute to objectionable odors beyond the facility's boundaries.

(d) Exemptions. The requirements of this Rule do not apply to:

- (1) processes at kraft pulp mills identified in Rule .0528 of this Section, and covered under Rule .0524 or .0528 of this Section;
- (2) processes at facilities that produce feed-grade animal proteins or feed-grade animal fats and oils identified in and covered under Rule .0539;
- (3) motor vehicles and transportation facilities;
- (4) all on-farm animal and agricultural operations, including dry litter operations and operations covered under Rule .1804 of this Section;
- (5) municipal wastewater treatment plants and municipal wastewater handling systems;
- (6) restaurants and food preparation facilities that prepare and serve food on site;
- (7) single family dwellings not used for commercial purposes;
- (8) materials odorized for safety purposes;
- (9) painting operations that do not require a business license; or
- (10) all temporary activities or operations.

(e) Control Requirements. The owner or operator of a facility subject to this Rule shall not operate the facility without implementing management practices or installing and operating odor control equipment sufficient to prevent odorous emissions from the facility from causing or contributing to objectionable odors beyond the facility's boundary.

(f) Maximum feasible controls. If the Director determines that a source or facility subject to this Rule is emitting an objectionable odor by the procedures described in Paragraph (g) of this Rule,

the Director shall require the owner or operator to implement maximum feasible controls for the control of odorous emissions. (Maximum feasible controls shall be determined according to the procedures in Rule .1807 of this Section.) The owner or operator shall:

- (1) within 180 days of receipt of written notification from the Director of the requirement to implement maximum feasible controls, complete the determination process outlined in 15A NCAC 2D .1807 and submit the completed maximum feasible control determination process along with a permit application for maximum feasible controls and a compliance schedule to the Division of Air Quality; the compliance schedule shall contain the following increments of progress:
  - (A) a date by which contracts for the odorous emission control systems and equipment shall be awarded or orders shall be issued for purchase of component parts;
  - (B) a date by which on-site construction or installation of the odorous emission control systems and equipment shall begin;
  - (C) a date by which on-site construction or installation of the odorous emission control systems and equipment shall be completed; and
  - (D) a date by which final compliance shall be achieved.
- (2) within 18 months after receiving written notification from the Director of the requirement to implement maximum feasible controls, have installed and begun operating maximum feasible controls.

The owner or operator shall certify to the Director within five days after the deadline for each increment of progress in this Paragraph whether the required increment of progress has been met.

(g) Determination of the existence of an objectionable odor. A source or facility is causing or contributing to an objectionable odor when:

- (1) A member of the Division staff determines by field investigation that an objectionable odor is present by taking into account nature, intensity, pervasiveness, duration, and source of the odor and other pertinent factors;
- (2) The source or facility emits known odor causing compounds such as ammonia, total volatile organics, hydrogen sulfide, or other sulfur compounds at levels that cause objectionable odors beyond the property line of that source or facility; or
- (3) The Division receives epidemiological studies associating health problems with odors from the source or facility or evidence of documented health problems associated with odors from the source or facility provided by the State Health Director.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. April 1, 2001.*

**15A NCAC 02D .1807 DETERMINATION OF MAXIMUM FEASIBLE CONTROLS FOR ODOROUS**

**EMISSIONS**

(a) Scope. This Rule sets out procedures for determining maximum feasible controls for odorous emissions. The owner or operator of the facility shall be responsible for providing the maximum feasible control determination.

(b) Process for maximum feasible control determinations. The following sequential process shall be used on a case-by-case basis to determine maximum feasible controls:

- (1) Identify all available control technologies. In the first step, all available options for the control of odorous emissions shall be listed. Available options include all possible control technologies or techniques with a practical potential to control, reduce, or minimize odorous emissions. For the purposes of this document, in some specific cases a comprehensive, effective odor control plan can be listed among the possible odor control technologies as a viable and satisfactory maximum feasible control technology option. All available control technologies shall be included on this list regardless of their technical feasibility or potential energy, human health, economic, or environmental impacts.
- (2) Eliminate technically infeasible options. In the second step, the technical feasibility of all the control options identified under Subparagraph (b)(1) of this Rule shall be evaluated with respect to source specific factors. A demonstration of technical infeasibility shall be clearly documented and shall show, based on physical, chemical, or engineering principles, that technical difficulties preclude the successful use of the control option under review. Technically infeasible control options shall then be eliminated from further consideration as maximum feasible controls.
- (3) Rank remaining control technologies by control effectiveness. All the remaining control technologies, which have not been eliminated under Subparagraph (b)(2) of this Rule, shall be ranked and then listed in order of their ability to control odorous emissions, with the most effective control option at the top of the list. The list shall present all the control technologies that have not been previously eliminated and shall include the following information:
  - (A) control effectiveness;
  - (B) economic impacts (cost effectiveness);
  - (C) environmental impacts: this shall include any significant or unusual other media impacts (for example, water or solid waste), and, at a minimum, the impact of each control alternative on emissions of toxic or hazardous air pollutants;
  - (D) human health impacts; and
  - (E) energy impacts.

However, an owner or operator proposing to implement the most stringent alternative, in terms of control effectiveness, need not provide detailed information concerning the other control options. In such cases, the owner or operator shall only document, to the satisfaction of the Director, that the proposed

control option is indeed the most efficient, in terms of control effectiveness, and provide a review of collateral environmental impacts.

- (4) Evaluate most effective controls and document results. Following the delineation of all available and technically feasible control technology options under Subparagraph (b)(3) of this Rule, the energy, human health, environmental, and economic impacts shall be considered in order to arrive at the maximum feasible controls. An analysis of the associated impacts for each option shall be conducted. The owner or operator shall present an objective evaluation of the impacts of each alternative. Beneficial and adverse impacts shall be analyzed and, if possible, quantified. If the owner or operator has proposed to select the most stringent alternative, in terms of control effectiveness, as maximum feasible controls, he shall evaluate whether impacts of unregulated air pollutants or environmental impacts in other media would justify selection of an alternative control technology. If there are no concerns regarding collateral environmental impacts, the analysis is ended and this proposed option is selected as maximum feasible controls. In the event the most stringent alternative is inappropriate, due to energy, human health, environmental, or economic impacts, the justification for this conclusion shall be fully documented; and the next most stringent option, in terms of control effectiveness, becomes the primary alternative and is similarly evaluated. This process shall continue until the control technology evaluated cannot be eliminated due to source-specific environmental, human health, energy, or economic impacts.
- (5) Select maximum feasible controls. The most stringent option, in terms of control effectiveness, not eliminated under Subparagraph (b)(4) of this Rule shall be selected as maximum feasible controls.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. April 1, 2001.*

**15A NCAC 02N .0304 IMPLEMENTATION SCHEDULE FOR PERFORMANCE STANDARDS FOR NEW UST SYSTEMS AND UPGRADING REQUIREMENTS FOR EXISTING UST SYSTEMS LOCATED IN AREAS DEFINED IN RULE .0301(D)**

(a) The following implementation schedule shall only apply to UST owners and operators of UST systems located within areas defined in Rule .0301(d) of this Section and who are in compliance with Paragraph (b) of this Rule. This implementation schedule shall be used by the Department for tank owners and operators to comply with the secondary containment requirements contained in Rule .0301(d) of this Section for new UST systems and the secondary containment requirements contained in Rule .0302(a) of this Section for existing UST systems located within areas defined in Rule .0301(d) of this Section.

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- (1) All new UST systems and all replacements to a UST system shall be provided with secondary containment in accordance with 40 CFR 280.42(b)(1) through (b)(4) as of the effective date of this Rule.
  - (2) All steel or metal connected piping and ancillary equipment of a UST system regardless of date of installation, shall be provided with secondary containment in accordance with 40 CFR 280.42(b)(1) through (b)(4) as of January 1, 2005.
  - (3) All fiberglass or non-metal connected piping and ancillary equipment of a UST system regardless of date of installation, shall be provided with secondary containment in accordance with 40 CFR 280.42(b)(1) through (b)(4) as of January 1, 2008.
  - (4) All UST systems installed on or before January 1, 1991 shall be provided with secondary containment in accordance with 40 CFR 280.42(b)(1) through (b)(4) as of January 1, 2008.
  - (5) All UST systems installed after January 1, 1991 shall be provided with secondary containment in accordance with 40 CFR 280.42(b)(1) through (b)(4) as of January 1, 2016.
- (b) All owners and operators of UST systems shall implement the following enhanced leak detection monitoring by April 1, 2001. The enhanced leak detection monitoring must consist of the following:
- (1) Install an automatic tank gauging system (ATG) for each UST;
  - (2) Install an electronic line leak detector (ELLD) for each pressurized piping system;
  - (3) Conduct at least one valid 0.1 gallon per hour (gph) test per month or at least one valid 0.2 gph test per week on each UST system;
  - (4) Conduct a line tightness test capable of detecting a leak rate of 0.1 gph, at least once per year for each suction piping system. No release detection is required for suction piping that is designed and constructed in accordance with 40 CFR 280.41(b)(2)(i) through (b)(2)(iv);
  - (5) If the UST system is located within 500 feet of a public water supply well or within 100 feet of any other well supplying water for human consumption, sample the supply well at least once per year. The sample collected from the well must be analyzed for the constituents of petroleum using the following methods:
    - (A) EPA Methods 601 and 602, including methyl tertiary butyl ether, isopropyl ether and xylenes;
    - (B) EPA Method 625; and
    - (C) If a waste oil UST system is present which does not meet the requirements for secondary containment in accordance with 40 CFR 280.42(b)(1) through (b)(4), the sample shall also be analyzed for lead and chromium using Standard Method 3030C preparation.
- (c) The first sample collected in accordance with Subparagraph (b)(5) of this Rule shall be collected and the results received by the Division by October 1, 2000 and yearly thereafter.

*History Note: Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); Temporary Adoption Eff. May 1, 2000; Eff. April 1, 2001.*

### 15A NCAC 02Q .0508 PERMIT CONTENT

- (a) The permit shall specify and reference the origin and authority for each term or condition and shall identify any differences in form as compared to the applicable requirement on which the term or condition is based.
- (b) The permit shall specify emission limitations and standards, including operational requirements and imitations, that assure compliance with all applicable requirements at the time of permit issuance.
- (c) Where an applicable requirement of the federal Clean Air Act is more stringent than an applicable requirement of rules promulgated pursuant to Title IV, both provisions shall be placed in the permit. The permit shall state that both provisions are enforceable by EPA.
- (d) The permit for sources using an alternative emission limit established under 15A NCAC 2D .0501(f) or 15A NCAC 2D .0952 shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.
- (e) The expiration date contained in the permit shall be for a fixed term of five years for sources covered under Title IV and for a term of no more than five years from the date of issuance for all other sources including solid waste incineration units combusting municipal waste subject to standards under Section 129(e) of the federal Clean Air Act.
- (f) The permit shall contain monitoring and related recordkeeping and reporting requirements as specified in 40 CFR 70.6(a)(3) and 70.6(c)(1) including conditions requiring:
  - (1) the permittee to submit reports of any required monitoring at least every six months. The permittee shall submit reports:
    - (A) on official forms obtained from the Division at the address in Rule .0104 of this Subchapter,
    - (B) in a manner as specified by a permit condition, or
    - (C) on other forms that contain the information required on official forms provided by the Division or as specified by a permit condition; and
  - (2) the permittee to report malfunctions, emergencies, and other upset conditions as prescribed in 15A NCAC 2D .0524, .0535, .1110, or .1111 and to report by the next business day deviations from permit requirements not covered under 15A NCAC 2D .0524, .0535, .1110, or .1111. The permittee shall report in writing to either the Director or Regional Supervisor all other deviations from permit requirements not covered under 15A NCAC 2D .0535 within two business days after becoming aware of the deviation. The permittee shall include the probable cause of such deviation and any corrective actions or preventive measures taken. All deviations from permit requirements shall be certified by a responsible official.

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At the request of the permittee, the Director may allow records to be maintained in computerized form in lieu of maintaining paper records.

(g) The permit for facilities covered under 15A NCAC 2D .2100, Risk Management Program, shall contain:

- (1) a statement listing 15A NCAC 2D .2100 as an applicable requirement;
- (2) conditions that require the owner or operator of the facility to submit:
  - (A) a compliance schedule for meeting the requirements of 15A NCAC 2D .2100 by the dates provided in 15A NCAC 2D .2101(a); or
  - (B) as part of the compliance certification under Paragraph (t) of this Rule, a certification statement that the source is in compliance with all requirements of 15A NCAC 2D .2100, including the registration and submission of the risk management plan.

The content of the risk management plan need not itself be incorporated as a permit term or condition.

(h) The permit shall contain a condition prohibiting emissions exceeding any allowances that a facility lawfully holds under Title IV. The permit shall not limit the number of allowances held by a permittee, but the permittee may not use allowances as a defense to noncompliance with any other applicable requirement.

(i) The permit shall contain a severability clause so that various permit requirements will continue to be valid in the event of a challenge to any other portion of the permit.

(j) The permit shall state that noncompliance with any condition of the permit is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(k) The permit shall state that the permittee may not use as a defense in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

(l) The permit shall state that the Director may reopen, modify, revoke and reissue, or terminate the permit for reasons specified in Rule .0517 or .0519 of this Section. The permit shall state that the filing of a request by the permittee for a permit revision, revocation and reissuance, or termination, notification of planned changes, or anticipated noncompliance does not stay any permit condition.

(m) The permit shall state that the permit does not convey any property rights of any sort, or any exclusive privileges.

(n) The permit shall state that the permittee shall furnish to the Division, in a timely manner, any reasonable information that the Director may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. The permit shall state that the permittee shall furnish the Division copies of records required to be kept by the permit when such copies are requested by the Director. For information claimed to be confidential, the permittee may furnish such records directly to EPA along with a claim of confidentiality.

(o) The permit shall contain a provision to ensure that the permittee pays fees required under Section .0200 of this Subchapter.

(p) The permit shall state the terms and conditions for reasonably anticipated operating scenarios identified by the applicant in the application. These terms and conditions shall:

- (1) require the permittee, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the operating scenario under which it is operating;
- (2) extend the permit shield described in Rule .0512 of this Section to all terms and conditions under each such operating scenario; and
- (3) ensure that each operating scenario meets all applicable requirements of Subchapter 2D of this Chapter and of this Section.

(q) The permit shall identify which terms and conditions are enforceable by:

- (1) both EPA and the Division;
- (2) the Division only;
- (3) EPA only; and
- (4) citizens under the federal Clean Air Act.

(r) The permit shall state that the permittee shall allow personnel of the Division to:

- (1) enter the permittee's premises where the permitted facility is located or emissions-related activity is conducted, or where records are kept under the conditions of the permit;
- (2) have access to and copy, at reasonable times, any records that are required to be kept under the conditions of the permit;
- (3) inspect at reasonable times and using reasonable safety practices any source, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and
- (4) sample or monitor substances or parameters, using reasonable safety practices, for the purpose of assuring compliance with the permit or applicable requirements at reasonable times.

(s) When a compliance schedule is required under 40 CFR 70.5(c)(8) or under a rule contained in Subchapter 2D of this Chapter, the permit shall contain the compliance schedule and shall state that the permittee shall submit at least semiannually, or more frequently if specified in the applicable requirement, a progress report. The progress report shall contain:

- (1) dates for achieving the activities, milestones, or compliance required in the compliance schedule, and dates when such activities, milestones, or compliance were achieved; and
- (2) an explanation of why any dates in the compliance schedule were not or will not be met, and any preventive or corrective measures adopted.

(t) The permit shall contain requirements for compliance certification with the terms and conditions in the permit, including emissions limitations, standards, or work practices. The permit shall specify:

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- (1) the frequency (not less than annually or more frequently as specified in the applicable requirements or by the Director) of submissions of compliance certifications;
- (2) a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices; and
- (3) a requirement that the compliance certification include:
  - (A) the identification of each term or condition of the permit that is the basis of the certification;
  - (B) the status of compliance with the terms and conditions of the permit for the period covered by the certification, based on the methods or means designated in 40 CFR 70.6(c)(5)(iii)(B). The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under 40 CFR 64 occurred;
    - (i) each deviation and take it into account in the compliance certification; and
    - (ii) identify as possible, exceptions to compliance, any periods during which compliance is required in which an excursion or exceedance as defined under 40 CFR 64 occurred;
  - (C) whether compliance was continuous or intermittent;
  - (D) the identification of the method(s) or other means used by the owner and operator for determining the compliance status with each term and condition during the certification period, and whether such methods or other means provide continuous or intermittent data, (Including at a minimum, the methods and means required under 40 CFR Part 70.6(a)(3), and identifying any other necessary material information that must be included in this certification to comply with Section 113(c)(2) of the Federal Clean Air Act, which prohibits knowingly making a false certification or omitting material information); and
  - (E) such other facts as the permitting authority may require to determine the compliance status of the source;
- (4) that all compliance certifications be submitted to EPA as well as to the Division.
  - (u) The permit shall contain a condition that authorizes the permittee to make Section 502(b)(10) changes, off-permit changes, or emission trades in accordance with Rule .0523 of this Section.
  - (v) The permit shall include all applicable requirements for all sources covered under the permit.
  - (w) The permit shall specify the conditions under which the permit shall be reopened before the expiration of the permit.
  - (x) If regulated, fugitive emissions shall be included in the permit in the same manner as stack emissions.

- (y) The permit shall contain a condition requiring annual reporting of actual emissions as required under Rule .0207 of this Subchapter.
- (z) The permit shall include all sources including insignificant activities.
- (aa) The permit may contain such other provisions as the Director considers appropriate.

*History Note: Filed as a Temporary Rule Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is sooner;*  
*Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(10); 143-215.108;*  
*Eff. July 1, 1994;*  
*Amended Eff. July 1, 1996;*  
*Filed as a Temporary Amendment Eff. December 1, 1999;*  
*Amended Eff. April 1, 2001; July 1, 2000.*

**15A NCAC 02Q .0803 COATING, SOLVENT CLEANING, GRAPHIC ARTS OPERATIONS**

- (a) For the purposes of this Rule, the following definitions apply:
  - (1) "Coating operation" means a process in which paints, enamels, lacquers, varnishes, inks, dyes, glues, and other similar materials are applied to wood, paper, metal, plastic, textiles, or other types of substrates.
  - (2) "Solvent cleaning operation" means the use of solvents containing volatile organic compounds to clean soils from metal, plastic, or other types of surfaces.
  - (3) "Graphic arts operation" means the application of inks to form words, designs, or pictures to a substrate, usually by a series of application rolls each with only partial coverage and usually using letterpress, offset lithography, rotogravure, or flexographic process.
- (b) Potential emissions for a coating operation, solvent cleaning operation, or graphic arts operation shall be determined using actual emissions without accounting for any air pollution control devices to reduce emissions of volatile organic compounds or hazardous air pollutants including perchloroethylene, methyl chloroform, and methyl chloride from the coating operation, solvent cleaning operation or graphic arts operation. All volatile organic compounds and hazardous air pollutants that are also volatile organic compounds and perchloroethylene, methyl chloroform, and methyl chloride are assumed to evaporate and be emitted into the atmosphere at the source.
- (c) Paragraphs (d) through (l) of this Rule do not apply to any facility whose potential emissions are greater than or equal to:
  - (1) 100 tons per year of each regulated air pollutant;
  - (2) 10 tons per year of each hazardous air pollutant; or
  - (3) 25 tons per year of all hazardous air pollutants combined;as determined by criteria set out in each individual source category rule. [A particular maximum achievable control technology (MACT) standard promulgated under 40 CFR Part 63 may have a lower applicability threshold than those contained in this Paragraph. The threshold contained in that MACT standard shall be used to determine the applicability of that MACT standard.]

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(d) With the exception of Paragraph (c) of this Rule, the owner or operator of a coating, solvent cleaning, or graphics arts operation shall be exempted from the requirements of Section .0500 of this Subchapter, provided the owner or operator of the facility complies with Paragraphs (f) through (j) of this Rule, as appropriate.

(e) Only Paragraph (b) of this Rule applies to coating operations, solvent cleaning operations, or graphic arts operations that are exempted from needing a permit under Rule .0102 of this Subchapter.

(f) The owner or operator of a facility whose potential emissions:

- (1) of volatile organic compounds are less than 100 tons per year but more than or equal to 75 tons per year;
- (2) of each hazardous air pollutant is less than 10 tons per year but more than or equal to 7.5 tons per year; or
- (3) of all hazardous air pollutants combined are less than 25 tons per year but more than or equal to 18 tons per year;

shall maintain records and submit reports as described in Paragraphs (g) and (j) of this Rule.

(g) For facilities covered under Paragraph (f) of this Rule, the owner or operator shall:

- (1) maintain monthly consumption records of each material used containing volatile organic compounds as follows:
  - (A) quantity of volatile organic compound in pounds per gallon of each material used,
  - (B) pounds of volatile organic compounds of each material used per month and total pounds of volatile organic compounds of each material used during the 12-month period ending on that month,
  - (C) quantity of each hazardous air pollutant in pounds per gallon of each material used,
  - (D) pounds of each hazardous air pollutant of each material used per month and total pounds of each hazardous air pollutant of each material used during the 12-month period ending on that month,
  - (E) quantity of all hazardous air pollutants in pounds per gallon of each material used, and
  - (F) pounds of all hazardous air pollutants of each material used per month and total pounds of all hazardous air pollutants of each material used during the 12-month period ending on that month; and
- (2) submit to the Director each quarter, or more frequently if required by a permit condition, a report summarizing emissions of volatile organic compounds and hazardous air pollutants containing the following:
  - (A) pounds volatile organic compounds used:
    - (i) for each month during the quarter, and
    - (ii) for each 12-month period ending on each month during the quarter using the 12-month rolling average method;
  - (B) greatest quantity in pounds of an individual hazardous air pollutant used:
    - (i) for each month during the quarter, and
    - (ii) for each 12-month period ending on each month during the quarter using the 12-month rolling average method; and

(C) pounds of all hazardous air pollutants used:

- (i) for each month during the quarter, and
- (ii) for each 12-month period ending on each month during the quarter using the 12-month rolling average method.

(h) The owner or operator of a facility whose potential emissions:

- (1) of volatile organic compounds are less than 75 tons per year,
- (2) of each hazardous air pollutant is less than 7.5 tons per year, and
- (3) of all hazardous air pollutants combined are less than 18 tons per year,

shall maintain records and submit reports as described in Paragraphs (i) and (j) of this Rule.

(i) For facilities covered under Paragraph (h) of this Rule, the owner or operator shall submit to the regional supervisors of the appropriate Division regional office by March 1 of each year, or more frequently if required by a permit condition, a report summarizing emissions of volatile organic compounds and hazardous air pollutants containing the following:

- (1) pounds volatile organic compounds used during the previous calendar year,
- (2) pounds of the highest individual hazardous air pollutant used during the previous year, and
- (3) pounds of all hazardous air pollutants used during the previous year.

(j) In addition to the specific reporting requirements for sources covered under Paragraphs (f) and (h) of this Rule, the owner or operator of the source shall:

- (1) maintain purchase orders and invoices of materials containing volatile organic compounds, which shall be made available to the Director upon request to confirm the general accuracy of the reports filed under Paragraphs (g) or (i) of this Rule regarding materials usage;
- (2) retain purchase orders and invoices for a period of at least three years;
- (3) report to the Director any exceedance of a requirement of this Rule within one week of occurrence; and
- (4) certify all submittals as to the truth, completeness, and accuracy of all information recorded and reported over the signature of the appropriate official as identified in Rule .0304(j) of this Subchapter.

(k) Copies of all records required to be maintained under Paragraphs (g), (i) or (j) of this Rule shall be maintained at the facility and shall be available for inspection by personnel of the Division on demand.

(l) The Director shall maintain a list of facilities covered under this Rule.

*History Note: Authority G.S. 143-215.3(a); 143-215.107(a)(10); 143-215.108; Eff. August 1, 1995; Amended April 1, 2001; April 1, 1999.*

**15A NCAC .02Q .0808 PEAK SHAVING GENERATORS**

(a) This Rule applies to facilities whose only sources requiring a permit is one or more peak shaving generators and their associated fuel storage tanks.

(b) For the purpose of this Rule, potential emissions shall be determined using actual total energy production.

(c) Any facility whose total energy production from one or more peak shaving generators is less than or equal to 6,500,000 kw-hrs per year shall be exempted from the requirements of Section .0500 of this Subchapter.

(d) The owner or operator of any peak shaving generator exempted by this Rule from Section .0500 of this Subchapter shall submit to the regional supervisors of the appropriate Division regional office by March 1 of each year a report containing the following information:

- (1) the name and location of the facility;
- (2) the number and size of all peak shaving generators located at the facility;
- (3) the total number of hours of operation of all peak shaving generators located at the facility;
- (4) the actual total amount of energy production per year from all peak shaving generators located at the facility; and
- (5) the signature of the appropriate official as identified in Rule .0304(j) of this Subchapter certifying as to the truth and accuracy of the report.

(e) The owner or operator of any facility exempted by this Rule from Section .0500 of this Subchapter shall provide documentation of number, size, number of hours of operation, and amount of total energy production per rolling 12-month period from all peak shaving generators located at the facility to the Director upon request. The owner or operator of a facility exempted by this Rule from Section .0500 of this Subchapter shall retain records to document the amount of total energy production per year for the previous three years.

(f) For facilities covered by this Rule, the owner or operator shall report to the Director any exceedance of a requirement of this Rule within one week of its occurrence.

*History Note: Authority G.S. 143-215.3(a); 143-215.107(a)(10); 143-215.108; Eff. July 1, 1999; Amended Eff. April 1, 2001.*

**15A NCAC 3I .0101 DEFINITIONS**

(a) All definitions set out in G.S. 113, Subchapter IV apply to this Chapter.

(b) The following additional terms are hereby defined:

- (1) Commercial Fishing Equipment or Gear. All fishing equipment used in coastal fishing waters except:
  - (A) Seines less than 30 feet in length;
  - (B) Collapsible crab traps, a trap used for taking crabs with the largest open dimension no larger than 18 inches and that by design is collapsed at all times when in the water, except when it is being retrieved from or lowered to the bottom;
  - (C) Spears, Hawaiian slings or similar devices which propel pointed implements by mechanical means,

including elastic tubing or bands, pressurized gas or similar means;

- (D) A dip net having a handle not more than eight feet in length and a hoop or frame to which the net is attached not exceeding 60 inches along the perimeter;
  - (E) Hook-and-line and bait-and-line equipment other than multiple-hook or multiple-bait trotline;
  - (F) A landing net used to assist in taking fish when the initial and primary method of taking is by the use of hook and line;
  - (G) Cast Nets;
  - (H) Gigs or other pointed implements which are propelled by hand, whether or not the implement remains in the hand; and
  - (I) Up to two minnow traps.
- (2) Fixed or stationary net. A net anchored or staked to the bottom, or some structure attached to the bottom, at both ends of the net.
  - (3) Mesh Length. The diagonal distance from the inside of one knot to the outside of the other knot, when the net is stretched hand-tight.
  - (4) Possess. Any actual or constructive holding whether under claim of ownership or not.
  - (5) Transport. Ship, carry, or cause to be carried or moved by public or private carrier by land, sea, or air.
  - (6) Use. Employ, set, operate, or permit to be operated or employed.
  - (7) Purse Gill Nets. Any gill net used to encircle fish when the net is closed by the use of a purse line through rings located along the top or bottom line or elsewhere on such net.
  - (8) Gill Net. A net set vertically in the water to capture fish by entanglement by the gills in its mesh as a result of net design, construction, mesh size, webbing diameter or method in which it is used.
  - (9) Seine. A net set vertically in the water and pulled by hand or power to capture fish by encirclement and confining fish within itself or against another net, the shore or bank as a result of net design, construction, mesh size, webbing diameter, or method in which it is used.
  - (10) Internal Coastal Waters or Internal Waters. All coastal fishing waters except the Atlantic Ocean.
  - (11) Channel Net. A net used to take shrimp which is anchored or attached to the bottom at both ends or with one end anchored or attached to the bottom and the other end attached to a boat.
  - (12) Dredge. A device towed by engine power consisting of a frame, tooth bar or smooth bar, and catchbag used in the harvest of oysters, clams, crabs, scallops, or conchs.
  - (13) Mechanical methods for clamming. Includes, but not limited to, dredges, hydraulic clam dredges, stick rakes and other rakes when towed by engine power, patent tongs, kicking with propellers or deflector plates with or without trawls, and any other method that utilizes mechanical means to harvest clams.



- (14) Mechanical methods for oystering. Includes, but not limited to, dredges, patent tongs, stick rakes and other rakes when towed by engine power and any other method that utilizes mechanical means to harvest oysters.
- (15) Depuration. Purification or the removal of adulteration from live oysters, clams, and mussels by any natural or artificially controlled means.
- (16) Peeler Crab. A blue crab that has a soft shell developing under a hard shell and having a definite pink, white, or red line or rim on the outer edge of the back fin or flipper.
- (17) Length of finfish.
- (A) Total length is determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the tip of the compressed caudal (tail) fin.
- (B) Fork length is determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the middle of the fork in the caudal (tail) fin.
- (C) Fork length for billfish is measured from the tip of the lower jaw to the middle of the fork of the caudal (tail) fin.
- (18) Licensee. Any person holding a valid license from the Department to take or deal in marine fisheries resources.
- (19) Aquaculture operation. An operation that produces artificially propagated stocks of marine or estuarine resources or obtains such stocks from authorized sources for the purpose of rearing in a controlled environment. A controlled environment provides and maintains throughout the rearing process one or more of the following: predator protection, food, water circulation, salinity, or temperature controls utilizing proven technology not found in the natural environment.
- (20) Critical habitat areas. The fragile estuarine and marine areas that support juvenile and adult populations of fish species, as well as forage species important in the food chain. Critical habitats include nursery areas, beds of submerged aquatic vegetation, shellfish producing areas, anadromous fish spawning and anadromous fish nursery areas, in all coastal fishing waters as determined through marine and estuarine survey sampling. Critical habitats are vital for portions, or the entire life cycle, including the early growth and development of important fish species.
- (A) Beds of submerged aquatic vegetation are those habitats in public trust and estuarine waters vegetated with one or more species of submerged vegetation such as eelgrass (*Zostera marina*), shoalgrass (*Halodule wrightii*) and widgeongrass (*Ruppia maritima*). These vegetation beds occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In either case, the bed is defined by the presence of above-ground leaves or the below-ground rhizomes and propagules together with the sediment on which the plants grow. In defining beds of submerged aquatic vegetation, the Marine Fisheries Commission recognizes the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et. seq.) and does not intend the submerged aquatic vegetation definition and its implementing rules to apply to or conflict with the non-development control activities authorized by that Act.
- (B) Shellfish producing habitats are those areas in which shellfish, such as, but not limited to clams, oysters, scallops, mussels, and whelks, whether historically or currently, reproduce and survive because of such favorable conditions as bottom type, salinity, currents, cover, and cultch. Included are those shellfish producing areas closed to shellfish harvest due to pollution.
- (C) Anadromous fish spawning areas are defined as those areas where evidence of spawning of anadromous fish has been documented by direct observation of spawning, capture of running ripe females, or capture of eggs or early larvae.
- (D) Anadromous fish nursery areas are defined as those areas in the riverine and estuarine systems utilized by post-larval and later juvenile anadromous fish.
- (21) Intertidal Oyster Bed. A formation, regardless of size or shape, formed of shell and live oysters of varying density.
- (22) North Carolina Trip Ticket. Multiple-part form provided by the Department to fish dealers who are required to record and report transactions on such forms.
- (23) Transaction. Act of doing business such that fish are sold, offered for sale, exchanged, bartered, distributed or landed. The point of landing shall be considered a transaction when the fisherman is the fish dealer.
- (24) Live rock. Living marine organisms or an assemblage thereof attached to a hard substrate including dead coral or rock (excluding mollusk shells). For example, such living marine organisms associated with hard bottoms, banks, reefs, and live rock may include, but are not limited to:
- (A) Animals:
- (i) Sponges (Phylum Porifera);
- (ii) Hard and Soft Corals, Sea Anemones (Phylum Cnidaria):
- (I) Fire corals (Class Hydrozoa);
- (II) Gorgonians, whip corals, sea pansies, anemones, Solenastrea (Class Anthozoa);
- (iii) Bryozoans (Phylum Bryozoa);
- (iv) Tube Worms (Phylum Annelida):
- (I) Fan worms (Sabellidae);
- (II) Feather duster and Christmas tree worms (Serpulidae);
- (III) Sand castle worms (Sabellaridae).
- (v) Mussel banks (Phylum Mollusca:Gastropoda);

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- (vi) Colonial barnacles (Arthropoda: Crustacea: Megabalanus sp.).
- (B) Plants:
  - (i) Coralline algae (Division Rhodophyta);
  - (ii) Acetabularia sp., Udotea sp., Halimeda sp., Caulerpa sp. (Division Chlorophyta);
  - (iii) Sargassum sp., Dictyopteris sp., Zonaria sp. (Division Phaeophyta).
- (25) Coral:
  - (A) Fire corals and hydrocorals (Class Hydrozoa);
  - (B) Stony corals and black corals (Class Anthozoa, Subclass Scleractinia);
  - (C) Octocorals; Gorgonian corals (Class Anthozoa, Subclass Octocorallia):
    - (i) Sea fans (Gorgonia sp.);
    - (ii) Sea whips (Leptogorgia sp. and Lophogorgia sp.);
    - (iii) Sea pansies (Renilla sp.)
- (26) Shellfish production on leases and franchises:
  - (A) The culture of oysters, clams, scallops, and mussels, on shellfish leases and franchises from a sublegal harvest size to a marketable size.
  - (B) The transplanting (relay) of oysters, clams, scallops and mussels from designated areas closed due to pollution to shellfish leases and franchises in open waters and the natural cleansing of those shellfish.
- (27) Shellfish marketing from leases and franchises. The harvest of oysters, clams, scallops, mussels, from privately held shellfish bottoms and lawful sale of those shellfish to the public at large or to a licensed shellfish dealer.
- (28) Shellfish planting effort on leases and franchises. The process of obtaining authorized cultch materials, seed shellfish, and polluted shellfish stocks and the placement of those materials on privately held shellfish bottoms for increased shellfish production.
- (29) Pound Net Set. A fish trap consisting of a holding pen, one or more enclosures, lead or leaders, and stakes or anchors used to support such trap. The lead(s), enclosures, and holding pen are not conical, nor are they supported by hoops or frames.
- (30) Educational Institution. A college, university or community college accredited by a regional accrediting institution.
- (31) Long Haul Operations. A seine towed between two boats.
- (32) Swipe Net Operations. A seine towed by one boat.
- (33) Bunt Net. The last encircling net of a long haul or swipe net operation constructed of small mesh webbing. The bunt net is used to form a pen or pound from which the catch is dipped or bailed.
- (34) Responsible party. Person who coordinates, supervises or otherwise directs operations of a business entity, such as a corporate officer or executive level supervisor of business operations and the person responsible for use of the issued license in compliance with applicable laws and regulations.
- (35) New fish dealer. Any fish dealer making application for a fish dealer license who did not possess a valid dealer license for the previous license year in that name or ocean pier license in that name on June 30, 1999. For purposes of license issuance, adding new categories to an existing fish dealers license does not constitute a new dealer.
- (36) Tournament Organizer. The person who coordinates, supervises or otherwise directs a recreational fishing tournament and is the holder of the Recreational Fishing Tournament License.
- (37) Holder. A person who has been lawfully issued in their name a license, permit, franchise, lease, or assignment.
- (38) Recreational Purpose. A fishing activity has a recreational purpose if it is not a commercial fishing operation as defined in G.S. 113-168.
- (39) Recreational Possession Limit. Includes, but is not limited to, restrictions on size, quantity, season, time period, area, means, and methods where take or possession is for a recreational purpose.
- (40) Attended. Being in a vessel, in the water or on the shore immediately adjacent to the gear and immediately available to work the gear and within 100 yards of any gear in use by that person at all times. Attended does not include being in a building or structure.
- (41) Commercial Quota. Total quantity of fish allocated for harvest taken by commercial fishing operations.
- (42) Recreational Quota. Total quantity of fish allocated for harvest taken for a recreational purpose.
- (43) Office of the Division. Physical locations of the Division conducting license transactions in the cities of Wilmington, Washington, Morehead City, Columbia, Wanchese and Elizabeth City, North Carolina. Other businesses or entities designated by the Secretary to issue Recreational Commercial Gear Licenses are not considered Offices of the Division.
- (44) Land:
  - (A) For purposes of trip tickets, when fish reach a licensed seafood dealer, or where the fisherman is the dealer, when the fish reaches the shore or a structure connected to the shore.
  - (B) For commercial fishing operations, when fish reach the shore or a structure connected to the shore.
  - (C) For recreational fishing operations, when fish are retained in possession by the fisherman.
- (45) Master. Captain of a vessel or one who commands and has control, authority, or power over a vessel.
- (46) Regular Closed Oyster Season. The regular closed oyster season occurs from May 15 through October 15, unless amended by the Fisheries Director through proclamation authority.
- (47) Assignment. Temporary transferral to another person of privileges under a license for which assignment is permitted. The person assigning the license delegates the privileges permitted under the license to be exercised by the assignee, but retains the power to revoke the assignment at any time, is still the responsible party for the license.

- (48) Transfer. Permanent transferral to another person of privileges under a license for which transfer is permitted. The person transferring the license retains no rights or interest under the license transferred.
- (49) Designee. Any person who is under the direct control of the permittee or who is employed by or under contract to the permittee for the purposes authorized by the permit.
- (50) Blue Crab Shedding. The process whereby a blue crab emerges soft from its former hard exoskeleton. A shedding operation is any operation that holds peeler crabs in a controlled environment. A controlled environment provides and maintains throughout the shedding process one or more of the following: predator protection, food, water circulation, salinity or temperature controls utilizing proven technology not found in the natural environment. A shedding operation does not include transporting peeler crabs to a permitted shedding operation.

*History Note: Authority G.S. 113-134; 143B-289.52; Eff. January 1, 1991; Amended Eff. March 1, 1995; March 1, 1994; October 1, 1993; July 1, 1993; Recodified from 15A NCAC 3I .0001 Eff. December 17, 1996; Amended Eff. April 1, 1999; August 1, 1998; April 1, 1997; Temporary Amendment Eff. August 1, 1999; July 1, 1999; Temporary Amendment Eff. August 1, 2000; May 1, 2000; Amended Eff. April 1, 2001.*

**15A NCAC 03J .0103 GILL NETS, SEINES, IDENTIFICATION, RESTRICTIONS**

- (a) It is unlawful to use a gill net with a mesh length less than 2½ inches.
- (b) The Fisheries Director may, by proclamation, limit or prohibit the use of gill nets or seines in coastal waters, or any portion thereof, or impose any or all of the following restrictions on the use of gill nets or seines:
  - (1) Specify area.
  - (2) Specify season.
  - (3) Specify gill net mesh length.
  - (4) Specify means/methods.
  - (5) Specify net number and length.
- (c) It is unlawful to use fixed or stationary gill nets in the Atlantic Ocean, drift gill nets in the Atlantic Ocean for recreational purposes, or any gill nets in internal waters unless nets are marked by attaching to them at each end two separate yellow buoys which shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. Gill nets which are not connected together at the top line shall be considered as individual nets, requiring two buoys at each end of each individual net. Gill nets connected together at the top line shall be considered as a continuous net requiring two buoys at each end of the continuous net. Any other marking buoys on gill nets used for recreational purposes shall be yellow except one additional buoy, any shade of hot pink in color, constructed as specified in Paragraph (c) of this Rule, shall be added at each end of each individual net. Any other marking buoys on gill nets used in commercial fishing operations shall be yellow except that one additional identification buoy of any color or any combination of colors, except any shade of hot pink, may be used at either or both ends. The owner shall always be identified on a buoy on each end either by using engraved buoys or by attaching engraved metal or plastic tags to the buoys. Such identification shall include owner's last name and initials and if a vessel is used, one of the following:
  - (1) Owner's N.C. motor boat registration number, or
  - (2) Owner's U.S. vessel documentation name.
- (d) It is unlawful to use gill nets:
  - (1) Within 200 yards of any pound net with lead and pound or heart in use;
  - (2) From March 1 through October 31 in the Intracoastal Waterway within 150 yards of any railroad or highway bridge.
- (e) It is unlawful to use gill nets within 100 feet either side of the center line of the Intracoastal Waterway Channel south of Quick Flasher No. 54 in Alligator River at the southern entrance to the Intracoastal Waterway to the South Carolina line, unless such net is used in accordance with the following conditions:
  - (1) No more than two gill nets per boat may be used at any one time;
  - (2) Any net used must be attended by the fisherman from a boat who shall at no time be more than 100 yards from either net; and
  - (3) Any individual setting such nets shall remove them, when necessary, in sufficient time to permit unrestricted boat navigation.
- (f) It is unlawful to use drift gill nets in violation of 15A NCAC 3J .0101(2) and Paragraph (e) of this Rule.
- (g) It is unlawful to use unattended gill nets with a mesh length less than five inches in a commercial fishing operation in the following areas:
  - (1) Pamlico River, west of a line beginning at a point on Mauls Point at 35° 26.9176' N - 76° 55.5253' W; to a point on Ragged Point at 35° 27.5768' N - 76° 54.3612' W;
  - (2) Within 200 yards of any shoreline in Pamlico River and its tributaries east of the line from Mauls Point at 35° 26.9176' N - 76° 55.5253' W; to Ragged Point at 35° 27.5768' N - 76° 54.3612' W and west of a line beginning at a point on Pamlico Point at 35° 18.5906' N - 76° 28.9530' W ; through Marker #1 to a point on Roos Point at 35° 22.3622' N - 76° 28.2032' W;
  - (3) Pungo River, east of a line beginning at a point on Durants Point at 35° 30.5312' N - 76° 35.1594' W; to the northern side of the breakwater at 35° 31.7198' N - 76° 36.9195' W;
  - (4) Within 200 yards of any shoreline in Pungo River and its tributaries west of the line from Durants Point at 35° 30.5312' N - 76° 35.1594' W; to the northern side of the breakwater at 35° 31.7198' N - 76° 35.1594' W, and west of a line beginning at a point on Pamlico Point at 35° 18.5906' N - 76° 28.9530' W; through Marker #1 to a point on Roos Point at 35° 22.3622' N - 76° 28.2032' W;

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- (5) Neuse River and its tributaries northwest of the Highway 17 highrise bridge;
- (6) Trent River and its tributaries;
- (7) Within 200 yards of any shoreline in Neuse River and its tributaries east of a line from the Highway 17 highrise bridge and west of a line beginning at a point on Wilkinson Point at 34° 57.9116' N - 76° 48.2240' W; to a point on Cherry Point at 34° 56.3658' N - 76° 48.7110' W.

Camp Point at 35° 59.7942' N - 76° 14.6514' W to the South Carolina State Line.

(h) It is unlawful to use unattended gill nets with a mesh length less than five inches in a commercial fishing operation from May 1 through October 31 in the following internal coastal and joint waters of the state south of a line beginning at a point on Roanoke Marshes Point at 35° 48.3693' N - 75° 43.7232' W; to a point on Eagle Nest Bay at 35° 44.1710' N - 75° 31.0520' W to the South Carolina State Line:

*History Note: Authority G.S. 113-134; 113-173; 113-182; 113-221; 143B-289.52; Eff. January 1, 1991; Amended Eff. August 1, 1998; March 1, 1996; March 1, 1994; July 1, 1993; September 1, 1991; Temporary Amendment Eff. October 2, 1999; July 1, 1999; October 22, 1998; Amended Eff. April 1, 2001.*

- (1) All primary nursery areas described in 15A NCAC 3R .0103, all permanent secondary nursery areas described in 15A NCAC 3R .0104, and no trawl areas described in 15A NCAC 3R .0106 (3),(4),(6), and (7);
- (2) In the area along the Outer Banks, beginning at a point on Core Banks at 34° 58.7853' N - 76° 09.8922' W; to a point on Wainwright Island at 34° 59.4664' N - 76° 12.4859' W; to a point at 35° 00.2666' N - 76° 12.2000' W; to a point at 35° 01.5833' N - 76° 11.4500' W; to a point at 35° 06.4000' N - 76° 04.3333' W; to a point at 35° 08.4333' N - 76° 02.5000' W; to a point at 35° 09.3000' N - 75° 54.8166' W; to a point 35° 19.0333' N - 75° 36.3166' W; to a point at 35° 22.8000' N - 75° 33.6000' W; to a point at 35° 28.4500' N - 75° 31.3500' W; to a point at 35° 35.9833' N - 75° 31.2000' W; to a point 35° 45.1833' N - 75° 34.1000' W; to a point at 35° 44.1833' N - 75° 31.0833' W. Thence running south along the shoreline across the inlets to the point of beginning;
- (3) In Back and Core sounds, beginning at a point on Shackleford Banks at 34° 39.6601' N - 76° 34.4078' W; to a point at Marker #3 at 34° 41.3166' N - 76° 33.8333' W; to a point at 34° 40.4500' N - 76° 30.6833' W; to a point near Marker "A37" at 34° 43.5833' N - 76° 28.5833' W; to a point at 34° 43.7500' N - 76° 28.6000' W; to a point at 34° 48.1500' N - 76° 24.7833' W; to a point near Drum Inlet at 34° 51.0500' N - 76° 20.3000' W; to a point at 34° 53.4166' N - 76° 17.3500'; to a point at 34° 53.9166' N - 76° 17.1166' W; to a point at 34° 53.5500' N - 76° 16.4166' W; to a point at 34° 56.5500' N - 76° 13.6166' W; to a point at 34° 56.4833' N - 76° 13.2833' W; to a point at 34° 58.1833' N - 76° 12.3000' W; to a point at 34° 58.8000' N - 76° 12.5166' W; to a point on Wainwright Island at 34° 59.4664' N - 76° 12.4859' W; to a point on Core Banks at 34° 58.7832' N - 76° 09.8922' W; thence following the shoreline south across Drum and Barden inlets to the point of beginning;
- (4) Within 200 yards of any shoreline, except from October 1 through October 31, south and east of Highway 12 in Carteret County and south of a line from a point on Core Banks at 34° 58.7853' N - 76° 09.8922' W; to

**15A NCAC 03J .0107 POUND NET SETS**

(a) All initial, renewal or transfer applications for Pound Net Set Permits, and the operation of such pound net sets, shall comply with the general rules governing all permits in 15A NCAC 3O .0500. The procedures and requirements for obtaining permits are also found in 15A NCAC 3O .0500.

(b) It is unlawful to use pound net sets in coastal fishing waters without the permittee's identification being clearly printed on a sign no less than six inches square, securely attached to the outermost stake of each end of each set. For pound net sets in the Atlantic Ocean using anchors instead of stakes, the set must be identified with a yellow buoy, which shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than 11 inches in length. The permittee's identification shall be clearly printed on the buoy. Such identification on signs or buoys must include the pound net set permit number and the permittee's last name and initials.

(c) It is unlawful to use pound net sets, or any part thereof, except for one location identification stake or identification buoy for pound nets used in the Atlantic Ocean at each end of proposed new locations, without first obtaining a Pound Net Set Permit from the Fisheries Director. The applicant must indicate on a base map provided by the Division the proposed set including an inset vicinity map showing the location of the proposed set with detail sufficient to permit on-site identification and location. The applicant must specify the type (s) of pound net set (s) requested and possess proper valid licenses and permits necessary to fish those type (s) of net. A pound net set shall be deemed a flounder pound net set when the catch consists of 50 percent or more flounder by weight of the entire landed catch, excluding blue crabs. The type "other finfish pound net set" is for sciaenid (Atlantic croaker, red drum, weakfish, spotted seatrout, spot, for example) and other finfish, except flounder and herring or shad, taken for human consumption. Following are the type(s) of pound net fisheries that may be specified:

- (1) Flounder pound net set;
- (2) Herring/shad pound net set;
- (3) Bait pound net set;
- (4) Shrimp pound net set;
- (5) Blue crab pound net set; or
- (6) Other finfish pound net set.

(d) For proposed new locations, the Fisheries Director shall issue a public notice of intent to consider issuance of a Pound Net Set Permit allowing for public comments for 20 days, and after the comment period, may hold public meetings to take comments on the proposed pound net set. If the Director does not approve or

deny the application within 90 days of receipt of a complete and verified application, the application shall be deemed denied. For new locations, transfers and renewals, the Fisheries Director may deny the permit application if it is determined that granting the permit will be inconsistent with one or more of the following permitting criteria, as determined by the Fisheries Director

- (1) The application must be in the name of an individual and shall not be granted to a corporation, partnership, organization or other entity;
- (2) The proposed pound net set, either alone or when considered cumulatively with other existing pound net sets in the area, will not interfere with public navigation or with existing, traditional uses of the area other than navigation, and will not violate 15A NCAC 3J.0101 and .0102;
- (3) The proposed pound net set will not interfere with the rights of any riparian or littoral landowner, including the construction or use of piers;
- (4) The proposed pound net set will not, by its proximate location, interfere with existing pound net sets in the area;
- (5) The applicant has in the past complied with fisheries rules and laws and does not currently have any licenses or privileges under suspension or revocation. In addition, a history of habitual fisheries violations evidenced by eight or more convictions in ten years shall be grounds for denial of a pound net set permit;
- (6) The proposed pound net set is in the public interest; or
- (7) The applicant has in the past complied with all permit conditions, rules and laws related to pound nets.

Approval shall be conditional based upon the applicant's continuing compliance with specific conditions contained on the Pound Net Set Permit and the conditions set out in Subparagraphs (1) through (8) of this Paragraph. The final decision to approve or deny the Pound Net Set Permit application may be appealed by the applicant by filing a petition for a contested case hearing, in writing, within 60 days from the date of mailing notice of such final decision to the applicant, with the Office of Administrative Hearings.

(e) An application for renewal of an existing Pound Net Set Permit shall be filed not less than 30 days prior to the date of expiration of the existing permit, and shall not be processed unless filed by the permittee. The Fisheries Director shall review the renewal application under the criteria for issuance of a new Pound Net Set Permit, and may decline to renew the permit accordingly. The Fisheries Director may hold public meetings and may conduct such investigations necessary to determine if the permit should be renewed.

(f) A Pound Net Set Permit, whether a new or renewal permit, shall expire one year from the date of issuance. The expiration date shall be stated on the permit.

(g) Pound net sets, except herring/shad pound net sets in the Chowan River, shall be operational for a minimum period of 30 consecutive days during the permit period unless a season for the fishery for which the pound net set is permitted is ended earlier due to a quota being met. For purposes of this Rule, operational means with net attached to stakes or anchors for the lead and pound, including only a single pound in a multi-pound set, and a

non-restricted opening leading into the pound such that the set is able to catch and hold fish. The permittee, including permittees of operational herring/shad pound net sets in the Chowan River, shall notify the Marine Patrol Communications Center by phone within 72 hours after the pound net set is operational. Notification shall include name of permittee, pound net set permit number, county where located, a specific location site, and how many pounds are in the set. It is unlawful to fail to notify the Marine Patrol Communications Center within 72 hours after the pound net set is operational or to make false notification when said pound net set is not operational. Failure to comply with this Paragraph shall be grounds for the Fisheries Director to revoke this and any other pound net set permits held by the permittee and for denial of any future pound net set permits.

(h) It is unlawful to transfer a pound net set permit without a completed application for transfer being submitted to the Division of Marine Fisheries not less than 45 days before the date of the transfer. Such application shall be made by the proposed new permittee in writing and shall be accompanied by a copy of the current permittee's permit and an application for a pound net set permit in the new permittee's name. The Fisheries Director may hold a public meeting and may conduct such investigations necessary to determine if the permit should be transferred. No transfer is effective until approved and processed by the Division. The transferred permit shall expire on the same date as the initial permit. Upon death of the permittee, the permit may be transferred to the Administrator/Executor of the estate of the permittee if transferred within six months of the Administrator/Executor's qualification under G.S. 28A. The Administrator/Executor must provide a copy of the deceased permittee's death certificate, a copy of the certificate of administration and a list of eligible immediate family members as defined in G.S. 113-168 to the Morehead City Office of the Division of Marine Fisheries. Once transferred to the Administrator/Executor, the Administrator/Executor may transfer the permit(s) to eligible family members of the deceased permittee.

(i) Every pound net set in coastal fishing waters shall have yellow light reflective tape or yellow light reflective devices on each pound. The light reflective tape or yellow light reflective devices shall be affixed to a stake of at least three inches in diameter on any outside corner of each pound, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions. In addition, every pound net set shall have a marked navigational opening of at least 25 feet in width at the end of every third pound. Such opening shall be marked with yellow light reflective tape or yellow light reflective devices on each side of the opening. The yellow light reflective tape or yellow light reflective devices shall be affixed to a stake of at least three inches in diameter, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions. If a permittee notified of a violation under this Paragraph fails or refuses to take corrective action sufficient to remedy the violation within 10 days of receiving notice of the violation, the Fisheries Director shall revoke the permit.

(j) In Core Sound, it is unlawful to use pound net sets in the following areas except that only those pound net set permits

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valid within the specified area as of March 1, 1994, may be renewed or transferred subject to the requirements of this Rule:

- (1) That area bounded by a line beginning at Green Day Marker #3 near Hog Island Point to Green Flasher #13; to Green Flasher #11; to a point on shore north of Great Ditch 34° 58.9000' N - 76° 15.1000' W; thence following the shoreline to Hog Island Point 34° 58.5083' N - 76° 15.7882' W; thence back to Green Day Marker #3.
- (2) That area bounded by a line beginning at Green Day Marker #3 near Hog Island Point to Cedar Island Point 34° 57.5001' N - 76° 1'6.5664' W; to Red Flasher #18; to Red Flasher #2; back to Green Marker #3.
- (3) That area bounded by a line beginning on Long Point 34° 56.4809' N - 76° 16.7344' W; to Red Marker #18; to Green Marker #19; thence following the six foot contour past the Wreck Beacon to a point at 34° 53.7500' N - 76° 18.1833' W; to Green Marker #25; to Green Marker #27; to Red Flasher #28; to Green Flasher #29; to Green Flasher #31; to Green Flasher #35; to Green Flasher #37; to Bells Point 34° 56.9673' N - 76° 29.9990' W; thence north following the shoreline of Core Sound across the mouth of Jarrett Bay, Oyster Creek, Fulcher Creek, Willis Creek, Nelson Bay, Styron Bay, East Thorofare Bay and Rumley Bay, back to Long Point.

(k) Escape Panels:

(1) The Fisheries Director may, by proclamation, require escape panels in pound net sets and may impose any or all of the following requirements or restrictions on the use of escape panels:

- (A) Specify size, number, and location.
- (B) Specify mesh length, but not more than six inches.
- (C) Specify time or season.
- (D) Specify areas.

- (2) It is unlawful to use flounder pound net sets without four unobstructed escape panels in each pound south and east of a line beginning at a point on Long Shoal Point at 35° 57.3950' N-76° 00.8166' W; to Green Marker No. 5 east of the Intracoastal Waterway in the Alligator River at 35° 56.7316' N-75° 59.3000' W; thence following Route #1 of the Intracoastal Waterway in Albemarle Sound to Green Marker No. 171 at 36° 09.3033' N-75° 53.4916' W; to a point on Camden Point at 36° 09.9093' N - 75° 54.6601' W. The escape panels must be fastened to the bottom and corner ropes on each wall on the side and back of the pound opposite the heart. The escape panels must be a minimum mesh size of five and one-half inches, hung on the diamond, and must be at least six meshes high and eight meshes long.

- (l) Pound net sets are subject to inspection at all times.
- (m) Daily reporting may be a condition of the permit for pound net sets for fisheries under a quota.
- (n) It is unlawful to fail to remove all pound net stakes and associated gear within 30 days after expiration of the permit or notice by the Fisheries Director that an existing pound net set permit has been revoked or denied.

(o) It is unlawful to abandon an existing pound net set without completely removing from the coastal waters all stakes and associated gear within 30 days.

*History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52; 150B-23; Eff. January 1, 1991; Amended Eff. April 1, 1999; March 1, 1996; March 1, 1994; September 1, 1991; January 1, 1991; Temporary Amendment Eff. August 1, 2000; Amended Eff. April 1, 2001.*

**15A NCAC 03J .0209 ALBEMARLE SOUND/CHOWAN RIVER HERRING MANAGEMENT AREAS**

(a) Defined areas:

- (1) The Albemarle Sound Herring Management Area is defined as Albemarle Sound and all its joint water tributaries; Currituck Sound; Roanoke and Croatan sounds and all their joint water tributaries, including Oregon Inlet, north of a line from Roanoke Marshes Point 35° 48.3693' N – 75° 43.7232' W across to the north point of Eagles Nest Bay 35° 44.1710' N – 75° 31.0520' W.
- (2) The Chowan River Herring Management Area is defined as that area northwest of a line from Black Walnut Point 35° 59.9267' N – 76° 41.0313' W to Reedy Point 36° 02.2140' N – 76° 39.3240' W, to the North Carolina/Virginia state line; including the Meherrin River.

(b) Effective January 1, 2001, it is unlawful to use drift gill nets with a mesh length less than three inches from January 1 through May 15.

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52;*

*Temporary Adoption Eff. May 1, 2000; Eff. April 1, 2001.*

**15A NCAC 03J .0402 FISHING GEAR RESTRICTIONS**

(a) It is unlawful to use commercial fishing gear in the following areas during dates and times specified for the identified areas:

- (1) Atlantic Ocean - Dare County:

(A) Nags Head:

(i) Seines and gill nets may not be used from the North Town Limit of Nags Head at Eight Street southward to Gulf Street:

(I) From Wednesday through Saturday of the week of the Nags Head Surf Fishing Tournament held during October of each year the week prior to Columbus Day.

(II) From November 1 through December 15.

(ii) Commercial fishing gear may not be used within 750 feet of licensed fishing piers when open to the public.

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- (B) Oregon Inlet. Seines and gill nets may not be used from the Friday before Easter through December 31:
- (i) Within one-quarter mile of the beach from the National Park Service Ramp #4 (35° 48.2500' N - 75° 32.7000' W) on Bodie Island to the northern terminus of the Bonner Bridge (35° 46.5000' N - 75° 32.3666' W) on Hwy. 12 over Oregon Inlet.
  - (ii) Within the area known locally as "The Pond", a body of water generally located to the northeast of the northern terminus of the Bonner Bridge.
- (C) Cape Hatteras (Cape Point). Seines and gill nets may not be used within one-half mile of Cape Point from the Friday before Easter through December 31. The closed area is defined by a circle with a one-half mile radius having the center at Cape Point (35° 12.9000' N - 75° 31.7166' W). The closed area begins one-half mile north of Cape Point at a point on the beach (35° 13.4333' N - 75° 31.6500' W) and extends in a clockwise direction, one-half mile from Cape Point, to a point on the beach (35° 13.3833' N - 75° 31.9833' W) northwest of Cape Point.
- (2) Atlantic Ocean - Onslow and Pender Counties. Commercial fishing gear may not be used during the time specified for the following areas:
- (A) Topsail Beach. From January 1 through December 31, that area around Jolly Rodger Fishing Pier bordered on the offshore side by a line 750 feet from the end of the pier and on the northeast and southwest by a line beginning at a point on the beach one-quarter mile from the pier extending seaward to intersect the offshore boundary.
- (B) Surf City:
- (i) From January 1 to June 30, those areas around the Surf City and Barnacle Bill's Fishing Piers bordered on the offshore side by a line 750 feet from the ends of the piers, on the southwest by a line beginning at a point on the beach one-quarter mile from the piers and on the northeast by a line beginning at a point on the beach 750 feet from the piers extending seaward to intersect the offshore boundaries.
  - (ii) From July 1 to December 31, those areas around the piers bordered on the offshore side by a line 750 feet from the ends of the piers, on the southwest by a line beginning at a point on the beach 750 feet from the piers and on the northeast by a line beginning at a point on the beach one-quarter mile from the piers extending seaward to intersect the offshore boundaries.
- (3) Atlantic Ocean - New Hanover County. Carolina Beach Inlet through Kure Beach. Commercial fishing gear may not be used during the times specified for the following areas:
- (A) From the Friday before Easter to November 30, within the zones adjacent to the Carolina Beach, Center and Kure Beach Fishing Piers bordered on the offshore side by a line 750 feet from the ends of the piers and on the north and south by a line beginning at a point on the beach one-quarter mile from the pier extending seaward to intersect the offshore boundary, except the southern boundary for Kure Beach Pier is a line beginning on the beach one mile south of the pier to the offshore boundary for the pier.
- (B) From May 1 to November 30, within 900 feet of the beach, from Carolina Beach Inlet to the southern end of Kure Beach with the following exceptions:
- (i) From one-quarter mile north of Carolina Beach Fishing pier to Carolina Beach Inlet from October 1 to November 30:
    - (I) Strike nets may be used within 900 feet of the beach;
    - (II) Attended nets may be used between 900 feet and one-quarter mile of the beach.
  - (ii) Strike nets and attended gill nets may be used within 900 feet of the beach from October 1 to November 30 in other areas except those described in Part (a)(3)(A) and Subpart (a)(3)(B)(i) of this Rule.
  - (iii) It is unlawful to use commercial fishing gear within 900 feet of the beach from Carolina Beach Inlet to New Inlet from October 15 through October 17.
- (b) It is unlawful to use gill nets or seines in the following areas during dates and times specified for the identified areas:
- (1) Neuse River and South River, Carteret County. No more than 1,200 feet of gill net(s) having a stretched mesh of five inches or larger may be used:
- (A) Within one-half mile of the shore from Winthrop Point at Adams Creek to Channel Marker "2" at the mouth of Turnagain Bay.
  - (B) Within South River.
- (2) Cape Lookout, Carteret County:
- (A) Gill nets or seines may not be used in the Atlantic Ocean within 300 feet of the Rock Jetty (at Cape Lookout between Power Squadron Spit and Cape Point).
  - (B) Seines may not be used within one-half mile of the shore from Power Squadron Spit south to Cape Point and northward to Cape Lookout Lighthouse including the area inside the "hook" south of a line from the COLREGS Demarcation Line across Bardens Inlet to the eastern end of Shackleford Banks and then to the northern tip of Power Squadron Spit from 12:01 a.m. Saturdays until

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12:01 a.m. Mondays from May 1 through November 30.

- (3) State Parks/Recreation Areas:
  - (A) Gill nets or seines may not be used in the Atlantic Ocean within one-quarter mile of the shore at Fort Macon State Park, Carteret County.
  - (B) Gill nets or seines may not be used in the Atlantic Ocean within one-quarter mile of the shore at Hammocks Beach State Park, Onslow County, from May 1 through October 1, except strike nets and attended gill nets may be used beginning August 15.
  - (C) Gill nets or seines may not be used within the boat basin and marked entrance channel at Carolina Beach State Park, New Hanover County.
- (4) Mooring Facilities/Marinas. Gill nets or seines may not be used from May 1 through November 30 within:
  - (A) One-quarter mile of the shore from the east boundary fence to the west boundary fence at U.S. Coast Guard Base Fort Macon at Beaufort Inlet, Carteret County;
  - (B) Canals within Pine Knoll Shores, Carteret County;
  - (C) Spooners Creek entrance channel and marina on Bogue Sound, Carteret County; and
  - (D) Harbor Village Marina on Topsail Sound, Pender County.
- (5) Masonboro Inlet. Gill nets and seines may not be used:
  - (A) Within 300 feet of either rock jetty; and
  - (B) Within the area beginning 300 feet from the offshore end of the jetties to the Intracoastal Waterway including all the waters of the inlet proper and all the waters of Shinn Creek.
- (6) Atlantic Ocean Fishing Piers. At a minimum, gill nets and seines may not be used within 300 feet of ocean fishing piers when open to the public. If a larger closed area has been delineated by the placement of buoys or beach markers as authorized by G.S. 113-185(a), it is unlawful to fish from vessels or with nets within the larger marked zone.
- (7) Topsail Beach, Pender County. It is unlawful to use gill nets and seines from 4:00 p.m. Friday until 6:00 a.m. the following Monday in the three finger canals on the south end of Topsail Beach.
- (8) Mad Inlet to Tubbs Inlet - Atlantic Ocean, Brunswick County. It is unlawful to use gill nets and seines from September 1 through November 15, except that a maximum of four commercial gill nets per vessel not to exceed 200 yards in length individually or 800 yards in combination may be used.

*History Note: Authority G.S. 113-133; 113-134; 113-182; 113-221; 143B-289.52; Eff. March 1, 1996; Amended Eff. April 1, 2001.*

**15A NCAC 03M .0503 FLOUNDER**

- (a) It is unlawful to possess flounder:

- (1) Less than 13 inches total length taken from internal waters;
  - (2) Less than 14 inches total length taken from the Atlantic Ocean in a commercial fishing operation;
  - (3) Less than 15 inches total length taken from the Atlantic Ocean for recreational purposes.
- (b) From October 1 through April 30, it shall be unlawful to use a trawl in the Atlantic Ocean within three miles of the ocean beach from the North Carolina/Virginia state line (36° (33' N) to Cape Lookout (34° 36' N) unless each trawl has a mesh length of 5 1/2 inches or larger diamond mesh (stretched) or 6 inches or larger square mesh (stretched) applied throughout the body, extension(s) and the cod end (tailbag) of the net except as provided in Paragraphs (h) and (i) of this Rule.
- (c) License to Land Flounder from the Atlantic Ocean:
    - (1) It is unlawful to land more than 100 pounds per trip of flounder taken from the Atlantic Ocean unless the owner of the vessel or in the case of Land or Sell Licenses, the responsible party, has been issued a License to Land Flounder from the Atlantic Ocean and the vessel in use is the vessel specified on the License to Land Flounder from the Atlantic Ocean.
    - (2) It is unlawful for a fish dealer to purchase or offload more than 100 pounds of flounder taken from the Atlantic Ocean by a vessel whose owner, or in the case of Land or Sell Licenses, the responsible party, has not first procured a valid North Carolina License to Land Flounder from the Atlantic Ocean and the vessel in use is the vessel specified on the License to Land Flounder from the Atlantic Ocean.
    - (3) It is unlawful for any person to land flounder from the Atlantic Ocean under a License to Land Flounder from the Atlantic Ocean unless that person is the holder of the license or the master designated on the license.
    - (4) It is unlawful for any individual to land flounder from the Atlantic Ocean without having ready at hand for inspection a valid License to Land Flounder from the Atlantic Ocean, except as specified in Subparagraph (c)(1) of this Rule.
  - (d) All fish dealer transactions in flounder landed from the Atlantic Ocean must be conducted in accordance with the Atlantic Ocean Flounder Dealer Permits in 15A NCAC 03O .0503 and related rules in 15A NCAC 03O .0500.
  - (e) It is unlawful to transfer flounder taken from the Atlantic Ocean from one vessel to another.
  - (f) It is unlawful to possess more than eight flounder per person per day taken for recreational purposes from the Atlantic Ocean.
  - (g) Tailbag liners of any mesh size, the multiple use of two or more cod ends, or other netting material that in any way could restrict the legal size mesh shall not be used or possessed on the deck of a vessel in the Atlantic Ocean from October 1 through April 30 from the North Carolina/Virginia state line (36° 33' N) to Cape Lookout (34° 36' N).
  - (h) Trawls with a cod end mesh size smaller than described in Paragraph (b) of this Rule may be used or possessed on the deck of a vessel provided not more than 100 pounds of flounder per trip from May 1 through October 31 or more than 200 pounds



from November 1 through April 30 is possessed aboard or landed from that vessel.

(i) Flynets are exempt from the flounder trawl mesh requirements if they meet the following definition:

- (1) The net has large mesh in the wings that measure 8 inches to 64 inches;
- (2) The first body section (belly) of the net has 35 or more meshes that are at least 8 inches; and
- (3) The mesh decreases in size throughout the body of the net to as small as 2 inches or smaller towards the terminus of the net.

(j) Commercial Season.

(1) The North Carolina season for landing ocean-caught flounder shall open January 1 each year. If 70 percent of the quota allocated to North Carolina in accordance with the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Fishery Management Plan for Summer Flounder is projected to be taken, the Fisheries Director shall, by proclamation, close North Carolina ports to landing of flounder taken from the ocean.

(2) The season for landing flounder taken in the Atlantic Ocean shall reopen November 1 if any of the quota allocated to North Carolina in accordance with the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Fishery Management Plan for Summer Flounder remains. If after reopening, 100 percent of the quota allocated to North Carolina in accordance with the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Fishery Management Plan for Summer Flounder is projected to be taken prior to the end of the calendar year, the Fisheries Director shall, by proclamation, close North Carolina ports to landing of flounder taken from the ocean.

(3) During any closed season prior to November 1, vessels may land up to 100 pounds of flounder per trip taken from the Atlantic Ocean.

(k) The Fisheries Director may, by proclamation, establish trip limits for the taking of flounder from the Atlantic Ocean to assure that the individual state quota allocated to North Carolina in the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Fishery Management Plan for Summer Flounder is not exceeded.

*History Note: Filed as a Temporary Amendment Eff. November 1, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*

*Authority G.S. 113-134; 113-169.5; 113-182; 113-221; 143B-289.52;*

*Eff. January 1, 1991;*

*Amended Eff. March 1, 1996; February 1, 1992;*

*Temporary Amendment Eff. December 23, 1996;*

*Amended Eff. April 1, 1997;*

*Temporary Amendment Eff. June 1, 1998; August 18, 1997;*

*Amended Eff. April 1, 1999;*

*Temporary Amendment Eff. May 1, 2000; July 1, 1999;*

*Amended Eff. April 1, 2001; August 1, 2000.*

**15A NCAC 03M .0513 RIVER HERRING AND SHAD**

(a) The Fisheries Director may, by proclamation, based on variability in environmental and local stock conditions, take any or all of the following actions in the blueback herring, alewife, American shad and hickory shad fisheries:

- (1) Specify size;
- (2) Specify season;
- (3) Specify area;
- (4) Specify quantity;
- (5) Specify means/methods; and
- (6) Require submission of statistical and biological data.

(b) The annual commercial quota (calendar year) for river herring in the Albemarle Sound and Chowan River Herring Management Area shall be 300,000 pounds to be allocated as follows:

- (1) 200,000 pounds to the pound net fishery for the Chowan River Herring Management Area;
- (2) 67,000 pounds to the Albemarle Sound Herring Management Area gill net fishery; and
- (3) 33,000 pounds to be allocated at the discretion of the Fisheries Director.

(c) For the purpose of this rule, the Albemarle Sound Herring Management Area and the Chowan River Herring Management Area are defined in 15A NCAC 03J .0209.

(d) It is unlawful to possess more than 25 blueback herring or alewife, in the aggregate, per person per day taken for recreational purposes.

(e) It is unlawful to take American shad and hickory shad by any method except hook-and-line from April 15 through December 31.

(f) It is unlawful to possess more than 10 American shad or hickory shad, in the aggregate, per person per day taken by hook-and-line or for recreational purposes.

*History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52;*

*Eff. March 1, 1995;*

*Amended Eff. August 1, 1998;*

*Temporary Amendment Eff. May 1, 2000; August 1, 1999; July 1, 1999; March 1, 1999;*

*Amended Eff. April 1, 2001.*

**15A NCAC 03O .0503 PERMIT CONDITIONS: SPECIFIC**

(a) Horseshoe Crab Biomedical Use Permit:

- (1) It is unlawful to use horseshoe crabs for biomedical purposes without first obtaining a permit.
- (2) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to submit a report on the use of horseshoe crabs to the Division of Marine Fisheries due on February 1 of each year unless otherwise specified on the permit. Such reports will be filed on forms provided by the Division and will include but not be limited to a monthly account of the number of crabs harvested, statement of percent mortality up to the point of release, and a certification

that harvested horseshoe crabs are solely used by the biomedical facility and not for other purposes.

- (3) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to comply with the Atlantic States Marine Fisheries Commission Horseshoe Crab Fisheries Management Plan monitoring and tagging requirements for horseshoe crabs. Copies of this plan are available from the Atlantic States Marine Fisheries Commission, 1444 Eye Street, NW, 6th Floor, Washington, DC 20005, (202) 289-6400, or the Division of Marine Fisheries' Morehead City Office.
- (b) Dealers Permits for Monitoring Fisheries under a Quota/Allocation:
- (1) During the commercial season opened by proclamation or rule for the fishery for which a Dealers Permit for Monitoring Fisheries under a Quota/Allocation permit is issued, it is unlawful for fish dealers issued such permit to fail to:
- (A) Fax or send via electronic mail by noon daily, on forms provided by the Division, the previous day's landings for the permitted fishery to the dealer contact designated on the permit. Landings for Fridays or Saturdays may be submitted on the following Monday. If the dealer is unable to fax or electronic mail the required information, the permittee may call in the previous day's landings to the dealer contact designated on the permit but must maintain a log furnished by the Division;
- (B) Submit the required log to the Division upon request or no later than five days after the close of the season for the fishery permitted;
- (C) Maintain faxes and other related documentation in accordance with 15A NCAC 3I .0114;
- (D) Contact the dealer contact daily regardless of whether or not a transaction for the fishery for which a dealer is permitted occurred;
- (E) Record the permanent dealer identification number on the bill of lading or receipt for each transaction or shipment from the permitted fishery.
- (2) Striped Bass Dealer Permit:
- (A) It is unlawful for a fish dealer to possess, buy, sell or offer for sale striped bass taken from the following areas without first obtaining a Striped Bass Dealer Permit validated for the applicable harvest area:
- (i) Atlantic Ocean;
- (ii) Albemarle Sound Management Area for Striped Bass which is defined as Albemarle Sound and all its joint water tributaries including Roanoke River, up to the Hwy. 258 bridge; Eastmost and Middle Rivers, and Cashie River below Sans Souci Ferry; Currituck Sound and all its joint water tributaries; Roanoke and Croatan Sounds and all their joint water tributaries, including Oregon Inlet, east of a line from Baum Point 35° 55.1602' N - 75° 39.5736' W; to Rhodoms Point 36° 00.2146' N - 75° 43.6399' W and east of a line from Eagleton Point 36° 01.3178' N - 75° 43.6585' W; to Long Point 36° 02.4971' N - 75° 44.2261' W at the mouth of Kitty Hawk Bay and north of a line from Roanoke Marshes Point 35° 48.3693' N - 75° 43.7232' W, to the north point of Eagle Nest Bay 35° 44.1710' N - 75° 31.0520' W; Croatan Sound south of a line at the Highway 64/264 bridge at Manns Harbor and north of a line from Roanoke Marshes Point 35° 48.3693' N - 75° 43.7232' W; across to the north point of Eagle Nest Bay 35° 44.1710' N - 75° 31.0520' W;
- (iii) Central Area which is defined as all internal coastal waters of Carteret, Craven, Beaufort, and Pamlico counties; Pamlico and Pungo rivers; and Pamlico Sound south of a line from Roanoke Marshes Point 35° 48.3693' N - 75° 43.7232' W, to the north point of Eagle Nest Bay 35° 44.1710' N - 75° 31.0520' W (southern boundary of the Albemarle Sound Management Area for Striped Bass) to the county boundaries;
- (iv) Southern Area which is defined as all internal coastal waters of Pender, Onslow, New Hanover, and Brunswick counties.
- (B) No permittee may possess, buy, sell or offer for sale striped bass taken from the harvest areas opened by proclamation without having a North Carolina Division of Marine Fisheries issued valid tag for the applicable area affixed through the mouth and gill cover, or, in the case of striped bass imported from other states, a similar tag that is issued for striped bass in the state of origin. North Carolina Division of Marine Fisheries striped bass tags may not be bought, sold, offered for sale, or transferred. Tags shall be obtained at the North Carolina Division of Marine Fisheries Offices. The Division of Marine Fisheries shall specify the quantity of tags to be issued based on historical striped bass landings. It is unlawful for the permittee to fail to surrender unused tags to the Division upon request.
- (3) Albemarle Sound Management Area for River Herring Dealer Permit: It is unlawful to possess, buy, sell or offer for sale river herring taken from the following area without first obtaining an Albemarle Sound Management Area for River Herring Dealer Permit: Albemarle Sound Management Area for River Herring is defined as Albemarle Sound and all its joint water tributaries including Roanoke River, up to the Hwy. 258 bridge; Eastmost and Middle Rivers, and Cashie River below Sans Souci Ferry; Currituck Sound and all its joint water tributaries; Roanoke and Croatan Sounds

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and all their joint water tributaries, including Oregon Inlet, east of a line from Baum Point 35° 55.1602' N - 75° 39.5736' W; to Rhodoms Point 36° 00.2146' N - 75° 43.6399' W and east of a line from Eagleton Point 36° 01.3178' N - 75° 43.6585' W; to Long Point 36° 02.4971' N - 75° 44.2261' W at the mouth of Kitty Hawk Bay and north of a line from Roanoke Marshes Point 35° 48.3693' N - 75° 43.7232' W, to the north point of Eagle Nest Bay 35° 44.1710' N - 75° 31.0520' W; Croatan Sound south of a line at the Highway 64/264 bridge at Manns Harbor and north of a line from Roanoke Marshes Point 35° 48.3693' N - 75° 43.7232' W; across to the north point of Eagle Nest Bay 35° 44.1710' N - 75° 31.0520' W.

(4) Atlantic Ocean Flounder Dealer Permit:

(A) It is unlawful for a Fish Dealer to allow vessels holding a valid License to Land Flounder from the Atlantic Ocean to land more than 100 pounds of flounder from a single transaction at their licensed location during the open season without first obtaining a Atlantic Ocean Flounder Dealer Permit. The licensed location must be specified on the Atlantic Ocean Flounder Dealer Permit and only one location per permit will be allowed.

(B) It is unlawful for a Fish Dealer to possess, buy, sell, or offer for sale more than 100 pounds of flounder from a single transaction from the Atlantic Ocean without first obtaining an Atlantic Ocean Flounder Dealer Permit.

(5) Atlantic Ocean American Shad Dealer Permit: It is unlawful for a Fish Dealer to possess, buy, sell or offer for sale American Shad taken from the Atlantic Ocean without first obtaining an Atlantic Ocean American Shad Dealer Permit.

(c) Blue Crab Shedding Permit: It is unlawful to possess more than 50 blue crabs in a shedding operation without first obtaining a Blue Crab Shedding Permit from the Division of Marine Fisheries.

(d) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean:

(1) It is unlawful to trawl for shrimp in the Atlantic Ocean without Turtle Excluder Devices installed in trawls within one nautical mile of the shore from Browns Inlet (34° 17.6' N latitude) to Rich's Inlet (34° 35.7' N latitude) without a valid Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean when allowed by proclamation from April 1 through November 30.

(2) It is unlawful to tow for more than 55 minutes from April 1 through October 31 and 75 minutes from November 1 through November 30 in this area when working under this permit. Tow time begins when the doors enter the water and ends when the doors exit the water.

(3) It is unlawful to fail to empty the contents of each net at the end of each tow.

(4) It is unlawful to refuse to take observers upon request by the Division of Marine Fisheries or the National Marine Fisheries Service.

(5) It is unlawful to fail to report any sea turtle captured. Reports must be made within 24 hours of the capture to the Marine Patrol Communications Center by phone. All turtles taken incidental to trawling must be handled and resuscitated in accordance with requirements specified in 50 CFR 223.206, copies of which are available via the Internet at www.nmfs.gov and at the Division of Marine Fisheries, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.

(e) Pound Net Set Permits. Rules setting forth specific conditions for pound net sets are found in 15A NCAC 3J .0107.

History Note: Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 143B-289.52;

Temporary Adoption Eff. May 1, 2000;

Temporary Amendment Eff. September 1, 2000; August 1, 2000; Eff. April 1, 2001;

Amended Eff. April 1, 2001.

TITLE 16 - DEPARTMENT OF PUBLIC EDUCATION

16 NCAC 06C .0401 VACATION LEAVE

(a) All full-time or part-time permanent public school employees who are working or on paid leave for at least one-half of the calendar days in a month shall earn vacation leave, based on length of state service in North Carolina.

(b) A part-time permanent employee in a budgeted position shall earn vacation leave on a pro rata basis.

(c) Local boards of education may choose to record leave earned in hours. If leave is recorded in hours, the leave earned as indicated in this Paragraph shall be multiplied times the regular number of hours worked per day. Employees shall earn vacation leave as follows:

Yrs. of State Service	Days Per Month of Employment
Less than 2 yrs.	1.00
2 but less than 5 yrs.	1.15
5 but less than 10 yrs.	1.40
10 but less than 15 yrs.	1.65
15 but less than 20 yrs.	1.90
20 yrs. or more	2.15

(d) LEAs shall credit state service for full-time or part-time permanent employment figured on the same basis as for longevity pay. The LEA must establish the anniversary date for each employee on the basis of the employee's state service.

(e) The LEA may advance vacation leave to an employee.

(f) The LEA shall transfer unused vacation leave when an employee transfers between LEAs. An employee may have leave transferred to or from a state agency or institution, community college or technical institute, a position subject to the State Personnel Act in a local mental health center, public health, social services or emergency management agency, if the receiving agency is willing to accept the leave; otherwise, the employee shall be paid in a lump sum for accumulated leave not

to exceed 30 workdays or 240 hours, according to the earning rate.

(g) Leave payment at separation shall be subject to the following:

- (1) An employee who is overdrawn on leave when he or she separates will have the excess leave corrected through a deduction from the final salary check.
- (2) Payment for leave may be made on the regular payroll or on a supplemental payroll. The LEA shall make payment from the same source of funds and in the same proportion as the employee's salary is paid.
- (3) Terminal leave payment shall be subject to the same deductions as salary, including retirement.
- (4) The receipt of lump sum payment and retirement benefit shall not be deemed dual compensation.
- (5) The LEA shall make payment for unpaid salary, terminal leave and travel of a deceased employee to the personal representative of the deceased employee, or if there is no personal representative, to the Clerk of Superior Court of the county in which the employee resided.

(h) Each LEA shall maintain leave records for all employees. LEAs must inform employees of their leave balances at least once a year. LEAs must retain leave records for separated employees for at least five years from the date of separation.

(i) Leave must be taken in one-half days, whole days, or hours as determined for earning purposes by the local board.

(j) School bus drivers and instructional personnel who require a substitute may take vacation leave only on days when students are not in attendance. Instructional personnel who do not require a substitute may take vacation leave on any day school is in session. LEAs may designate specific scheduled workdays for required attendance. Employees may charge leave taken only to scheduled teacher workdays and the ten vacation leave days scheduled in the school calendar.

(k) Other employees may take vacation leave instead of sick leave. These employees must have an opportunity to take annual leave earned in the school year.

*History Note: Authority G.S. 115C-272; 115C-285; 115C-302.1; 115C-316;*

*Eff. July 1, 1986;*

*Amended Eff. July 1, 2001; July 1, 1994; October 1, 1993; December 1, 1991.*

#### **16 NCAC 06C .0402 SICK LEAVE**

(a) Public school employees who earn vacation leave shall also earn sick leave. Full-time employees shall earn one day per month or the number of hours worked daily by a full time employee in that class of work. Part-time employees shall earn and may use sick leave in proportion to the part of the day for which they are employed.

(b) The LEA may allow sick leave to be used for temporary disability which prevents an employee from performing his or her usual duties, illness in the employee's immediate family and attendant medical appointments which require the employee's attendance, death in the immediate family and medical appointments for the employee. For purposes of this Rule the

term immediate family shall include spouse, children, parents, brothers, sisters, grandparents, grandchildren, and dependents living in the household. The term shall also include the step, half, and in-law relationships. An employee of any public school system may contribute vacation or sick leave to another immediate family member who is employed by any State agency or public school system.

(c) Employees must take leave in one-half days, whole days, or hours as determined for earning purposes by the local board.

(d) Employees may accumulate sick leave indefinitely and may transfer sick leave as in the case of vacation leave.

(e) LEAs may advance sick leave not to exceed the amount which would be earned within the school year.

(f) An employee who is overdrawn on sick leave when the employee separates from service will have the excess leave corrected through a deduction from the final salary check.

(g) If the period of sick leave taken is less than 30 days, the employee will return to his or her position with the LEA. If the period of temporary disability exceeds 30 days, the superintendent shall determine when the employee is to be reinstated. The superintendent makes this decision based on the welfare of the students and the need for continuity of instruction.

(h) The LEA shall credit an employee who separates from service and returns within 60 months with all sick leave accumulated to the time of separation.

(i) Permanent full or part-time instructional personnel, excluding teacher assistants, who are absent due to their personal illness or injury in excess of their accumulated sick leave, shall be allowed extended sick leave of up to 20 work days throughout the regular term of employment. These days do not have to be consecutive. A new employee must have reported to work to be eligible for extended sick leave. The superintendent may require a doctor's certificate or other proof acceptable to the superintendent of the reason for the absence.

(j) An LEA may establish a voluntary sick leave bank for its employees. Any employee of an LEA that establishes a voluntary sick leave bank may, but is not required to, participate in the voluntary sick leave bank.

(1) The LEA shall develop and implement a plan for participation that shall include those factors listed in G.S. 115C-336(b)(i)-(vii) and the following:

- (A) a uniform number of days to be contributed to the bank by participants;
- (B) provisions for legitimate usage of days by participants;
- (C) means to protect against overdraft of total contributed days; and
- (D) safeguards to prevent abuses by participants.

(2) The LEA shall establish a sick leave bank committee to administer the sick leave bank.

- (A) The LEA shall assure that all local personnel are equitably represented on the committee.
- (B) The LEA shall develop operational rules for the efficient and effective functioning of the bank.
- (C) The LEA shall develop procedures for participants' usage of days based upon requirements in the plan.
- (D) The LEA shall specify the limits of the committee's authority.

- (E) The committee shall notify all participating employees of the ways in which their participation will affect their state retirement account.
- (3) The LEA shall ensure that its operational procedures require:
  - (A) that payment of substitutes and matching social security are charged to the appropriate program report code; and
  - (B) the reporting to the division of school business services of the Department of the number of employees participating itemized by job classification, the number of sick leave days withdrawn, the cost of the leave, and other data required for fiscal and programmatic accountability.

*History Note:* Authority G.S. 115C-12(8); 115C-336; Eff. July 1, 1986; Amended Eff. April 1, 2001; June 1, 1994; October 1, 1993; July 1, 1992.

**16 NCAC 06C .0501 GENERAL PROVISIONS**

- (a) Each LEA shall provide for the evaluation of all professional employees pursuant to G.S. 115C-333. The LEA shall base this evaluation upon performance standards and criteria contained in this Rule unless the LEA shall adopt an alternative evaluation pursuant to G.S. 115C-333(a). LEAs may adopt additional standards and criteria that are not in conflict with those adopted by the SBE, the General Statutes, or with this Section.
- (b) The person to whom an employee reports as designated in the job description, or that person's designee as approved by the superintendent, shall evaluate the employee.
- (c) The LEA shall inform all personnel of their job descriptions and the performance standards and criteria applicable to their position at the time of employment or the beginning of the school year.
- (d) The process for evaluating professional public school employees shall be as follows:
  - (1) All initially licensed and probationary status teachers shall have three observations conducted by a school administrator and one by a teacher and a summative appraisal conducted on an annual basis.
  - (2) All teachers who have less than four years of public school teaching experience shall be evaluated using the current teacher performance appraisal instrument unless the local board of education shall adopt an alternative evaluation instrument for these teachers that is validated, that reflects the performance standards and criteria contained in this Rule, and that addresses improving student achievement and employee skills and knowledge.
  - (3) Local school administrative units may conduct more than three observations for personnel identified by the local school administrative unit as requiring more frequent observations.
- (e) Each LEA shall provide orientation on the performance appraisal process to its personnel.

- (f) The performance appraisal shall address the following criteria:
  - (1) a basis for self-improvement by professional personnel;
  - (2) data for planning staff development activities for personnel at the school, administrative unit, regional and state levels; and
  - (3) data for employment decisions.
- (g) Each person may place written comments regarding the evaluation on their performance appraisal instruments.
- (h) Each LEA shall adopt a rating scale for the evaluation or use the following scale:
  - (1) Unsatisfactory. Performance is consistently inadequate or unacceptable and most practices require considerable improvement to minimum performance expectations. Teacher requires close and frequent supervision in the performance of all responsibilities.
  - (2) Below Standard. Performance is sometimes inadequate or unacceptable and needs improvement. Teacher requires supervision and assistance to maintain an adequate scope of competencies, and sometimes fails to perform additional responsibilities as assigned.
  - (3) At Standard. Performance is consistently adequate or acceptable. Teaching practices fully meet all performance expectations at an acceptable level. Teacher maintains an adequate scope of competencies and performs additional responsibilities as assigned.
  - (4) Above Standard. Performance is consistently high. Teaching practices are demonstrated at a high level. Teacher seeks to expand scope of competencies and undertakes additional appropriate responsibilities.

*History Note:* Authority G.S. 115C-333; Eff. July 1, 1986; Amended Eff. April 1, 2001; September 1, 1999.

**16 NCAC 06D .0503 STATE GRADUATION REQUIREMENTS**

- (a) In order to graduate and receive a high school diploma, public school students shall meet the requirements of paragraph (b) and shall attain passing scores on competency tests adopted by the SBE and administered by the LEA. Students who satisfy all state and local graduation requirements but who fail the competency tests shall receive a certificate of achievement and transcript and shall be allowed by the LEA to participate in graduation exercises.
  - (1) The passing score for the competency test, which is the same as grade-level proficiency as set forth in Rule .0502 of this Subchapter, shall be level III or higher.
  - (2) Special education students may apply in writing to be exempted from taking the competency tests. Before it approves the request, the LEA must assure that the parents, or the child if aged 18 or older, understand that each student must pass the competency tests to receive a high school diploma.
  - (3) Any student who has failed to pass the competency tests by the end of the last school month of the year in which the student's class graduates may receive additional remedial instruction and continue to take the

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competency tests during regularly scheduled testing until the student reaches maximum school age.

(b) In addition to the requirements of Paragraph (a), students must successfully complete 20 course units in grades 9-12 as specified below.

(1) Effective with the class entering ninth grade for the first time in the 2000-2001 school year, students shall select one of the following four courses of study:

NOTE: All students are encouraged, but not required, to include at least one elective course in arts education.

(A) Career preparation, which shall include:

- (i) four credits in English language arts, which shall be English I, II, III, and IV;
- (ii) three credits in mathematics, one of which shall be algebra I (except as limited by G.S. 115C-81(b));
- (iii) three credits in science, which shall include biology, a physical science, and earth/environmental science;
- (iv) three credits in social studies, which shall be Economic, Legal and Political Systems (ELPS), U.S. history, and world studies;
- (v) one credit in health and physical education;
- (vi) four credits in career/technical education, which shall be in a career concentration or pathway that leads to a specific career field and which shall include a second-level (advanced) course;
- (vii) two elective credits; and
- (viii) other credits designated by the LEA.

(B) College technical preparation, which shall include:

- (i) four credits in English language arts, which shall be English I, II, III, and IV;
- (ii) three credits in mathematics, which shall be either algebra I, geometry, and algebra II; or algebra I, technical mathematics I, and technical mathematics II; or integrated mathematics I, II, and III;
- (iii) three credits in science, which shall include biology, a physical science, and earth/environmental science;
- (iv) three credits in social studies, which shall be Economic, Legal and Political Systems (ELPS), U.S. history, and world studies;
- (v) one credit in health and physical education;
- (vi) four credits in career/technical education, which shall be in a career concentration or pathway that leads to a specific career field and which shall include a second-level (advanced) course;
- (vii) two elective credits; and
- (viii) other credits designated by the LEA.

NOTE: A student who is pursuing this course of study may also meet the requirements of a college/university

course of study by completing one additional mathematics course for which Algebra II is a prerequisite and, effective with the class entering the ninth grade for the first time in the 2002-03 school year, two credits in the same second language.

(C) College/university preparation, which shall include:

- (i) four credits in English language arts, which shall be English I, II, III, and IV;
- (ii) three credits in mathematics, which shall be algebra I, algebra II, and geometry or a higher level course for which algebra II is a prerequisite; or integrated mathematics I, II, and III; however, effective with the class entering the ninth grade for the first time in the 2002-03 school year, this requirement shall become four credits in mathematics, which shall be algebra I, algebra II, geometry, and a higher level course for which algebra II is a prerequisite; or integrated mathematics I, II, III, and one course beyond integrated mathematics III;
- (iii) three credits in science, which shall include biology, a physical science, and earth/environmental science;
- (iv) three credits in social studies, which shall be Economic, Legal and Political Systems (ELPS), U.S. history, and world studies;
- (v) one credit in health and physical education;
- (vi) two credits in the same second language;
- (vii) four elective credits, except that effective with the class entering the ninth grade for the first time in the 2002-03 school year, this shall be reduced to three elective credits; and
- (viii) other credits designated by the LEA.

(D) Occupational, which shall include:

- (i) four credits in English language arts, which shall be Occupational English I, II, III, and IV;
- (ii) three credits in mathematics, which shall be Occupational Mathematics I, II, and III;
- (iii) two credits in science, which shall be Life Skills Science I and II;
- (iv) two credits in social studies, which shall be Government/U.S. History and Self-Advocacy/Problem Solving;
- (v) one credit in health and physical education;
- (vi) six credits in occupational preparation education, which shall be Occupational Preparation I, II, III, IV, 240 hours of

- community-based training, and 360 hours of paid employment;
- (vii) four vocational education elective credits;
- (viii) computer proficiency as specified in the student's IEP;
- (ix) a career portfolio; and
- (x) completion of the student's IEP objectives.

- (2) LEAs may count successful completion of course work in the ninth grade at a school system which does not award course units in the ninth grade toward the requirements of this Rule.
- (3) LEAs may count successful completion of course work in grades 9-12 at a summer school session toward the requirements of this Rule.
- (4) LEAs may count successful completion of course work in grades 9-12 at an off-campus institution toward the locally-designated electives requirements of this Rule. 23 NCAC 2C .0305 shall govern enrollment in community college institutions.

(c) Effective with the class of 2001, all students must demonstrate computer proficiency as a prerequisite for high school graduation. The passing scores for this proficiency shall be 47 on the multiple choice test and 49 on the performance test. This assessment shall begin at the eighth grade. A student with disabilities shall demonstrate proficiency by the use of a portfolio if this method is required by the student's IEP.

(d) Special needs students as defined by G.S. 115C-109, excluding gifted and pregnant, who do not meet the requirements for a high school diploma shall receive a graduation certificate and shall be allowed to participate in graduation exercises if they meet the following criteria:

- (1) successful completion of 20 course units by general subject area (four English, three math, three science, three social studies, one health and physical education, and six local electives) under Paragraph (b). These students are not required to pass the specifically designated courses such as Algebra I, Biology or United States history,
- (2) completion of all IEP requirements.

*History Note: Authority G.S. 115C-12(9b); 115C-81(b)(4); N.C. Constitution, Article IX, Sec. 5; Eff. December 1, 1999; Amended Eff. December 1, 2000.*

**16 NCAC 06G .0305 ANNUAL PERFORMANCE STANDARDS, GRADES K-12**

(a) For purposes of this Section, the following definitions shall apply to kindergarten through twelfth grade:

- (1) "Accountability measures" are SBE-adopted tests designed to gauge student performance and achievement.
- (2) "b<sub>0</sub>" means the state average rate of growth used in the regression formula for the respective grades and content areas (reading and mathematics) in grades 3 through 8 and grade 10; or the state average performance used in the prediction formula for respective high school end-of-course tests. The values for b<sub>0</sub> shall be as follows:

- (A) for reading:
  - (i) 6.2 for grade 3;
  - (ii) 5.2 for grade 4;
  - (iii) 4.6 for grade 5;
  - (iv) 3.0 for grade 6;
  - (v) 3.3 for grade 7;
  - (vi) 2.7 for grade 8; and
  - (vii) 2.3 for grade 10.

- (B) for mathematics:
  - (i) 12.8 for grade 3;
  - (ii) 7.3 for grade 4;
  - (iii) 7.4 for grade 5;
  - (iv) 7.1 for grade 6;
  - (v) 6.5 for grade 7;
  - (vi) 4.9 for grade 8; and
  - (vii) 2.3 for grade 10.

- (C) for EOC courses:
  - (i) 60.4 for Algebra I;
  - (ii) 55.2 for Biology;
  - (iii) 54.0 for ELPS (Economic, Legal, and Political Systems);
  - (iv) 53.3 for English I;
  - (v) 56.0 for U.S. History;
  - (vi) 59.3 for Algebra II;
  - (vii) 56.9 for Chemistry;
  - (viii) 58.5 for Geometry;
  - (ix) 53.8 for Physical Science; and
  - (x) 56.1 for Physics.

(3) "b<sub>1</sub>" means the value used to estimate true proficiency in the regression formulas for grades 3 through 8 and grade 10. The values for b<sub>1</sub> shall be as follows:

- (A) for reading:
  - (i) 0.46 for grade 3;
  - (ii) 0.22 for grades 4 through 8; and
  - (iii) 0.24 for grade 8 to 10.

- (B) for mathematics:
  - (i) 0.30 for grade 3;
  - (ii) 0.26 for grades 4 through 8; and
  - (iii) 0.28 for grade 8 to 10.

(4) "b<sub>2</sub>" means the value used to estimate regression to the mean in the regression formula for grades 3 through 8 and 10. The values for b<sub>2</sub> shall be as follows:

- (A) for reading:
  - (i) -0.91 for grade 3;
  - (ii) -0.60 for grades 4 through 8; and
  - (iii) -0.52 for grades 8 to 10.

- (B) for mathematics:
  - (i) -0.47 for grade 3;
  - (ii) -0.58 for grades 4 through 8; and
  - (iii) -0.43 for grades 8 to 10.

(5) "b<sub>IRP</sub>" means the value used to estimate the effect of the school's average reading proficiency on the predicted average EOC test score. The values for b<sub>IRP</sub> shall be as follows:

- (A) 0.71 for Biology;
- (B) 0.88 for ELPS;
- (C) 1.01 for English I;
- (D) 0.68 for U.S. History;

- (E) 0.43 for Algebra II;  
 (F) 0.42 for Geometry; and  
 (G) 0.58 for Physical Science.
- (6) "b<sub>IMP</sub>" means the value used to estimate the effect of the school's average math proficiency on the predicted average EOC test score. The values for b<sub>IMP</sub> shall be as follows:  
 (A) 0.88 for Algebra I;  
 (B) 0.318 for Biology;  
 (C) 0.88 for ELPS;  
 (D) 0.15 for U.S. History;  
 (E) 0.39 for Geometry;  
 (F) 0.34 for Physical Science; and  
 (G) 0.58 for Physics.
- (7) "b<sub>IAP</sub>" means the value used to estimate the effect of the school's average Algebra I proficiency on the predicted average EOC test score. The values for b<sub>IAP</sub> shall be as follows:  
 (A) 0.89 for Algebra II;  
 (B) 0.18 for Chemistry; and  
 (C) 0.43 for Geometry.
- (8) "b<sub>IBP</sub>" means the value used to estimate the effect of the school's average Biology proficiency on the predicted average EOC test score. The values for b<sub>IBP</sub> shall be 0.51 for Chemistry and 0.66 for Physics.
- (9) "b<sub>IEP</sub>" means the value used to estimate the effect of the school's average English I proficiency on the predicted average EOC test score. The values for b<sub>IEP</sub> shall be 0.27 for Chemistry and 0.32 for Physics.
- (10) "Compliance commission" means that group of 22 persons selected by the SBE to advise the SBE on testing and other issues related to school accountability and improvement. The commission shall be composed of two members from each of the eight educational districts: five teachers, five principals, four central office staff representatives, two local school board representatives; and five at-large members who represent parents, business (two members), and the community.
- (11) "Composite score" means a summary of student performance in a school. A composite score may include reading, writing, and mathematics in grades 3 through 8 and in Algebra I & II, Biology, ELPS, English I, English II (Writing), Geometry, Chemistry, Physics, Physical Science, and U.S. History in a school where one or more of these EOC tests are administered, as well as student performance on the NC High School Comprehensive Test, the NC Computer Skills Test, competency passing rate, dropout rates, and percent diploma recipients who satisfy the requirements for College Prep/College Tech Prep courses of study in grades 9 through 12 to the extent that any apply in a given school.
- (12) "Eligible students" means the total number of students in membership minus the number of students excluded from participation in a statewide assessment.
- (13) "Expected growth" means the amount of growth in student performance that is projected through use of the regression formula in grades 3 through 8 and grade 10 in reading and mathematics.
- (14) "Exemplary growth" means the amount of growth in student performance in grades 3 through 8 and grade 10 in reading and mathematics that is projected through use of the regression formula that includes the state average rate of growth adjusted by an additional ten percent (10%).
- (15) "Growth standards" are the benchmarks set annually by the SBE to measure a school's progress.
- (16) "IRM" is the index for regression to the mean used in the regression formula. The SBE shall compute the IRM for reading by subtracting the North Carolina average reading scale score from the local school average reading scale score. The SBE shall compute the IRM for mathematics by subtracting the North Carolina average reading scale score from the local school average mathematics scale score. The SBE shall base the state average on data from the 1994-95 school year.
- (17) "ITP" is the index for true proficiency used in the regression formula. The SBE shall compute the ITP by adding the North Carolina average scale scores in reading and mathematics and subtracting that sum from the addition of the local school average scale scores in reading and mathematics. The SBE shall base the state average on data from the 1994-95 school year.
- (18) "IRP" is the index of reading proficiency used in the prediction formula. The SBE shall compute the "IRP" by calculating the average reading scale score for students in the school and subtracting the average reading scale score for North Carolina schools. The SBE shall base the state average for North Carolina schools on data from the 1998-99 school year.
- (19) "IMP" is the index of mathematics proficiency used in the prediction formula. The SBE shall compute the "IMP" by calculating the average mathematics scale score for students in the school and subtracting the average mathematics scale score for North Carolina schools. The SBE shall base the state average for North Carolina schools on data from the 1998-99 school year.
- (20) "IAP" is the index of Algebra I proficiency used in the prediction formula. The SBE shall compute the "IAP" by calculating the average Algebra I scale score for students in the school and subtracting the average Algebra I scale score for North Carolina schools. The SBE shall base the state average for North Carolina schools on data from the 1998-99 school year.
- (21) "IBP" is the index of Biology proficiency used in the prediction formula. The SBE shall compute the "IBP" by calculating the average Biology scale score for students in the school and subtracting the average Biology scale score for North Carolina schools. The SBE shall base the state average for North Carolina schools on data from the 1998-99 school year.
- (22) "IEP" is the index of English I proficiency used in the prediction formula. The SBE shall compute the "IEP" by calculating the average English I scale score for students in the school and subtracting the average



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English I scale score for North Carolina schools. The SBE shall base the state average for North Carolina schools on data from the 1998-99 school year.

(23) "Performance Composite" is the percent of scores of students in a school who are at or above Level III or are at a passing level on the Computer Skills Test as specified by 16 NCAC 06D .0503(c). In determining the number of scores of students who are performing at or above Level III at a school, the SBE shall:

(A) determine the number of scores that are at Level III or IV in reading, mathematics, or writing across grades 3 through 8 and 10, or on all EOC tests administered as a part of the statewide testing program; add the number of scores that are at a passing level on the NC Computer Skills Test; and use the total of these numbers as the numerator;

(B) determine the number of student scores in reading, mathematics, or writing, or Computer Skills in grades 3 through 8 and 10; or determine the number of student scores on all EOC tests administered as part of the statewide testing program; and use this number as the denominator; and

(C) total the numerators for each content area and subject, total the denominators for each content area and subject, and divide the denominator into the numerator to compute the performance composite.

(24) "Predicted EOC mean" is the average student performance in a school on an EOC test that is projected through the use of the prediction formula.

(25) "Predicted EOC exemplary mean" is the average student performance in a school on an EOC test that is projected through the use of the prediction formula that includes the state average adjusted by an additional five percent (5%).

(26) "Prediction formula" means a regression formula used in predicting a school's EOC test mean for one school year.

(27) "Regression formula" means a formula that defines one variable in terms of one or more other variables for the purpose of making a prediction or constructing a model.

(28) "Standard deviation" is a statistic that indicates how much a set of scores vary. Standard deviation values used for the growth standards are as follow:

(A) for reading in grades K-8:

- (i) 1.7 for grade 3;
- (ii) 1.3 for grade 4;
- (iii) 1.2 for grade 5;
- (iv) 1.3 for grade 6;
- (v) 1.1 for grade 7;
- (vi) 1.2 for grade 8; and
- (vii) 1.6 for grade 10.

(B) for mathematics in grades K-8:

- (i) 2.6 for grade 3;
- (ii) 2.1 for grade 4;
- (iii) 2.0 for grade 5;
- (iv) 2.1 for grade 6;

(v) 2.0 for grade 7;

(vi) 1.7 for grade 8; and

(vii) 2.0 for grade 10.

(C) for courses with an EOC test:

(i) 3.3 for Algebra I;

(ii) 2.6 for Biology;

(iii) 3.1 for ELPS;

(iv) 1.8 for English I;

(v) 7.6 for English II (expected gain);

(vi) 7.5 for English II (exemplary gain);

(vii) 2.2 for U.S. History;

(viii) 2.9 for Algebra II;

(ix) 2.5 for Chemistry;

(x) 2.5 for Geometry;

(xi) 2.5 for Physical Science;

(xii) 3.3 for Physics;

(xiii) 10.0 for College Prep/College Tech Prep (CP/CTP);

(xiv) 12.8 for Competency Passing Rate; and

(xv) Dropout Rate will be determined based upon data from the 2000-01 school year.

(b) In carrying out its duty under G.S. 115C-105.35 to establish annual performance goals for each school, the SBE shall use both growth standards and performance standards.

(1) The SBE shall calculate the expected growth rate for grades 3 through 8 and grade 10 in an individual school by using the regression formula "Expected Growth =  $b_0 + (b_1 \times \text{ITP}) + (b_2 \times \text{IRM})$ ."

(2) The SBE shall calculate the predicted EOC expected mean for courses in which end-of-course tests are administered by using the prediction formulas that follow.

(A) "Predicted Algebra I Mean Score =  $b_0 + (b_{\text{IMP}} \times \text{IMP})$ ," where  $b_0$  is the North Carolina average of school means and  $(b_{\text{IMP}} \times \text{IMP})$  is the impact of Mathematics Proficiency.

(B) "Predicted Biology Mean Score =  $b_0 + (b_{\text{IRP}} \times \text{IRP}) + (b_{\text{IMP}} \times \text{IMP}) + (b_{\text{IMP}}^2 \times \text{IMP}^2) + (b_{\text{IMP}}^3 \times \text{IMP}^3)$ ," where  $b_0$  is the North Carolina average of school means and  $(b_{\text{IRP}} \times \text{IRP})$  is the impact of Reading Proficiency, and  $(b_{\text{IMP}} \times \text{IMP})$  is the impact of Mathematics Proficiency.

(C) "Predicted ELPS Mean Score =  $b_0 + (b_{\text{IRP}} \times \text{IRP})$ ," where  $b_0$  is the North Carolina average of school means and  $(b_{\text{IRP}} \times \text{IRP})$  is the impact of Reading Proficiency.

(D) "Predicted English I Mean Score =  $b_0 + (b_{\text{IRP}} \times \text{IRP})$ ," where  $b_0$  is the North Carolina average of school means and  $(b_{\text{IRP}} \times \text{IRP})$  is the impact of Reading Proficiency.

(E) "Predicted U.S. History Mean Score =  $b_0 + (b_{\text{IRP}} \times \text{IRP}) + (b_{\text{IMP}} \times \text{IMP}) + (b_{\text{IMP}}^2 \times \text{IMP}^2)$ ," where  $b_0$  is the North Carolina average of school means and  $(b_{\text{IRP}} \times \text{IRP})$  is the impact of Reading Proficiency,  $(b_{\text{IMP}} \times \text{IMP})$  is the impact of Mathematics Proficiency.

- (F) "Predicted Algebra II Mean Score =  $b_0 + (b_{IRP} \times IRP) + (b_{IAP} \times IAP)$ ," where  $b_0$  is the North Carolina average of school means and  $(b_{IRP} \times IRP)$  is the impact of Reading Proficiency, and  $(b_{IAP} \times IAP)$  is the impact of Algebra Proficiency.
- (G) "Predicted Chemistry Mean Score =  $b_0 + (b_{IAP} \times IAP) + (b_{IBP} \times IBP) + (b_{IEP} \times IEP)$ ," where  $b_0$  is the North Carolina average of school means and  $(b_{IAP} \times IAP)$  is the impact of Algebra Proficiency,  $(b_{IBP} \times IBP)$  is the impact of Biology Proficiency, and  $(b_{IEP} \times IEP)$  is the impact of English I Proficiency.
- (H) "Predicted Geometry Mean Score =  $b_0 + (b_{IRP} \times IRP) + (b_{IMP} \times IMP) + (b_{IAP} \times IAP)$ ," where  $b_0$  is the North Carolina average of school means and  $(b_{IRP} \times IRP)$  is the impact of Reading Proficiency,  $(b_{IMP} \times IMP)$  is the impact of Mathematics Proficiency, and  $(b_{IAP} \times IAP)$  is the impact of Algebra I Proficiency.
- (I) "Predicted Physical Science Mean Score =  $b_0 + (b_{IRP} \times IRP) + (b_{IMP} \times IMP)$ ," where  $b_0$  is the North Carolina average of school means and  $(b_{IRP} \times IRP)$  is the impact of Reading Proficiency,  $(b_{IMP} \times IMP)$  is the impact of Mathematics Proficiency.
- (J) "Predicted Physics Mean Score =  $b_0 + (b_{IMP} \times IMP) + (b_{IBP} \times IBP) + (b_{IEP} \times IEP)$ ," where  $b_0$  is the North Carolina average of school means and  $(b_{IMP} \times IMP)$  is the impact of Mathematics Proficiency,  $(b_{IBP} \times IBP)$  is the impact of Biology Proficiency, and  $(b_{IEP} \times IEP)$  is the impact of English I Proficiency.
- (c) Schools shall be accountable for student performance and achievement.
- (1) To be included in accountability measures for the growth standard, a student in grade three through grade eight must:
    - (A) have a pre-test score and a post-test score in reading and mathematics. Students in grades four or seven with writing scores shall also be included; and
    - (B) have been in membership more than one-half of the instructional period (91 of 180 days).
  - (2) Students in grades 9-12 shall be included in the performance composite:
    - (A) if they have reading, mathematics, writing, Computer Skills, or EOC scores without reference to pretest scores or length of membership;
    - (B) if they have been in membership 160 of 180 days; and
    - (C) if they have scores for all tests used in the prediction formula.
  - (d) The SBE shall include in the accountability system on the same basis as all other public schools each alternative school with an identification number assigned by the Department. Test scores for students who attend programs or classes in a facility that does not have a separate school number shall be reported to and included in the students' home schools.
  - (e) Each K-8 school shall test at least 98 percent of its eligible students. If a school fails to test at least 98 percent of its eligible students for two consecutive school years, the SBE may designate the school as low-performing and may target the school for assistance and intervention. Each school shall make public the percent of eligible students that the school tests.
    - (f) High schools shall test at least 95 percent of enrolled students who are subject to EOC tests and the NC Comprehensive Test, regardless of exclusions. High schools that test fewer than 95 percent of enrolled students for two consecutive years may be designated as low-performing by the SBE.
    - (g) All students who are following the standard course of study and who are not eligible for exclusion as set out in Paragraph (h) of this Rule shall take the SBE-adopted tests. Every student, including those students who are excluded from testing, shall complete or have completed an answer document (except in writing). Both the school and the LEA shall maintain records on the exclusions of students from testing. The Department may audit these records.
    - (h) Individual students may be excluded from SBE-adopted tests as follows:
      - (1) Limited English proficient students may be excluded for up to two years beginning with the time of enrollment if the student's English language proficiency has been assessed as novice/low to intermediate/low in listening, reading, and writing. A student whose English language proficiency has been assessed as intermediate/high or advanced may be excluded from tests in which the student writes responses for up to two years. LEAs shall use other assessment methods for excluded students to demonstrate that these students are progressing in English and other subject areas.
      - (2) Students with disabilities may be excluded on an individual basis if the exclusion is stated in the student's IEP and if the student is following a functional curriculum as defined by 16 NCAC 06D .0501(3). If a student with disabilities is excluded from participation in a statewide assessment in one subject but is included in testing for the remaining subjects, that student shall be included in the school's percent tested requirement. The parent or guardian, or the student if over age 18, shall sign a written consent for test exclusion that certifies that the parent, guardian, or student understands that the exclusion for the eighth grade tests may cause the student not to be eligible to receive a high school diploma.
        - (i) LEAs shall administer alternative assessments to students who are excluded from participation in a regular statewide assessment to demonstrate mastery of course or specific curriculum content.
        - (j) The SBE shall calculate a school's expected growth/gain composite in student performance using the following process:
          - (1) Calculate the indices for writing in grades 4 and 7 (separately) for the three most current years for achievement levels as defined by 16 NCAC 06C .0103(a)(1) as follows:
            - (A) Multiply the percent of students at level IV by 3.
            - (B) Multiply the percent of students at level III by 2.
            - (C) Determine the percent of students at level II.

- (D) Add the three numbers together and divide by three.
- (E) Determine the difference in scores that is greatest by subtracting the index two years ago from the most recent index and then by subtracting the index for the prior school year from the most recent index. Multiply the resulting difference by one half.
- (F) Subtract 0.1 from the difference.
- (G) Divide by the associated standard deviation. The result is the standard gain for writing.
- (2) Review expected and exemplary growth standards for all grades and subjects, and review the predicted EOC mean for expected standard gain and the exemplary standard gain for EOC courses.
- (3) Determine the actual growth in reading and mathematics at each grade level included in the state testing program, using data on groups of students, and determine the actual EOC mean for EOC tests using data on the same groups of students from one point in time to another point in time.
- (4) Subtract the expected growth from the actual growth in reading and mathematics at grades 3 through 8 and grade 10; then subtract the predicted EOC mean from the actual EOC mean for EOC tests.
- (5) Divide the differences for reading, writing, and mathematics by the standard deviations of the respective differences in growth/gain at each grade level and for each EOC to determine the standard growth score.
- (6) The SBE shall calculate a school's gain composite in college prep/college tech prep using the following process:
  - (A) Compute the percent of graduates who receive diplomas who completed either course of study in the current accountability year. Students shall be counted only once if they complete more than one course of study;
  - (B) Find the baseline, which is the average of the two prior school years' percent of graduates who received diplomas and who completed a course of study;
  - (C) Subtract the baseline from the current year's percentage;
  - (D) Subtract 0.1, unless the percentages are both 100. If both percentages are 100, the gain is zero; and
  - (E) Divide by the associated standard deviation. The result is the standard gain for college prep/college tech prep.
- (7) The SBE shall calculate a school's expected gain composite in the competency passing rate by comparing the grade 10 competency passing rate on a matched set of students to the grade 8 passing rate for the same group of students.
  - (A) Subtract the grade 8 rate from the grade 10 rate;
  - (B) Subtract 0.1; and
  - (C) Divide by the standard deviation. The result is the standard gain in competency passing rate.
- (8) Determine the composite expected gain in English II for a high school as follows:
  - (A) Compute the English II index for the current year and for the two previous years by multiplying the percentage of students at level IV by 3, the percentage of students at level III by 2, and the percentage of students at level II by 1. Add the products and divide by 3 to obtain the EOC index;
  - (B) Compute the EOC indices for the same three years;
  - (C) Determine the baseline by adding Year One and Year Two and dividing by 2;
  - (D) Subtract the baseline from the current year's index;
  - (E) Subtract 0.1 from the difference; and
  - (F) Divide the result by the associated standard deviation of change. This is the standard expected gain for English II.
- (9) The SBE shall calculate a school's expected growth/gain composite by adding the expected standard growth scores for reading and mathematics at each grade level from grade 3 to 8 and 10, EOC gain, writing at grades 4 and 7, gain in competency passing rate, gain in college prep/college tech prep, change in dropout rate, and English II gain, as they may apply in a given school. If the resulting number is zero or above, the school has made the expected growth standard.
- (10) The SBE shall compute exemplary growth using the exemplary growth standard ( $b_o \times 1.10$ ) in the accountability formula for grades 3 through 8 and 8 to 10 in reading and mathematics, and ( $b_o \times 1.05$ ) for predicted EOC means. There is no exemplary standard for writing, competency passing rate, or college prep/college tech prep gain.
- (11) To determine the composite score for exemplary standards:
  - (A) Subtract the exemplary growth/gain from the actual growth/gain standard in reading and mathematics at grades 3 through 8 and 10; subtract the predicted exemplary EOC mean from the actual EOC mean for each EOC test. In writing, one tenth (.1) must be subtracted from the greater of the two writing differences.
  - (B) Divide the difference in growth/gain by the standard deviations of the respective differences in growth/gain to determine the standard growth/gain score.
  - (C) Add the exemplary standard growth/gain scores for reading and mathematics at each grade level from grade 3 to 8 and 10, EOC gain, expected standard gain in writing at grades 4 and 7, Competency Passing Rate, Dropout Rate, and for College Prep/College Tech Prep, and exemplary standard gain in English II. If the resulting number is zero or above, the school has met the exemplary growth standard.
- (k) If school officials believe that the school's growth standards were unreasonable due to specific, compelling reasons, the school may appeal its growth standards to the SBE. The SBE shall appoint an appeals committee composed of a panel selected

from the compliance commission to review written appeals from schools. The school officials must clearly document the circumstances that made the goals unrealistic and must submit its appeal to the SBE within 30 days of receipt of notice from the Department of the school's performance. The appeals committee shall review all appeals and shall make recommendations to the SBE. The SBE shall make the final decision on the reasonableness of the growth goals.

*History Note: Authority G.S. 115C-12(9)c4; Eff. January 1, 1998; Amended Eff. December 1, 2000.*

**16 NCAC 06G .0310 ANNUAL PERFORMANCE STANDARDS, GRADES 9-12**

*History Note: Authority G.S. 115C-12(9)c4; Eff. September 1, 1998; Repealed Eff. December 1, 2000.*

**TITLE 21 – OCCUPATIONAL LICENSING BOARDS**

**CHAPTER 12 - LICENSING BOARD FOR GENERAL CONTRACTORS**

**21 NCAC 12 .0204 ELIGIBILITY**

- (a) Limited License. The applicant for such a license must:
  - (1) Be entitled to be admitted to the examination given by the Board in light of the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
  - (2) Be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least twelve thousand five hundred dollars (\$12,500.00);
  - (3) Successfully complete 70 percent of the examination given the applicant by the Board dealing with the specified contracting classification chosen by the applicant.
- (b) Intermediate License. The applicant for such a license must:
  - (1) Be entitled to be admitted to the examination given by the Board in light of the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
  - (2) Be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least fifty thousand dollars (\$50,000.00) as reflected in an audited financial statement prepared by a certified public accountant or an independent accountant who is engaged in the public practice of accountancy;
  - (3) Successfully complete 70 percent of the examination given the applicant by the Board dealing with the specified contracting classification chosen by the applicant.
- (c) Unlimited License. The applicant for such a license must:
  - (1) Be entitled to be admitted to the examination given by the Board in light of the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;

- (2) Be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least one hundred thousand dollars (\$100,000.00) as reflected in an audited financial statement prepared by a certified public accountant or an independent accountant who is engaged in the public practice of accountancy;
  - (3) Successfully complete 70 percent of the examination given the applicant by the Board dealing with the specified contracting classification chosen by the applicant.
- (d) In lieu of demonstrating the required level of working capital, an applicant may obtain a surety bond from a surety authorized to transact surety business in North Carolina pursuant to GS. 58 Article 7, 16, 21, or 22. The surety shall provide proof that it maintains a rating from A.M. Best, or its successor rating organization, of either Superior (A++ or A+) or Excellent (A or A-). The bond shall be continuous in form and shall be maintained in effect for as long as the applicant maintains a license to practice general contracting in North Carolina or until the applicant demonstrates the required level of working capital. The application form and subsequent annual license renewal forms shall require proof of a surety bond meeting the requirements of this Rule. The applicant shall maintain the bond in the amount of fifty thousand dollars (\$50,000.00) for a limited license, two hundred fifty thousand dollars (\$250,000.00) for an intermediate license, and five hundred thousand dollars (\$500,000.00) for an unlimited license. The bond shall be for the benefit of any person who is damaged by an act or omission of the applicant constituting breach of a construction contract or breach of a contract for the furnishing of labor, materials, or professional services to construction undertaken by the applicant, or by an unlawful act or omission of the applicant in the performance of a construction contract. The bond required by this Rule shall be in addition to and not in lieu of any other bond required of the applicant by law, regulation, or any party to a contract with the applicant. Should the surety cancel the bond, the surety and the applicant both shall notify the Board immediately in writing. If the applicant fails to provide written proof of financial responsibility in compliance with this Rule within 30 days of the bond's cancellation, then the applicant's license shall be suspended until written proof of compliance is provided. After a suspension of two years, the applicant shall fulfill all requirements of a new applicant for licensure. The practice of general contracting by an applicant whose license has been suspended pursuant to this Rule will subject the applicant to additional disciplinary action by the Board.
- (e) Reciprocity. If an applicant is licensed as a general contractor in another state, the Board, in its discretion, need not require the applicant to successfully complete the written examination as provided by G.S.87-15.1. However, the applicant must comply with all other requirements of these rules to be eligible to be licensed in North Carolina as a general contractor.
  - (f) Accounting and reporting standards. Working capital, balance sheet with current and fixed assets, current and long

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

*History Note:* Filed as a Temporary Amendment Eff. June 28, 1989 for a Period of 155 Days to Expire on December 1, 1989;

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

*Eff. February 1, 1976;*

*Readopted Eff. September 26, 1977;*

*Amended Eff. January 1, 1983; ARRC Objection March 19, 1987;*

*Amended Eff. December 1, 1989; May 1, 1989; August 1, 1987; Temporary Amendment Eff. May 31, 1996; RRC Removed Objection Eff. October 17, 1996;*

*Amended Eff. August 1, 1998; April 1, 1997;*

*Temporary Amendment Eff. August 24, 1998;*

*Amended Eff. August 1, 2001; August 1, 2000.*

### CHAPTER 14 - BOARD OF COSMETIC ART EXAMINERS

#### 21 NCAC 14J .0107 APPROVED FIELD TRIPS

Cosmetology Educational Field Trips include the following activities:

- (1) Beauty Shops;
- (2) Cosmetology Conventions;
- (3) Competition Training;
- (4) Other Schools;
- (5) State Board Office and Archives Museum;
- (6) Supply Houses;
- (7) College or Career Day at School;
- (8) Fashion Shows;
- (9) Rest Homes/Nursing Homes;
- (10) Hospitals; and
- (11) Funeral Homes.

An instructor must be present during these educational field trips, for credit to be given to student, with a ratio of one instructor per 20 students present. The maximum number of hours a student may earn for field trips is 40 credit hours for cosmetology students, 20 credit hours for esthetician students and 10 credit hours for manicurist students.

*History Note:* Authority G.S. 88B-4;

*Eff. October 1, 1990;*

*Amended Eff. April 1, 2001.*

#### 21 NCAC 14K .0102 COURSE OF STUDY

(a) The 300 hours in classes required for licensure as a manicurist must include at least 260 hours of "classroom work" as described in Paragraph (b) and at least 40 hours of supervised "live model performances" as set forth in 21 NCAC 14K.0107 (a).

(b) Students must take the following classroom work:

- (1) Manicuring, including trimming, filing, shaping, decorating, and arm and hand massage;
- (2) Sculptured and other artificial nails;
- (3) Pedicuring;
- (4) Theory and salesmanship as it relates to manicuring;
- (5) The procedures and methods of sanitation, including the study of the Federal Environmental Protection Agency's disinfectant guidelines and the recommendations on the Material Safety Data Sheets prepared by the manufacturers on all products used by the school's students in the live model performance set forth in 21 NCAC 14 K.0107 (a); and
- (6) The study of bacteriology including communicable diseases and the requirements of The Pure Food and Drug Law for creams and lotions.

(c) Classroom work shall include lectures on the subject as well as demonstrations, questions and answers on textbooks, written examinations, and in-class practice of procedures and methods.

*History Note:* Authority G.S. 88B-4; 88B-10;

*Eff. February 1, 1976;*

*Amended Eff. December 1, 1990; January 1, 1989; April 1, 1988;*

*Temporary Amendment Eff. January 1, 1999;*

*Amended Eff. April 1, 2001; August 1, 2000.*

#### 21 NCAC 14K .0103 EQUIPMENT AND INSTRUMENTS

(a) A manicurist school shall be equipped with the following minimum equipment:

- (1) two handwashing sinks, separate from restrooms, located in or adjacent to the clinic area;
- (2) adequate chairs for patrons in the clinic area;
- (3) ten work tables with adequate light in the clinic area for every 20 students;
- (4) pedicure chair and basin;
- (5) one wet and one dry sterilizer for each work table;
- (6) a covered waste container located in the clinic area; and
- (7) a covered container for soiled or disposable towels located in the clinic area.

(b) Each student shall be supplied with:

- (1) a manicurist bowl;
- (2) nail brushes;
- (3) a tray for manicuring supplies;
- (4) one mannequin hand;
- (5) a manicuring kit containing proper implements for manicuring and pedicuring; and
- (6) implements for artificial nails, nail wraps and tipping.

(c) The minimum requirement for a school of manicuring with a department of esthetics in its training program shall be one of each item specified in 21 NCAC 14O .0103(a).

*History Note:* Authority G.S. 88B-4;

*Eff. February 1, 1976;*

Amended Eff. April 1, 2001; August 1, 1998; April 1, 1991.

CHAPTER 16 - BOARD OF DENTAL EXAMINERS

**21 NCAC 16I .0104 REPORTING CONTINUING EDUCATION**

(a) The number of hours completed to satisfy the continuing education requirement shall be indicated on the renewal application form submitted to the Board and confirmed by the hygienist's signature. Upon request by the Board or its authorized agent, the hygienist shall provide official documentation of attendance at courses indicated. Such documentation shall be provided by the organization offering or sponsoring the course. Documentation must include:

- (1) the title;
- (2) the number of hours of instruction;
- (3) the date of the course attended;
- (4) the name(s) of the course instructor(s); and
- (5) the name of the organization offering or sponsoring the course.

(b) All records, reports and certificates relative to continuing education hours must be maintained by the licensee for at least two years and shall be produced upon request of the Board or its authorized agent.

(c) Dental hygienists shall receive four hours credit per year for continuing education when engaged in the following:

- (1) service on a full-time basis on the faculty of an educational institution with direct involvement in education, training, or research in dental or dental auxiliary programs; or
- (2) affiliation with a federal, state or county government agency whose operation is directly related to dentistry or dental auxiliaries. Verification of credit hours shall be maintained in the manner specified in this Rule.

(d) Evidence of service or affiliation with an agency as specified in Paragraph (c) of this Rule shall be in the form of verification of affiliation or employment which is documented by a director or an official acting in a supervisory capacity.

*History Note: Authority G.S. 90-225.1; Eff. May 1, 1994; Amended Eff. April 1, 2001.*

**21 NCAC 16R .0104 EXEMPTION FROM AND CREDIT FOR CONTINUING EDUCATION**

(a) Dentists may request exemption from continuing education requirements by submitting evidence in writing to the Board of retirement or semi-retirement from the practice of dentistry. A retired dentist is a dentist who never practices dentistry. A semi-retired dentist is a dentist who practices on an occasional basis not to exceed 100 clock hours in a calendar year. A dentist who can demonstrate a disabling condition may request a variance in continuing education hours during a particular period. Written documentation of a disabling condition that interferes with the dentist's ability to complete the required hours shall be provided to the Board. The Board may grant or deny such requests on a case by case basis. In considering the request, the Board may

require additional documentation substantiating any specified disability.

(b) In those instances where continuing education is waived and the exempt individual wishes to resume practice, the Board shall require continuing education courses in accordance with 21 NCAC 16R .0101 when reclassifying the licensee. The Board may require those licensees who have not practiced dentistry for a year or more to undergo a bench test prior to allowing the licensee to resume practice.

(c) Dentists shall receive 10 hours credit per year for continuing education when engaged in any of the following:

- (1) service on a full-time basis on the faculty of an educational institution with direct involvement in education, training, or research in dental or dental auxiliary programs; or
- (2) affiliation with a federal, state or county government agency whose operation is directly related to dentistry or dental auxiliaries. Verification of credit hours shall be maintained in the manner specified in 21 NCAC 16R .0103.

*History Note: Authority G.S. 90-31.1; 90-38; Eff. May 1, 1994; Amended Eff. April 1, 2001.*

**21 NCAC 16W .0103 TRAINING FOR PUBLIC HEALTH HYGIENISTS PERFORMING PREVENTIVE PROCEDURES**

(a) Public health hygienists who provide only education and preventive procedures such as application of fluorides, fluoride varnishes, and oral screenings, and not clinical procedures, shall be subject to the training provisions set out in Paragraph (b) of this Rule instead of the training provisions required by 21 NCAC 16W .0102.

(b) A public health hygienist may perform preventive procedures as set out in Paragraph (a) of this Rule under the direction of a duly licensed public health dentist if the hygienist:

- (1) maintains CPR certification; and
- (2) completes such other training as may be required by the Oral Health Section of the Department of Health and Human Services.

*History Note: Authority G.S. 90-223; 90-233(a); Temporary Adoption Eff. February 8, 2000; Eff. April 1, 2001.*

CHAPTER 46 - BOARD OF PHARMACY

**21 NCAC 46 .2502 RESPONSIBILITIES OF PHARMACIST-MANAGER**

(a) The pharmacist-manager shall assure that prescription legend drugs and controlled substances are safe and secure within the pharmacy.

(b) The pharmacist-manager employed or otherwise engaged to supply pharmaceutical services may have a flexible schedule of attendance but shall be present for at least one-half the hours the pharmacy is open or 32 hours a week, whichever is less.

(c) Whenever a change of ownership or change of pharmacist-manager occurs, the successor pharmacist-manager shall complete an inventory of all controlled substances in the pharmacy within 10 days. A written record of such inventory, signed and dated by the successor pharmacist-manager, shall be maintained in the pharmacy with other controlled substances records for a period of three years.

(d) The pharmacist-manager shall develop and implement a system of inventory record-keeping and control which will enable that pharmacist-manager to detect any shortage or discrepancy in the inventories of controlled substances at that pharmacy at the earliest practicable time.

(e) The pharmacist-manager shall maintain complete authority and control over any and all keys to the pharmacy and shall be responsible for the ultimate security of the pharmacy. A pharmacy shall be secured to prohibit unauthorized entry if no pharmacist will be present in the pharmacy for a period of 90 minutes or more.

(f) These duties are in addition to the specific duties of pharmacist-managers at institutional pharmacies and pharmacies in health departments as set forth in the Rules in this Chapter.

(g) A person shall not serve as pharmacist-manager at more than one pharmacy at any one time except for limited service pharmacies.

(h) When a pharmacy is to be closed permanently, the pharmacist-manager shall inform the Board and the United States Drug Enforcement Administration of the closing, arrange for the proper disposition of the pharmaceuticals and return the pharmacy permit to the Board's offices within 10 days of the closing date. Notice of the closing shall be given to the public by posted notice at the pharmacy at least 30 days prior to the closing date and, if possible, 15 days after the closing date. Such notice shall notify the public that prescription files may be transferred to a pharmacy of the patient's or customer's choice during the 30 day period prior to the closing date. During the 30 day period prior to the closing date, the pharmacist-manager, and the pharmacy's owner (if the owner is other than the pharmacist-manager), shall transfer prescription files to another pharmacy chosen by the patient or customer, upon request. Absent specific instructions from the patient or customer, the pharmacist-manager, and the pharmacy's owner (if the owner is other than the pharmacist-manager), shall transfer prescription files to another pharmacy for maintenance of patient therapy and shall inform the public of such transfer by posted notice at the pharmacy for 15 days after the closing date, if possible. Controlled substance records shall be retained for the period of time required by law.

(i) Notice of the temporary closing of any pharmacy for more than 14 consecutive days shall be given to the public by posted notice at the pharmacy at least 30 days prior to the closing date and, if possible, 15 days after the closing date. Such notice shall notify the public that prescription files may be transferred to a pharmacy of the patient's or customer's choice during the 30 day period prior to the closing date. During the 30 day period prior to the closing date, the pharmacist-manager, and the pharmacy's owner (if the owner is other than the pharmacist-manager), shall transfer prescription files to another pharmacy chosen by the patient or customer, upon request.

(j) The pharmacist-manager shall prepare a plan to safeguard prescription records and pharmaceuticals in the event of a natural disaster such as hurricane or flood.

(k) The pharmacist-manager shall separate from the dispensing stock all drug products more than six months out of date.

(l) The pharmacist-manager shall report to the Board of Pharmacy information that reasonably suggests that there is a probability that a prescription drug or device dispensed from a location holding a permit has caused or contributed to the death of a patient or customer. This report shall be filed in writing on a form provided by the Board within 14 days of the owner representative or pharmacist-manager's becoming aware of the event. The pharmacist-manager shall retain all documents, labels, vials, supplies, substances and internal investigative reports relating to the event. All such items shall be made available to the Board upon request.

(m) The Board shall not disclose the identity of a pharmacist-manager who makes a report under Paragraph (k) of this Rule, except as required by law. All reports made under Paragraph (k) of this Rule shall not be released except as required by law.

(n) Dispensing errors which are not detected and corrected prior to the patient receiving the medication shall be documented and reported to the pharmacist-manager. Documentation shall include pertinent chronological information and appropriate forms including the identity of individual(s) responsible. These documents, including action taken as part of a quality assurance plan, shall be archived in a readily retrievable manner and available for inspection by the Board for a period of three years. These documents shall not be released except as required by law.

(o) In any Board proceeding, the Board shall consider compliance with Paragraphs (l) and (n) of this Rule as a mitigating factor and noncompliance with Paragraphs (l) and (n) of this Rule as an aggravating factor.

*History Note: Authority G.S. 90-85.6; 90-85.21; 90-85.25; 90-85.26; 90-85.32; Eff. May 1, 1989; Amended Eff. April 1, 2001; July 1, 1996; March 1, 1992; October 1, 1990.*

**21 NCAC 46.3208 MONITORING POST-TREATMENT SUPPORT**

(a) Post-treatment support may include family counseling, advocacy and other services and programs deemed appropriate to improve recoveries.

(b) Treatment sources' post-treatment support shall be monitored by the Program on an ongoing basis.

(c) The Program's post-treatment support shall be monitored by the Program on an ongoing basis.

*History Note: Authority G.S. 90-85.6; 90-85.41; Eff. April 1, 2001.*

**CHAPTER 54 - NORTH CAROLINA PSYCHOLOGY BOARD**

**21 NCAC 54.1901 TYPES**

(a) Qualifying Examinations. National and state examinations shall be administered. The examinations shall be taken only for licensure purposes. The applicant shall comply with deadlines and procedures established by the examination contractor and testing vendor when approved to take a computer administered examination.

(1) National Examination. The national examination is the Examination for Professional Practice in Psychology (EPPP) which is developed by the Association of State and Provincial Psychology Boards (ASPPB). The EPPP assesses the applicant's knowledge of the subject matter of psychology and his or her understanding of professional and ethical problems in the practice of psychology. For paper and pencil administrations of the EPPP in April, 2001, and in October, 2001, the passing point for licensed psychologist shall be set at 70% of the total scored items on the examination, and the passing point for licensed psychological associate shall be set at 64% of the total scored items on the examination. For computer delivered administrations of the EPPP beginning in April, 2001, and for all other computer delivered administrations of the EPPP thereafter, the passing point for licensed psychologist shall be a scaled score of 500, and the passing point for licensed psychological associate shall be a scaled score of 440. This examination shall not be required for an applicant who has previously taken the EPPP and whose score met the North Carolina passing point which was established for that particular administration date of the examination unless the Board determines pursuant to G.S. 90-270.15 that an individual shall be required to take and pass a current form of the EPPP.

(2) State Examination. The Board-developed state examination assesses the applicant's knowledge of the North Carolina Psychology Practice Act, selected rules of the Board covering such topics as education and supervision, and other legal requirements. The passing point for all licensees shall be set at 78% of the total scored items on the examination.

(b) Oral Examination. Upon proof that an applicant or licensee has engaged in any of the prohibited actions specified in G.S. 90-270.15(a), the Board may administer a state oral examination which assesses knowledge of the North Carolina Psychology Practice Act, selected rules of the Board covering such topics as education and supervision, and other legal requirements.

(c) Special Administrations. Candidates with documented impairments or disabilities shall be tested under conditions that shall minimize the effect of the impairments or disabilities on their performance. In general, those lifestyle accommodations which an individual uses to compensate for impairments or disabilities, and which have become accepted practice for the individual in his or her graduate program or since the onset of the applicant's impairment of disability, shall be considered as the most appropriate accommodation for testing. Special test administrations shall be as comparable as possible to a standard administration.

*History Note: Authority G.S. 90-270.9; 90-270.11; 90-270.15(b); Eff. September 1, 1982; Amended Eff. April 1, 2001; October 1, 1996; March 1, 1989; January 1, 1986.*

**21 NCAC 54 .1903 RETAKING**

An applicant may take the examination no more than 4 times in a 12-month period and no more frequently than every 60 days upon payment of the required fee. The 12-month period begins on the date of the letter which notifies the applicant that his or her credentials have been approved for examination by the Board. After failing the examination for the fourth time or after the passage of 12 months, whichever occurs first, an applicant must totally reapply for licensure. Except as exempt under G.S. 90-270.4, after failing the examination for the second time, an applicant shall not practice or offer to practice psychology without first becoming licensed.

*History Note: Authority G.S. 90-250.5(b); 90-270.9; Eff. September 1, 1982; Amended Eff. April 1, 2001; October 1, 1991; March 1, 1989; July 1, 1985.*

**21 NCAC 54 .1904 FAILURE TO APPEAR**

If an applicant does not appear for an examination within four months after being approved for examination by the Board, he or she shall be deemed to have failed the examination. The four-month period begins on the date of the letter which notifies the applicant that his or her credentials have been approved for examination by the Board. The applicant shall be permitted to take the examination within the next consecutive four months without reapplying for licensure. If the applicant does not appear for an examination within the second four-month period, he or she shall be deemed to have failed the examination a second time and must reapply for licensure. Except as exempt under G.S. 90-270.4, after failing the examination for the second time, an applicant shall not practice or offer to practice psychology without first becoming licensed by the Board.

*History Note: Authority G.S. 90-270.5(b); 90-270.9; Eff. September 1, 1982; Amended Eff. April 1, 2001; May 1, 1996; October 1, 1991; March 1, 1989.*



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## RULES REVIEW COMMISSION

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This Section contains the agenda for the next meeting of the Rules Review Commission on Thursday, November 16, 2000, 10:00 a.m., at 1307 Glenwood Ave., Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners by Monday, November 13, 2000, at 5:00 p.m. 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 Teresa L. Smallwood – Chairman John Arrowood Laura Devan Jim Funderburke David Twiddy	Appointed by House R. Palmer Sugg – 1 <sup>st</sup> Vice Chairman Jennie J. Hayman 2 <sup>nd</sup> Vice Chairman Walter Futch Paul Powell George Robinson
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### RULES REVIEW COMMISSION MEETING DATES

January 20, 2001 March 16, 2001 May 18, 2001	February 15, 2001 April 20, 2001 June 15, 2001
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### RULES REVIEW COMMISSION

December 21, 2000

#### MINUTES

The Rules Review Commission convened at 10:00 a.m. on Thursday morning, December 21, 2000, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present: Chairman Paul Powell, Laura Devan, Jennie Hayman, Palmer Sugg, David Twiddy, George Robinson, Jim Funderburk, Robert Saunders and Walter Futch.

Staff members present were: Joseph J. DeLuca, Staff Director; Bobby Bryan, Rules Review Specialist; and Lisa Johnson.

The following people attended:

L.W. Davis	State Highway Patrol
S.L. Collie	
Susan J. Smith	American Polarity Therapy Association
Ryke Longest	AGO Environmental
Cory Menees	DHHS/Nutrition
Denise Stanford	Dental Board/Pharmacy Board
Terry Fiddle	Dental Board
David Cashwell	Dental Board
Rick Rogen	NC Board of Massage & Bodywork Therapy
Candace Frye	NC Board of Massage & Bodywork Therapy
Charles Reed	NC Division of Public Health
Elizabeth Bishop	NC Division of Vocational Rehabilitation
Jackie Stalnaker	NC Division of Vocational Rehabilitation
George Crow	NC Division of Vocational Rehabilitation
Terry Kemp	NC Division of Vocational Rehabilitation
Steve Albright	NC Department of State Treasurer
Jennie W. Mau	NC Department of Justice
Lou Kost	OSP
Jean Stanley	Nursing/Midwifery Joint Committee
Dedra Alston	DENR

**RULES REVIEW COMMISSION**

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Howard Kramer	NC Board of Nursing
Sharnese Ramsome	DSS
Peter Goolsey	DSOS
Harold McCarey	DENR/DWM
Valerie J. Ford	OSP
Linda Culpepper	DENR/DWM
William H. Potter, Jr.	NCSD
Noah Huffstetler	Kilpatrick & Stockton, LLP
Robert Hamilton	NCALB
Kjersten Klassen	Kilpatrick & Stockton, LLP
Ann Wall	Department of Labor
Patrick Knowlson	DAQ
Janice Fain	Division of Child Development
Ann Christian	NC Substance Abuse Professionals Certification Board
Jessica Gill	DCM
William Crowell	DCM
Jeff Manning	DENR/DWQ
Warren Plonk	OSBPM
Mell Nelms	DENR/DLR
Delores Joyner	State Personnel Commission
Bayard Alcorn	DENR/Parks & Rec.
Charles Wilkins	NC Board of Massage & Bodywork Therapy
Molly Masich	OAH
Julian Mann	OAH

**APPROVAL OF MINUTES**

The meeting was called to order at 10:06 a.m. with Chairman Powell presiding. Chairman Powell asked for any discussion, comments, or corrections concerning the minutes of the November 16, 2000 meeting. The minutes were approved as written.

**FOLLOW-UP MATTERS**

- 10 NCAC 3R .6254: DHHS/Division of Facility Services – The rewritten rule submitted by the agency was approved by the Commission.
- 14A NCAC 9H .0308; .0316; .0318; .0321 & .0323: Department of Crime Control & Public Safety – The rewritten rules submitted by the agency were approved by the Commission.
- 15A NCAC 2B .0257: Environmental Management Commission – The rewritten rule submitted by the agency was approved by the Commission.
- 15A NCAC 2D .0535: Environmental Management Commission – The rewritten rule submitted by the agency was approved by the Commission.
- 15A NCAC 2Q .0401: DENR/Environmental Management Commission – The rewritten rule submitted by the agency was approved by the Commission.
- 15A NCAC 7H .0209: DENR/Coastal Resources Commission – The rewritten rule submitted by the agency was approved by the Commission.
- 19A NCAC 3D .0519: Division of Motor Vehicles – The agency decided not to rewrite the rule and the rule was returned.
- 21 NCAC 4B .0202; .0302; .0404; .0801; .0802; .0804; .0805; .0809; .0810; .0815; .0817; and .0819: NC Auctioneers Commission – The rewritten rules submitted by the agency were approved by the Commission with the exception of .0804 which was returned to the agency at the agency’s request.
- 21 NCAC 16Q .0201; .0301: NC State Board of Dental Examiners – The rewritten rules submitted by the agency were approved by the Commission.
- 21 NCAC 16X .0101: NC State Board of Dental Examiners – This rule was referred to OSBPM previously and it was found by OSBPM that there is no substantial economic impact. The rule was approved by the Commission conditioned upon the agency submitting a rewritten rule to the staff by the end of the day deleting paragraph (f). The rewritten rule was subsequently received.
- 21 NCAC 32T .0101: NC Medical Board – The rewritten rule submitted by the agency was approved by the Commission.
- 21 NCAC 46 .1604; .3101; .3205; .3206; .3207; .3209; .3210: NC Board of Pharmacy –The rewritten rules submitted by the agency were approved by the Commission.

## ***RULES REVIEW COMMISSION***

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21 NCAC 50 .1401; .1402; .1403; .1404; .1405; .1406; .1407; .1408 & .1409: State Board of Plumbing, Heating & Fire Sprinklers Contractors – The rewritten rules submitted by the agency were approved by the Commission with the exception of .1406 which was withdrawn.

### **LOG OF FILINGS**

Chairman Powell presided over the review of the log and all rules were approved with the following exceptions:

2 NCAC 34 .0502: Department of Agriculture Structural Pest Control Committee – The Commission objected to this rule due to ambiguity or lack of necessity. The Commission could not understand what difference, if any, exists between paragraphs (b) and (c). The statement of the reason for this rule indicates that the current rule requires only the submission of data prior to using a specific termiticide (b), while the new (c) will require state approval of the termiticide. However the language of (c) strictly read seems to state that a termiticide will be approved “based on the requirements... in...(b)....” The requirements in (b) are primarily to submit data. It appears that the intent is to allow the Committee to decide if the termiticide is effective. However the rule does not say that and does not set out any standards for approval. Commissioner Devan was opposed to objection.

2 NCAC 52B .0201: Department of Agriculture – The Commission objected to this rule based on ambiguity. It is unclear in (a) whether the rule applies literally to all animals, including e.g., domestic pets, or only certain types or classes of animals. Commissioners Devan, Hayman and Twiddy were opposed to objection.

7 NCAC 4 S .0104: Department of Cultural Resources – The Commission objected to this rule due to lack of statutory authority. The authority cited for this rule is broad and permits the agency to make “...reasonable rules...for the... use by the public...” of Tryon Palace and other historic locations. However, staff does not believe that gives the agency authority for the rule in (c) to discriminate between allowing non-commercial photography and prohibiting commercial photography if it does not meet certain standards.

17 NCAC 7B .1303: Department of Revenue – The Commission extended the period of review in order to have some questions answered. The Commission wants to know what the rule will be, and where it is found, for sales to a N.C. residential buyer and the property is delivered to a donee of the buyer.

20 NCAC 8 .0110: State Treasurer – The rule was approved conditioned upon receiving a technical change by the end of the day. That technical change was subsequently received.

21 NCAC 30 .0101: State Board of Massage & Bodywork Therapy – The original rule was objected to due to lack of statutory authority and the rewritten rule submitted by the agency was approved.

21 NCAC 30 .0102: State Board of Massage & Bodywork Therapy – The original rule was objected to due to ambiguity and the rewritten rule submitted by the agency was approved conditioned upon receipt of a technical change by the end of the day. The technical change was subsequently received.

21 NCAC 30 .0201: State Board of Massage & Bodywork Therapy – The original rule was objected to due to lack of statutory authority and ambiguity and the rewritten rule submitted by the agency was approved.

21 NCAC 30 .0203: State Board of Massage & Bodywork Therapy – The original rule was objected to due to lack of statutory authority and ambiguity and the rewritten rule submitted by the agency was approved.

21 NCAC 30 .0204: State Board of Massage & Bodywork Therapy – The Commission objected to this rule due to ambiguity and a rewritten rule was approved conditioned upon the receipt by staff by the end of the day of a change in (b) from “disciplinary action” to “a letter of reprimand.” The change was subsequently received.

21 NCAC 30 .0305: State Board of Massage & Bodywork Therapy – This rule was withdrawn by the agency.

21 NCAC 30 .0503: State Board of Massage & Bodywork Therapy – The original rule was objected to due to ambiguity and the rewritten rule submitted by the agency was approved.

21 NCAC 30 .0504: State Board of Massage & Bodywork Therapy – The original rule was objected to due to ambiguity and the rewritten rule submitted by the agency was approved.

21 NCAC 30 .0602: State Board of Massage & Bodywork Therapy – The Commission objected to this rule due to lack of statutory authority and ambiguity. In (a)(2)(a), it is not clear what the Board would consider “adequate” education and experience. In (a)(2)(b), it is not clear how much space, equipment, etc. is adequate to provide training of good quality. In (a)(2)(g), it is not clear what standards the Board will use in determining that a school is financially sound. In (a)(2)(j), it is not clear what additional criteria the Board deems necessary. There is no authority to set the criteria outside rulemaking. In (a)(3)(b)(iv), it is not clear what additional criteria the Board deems necessary. There is no authority to set the criteria outside rulemaking.

In (b), it is not clear what the Board’s directions are for submitting supplemental applications.

21 NCAC 30 .0606: State Board of Massage & Bodywork Therapy – The original rule was objected to due to lack of statutory authority and ambiguity and the rewritten rule submitted by the agency was approved.

21 NCAC 30 .0701: State Board of Massage & Bodywork Therapy – The original rule was objected to due to lack of necessity and the rewritten rule submitted by the agency was approved conditioned upon receipt of a technical change by the end of the day. The technical change was subsequently received.

21 NCAC 30 .0702: State Board of Massage & Bodywork Therapy – The original rule was objected to due to lack of statutory authority and ambiguity and the rewritten rule submitted by the agency was approved.

**RULES REVIEW COMMISSION**

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- 21 NCAC 30 .0903: State Board of Massage & Bodywork Therapy – The original rule was objected to due to lack of statutory authority and ambiguity and the rewritten rule submitted by the agency was approved.
- 21 NCAC 30 .0905: State Board of Massage & Bodywork Therapy - The rule was approved conditioned upon receiving a technical change by the end of the day. That technical change was subsequently received.
- 21 NCAC 33 .0106: Midwifery Joint Committee - The rule was approved conditioned upon receiving a technical change by the end of the day. That technical change was subsequently received.
- 25 NCAC 1E .1605 – State Personnel Commission – The Commission objected due to ambiguity. In (1), it is not clear what is meant by “acceptable” proof.
- 25 NCAC 1E .1606 – State Personnel Commission – The Commission objected due to ambiguity. It is not clear what is meant by “significant” community service activities.
- 25 NCAC 1E .1607 – State Personnel Commission – The Commission objected due to ambiguity and unnecessary. In (a)(2), it is not clear what is meant by “sufficient proof.” In (b), the first sentence is not a rule and is thus unnecessary.
- 25 NCAC 1I .2310: State Personnel Commission - The rule was approved conditioned upon receiving a technical change by the end of the day. That technical change was not subsequently received.
- 26 NCAC 3 .0207: Office of State Personnel - The rule was approved conditioned upon receiving a technical change by the end of the day. That technical change was subsequently received.

**COMMISSION PROCEDURES AND OTHER BUSINESS**

Mr. DeLuca reported that there were no rules filed this month therefore there would be no meeting in January. All follow up matters will be carried over to the next meeting.

The next meeting will be on Thursday, February 15, 2000.

The meeting adjourned at 1:44 p.m.

Respectfully submitted,  
Lisa Johnson

## CONTESTED CASE DECISIONS

*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698. Also, the Contested Case Decisions are available on the Internet at the following address: <http://www.state.nc.us/OAH/hearings/decision/caseindex.htm>.*

### 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

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b>ALCOHOL BEVERAGE CONTROL COMMISSION</b>				
NC ABC Commission v Food Lion, Inc. T/A Food Lion Store 540	99 ABC 0366	Mann	05/30/00	
NC ABC Commission v.DCL., Inc. T/A Cheap Shot O'Malleys	99 ABC 1341	Morrison	06/15/00	15:03 NCR 340
Daniel W. Shelton T/A Shelton Broers v.NC ABC Commission	99 ABC 1641	Conner	08/31/00	15:08 NCR 879
NC ABC Commission v. Harris Teeter, Inc. T/A Harris Teeter 142	99 ABC 1746	Lassiter	05/01/00	
NC ABC Commission v. Headlights, Inc. T/A Headlights	00 ABC 0302	Gray	08/21/00	
Timothy Lee Hopper v. NC ABC Commission	00 ABC 0326	Lassiter	10/20/00	
Steven Wilson McCrae v. NC ABC Commission	00 ABC 0598	Wade	08/23/00	
Xavier DeShawn Bradley v. NC ABC Commission	00 ABC 0619	Mann	08/08/00	
NC ABC Commission v. Kevin Scott Heath, Robinhood Grille, LLC t/a Robinhood Grille	00 ABC 1026	Gray	12/19/00	15:14 NCR 1390
<b>BOARD OF MORTUARY SCIENCE</b>				
NC Board of Mortuary Science v. John Charles McNeill, McNeill Funerals, Inc.	00 BMS 0564	Wade	10/13/00	
<b>CRIME CONTROL AND PUBLIC SAFETY</b>				
Mamie Lee French v. N.C. Crime Victims Compensation Commission	99 CPS 1646	Conner	04/27/00	15:01 NCR 38
Pearl J. Conner v. Victim & Justice Services, Dept of Crime Control & Public Safety	00 CPS 0903	Lassiter	11/09/00	
<b>HEALTH AND HUMAN SERVICES</b>				
William M. Gardin v. Department of Health & Human Services	98 CRA 1054	Lassiter	06/20/00	
Frederica LaShon Smith v. Department of Health & Human Services	00 CRA 0278 <sup>1</sup>	Wade	06/30/00	
Charles Cecil Douglas v. Department of Health & Human Services	00 CRA 0648	Wade	08/23/00	
<b>Child Support Enforcement Section</b>				
Steven M. Helms v. Department of Health & Human Services	98 CSE 1634	Gray	07/13/00	
David R. North v. Department of Health & Human Services	99 CSE 0408	Chess	10/25/00	
Michael A. Cameron v. Department of Health & Human Services	99 CSE 0424	Mann	09/25/00	
Marcus James Ward v. Department of Health & Human Services	99 CSE 0784	Wade	09/29/00	
Omer D. & Marinda A. Potter v. Department of Health & Human Services	99 CSE 0798	Chess	10/25/00	
Anthony R. McRae Sr. v. Department of Health & Human Services	99 CSE 0812	Morrison	12/20/00	
Richard Cook v. Department of Health & Human Services	99 CSE 0873 <sup>4</sup>	Chess	10/27/00	
Richard C. Mack v. Department of Health & Human Services	99 CSE 1244	Mann	08/16/00	
John Ray McCarroll v. Department of Health & Human Services	99 CSE 1272	Lassiter	08/16/00	
Loany Centeno v. Department of Health & Human Services	99 CSE 1325	Chess	06/29/00	
Craig D. McLeod v. Department of Health & Human Services	99 CSE 1369	Lassiter	08/29/00	
Jermaine L. Covington v. Department of Health & Human Services	99 CSE 1408	Lassiter	11/01/00	
Joseph E. Toothman v. Department of Health & Human Services	99 CSE 1428	Gray	09/27/00	
Kenneth W. Freeman, Jr. v. Department of Health & Human Services	99 CSE 1455	Wade	10/31/00	
Darryl Glenn Cannady v. Department of Health & Human Services	99 CSE 1457	Gray	07/27/00	
Michael A. Whitlow v. Department of Health & Human Services	99 CSE 1482	Gray	07/11/00	

**CONTESTED CASE DECISIONS**

Susan Marie Grier v. Department of Health & Human Services	99 CSE 1484	Mann	06/02/00
David R. McDonald v. Department of Health & Human Services	99 CSE 1486	Lassiter	10/02/00
Larry N. McLain v. Department of Health & Human Services	99 CSE 1488	Lassiter	08/16/00
Randy Gillespie v. Department of Health & Human Services	99 CSE 1491	Gray	08/22/00
Samuel E. Massenberg, Jr. v. Department of Health & Human Services	99 CSE 1513	Morrison	09/27/00
Nina Maier v. Department of Health & Human Services	99 CSE 1541	Gray	07/28/00
Edward J. Lucero v. Department of Health & Human Services	99 CSE 1542	Mann	10/31/00
Ronald E. Davis, Jr. v. Department of Health & Human Services	99 CSE 1554	Gray	07/28/00
Almiron J. Deis v. Department of Health & Human Services	99 CSE 1589	Mann	10/31/00
Kenneth Jones v. Department of Health & Human Services	99 CSE 1590	Gray	08/22/00
Anthony C. Lambert v. Department of Health & Human Services	99 CSE 1699	Gray	06/05/00
Richard Cook v. Department of Health & Human Services	00 CSE 0053 <sup>4</sup>	Chess	10/27/00
Wendy Gosnell v. Department of Health & Human Services	00 CSE 0073	Mann	06/14/00
Matthew Gibson v. Department of Health & Human Services	00 CSE 0076	Mann	10/31/00
Dwight Dion Hallman v. Department of Health & Human Services	00 CSE 0098	Mann	06/14/00
Davis, Donald George v. Department of Health & Human Services	00 CSE 0107	Wade	06/08/00
Davis, Donald George v. Department of Health & Human Services	00 CSE 0108	Wade	06/08/00
Thomas Jackson v. Department of Health & Human Services	00 CSE 0165	Chess	07/27/00
Albertus Shaw III v. Department of Health & Human Services	00 CSE 0176	Gray	06/05/00
Linwood Morris v. Department of Health & Human Services	00 CSE 0178	Mann	06/14/00
John H. Jones v. Department of Health & Human Services	00 CSE 0181	Morrison	08/25/00
Eddie J. Sykes v. Department of Health & Human Services	00 CSE 0192	Lassiter	06/13/00
Andrew S. McKenzie v. Department of Health & Human Services	00 CSE 0193	Wade	06/08/00
Darryal K. Anderson v. Department of Health & Human Services	00 CSE 0200	Gray	06/09/00
John V. Wiberg, Jr. v. Department of Health & Human Services	00 CSE 0211	Mann	06/23/00
William Jerry Gibbs v. Department of Health & Human Services	00 CSE 0213	Gray	06/22/00
Gregory L. Pinkett v. Department of Health & Human Services	00 CSE 0214	Wade	10/31/00
Joseph D. Turnage v. Department of Health & Human Services	00 CSE 0220	Morrison	11/16/00
Izell Anthony Twigg v. Department of Health & Human Services	00 CSE 0226	Gray	06/07/00
Don Fitzgerald Harris v. Department of Health & Human Services	00 CSE 0230	Mann	08/01/00
Benjamin E. Walker v. Department of Health & Human Services	00 CSE 0232	Morrison	07/31/00
Randy Keith Beddard v. Department of Health & Human Services	00 CSE 0236	Lassiter	06/20/00
Delinda Guthrie Montague v. Department of Health & Human Services	00 CSE 0237	Mann	08/01/00
Lavarr Sharpe v. Department of Health & Human Services	00 CSE 0240	Mann	06/26/00
Timothy Holtzclaw v. Department of Health & Human Services	00 CSE 0245	Gray	09/14/00
Melton Tillery v. Department of Health & Human Services	00 CSE 0246	Lassiter	06/20/00
Darla Judkin v. Department of Health & Human Services	00 CSE 0254	Chess	08/23/00
Christopher Mark Boyette v. Department of Health & Human Services	00 CSE 0262	Lassiter	11/01/00
Ronald L. Long, Jr. v. Department of Health & Human Services	00 CSE 0265	Mann	08/31/00
David Lee Jones v. Department of Health & Human Services	00 CSE 0269	Conner	09/27/00
Walter Witherspoon v. Department of Health & Human Services	00 CSE 0268	Chess	06/19/00
Frederica LaShon Smith v. Department of Health & Human Services	00 CSE 0279	Wade	06/08/00
John Wayne Chambers v. Department of Health & Human Services	00 CSE 0280	Mann	06/30/00
George Fuller v. Department of Health & Human Services	00 CSE 0283	Morrison	06/28/00
Robert G. Wilson v. Department of Health & Human Services	00 CSE 0285	Lassiter	05/25/00
Gary Frank Ramsey v. Department of Health & Human Services	00 CSE 0292	Mann	06/29/00
Pierce Foster Williams, Jr., v. Department of Health & Human Services	00 CSE 0297	Conner	09/26/00
Shylatron Copeland v. Department of Health & Human Services	00 CSE 0316	Mann	06/26/00
Isaac L. McCoy v. Department of Health & Human Services	00 CSE 0324	Lassiter	06/29/00
Robert Boening v. Department of Health & Human Services	00 CSE 0341	Mann	06/26/00
Joseph Patrick Santana v. Department of Health & Human Services	00 CSE 0344	Morrison	06/07/00
Hilton R. Shaw v. Department of Health & Human Services	00 CSE 0346	Lassiter	07/07/00
Glennie Mae Jones v. Department of Health & Human Services	00 CSE 0349	Mann	10/30/00
Anthony B. Bryant v. Department of Health & Human Services	00 CSE 0351	Wade	07/19/00
Michael Shelton DeBerry v. Department of Health & Human Services	00 CSE 0353	Gray	06/22/00
Leroy L. Alford v. Department of Health & Human Services	00 CSE 0354	Mann	06/26/00
Michael A. Tarach v. Department of Health & Human Services	00 CSE 0357	Morrison	07/26/00
Jeffrey T. Daye v. Department of Health & Human Services	00 CSE 0369	Lassiter	07/07/00
Michael Powell v. Department of Health & Human Services	00 CSE 0389	Conner	07/27/00
Jerry M. Thurmond v. Department of Health & Human Services	00 CSE 0390	Wade	06/30/00
Donald E. Church v. Department of Health & Human Services	00 CSE 0394	Gray	07/11/00
Ricky Barrett v. Department of Health & Human Services	00 CSE 0415	Mann	07/17/00
Kenneth Ray Smith v. Department of Health & Human Services	00 CSE 0416	Morrison	05/31/00
Juan M. Acosta v. Department of Health & Human Services	00 CSE 0417	Lassiter	06/24/00
Ronald T. Palmer v. Department of Health & Human Services	00 CSE 0422	Mann	10/31/00
Stanley Ray Allison v. Department of Health & Human Services	00 CSE 0425	Gray	07/11/00
James T. Graham v. Department of Health & Human Services	00 CSE 0426	Wade	06/08/00
Rufus Mitchell Simmons, Jr. v. Department of Health & Human Services	00 CSE 0431	Gray	06/27/00
James Howard Alexander v. Department of Health & Human Services	00 CSE 0433	Mann	06/26/00
Steve A. Hayward v. Department of Health & Human Services	00 CSE 0435	Morrison	07/14/00
Leonard Gabriel v. Department of Health & Human Services	00 CSE 0450	Mann	06/29/00
Patrick L. Moore v. Department of Health & Human Services	00 CSE 0463	Wade	06/19/00
Gregory Lee Bell v. Department of Health & Human Services	00 CSE 0464	Connor	06/29/00
Tamika B. Jenkins v. Department of Health & Human Services	00 CSE 0466	Chess	06/19/00
William R. Parker v. Department of Health & Human Services	00 CSE 0467	Gray	06/26/00
Vernon Ledbetter v. Department of Health & Human Services	00 CSE 0468	Mann	06/14/00
Garry L. Studer v. Department of Health & Human Services	00 CSE 0471	Lassiter	07/31/00
Johnnie Green v. Department of Health & Human Services	00 CSE 0472	Wade	08/09/00

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Roger Shular v. Department of Health & Human Services	00 CSE 0478	Mann	07/26/00
William A. Toney v. Department of Health & Human Services	00 CSE 0480	Wade	06/19/00
Larry O. Anthony v. Department of Health & Human Services	00 CSE 0484	Connor	06/26/00
Johnny Daye v. Department of Health & Human Services	00 CSE 0485	Gray	06/22/00
Jose A. Seijo v. Department of Health & Human Services	00 CSE 0491	Morrison	06/26/00
Randy Hammonds v. Department of Health & Human Services	00 CSE 0495	Lassiter	06/20/00
Shawn F. Moser Sr. v. Department of Health & Human Services	00 CSE 0511	Conner	08/14/00
Timothy Franklin Clowney v. Department of Health & Human Services	00 CSE 0512	Wade	08/09/00
Clarence Evans v. Department of Health & Human Services	00 CSE 0513 <sup>2</sup>	Conner	07/28/00
Clarence Evans v. Department of Health & Human Services	00 CSE 0545 <sup>2</sup>	Conner	07/28/00
Rickey L. Gullede v. Department of Health & Human Services	00 CSE 0558	Mann	06/26/00
Damon Barnes Jr. v. Department of Health & Human Services	00 CSE 0567	Lassiter	08/16/00
William A. Bell v. Department of Health & Human Services	00 CSE 0589	Gray	08/21/00
Robert Lee Thompson v. Department of Health & Human Services	00 CSE 0592	Wade	08/10/00
William T. Hutto v. Department of Health & Human Services	00 CSE 0594	Conner	09/07/00
Julian Orlando Fernandez v. Department of Health & Human Services	00 CSE 0599	Gray	08/21/00
Bryan Keith Wilkerson v. Department of Health & Human Services	00 CSE 0607	Morrison	08/01/00
Rodney A. Hopper v. Department of Health & Human Services	00 CSE 0613	Wade	08/23/00
Tabitha Angley v. Department of Health & Human Services	00 CSE 0614	Conner	07/27/00
Douglas M. Coker v. Department of Health & Human Services	00 CSE 0622	Chess	07/11/00
Mark Christopher Smith v. Department of Health & Human Services	00 CSE 0627	Gray	08/21/00
Rhonda Styers v. Department of Health & Human Services	00 CSE 0639	Mann	10/30/00
Terrence L. Holder v. Department of Health & Human Services	00 CSE 0640	Morrison	08/18/00
Mikal M. Mua'zzin v. Department of Health & Human Services	00 CSE 0651	Conner	08/28/00
Jose' D. Rivas v. Department of Health & Human Services	00 CSE 0658	Chess	08/07/00
Benny G. Bowen v. Department of Health & Human Services	00 CSE 0666	Mann	12/11/00
Valerie A. Simpson v. Department of Health & Human Services	00 CSE 0673	Morrison	07/07/00
James H. Hopper, Jr. v. Department of Health & Human Services	00 CSE 0677	Lassiter	08/29/00
Joseph I. Woodcock v. Department of Health & Human Services	00 CSE 0684	Lassiter	07/07/00
Kenneth R. Harker v. Department of Health & Human Services	00 CSE 0686	Wade	09/11/00
Justine Roberts v. Department of Health & Human Services	00 CSE 0694	Conner	08/28/00
Dana E. Grice v. Department of Health & Human Services	00 CSE 0709	Morrison	09/08/00
Alfred R. Swain v. Department of Health & Human Services	00 CSE 0718	Mann	06/28/00
Tyrone K. Anthony v. Department of Health & Human Services	00 CSE 0741	Wade	10/31/00
James C. Martin, Jr. v. Department of Health & Human Services	00 CSE 0751	Conner	08/30/00
Wade A. Burgess v. Department of Health & Human Services	00 CSE 0757	Gray	08/22/00
Donald Daniel Harmon v. Department of Health & Human Services	00 CSE 0758	Mann	10/24/00
Parnell Dougloss Sparks v. Department of Health & Human Services	00 CSE 0761	Morrison	06/06/00
Kevin S. Tate v. Department of Health & Human Services	00 CSE 0764	Lassiter	09/11/00
Jeffrey Ottis Hairr v. Department of Health & Human Services	00 CSE 0766	Mann	07/17/00
Ricky A. Phillips v. Department of Health & Human Services	00 CSE 0777	Morrison	08/01/00
Catherine A. Odom v. Department of Health & Human Services	00 CSE 0792	Mann	08/31/00
George Franklin Anderson v. Department of Health & Human Services	00 CSE 0793	Morrison	08/09/00
Raymond Thomas Carpenter, Jr. v. Department of Health & Human Svcs	00 CSE 0810	Mann	09/25/00
Darrell Johnson v. Department of Health & Human Services	00 CSE 0811	Wade	09/29/00
Ronald Owen Goodwin v. Department of Health & Human Services	00 CSE 0831	Chess	09/07/00
Jean M. Brown v. Department of Health & Human Services	00 CSE 0848	Wade	08/10/00
Richard B. Malloy v. Department of Health & Human Services	00 CSE 0849	Wade	10/02/00
Ronald R. Lemmons v. Department of Health & Human Services	00 CSE 0865	Gray	08/21/00
St. Clair Staley v. Department of Health & Human Services	00 CSE 0890 <sup>3</sup>	Conner	10/06/00
Kenneth Duncan v. Department of Health & Human Services	00 CSE 0896	Gray	09/27/00
Kelvin Hardesty v. Department of Health & Human Services	00 CSE 0901	Lassiter	10/02/00
Michael Anthony Wright v. Department of Health & Human Services	00 CSE 0922	Lassiter	10/17/00
Cyrus V. Perry v. Department of Health & Human Services	00 CSE 0924	Gray	09/29/00
Jamey Johnson v. Department of Health & Human Services	00 CSE 0925	Wade	10/10/00
Marvin A. Smith v. Department of Health & Human Services	00 CSE 0932	Conner	09/21/00
Chris Michael Moore v. Department of Health & Human Services	00 CSE 0945	Gray	10/17/00
James C. Boyce v. Department of Health & Human Services	00 CSE 0946	Wade	12/01/00
Matthew Russell Schmidt v. Department of Health & Human Services	00 CSE 0963	Morrison	10/04/00
Keith Stephenson v. Department of Health & Human Services	00 CSE 0979	Chess	10/25/00
Walter R. Spencer, Jr. v. Department of Health & Human Services	00 CSE 1010	Morrison	10/27/00
Keith D. Meredith v. Department of Health & Human Services	00 CSE 1011	Morrison	09/19/00
Billy Joe Davis v. Department of Health & Human Services	00 CSE 1012	Lassiter	09/08/00
Darwin Dean Graves v. Department of Health & Human Services	00 CSE 1014	Conner	11/28/00
Norman G. Mitchell v. Department of Health & Human Services	00 CSE 1036	Chess	12/18/00
Mary A. Hines v. Department of Health & Human Services	00 CSE 1047	Gray	10/20/00
St. Clair Staley v. Department of Health & Human Services	00 CSE 1069 <sup>3</sup>	Conner	10/06/00
Nancy Moore v. Department of Health & Human Services	00 CSE 1081	Lassiter	11/16/00
Carl V. Greggs, Sr. v. Department of Health & Human Services	00 CSE 1082	Wade	11/16/00
Chester L. Jenkins v. Department of Health & Human Services	00 CSE 1089	Chess	12/13/00
Tacha Hyatt-Crowder v. Department of Health & Human Services	00 CSE 1098	Gray	11/07/00
Stan Valentine v. Department of Health & Human Services	00 CSE 1100	Morrison	11/16/00
Carlos Eugene Jacobs v. Department of Health & Human Services	00 CSE 1259	Mann	11/30/00
Norman Bell v. Department of Health & Human Services	00 CSE 1268	Morrison	11/28/00
Victor Ferguson v. Department of Health & Human Services	00 CSE 1396	Mann	06/26/00

*Division of Social Services*

Emma Burkes (Edwards v. Department of Health & Human Services	00 DCS 1221	Morrison	08/17/00
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Frederica LaShon Smith v. Department of Health & Human Services	00 DCS 0277 <sup>1</sup>	Wade	06/30/00	
Michael Clay Mitchell v. Department of Health & Human Services	00 DCS 0300	Wade	06/30/00	
Sherry Moorefield v. Department of Health & Human Services	00 DCS 0350	Gray	08/25/00	
Pamela Browning Frazier v. Department of Health & Human Services	00 DCS 0479	Lassiter	06/12/00	
Lisa Lawler v. Department of Health & Human Services	00 DCS 0529	Morrison	08/29/00	
May M. Timmons v. Department of Health & Human Services	00 DCS 0546	Gray	06/22/00	
Starice Jennifer Anderson v. Department of Health & Human Services	00 DCS 0556	Gray	08/10/00	
Beverly Hawking v. Department of Health & Human Services	00 DCS 0600	Mann	06/30/00	
Lisa Hardy v. Department of Health & Human Services	00 DCS 0678	Mann	07/17/00	
Chasity Pipkin v. Department of Health & Human Services	00 DCS 0838	Gray	09/11/00	
Joyce Staley v. Department of Health & Human Services	00 DCS 0842	Conner	09/12/00	
Bessie B. Hampton v. Department of Health & Human Services	00 DCS 0845	Morrison	08/29/00	
Beverly Singleton v. Department of Health & Human Services	00 DCS 0846	Lassiter	08/18/00	
Kerry Lynn Morgan v. Department of Health & Human Services	00 DCS 0850	Conner	09/12/00	
Bonnie D. Drew v. Department of Health & Human Services	00 DCS 0906	Morrison	08/28/00	
Amy W. Hill v. Department of Health & Human Services	00 DCS 0974	Lassiter	09/08/00	
Amelia B. Bradshaw v. Department of Health & Human Services	00 DCS 0996	Mann	09/13/00	
Deborah Gray v. Department of Health & Human Services	00 DCS 1068	Morrison	09/19/00	
Kimberly D. Mays v. Department of Health & Human Services	00 DCS 1099	Gray	10/27/00	
Jennifer C. Dillard v. Department of Health & Human Services	00 DCS 1119	Wade	09/29/00	
Johnny K. Moore v. Department of Health & Human Services	00 DCS 1179	Morrison	10/04/00	
Latisha Eason Parker v. Department of Health & Human Services	00 DCS 1195	Wade	10/31/00	
Jannai Neal v. Department of Health & Human Services	00 DCS 1227	Conner	10/24/00	
Sheila Foy v. Department of Health & Human Services	00 DCS 1238	Gray	10/27/00	
Reta M. Dixon v. Department of Health & Human Services	00 DCS 1381	Conner	12/04/00	
Benita Hopkins v. Department of Health & Human Services	00 DCS 1444	Lassiter	12/18/00	
Mary Springer v. Department of Health & Human Services	00 DCS 1459	Conner	12/20/00	
Estelle Roberta Allison Teague and Marlene Allison Creary v. Department of Health & Human Services	99 DHR 0120	Reilly	05/15/00	
Philistine Thompson v. Department of Health & Human Services	99 DHR 0741	Gray	08/22/00	
Ruth I. Johnson v. Department of Health & Human Services	99 DHR 0952	Chess	05/27/00	
Lakecher McFadden v. Department of Health & Human Services	99 DHR 1631	Conner	09/18/00	
Mary Johnson McClure v. Department of Health & Human Services	00 DHR 0368	Lassiter	06/19/00	
Barry Arthur Kelly, Linda Snipes Kelley v. Department of Health and Human Services	00 DHR 0038	Gray	09/15/00	
Vonda Scales Shore v. Department of Health & Human Services	00 DHR 0500	Lassiter	10/06/00	
Ann Marie & Daniel Short v. Department of Health & Human Services	00 DHR 0574	Reilly	05/22/00	
Lynell Holley Walton v. DHHS, (Health Care Personnel Registry & Investigations)	00 DHR 0605	Chess	08/15/00	
Deborah A. Shands v. Butner Adolescent Treatment Center	00 DHR 0695	Mann	07/27/00	
Larry E. Cummins MD, PI Case #1999-1752 v. Div. of Medical Assistance, Kim Meymandi, Chief Hearing Officer	00 DHR 0797	Lassiter	08/01/00	
Larry E. Cummins MD, PI Case #1999-1117 v. Div. of Medical Assistance, Kim Meymandi, Chief Hearing Officer	00 DHR 0798	Lassiter	08/01/00	
Robert and Shirley Harmon on behalf of Gary Harmon v. Crossroads Behavioral Healthcare Center and the NC Div of Mental Health, Dev. Disabilities and Substance Abuse Services	00 DHR 0955	Chess	09/07/00	
Walter W. Griswold for Kimberly Griswold v. Crossroads Behavioral Healthcare Center and the NC Div of Mental Health, Dev. Disabilities and Substance Abuse Services	00 DHR 1025	Chess	09/07/00	
Carolyn W. Cooper and Happy Days Child Care v. DHHS, Div of Child Development	00 DHR 1031	Gray	08/31/00	
Larnetra D. Noel v. NC Department of Human Services	00 DHR 1327	Chess	10/06/00	
Tracy McLeod v. First Health Richmond Cty Home Health, DHR-DOFS	00 DHR 1382	Gray	11/21/00	
Reshea Devon Pierce v. Department of Health & Human Services	00 DHR 1516	Morrison	12/18/00	
<b>Division of Facility Services</b>				
Angela Denise Headen v. DHHS, Division of Facility Services	99 DHR 0107	Wade	04/11/00	15:01 NCR 41
Ruth Mae Wiley v. NC DHHS, Division of Facility Services	99 DHR 0331	Chess	05/27/00	
Elyse Glover v. DHHS, Div of Facility Svcs., Personnel Registry Case	99 DHR 1036	Lassiter	06/29/00	
Sharon J. Saxe v. DHHS, Division of Facility Services	99 DHR 1169	Lassiter	11/16/00	15:14 NCR 1396
Crystal Shermain Byers v. DHHS, Division of Facility Services	00 DHR 0217	Mann	06/07/00	
Rhonda Gail Andrew v. DHHS, Division of Facility Services	00 DHR 0282	Chess	09/21/00	
Camille Faustin v. DHHS, Division of Facility Services	00 DHR 0298	Smith	06/28/00	
David Jordan v. DHHS, Division of Facility Services	00 DHR 0311	Lassiter	06/19/00	
Lester Lee Huskins v. DHHS, Division of Facility Services	00 DHR 0391	Lassiter	08/29/00	
Charlene Jenkins v. DHHS, Div. of Facility Svcs., Health Care Personnel, Registry Section	00 DHR 0531	Wade	11/27/00	
Cynthia Renee Cajuste v. DHHS, Division of Facility Services	00 DHR 0606	Morrison	11/08/00	
Celestine L. Bristel v. DHHS, Division of Facility Services	00 DHR 0636	Lassiter	08/15/00	
Violet Anne Berliner v. DHHS, Division of Facility Services	00 DHR 0685	Gray	11/17/00	
MariaGoretti Adaugo Obialor v. DHHS, Div. of Facility Services	00 DHR 0743	Morrison	08/31/00	
Huelva Dale Corbett v. DHHS, Div. of Facility Services	00 DHS 0780	Gray	09/27/00	
Phoebe Visconti Sanders v. DHHS, Div. of Facility Services	00 DHR 0802	Lassiter	09/27/00	
Iola Cook Jefferson v. DHHS, Division of Facility Services	00 DHR 0835	Lassiter	07/24/00	
Michelle E. Lee v. DHHS, Division of Facility Services	00 DHR 0869	Conner	10/10/00	15:10 NCR 1045
Betty Jean Ellis v. DHHS, Division of Facility Services	00 DHR 0880	Lassiter	09/08/00	



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Hartis Stallings v. DHHS, Division of Facility Services	00 DHR 1037	Lassiter	08/29/00		
Desiree P. Garay v. DHHS, Division of Facility Services	00 DHR 1038	Conner	09/20/00		
Lauren Hoodenpyle v. DHHS Division of Facility Services	00 DHR 1045	Chess	09/12/00		
Jacqueline Alexander v. DHHS, Division of Facility Services	00 DHR 1126	Lassiter	09/07/00		
Debra Brown v. DHHS, Division of Facility Services	00 DHR 1136	Lassiter	09/07/00		
Tracy Smith v. DHHS, Division of Facility Services	00 DHR 1236	Lassiter	10/16/00		
Michele Carver v. DHHS, Div. of Facility Services, Health Care Personnel Registry	00 DHR 1289	Lassiter	10/05/00		
Sherie Moran Hinson Edwards v. DHHS, Division of Facility Services	00 HDR 1299	Morrison	12/18/00		
<b>ENVIRONMENT AND NATURAL RESOURCES</b>					
Ronnie L. Sturdivant v. Dept. of Environment & Natural Resources	98 EHR 1222	Lassiter	05/11/00	15:04 NCR	501
Dan M. Eichenbaum v. DENR & Harrison Construction Division of APAC-Tennessee, Inc.	99 EHR 0191	Lassiter	11/21/00		
Dixie Lumber Company of Cherryville, Inc. v. Department of Environment & Natural Resources	99 EHR 0395	Wade	05/04/00		
Shuttle Cleaning Service, Inc., Phillip Allen (Owner) v. Dept. of Environment & Natural Resources	99 EHR 1167	Reilly	05/19/00	15:06 NCR	696
Murphy Family Farms v. Department of Environment & Natural Resources	99 EHR 1181	Gray	08/14/00		
William A. Weston, Jr. v. Dept. of Environment & Natural Resources	99 EHR 1538	Conner	05/24/00	15:03 NCR	343
William F. McBrayer, Jr. v. Dept. of Environment & Natural Resources	99 EHR 1566	Wade	08/21/00		
Howard L. Hardy, Kenneth & Vester Freeman v. Department of Environment & Natural Resources	99 EHR 1600	Gray	08/31/00		
Gregory Marc Edwards v. Department of Environment & Natural Resources	99 EHR 1635	Wade	09/29/00		
David Sinclair v. Dept. of Environment & Natural Resources	00 EHR 0126	Conner	08/15/00	15:06 NCR	693
Jerry D. Phillips v. Department of Environment & Natural Resources	00 EHR 0151	Chess	09/28/00		
Amos Walter Jackson v. Dept. of Environment & Natural Resources	00 EHR 0568	Gray	09/22/00		
Archie D. Fellenzer, Jr. v. CAMA	00 EHR 0836	Morrison	11/03/00		
Carolina Mountain Construction, Inc. v. Dept. of Env. & Natural Resources	00 EHR 0902	Chess	09/07/00		
Peter Pallas v. New Hanover County Board of Health	00 EHR 1149	Chess	10/19/00		
Jerry J. Fowler v. Department of Environment & Natural Resources	00 EHR 1154	Chess	10/27/00		
William A. Sergeant Lot 9 v. Dept. of Environment & Natural Resources	00 EHR 1210	Gray	12/12/00		
Scotty's Mobile Village, Larry G. Scott v. Dept. of Env. & Natural Resources	00 EHR 1266	Morrison	12/12/00		
Chris & Senja Shumater v. Dept. of Environment & Natural Resources	00 EHR 1584	Morrison	12/18/00		
<i>Coastal Resources Commission</i>					
Gregory A. Bohmert v. Coastal Resources Commission	99 EHR 1438	Reilly	05/24/00	15:03 NCR	342
<i>Division of Air Quality</i>					
Bullock Properties/Ralph M. Bullock v. DENR, Div. of Air Quality	99 EHR 1088	Morrison	04/12/00		
VXIII Airborne Corps & Fort Bragg, Dept. of the Army, USA v. State of North Carolina, Dept. of Environment and Natural Resources, Division of Air Quality	00 EHR 0227	Conner	08/31/00		
<i>Division of Land Resources</i>					
James Carlis Reavis and Melinda D. Reavis v. NC DENR, Division of Land Resources	98 EHR 1292	Gray	10/16/00		
<i>Division of Water Quality</i>					
Fred J. McPherson v. DENR, Division of Water Quality	00 EHR 0160	Morrison	09/01/00		
Town of Wallace v. NCDENR, Division of Water Quality	00 EHR 0247	Lassiter	10/05/00		
Frederick Holland, Hervie S. Honeycut, and Mary Jane P. Osborne v. NCDENR, Division of Water Quality	00 EHR 0332	Conner	09/18/00		
<i>Division of Waste Management</i>					
A. J. Lancaster, Jr. v. NC DENR, Div. of Waste Management	99 EHR 0994	Mann	07/27/00	15:05 NCR	636
<b>JUSTICE</b>					
Pierre Deberry Debnam v. NC Criminal Justice Education and Training Standards Commission	00 DOJ 0719	Morrison	08/15/00		
<i>Alarm Systems Licensing Board</i>					
John Martin Canter v Alarm Systems Licensing Board	00 DOJ 0573	Gray	06/02/00		
Kenneth Waits Putnam v. Alarm Systems Licensing Board	00 DOJ 0574	Gray	06/07/00		
James Thomas Wagg v. Alarm Systems Licensing Board	00 DOJ 1124	Lassiter	11/02/00		
Edwin Moore Stevens v. Alarm Systems Licensing Board	00 DOJ 1413	Lassiter	11/02/00		
<i>Education and Training Standards Division</i>					
Peter A. Davis v. Sheriffs' Education & Training Standards Comm.	99 DOJ 0531	Reilly	09/14/00		
James Everett Hill v. Sheriffs' Education & Training Standards Comm.	99 DOJ 1479	Reilly	04/10/00		
Juan Montez Jones v. N.C. Criminal Justice Education & Training Standards Commission	99 DOJ 1716	Conner	07/05/00		
Larry G. McClain v. Sherriffs' Education & Training Standards Comm.	99 DOJ 1721	Morrison	06/28/00		
Ersal Overton, III v. Sherriffs' Education & Training Standards Comm.	99 DOJ 0791	Mann	08/23/00	15:08 NCR	883
Margaret A. Singleton v. Sheriffs' Education & Training Stds. Comm.	00 DOJ 0056	Gray	03/01/00		
William H. Norton, III v. NC Sheriffs' Educ. & Training Stds. Comm.	00 DOJ 0563	Gray	09/19/00		
Herbert Wilson Stubbs v. NC Criminal Justice Ed. & Training Stds. Comm.	00 DOJ 0907	Lassiter	11/02/00		

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James Edward Ellerbe v. Sheriffs' Education & Training Stds. Comm.	00 DOJ 0948	Lassiter	07/31/00		
Dexter Dwayne Boyd v. Criminal Justice Education & Training Standards Commission	00 DOJ 1366	Lassiter	05/26/00		
Rosamel T. Gresham v. Sherriffs' Education & Training Standards Comm.	00 DOJ 1557	Lassiter	12/20/00		
<b>Private Protective Services Board</b>					
Charles A. Joyce and Carolina Security Patrol, Inc. v. Private Protective Services Board	00 DOJ 0004	Conner	08/14/00		
George Thomas Bond v. Private Protective Services	00 DOJ 0014	Conner	05/11/00		
Robert V. Croom and Robert V. Wooster v. Private Protective Services Board	00 DOJ 0058	Morrison	05/16/00		
Sharon Blackstock v. Private Protective Services Board	00 DOJ 0059	Morrison	05/16/00		
Samuel G. Slater v. Private Protective Services Board	00 DOJ 0090	Morrison	05/12/00		
Keith Lewis v. Private Protective Services Board	00 DOJ 0113	Connor	06/07/00		
John W. Fromm v. Private Protective Services Board	00 DOJ 0570	Conner	06/07/00		
Jason Stewart Duckett v. Private Protective Services Board	00 DOJ 0572	Gray	06/07/00		
Shannon Ray Nance v. Private Protective Services Board	00 DOJ 0609	Gray	06/07/00		
Franklin Delano Gann, Jr. v. Private Protective Services Board	00 DOJ 0670	Morrison	06/15/00		
William Junior Holmes v. Private Protective Services Board	00 DOJ 0671	Morrison	06/15/00		
Michael Burt v. Private Protective Services Board	00 DOJ 0672	Morrison	06/15/00		
Jason William Kane v. Private Protective Services Board	00 DOJ 0952	Wade	09/08/00		
Anthony Queen Williams v. Private Protective Services Board	00 DOJ 1005	Morrison	09/01/00		
Calvin Earl McRae v. Private Protective Services Board	00 DOJ 0736	Morrison	08/02/00		
<b>PUBLIC INSTRUCTION</b>					
Doris G. Branch v. NC Department of Public Instructions	98 EDC 0368	Gray	10/08/00	15:13 ncr	1233
Stacia R. Parker v. Charlotte-Mecklenburg Board of Education	99 EDC 0389	Gray	08/23/00		
Charlie Lee Richardson v. Department of Public Instruction	99 EDC 0788	Reilly	04/11/00	15:01 NCR	45
Dale Y. Farmer v. Department of Public Instruction	00 EDC 0373	Gray	05/26/00		
Cumberland County Board of Education v. Mr. and Mrs. Wesley Waters for Weston Harold Waters	00 EDC 0465	Wade	08/11/00		
Kings Mountain Board of Education, Larry Allen, Melony Bolin, Ronald Hawkins, Shearra Miller, Stella Putnam, Joanne Cole, Otis Cole, Charlie Smith, Frank Smith, and Angela Smith v. NC State Board of Education and Cleveland County Board of Commissioners	00 EDC 0800	Morrison	06/26/00	15:04 NCR	492
James William Stockstill v. Orange County Board of Education, Orange County Schools and Randy Bridges	00 EDC 1261	Conner	09/28/00		
<b>DEPARTMENT OF INSURANCE</b>					
Jacquelyn Hastings v. NC Teachers & State Employees' Comprehensive Major Medical Plan	98 INS 1662	Gray	05/25/00		
<b>MISCELLANEOUS</b>					
Nancy York Vorys v. Raleigh Police Department		00 MIS 1436	Gray	10/27/00	
<b>STATE PERSONNEL</b>					
Denise M. Ashe v. Northampton County Board of Commissioners, Northampton County Board of Social Services, Northampton County Department of Social Services	95 OSP 1011	Gray	08/29/00		
Michele Smith v. Cumberland Co. Dept. of Social Services	97 OSP 1344	Morgan	07/11/00		
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Pat Hovis v. Lincoln County Department of Social Services	98 OSP 1348	Conner	11/15/00		
Larry Wellman v. Department of Health & Human Services	99 OSP 0484	Reilly	05/11/00	15:01 NCR	47
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Doris A. Archibald v. Dare County Health Department	99 OSP 0622	Gray	08/10/00		
Mack Reid Merrill v. NC Department of Correction	99 OSP 0627	Wade	08/23/00	15:07 NCR	772
Russell J. Suga v. Employment Security Commission of NC	99 OSP 0768	Gray	06/23/00		
Glenn Roger Forrest v. NC Department of Transportation	99 OSP 0853	Lassiter	08/24/00	15:07 NCR	781
Sarah C. Hauser v. Forsyth Co., Department of Public Health	99 OSP 0923	Lassiter	04/20/00	15:01 NCR	5
Larry Mayo v. Employment Security Commission of NC	99 OSP 1023	Wade	06/30/00		
Michael Duane Maxwell v. Dept. of Health & Human Services	99 OSP 1068	Reilly	08/03/00	15:09 NCR	924
Joel T. Lewis v. Department of Correction	99 OSP 1116	Reilly	05/31/00		
Christopher D. Lunsford v. NC Dept. of Administration, Motor Fleet	99 OSP 1142	Morrison	08/11/00		
Van Sutton v. Office of Juvenile Justice/Dobbs School	99 OSP 1204	Gray	07/13/00		
Benny Callihan v. Department of Correction	99 OSP 1381	Wade	09/06/00		
Russell J. Suga v. Employment Security Commission of NC	99 OSP 1649	Gray	06/09/00	15:04 NCR	508
Preston D. Stiles v. NC Dept of Health & Human Svcs., Caswell Center	99 OSP 1757	Anderson	08/28/00		
Lawrence E. Cooke v. Craven Correctional Facility, NC Dept of Correction	00 OSP 0013	Conner	07/05/00		
Fred J. Hargro, Jr. v. NC Dept of Crime Control & Public Safety, NC State Highway Patrol	00 OSP 0029	Morrison	08/08/00		
Robert Boyd Choat v. Department of Correction		00 OSP 0102	Reilly	07/24/00	
Larry Campbell v. Wildlife Resources Commission	00 OSP 0117 <sup>5</sup>	Reilly	09/28/00		
Larry Campbell v. Wildlife Resources Commission	00 OSP 0118 <sup>5</sup>	Reilly	09/28/00		
Vicky Ruffin-Jenkins v. Sparc Academy	00 OSP 0207	Connor	06/26/00		
Robert L. Swinney v. NC Department of Transportation	00 OSP 0281	Morrison	12/20/00	15:14 NCR	1392
Jesse C. Whitaker v. Facilities Operations (NCSU)	00 OSP 0342	Chess	07/11/00		
Gladys M. Sanders v. NC Department of Correction	00 OSP 0362	Gray	09/27/00		
Lillie B. Whitaker v. Center Point Human Resources, Ronald Morton	00 OSP 0443	Lassiter	07/24/00		

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Addie M. Williams v. Pender Correctional Inst., Dept. of Correction	00 OSP 0562	Conner	09/12/00	
Shelby Gorham-Teel v. NC Dept of Corrections, Div. of Prisons	00 OSP 0586	Chess	07/10/00	
Michael Jackson v. University Graphics, NC State University	00 OSP 0621	Lassiter	08/16/00	
Marvin Clark v. NC Department of Correction	00 OSP 0623	Gray	08/03/00	
James F. Pridgen, Jr. v. A&T State University, Millicent Hopkins	00 OSP 0652	Mann	07/27/00	
Mark Esposito v. NCDOT/Aviation, Bill Williams, Director	00 OSP 0791	Lassiter	07/24/00	
Marilyn R. Horton v. Gaston-Lincoln Mental Health	00 OSP 0912	Morrison	10/19/00	
Jeffrey L. Teague v. NC Department of Correction	00 OSP 0978	Chess	10/27/00	
Bernadine Johnson v. Department of Correction		00 OSP 1118	Morrison	11/20/00
Robert C. Adams v. NC Department of Labor	00 OSP 1185	Conner	11/28/00	
Pamela R. Smith v. NC Department of Public Instruction	00 OSP 1229	Conner	11/09/00	
Dora P. Pettiford v. NC Department of Health & Human Services	00 OSP 1279	Lassiter	09/25/00	
David A. Greats v. NC Department of Correction	00 OSP 1282	Conner	11/09/00	
Wayne Davis v. Shelby City Schools	00 OSP 1402	Lassiter	12/20/00	
Erthel Hines v. NC Agricultural & Technical State University	00 OSP 2139	Morrison	12/21/00	
<b>STATE TREASURER</b>				
Jean C. Burkhart v. NC Dept. of State Treasurer, Retirement Systems Division	99 DST 1475	Mann	05/30/00	15:05 NCR 633
<b>DEPARTMENT OF REVENUE</b>				
Eddie B. Thomas v. NC Department of Revenue		00 REV 0530	Gray	08/24/00
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<b>UNIVERSITY OF NORTH CAROLINA</b>				
Theresa T. Godfrey v. UNC Hosp. at Chapel Hill, Dept of Pharm. Billing	00 UNC 0763	Lassiter	09/08/00	
Betty S. Matheson v. UNC Hospitals, Patient Accounting Department, OR Services	00 UNC 1020	Gray	10/09/00	
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H. Michael Poole, Ph.D v. Perry Newsome, Exec. Dir. NC Board of Ethics	00 EBD 0696	Lassiter	08/25/00	

**CONTESTED CASE DECISIONS**

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**STATE OF NORTH CAROLINA**  
**COUNTY OF FORSYTH**

**IN THE OFFICE OF**  
**ADMINISTRATIVE HEARINGS**  
**00 ABC 1026**

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**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL** )  
**COMMISSION** )  
**Petitioner,** )  
 )  
**v.** )  
 )  
**KEVIN SCOTT HEATH, ROBINHOOD** )  
**GRILLE, LLC, T/A ROBINHOOD GRILLE** )  
**Respondent.** )

**RECOMMENDED DECISION**

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This contested case was heard before Beecher R. Gray, administrative law judge, on November 30, 2000 in High Point, North Carolina. At the close of the hearing, both exhibits admitted, Respondent's number one (1) and Petitioner's number one (1), both being liquor bottles, were released into the custody of counsel for Petitioner for purposes of a final agency decision, any necessary appeals, and for final disposal in accordance with applicable law.

**APPEARANCES :**

Petitioner: LoRita K. Pinnix, Esq.

Respondent: Kevin Scott Heath, appearing pro se

**FINDINGS OF FACT**

1. The parties stipulated on the record at the hearing that each had received notice of hearing by certified mail at least 15 days prior to the hearing and that notice was proper.
2. Petitioner's Robinhood Grille is located at 1989 North Peace Haven Road in Winston-Salem, North Carolina. Petitioner holds mixed beverage Permit Number MX 9109 for this business.
3. On April 14, 2000, Forsyth Municipal ABC Law Enforcement Officer Michael King visited Respondent's premises for a routine compliance inspection. Officer King was accompanied by other officers, all of whom arrived at Robinhood Grille a few minutes after 8:00 p.m.
4. The officers checked various aspects of Respondent's operation that night for compliance with ABC laws. They found no underage sales or consumption on the premises, although there were a number of patrons present on April 14, 2000, a Friday night.
5. Officer King checked approximately twenty-five (25) bottles of liquor that night, none of which showed any ABC violations. Upon checking a .750 liter bottle of Colonial Club Amaretto at the mixing station, containing approximately .100 liters of liquor, Officer King found that the mixed beverage tax stamp on that bottle had two light blue ink lines marked through the stamp from the top center diagonally through the left side, as if made by a blue ball point pen. The stamp contained Respondent's mixed beverage Permit Number, MX 9109; Order Number 177; and a date of 03-20-00. The right lower corner of the stamp was missing. The exterior of the bottle was sticky with residue. None of the identifying data on the stamp was obscured or missing. Another bottle of Colonial Club Amaretto found on the mixing station shelf had a tax stamp without any marks on it.
6. Amaretto is not a high turnover liquor as compared to vodkas, gin, and bourbons.
7. Officer King showed the nearly empty Amaretto bottle to Respondent who told Officer King that the blue ink marks were just stray marks. Respondent demonstrated to Officer King how he and his employees defaced a tax stamp on an empty bottle by completely obliterating the stamp with an ink pen or marker so that practically nothing could be read on the stamp.

**CONTESTED CASE DECISIONS**

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8. Officer King looked in one or more trash receptacles in the Grille that night to see if he could find any other bottles with defaced tax stamps but found none. Officer King did not dig deeply into the trash receptacles in this search; it was, by his testimony, not an exhaustive search.

The ABC Commission has promulgated rules regarding tax stamps and mixed beverage containers which provide:

**PROHIBITED ACTS: HANDLING AND STORAGE OF LIQUOR**

Neither a mixed beverages permittee nor his employee, whether on or off the premises, shall:

...

- (3) destroy, alter or deface the mixed beverages tax stamp or any other stamp, label, seal or device required by law to be affixed to a liquor container before the container has been emptied; . . .
- (9) possess any empty container of spirituous liquor purchased for resale in mixed beverages if the mixed beverages tax stamp on that container has not been permanently defaced; . . .

N.C. Admin. Code tit. 04, r. 02S.0513 (3), (9) (July 1992).

Respondent has been in the ABC business for 14 years and never has had an ABC violation prior to this contested case.

The officers who checked Respondent's premises on April 14, 2000 found no other ABC violations that night.

The Administrative Procedures Act contains the following enumerated power of an administrative law judge in hearing a contested case:

- (b) An administrative law judge may:

Determine that a rule as applied in a particular case is void because (1) it is not within the statutory authority of the agency, (2) is not clear and unambiguous to persons it is intended to direct, guide, or assist, or (3) is not reasonably necessary to enable the agency to fulfill a duty delegated to it by the General Assembly.

N.C. Gen. Stat. Section 150B-33(b) (9) (1999).

Officer King testified that he knew of no definition available to him or other ABC officers on the intended meaning of the words destroy, alter, or deface as used in the Commission's rule found at 04 NCAC 02S.0513(3). Officer King believes that a clear definition of such terms would be beneficial to the regulated community and to him as an enforcement officer.

**CONCLUSIONS OF LAW**

- 1. The parties properly are before the Office of Administrative Hearings.
- 2. From the undisputed evidence admitted in this contested case, I find that the Commission's rule, 04 NCAC 02S.0513(3), which provides that neither a mixed beverages permittee nor his employee may destroy, alter, or deface a mixed beverages tax stamp prior to emptying the container, is void as applied in this case because it is not clear and unambiguous to persons it is intended to direct, guide, or assist in both the regulated community and the law enforcement community.
- 3. Respondent Kevin Scott Heath has not violated the ABC Commission's rule 04 NCAC 02S.0513(3) under the facts of this case because the rule is void as applied and cannot be used as the basis for the alleged violation.

**RECOMMENDED DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby recommended that the ABC Commission dismiss the charge against Respondent as not supported by the evidence in that the Commission's rule 04 NCAC 02S.0513(3) is void under Section 150B-33(b)(9) because it is not clear and unambiguous.

This the 18<sup>th</sup> day of December, 2000.

\_\_\_\_\_  
Beecher R. Gray  
Administrative Law Judge

**CONTESTED CASE DECISIONS**

STATE OF NORTH CAROLINA  
COUNTY OF RICHMOND

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
00 OSP 0281

ROBERT L. SWINNEY, )  
Petitioner, )  
 )  
vs. )  
 )  
NORTH CAROLINA DEPARTMENT )  
OF TRANSPORTATION, )  
Respondent. )

**RECOMMENDED DECISION**

This matter was heard before Senior Administrative Law Judge Fred G. Morrison Jr. in Raleigh on July 24-25, 2000. Petitioner appeared *pro se*. Tina A. Krasner, Assistant Attorney General, and Sarah Ann Lannom, Assistant Attorney General, appeared on behalf of Respondent.

**PROCEDURAL BACKGROUND**

On March 16, 2000, Petitioner filed a Petition for Contested Case Hearing with the Office of Administrative Hearings. On March 17, 2000, an Order for Prehearing Statements was entered. Respondent filed a prehearing statement on April 17, 2000. Petitioner filed a prehearing statement on June 14, 2000. Petitioner claimed that he was denied a promotion to Right of Way Division Agent on the basis of race discrimination, political discrimination, and retaliation for filing prior complaints of race discrimination.

**ISSUES**

Did Respondent discriminate against Petitioner because of his race in not selecting him for promotion to the position of Right of Way Division Agent (Position No. 01068, Pay Grade 75)?

Did Respondent discriminate against Petitioner because of his political affiliation in not selecting him for promotion to the position of Right of Way Division Agent (Position No. 01068, Pay Grade 75)?

Did Respondent retaliate against Petitioner for filing prior complaints of race discrimination in not selecting him for promotion to the position of Right of Way Division Agent (Position No. 01068, Pay Grade 75)?

**WITNESSES**

Petitioner presented testimony from the following witnesses: Patricia Hawkins, John Shoemaker, Leonard Sanderson, William Wilhelm, Robert T. Nicholas, Don Mauldin, E.A. Waddell, Roger L. Lisk, James A. West, Wade McSwain, Jr., and John Williamson, Jr.

Respondent presented testimony from the following witness: Petitioner.

**EXHIBITS**

Petitioner's Exhibits 1-29 and 33-43 were offered and received into evidence.

Respondent's Exhibits 1-14, including all subparts, were offered and received into evidence.

**FINDINGS OF FACT**

Based upon the official documents in the file, the sworn testimony of the witnesses, and the other competent evidence admitted at the hearing, the undersigned finds the following facts:

**Race Discrimination Claim**

1. On July 20, 1999, the Department of Transportation ("DOT") posted an internal vacancy for the position of Right of Way Division Agent located in Division Ten—Albemarle (Position No. 01068, Pay Grade 75). The position's minimum

## **CONTESTED CASE DECISIONS**

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qualifications required graduation from a four-year college or university and four years of experience in right of way or real estate appraisal work, including three years in right of way work. The duties and key responsibilities of the position included: carrying out all right of way acquisition functions, appraisals excepted, in the division; responsible to the Manager of Right of Way through the area negotiators and the State Right of Way Negotiator, however, is to collaborate with the Division Engineer to the end that the Division Engineer may be fully informed of the status of right of way acquisitions within the division and to the end that the right of way functions are properly coordinated with highway construction and maintenance operations; should be fully informed as to departmental policies and procedures; and is in charge of and responsible for all right of way activities within the division. In addition, the applicant must have full knowledge of FHWA, DOT, & Right of Way Branch policies and procedures; must have an understanding of all phases and steps in the negotiating process; must have communication skills necessary to explain/discuss these policies and procedures with others in the Negotiating Unit, Right of Way Branch, Division of Highway, and the general public; must be able to interpret highway right of way and construction plans and explain these to other division of highways employees and the general public. (T pp 92-94; Respondent's Exh. 1).

2. Five persons applied for the Right of Way Division Agent position, including Petitioner, all of whom were rated "highly qualified" and had "promotional priority." The applicant pool included four White males and one Black male. (T pp 96-97; Respondent's Exh. 2).

3. On July 20, 1999, Petitioner submitted an application for the Right of Way Division Agent position. Petitioner, a Black male, had been employed by the DOT Right of Way Branch for thirteen years and three months. He spent the first two years of his career in Division Ten (Albemarle) and served on a temporary assignment there from August through Dec. 1, 1997. The majority of his experience, however, has been in Divisions Two (Greenville) and Eight (Aberdeen). At the time he applied for the Division Agent job, Petitioner had been a Right of Way Agent II in Greenville for approximately one year. Petitioner consistently received overall "very good" performance evaluations. (T pp 98-99, 101, 123, 233; Respondent's Exhs. 4 & 10A-10C, Petitioner's Exh. 23).

4. William Wilhelm also applied for the Right of Way Division Agent position on July 26, 1999. Mr. Wilhelm, a White male, had been employed by the DOT Right of Way Branch for twelve years and six months. He spent his entire career in Division Ten and had been a Right of Way Agent I for approximately ten years at the time he applied for the Division Agent job. Mr. Wilhelm consistently received overall "outstanding" performance evaluations. (T pp 102-103, 191; Respondent's Exh. 7 & 11B-11D).

5. Mr. John Shoemaker has spent his entire career (over thirty years) in Division Ten of the DOT's Right of Way Branch. He is the Area Negotiator and has been in that position for approximately one year. He described Division Ten as one of the three metropolitan divisions in North Carolina because it encompasses Charlotte/Mecklenburg County. Division Ten is also one of the busiest and most complex in the State out of the fourteen divisions. Mr. Shoemaker conducted the interviews for the Right of Way Division Agent position, which had been his former position for five and one-half years. He had worked with all five applicants and had worked with Mr. Wilhelm since the onset of the latter's career with the DOT. He had also been the immediate supervisor of all the applicants, except the Petitioner, for at least four years; therefore, he was familiar with their job performance, work habits, and work ethic. (T pp 63, 89-90, 92, 105-106, 113).

6. Mr. Shoemaker interviewed each applicant for approximately an hour. He had devised a standard set of twenty questions pertaining to the Division Agent position, which he orally asked all five candidates during their interviews. He also wrote down the candidates' responses to the questions. (T pp 104-105; Respondent's Exhs. 3, 5, 6, 8, & 9).

7. Mr. Shoemaker then met with upper management, Mr. James A. West, State Right of Way Negotiator, and Mr. John Williamson, Jr., Manager of the Right of Way Branch, in Raleigh to discuss the applicants and arrive at a recommendation. They agreed that William Wilhelm was the most qualified and best-suited applicant for the Right of Way Division Agent position because he had spent his entire career in Division Ten and was very familiar with the problems indigenous to a metropolitan division. In contrast, Petitioner's experience was mainly in rural divisions in the eastern part of the State. Mr. West spent twenty-seven years in Division Ten and was the Division Agent there before coming to Raleigh. He trained both Petitioner and Mr. Wilhelm and worked with the latter for many years. Mr. West described Mr. Wilhelm as the "go-to" person in Division Ten—someone you could depend on to handle complex projects in a timely manner and who is detail-oriented. (T pp 65, 107, 342, 356, 360-362, 386, 390-391, 398-400, 469-470, 474).

8. Mr. Wilhelm had successfully worked on numerous, difficult projects in Division Ten, which required a detailed knowledge of right of way work. In fact, he had performed the majority of the duties listed under the job description for a Right of Way Agent II. Mr. Wilhelm had worked well with other DOT employees, such as district engineers and division engineers. His job performance, work ethic, and record were all very good. Mr. Shoemaker gave Mr. Wilhelm a performance rating of "outstanding" and wrote that "Agent Wilhelm is a very experienced negotiator. He is very familiar with right of way policies and procedures. Minimal supervision is all that is required with this employee." (T pp 65, 97, 103-104, 192-194; Respondent's Exh. 11C).

## **CONTESTED CASE DECISIONS**

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9. After arriving at the decision to recommend Mr. Wilhelm for the Division Agent position, Mr. Shoemaker, Mr. West, and Mr. Williamson met with Leonard Sanderson, the State Highway Administrator. Mr. Sanderson has final approval for hiring with respect to positions above a pay grade 73. This is another check in the system to ensure that the DOT is getting the most qualified people for upper level positions in the Right of Way Branch. Mr. Sanderson approved the recommendation to promote Mr. Wilhelm to the Division Agent position. (T pp 108, 136-137, 159-160, 166-167, 474).

10. Several witnesses testified that even though the typical progression is for a person to advance from a Right of Way Agent II to a Division Right of Way Agent, there is no requirement that a person first be an Agent II before he or she can be promoted to a Division Agent. There has been at least one documented case where an Agent I was promoted to a Division Agent. Furthermore, Mr. West was promoted from Division Agent to State Area Negotiator, skipping over the position of Area Negotiator. (T pp 67, 387, 407-408).

### **Political Discrimination & Retaliation Claims**

11. Petitioner was originally hired by the DOT during a Republican administration; however, he has received a promotion during a subsequent Democratic administration.

12. Petitioner has filed several prior race discrimination claims against the DOT. He most recently filed a Petition for Contested Case on July 10, 1998, contending that he was denied a promotion to Right of Way Agent II in Moore County on the basis of race discrimination. Administrative Law Judge Beecher R. Gray issued a Recommended Decision on February 9, 1999, finding no evidence of race discrimination. The State Personnel Commission adopted the Recommended Decision on September 22, 1999, which decision was appealed to superior court.

13. Both Mr. West and Mr. Williamson were the decision-makers in Petitioner's promotion to Right of Way Agent II in Greenville on May 16, 1998. (T pp 409-410, 475).

### **CONCLUSIONS OF LAW**

1. The parties are properly before the Office of Administrative Hearings and received proper notice of the hearing in this matter. This office has jurisdiction to hear the matter and to issue a recommended decision to the State Personnel Commission which shall render a final agency decision after hearing arguments from the parties.

2. N.C. Gen. Stat. § 126-16 requires all State departments and agencies to provide for equal opportunity for employment without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition. N.C. Gen. Stat. § 126-36 states:

Any State employee or former State Employee who has reason to believe that employment, promotion, training, or transfer was denied the employee or that demotion, layoff, transfer, or termination of employment was forced upon the employee in retaliation for opposition to alleged discrimination or because of the employee's age, sex, race, color, national origin, religion, creed, political affiliation, or handicapped [handicapping] condition as defined by G.S. 168A-3 . . . shall have the right to appeal directly to the State Personnel Commission.

3. To create a prima facie case of discrimination in hiring based on the *McDonnell Douglas* standard, a Petitioner must show:

- (1) that Petitioner belongs to a protected class;
- (2) that Petitioner applied and was qualified for the job for which the employer was seeking applicants;
- (3) that Petitioner was rejected despite the fact that he/she met the qualifications for the job; and
- (4) after Petitioner was rejected, the employer continued to seek applicants from persons with the same qualifications as the applicant.

*McDonnell Douglas v. Green*, 411 U.S. 792, 36 L. Ed. 2d 668 (1973).

4. Petitioner established a prima facie case of discrimination based on his race. Respondent then offered evidence of a legitimate, nondiscriminatory reason for Petitioner's non-selection. *See St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 507, 125 L. Ed. 2d 407, --- (1993). DOT officials testified that the decision not to promote Petitioner to Right of Way Division Agent (Position No. 01068, Pay Grade 75) was based on the fact Petitioner's experience had primarily been in Divisions Two and



## **CONTESTED CASE DECISIONS**

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Eight, more rural divisions in the eastern part of the State; whereas, Mr. Wilhelm had spent his entire career in Division Ten where the position was located. Mr. Wilhelm had also worked for two of the decision-makers for many years and had a reputation as a hardworking, dependable agent, who could successfully handle complex claims. Therefore, DOT rebutted any prima facie case of race discrimination.

5. Once the employer introduces evidence of legitimate, nondiscriminatory reasons for its action, the legal presumption raised by the Petitioner in the prima facie case is rebutted and, like any other legal presumptions and burdens, completely drops out of the case. Petitioner must show that Respondent's reasons are merely a pretext. *Id.* at 508, 125 L. Ed. 2d at ---.

6. Petitioner did not prove by the preponderance of the evidence that: (1) DOT did not believe that Mr. Wilhelm was better qualified for the Right of Way Division Agent position; and (2) but for intentional discrimination, Petitioner would have been selected for the position.

7. Petitioner did not convince me that he was the victim of political discrimination. Quite to the contrary, Petitioner was promoted to an Agent II position during a Democratic administration by two of the same decision makers as in this case.

8. In order to establish a prima facie case of retaliation, Petitioner must show that:

- (1) he engaged in a protected activity;
- (2) the employer took an adverse action against him; and
- (3) there was a causal connection between the protected activity and the adverse action.

*Ross v. Communications Satellite Corp.*, 759 F.2d 355, 365 (4th Cir. 1985). The element of a causal link requires Petitioner to provide sufficient evidence "to raise the inference that [the] protected activity was the likely reason for the adverse action." *Zanders v. National R.R. Passenger Corp.*, 898 F.2d 1127, 1135 (6th Cir. 1990).

9. Petitioner cannot show a causal link between the filing of prior complaints of race discrimination and his non-selection for promotion to the Division Agent position. Petitioner was promoted to an Agent II position in May, 1998, by two of the same decision-makers as in this case.

Accordingly, Petitioner did make out a prima facie case of retaliation nor did he prove it.

### **RECOMMENDED DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby recommended that the State Personnel Commission affirm Respondent's decision not to select Petitioner for promotion to the Right of Way Division Agent position.

### **ORDER**

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714, in accordance with N.C. Gen. Stat. § 150B-36(b).

### **NOTICE**

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

The agency is required by N.C. Gen. Stat. § 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the State Personnel Commission.

This the 20th day of December, 2000.

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Fred G. Morrison Jr.  
Senior Administrative Law Judge

CONTESTED CASE DECISIONS

STATE OF NORTH CAROLINA

COUNTY OF CRAVEN

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
99 DHR 1169

SHARON J. SAXE,
Petitioner,

v.

DEPARTMENT OF HEALTH AND HUMAN SERVICES,
DIVISION OF FACILITY SERVICES,
Respondent.

RECOMMENDED DECISION

On May 22 and 23, 2000, Administrative Law Judge Melissa Owens Lassiter heard this matter in New Bern, North Carolina.

APPEARANCES

For Petitioner: David P. Voerman, Attorney at Law
New Bern, North Carolina

For Respondent: Jane L. Oliver, Assistant Attorney General
Raleigh, North Carolina

ISSUES

Whether Respondent erred when it determined that, on or about July 2, 1999, Petitioner, a nurse aide, abused resident V.O., of Twin Rivers Nursing Center, a nursing facility in New Bern, North Carolina, by pushing the resident into the bed rails and jerking the resident's arms?

APPLICABLE STATUTES AND RULES

N.C. Gen. Stat. § 131E-255 and § 131E-256

N.C. Gen. Stat. § 150B-23

42 CFR § 483.156

42 CFR § 488.335(d)(1)

10 NCAC 3B.1001

EXHIBITS

The following exhibits were admitted into evidence without objection:

- 1. Respondent's Exhibits 2 - 6, 7 - 8, 11 - 16, 17, 19, 20, 22, 25, 26, 28, 30, 32;
2. Petitioner's Exhibits 1, 3, 4 - 5, 7 - 9, 12 - 14, and 15; and
3. Deposition Exhibits: Petitioner's Exhibits 1 and 2;
4. Respondent Exhibits A and B.

The following exhibits were admitted either in part or for limited purposes:

Respondent's Exhibits

- 1. Exhibit 1 was admitted to the extent it corroborated or contradicted prior statements, and therefore, with the exception of certain statements.
2. Exhibits 9 and 10 were admitted over Petitioner's exception.
3. Exhibit 18 was admitted with the exception of certain hearsay statements as omitted on the exhibit.

## ***CONTESTED CASE DECISIONS***

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4. Exhibit 21 was admitted with the exception of the statement of Jerry Oliver in the first paragraph.
5. Exhibit 23 was admitted for the limited purpose of establishing how and when the facility notified the Health Care Personnel Registry of the allegation of abuse.
6. Exhibit 29 was admitted with certain portions redacted upon Petitioner's objection.
7. Exhibit 31 was admitted for the limited purpose of showing the rationale of the investigator in reaching her conclusion and not for substantive purposes.

### Petitioner's Exhibits

1. Exhibit 2 was admitted without objection, except page 3 of the exhibit which was admitted only for the limited purpose of impeachment.
2. Exhibit's 6 and 10 were admitted subject to the establishment of foundation during depositions that were to take place after the hearing. Since those depositions were not taken, these exhibits are not admitted.
3. Exhibit 11 was admitted for the limited purpose of impeachment upon Respondent's objection.

Based upon the documents filed in this matter, the exhibits admitted into evidence and the sworn testimony of the witnesses, the undersigned makes the following findings:

### **FINDINGS OF FACT**

### **PROCEDURAL BACKGROUND**

1. By letter dated August 24, 1999, Respondent notified Petitioner that: (1) it intended to investigate an allegation that on July 2, 1999, Petitioner had abused a resident at Twin Rivers Nursing Center in New Bern, NC, and (2) it intended to list Petitioner's name on the Health Care Personnel Registry pursuant to N.C. Gen. Stat. § 131E-256.
2. On September 21, 1999, Petitioner filed a petition for a contested case with the Office of Administrative Hearings appealing the listing of the abuse allegation against her.
3. By letter dated November 30, 1999, Respondent notified Petitioner that it had substantiated the allegation of abuse by Petitioner and that it was entering a finding of abuse on the Nurse Aide Registry and Health Care Personnel Registry.
4. On or about December 17, 1999, Petitioner filed a Motion to Amend her first contested case petition, to include an appeal of the Respondent's November 30, 1999 substantiation of the allegation of abuse against her. Respondent did not resist such Motion. On January 6, 1999, the undersigned allowed Petitioner's Motion to Amend.

### ***ADJUDICATED FACTS***

5. Petitioner had worked as a nurse aide at Twin Rivers Nursing Center (Twin Rivers) since 1991. At all times relevant to this action, Petitioner worked part-time as a nurse aide at Twin Rivers in New Bern, North Carolina. In the summer of 1999, Petitioner worked at Twin Rivers only on weekends on an as-needed basis. Petitioner had a full-time job (forty hours per week) as a nurse aide for Craven Regional Medical Center's home health department. She also took night classes at Craven Community College. (T vol I, pp 13-14, 17-18; T vol II, p 3-4)
6. Twin Rivers is a skilled nursing facility and, as such, is a health care facility, as defined in N.C. Gen. Stat. §§ 131E-255(c) and -256(b)(6). (T vol I, p 120)
7. Petitioner had worked as a nurse aide since 1990. She received her nurse aide training at Morehead Nursing Center. Petitioner's training included instruction on patient care and resident rights. Petitioner received additional training in resident rights through her employment at Morehead Nursing Center and, later at Twin Rivers Nursing center and Craven Regional Medical Center. Petitioner was aware that residents of nursing facilities have a right to privacy, a right to respect, a right to request assistance when assistance is needed, and a right to be free from physical and verbal abuse. Petitioner was also aware that the term "abuse" includes physical acts which cause unnecessary pain to residents as well as acts which do not necessarily result in lasting physical injury. (T vol I, pp 16-17)
8. During the week of June 29, 1999 through July 2, 1999, Petitioner worked forty hours at her full time job and attended night classes at Craven Community College. Petitioner ordinarily had classes four nights per week, but this week she did not have a full

## **CONTESTED CASE DECISIONS**

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week of classes because of the Fourth of July holiday. Petitioner was also scheduled to work at Twin Rivers on July 2, 1999 from 5:00 p.m. to 11:00 p.m. and on July 3, 1999 from 3:00 pm to 11:00 pm. (T vol I, pp 15, 17-18; T vol II, p 10; Resp Exh 2 and 3)

9. On July 2, 1999, Petitioner arrived at work at Twin Rivers at approximately 5:00 p.m. She came directly from her home health job. Petitioner was a little upset about having to work that night because she was tired after having a hard day. Petitioner was assigned to work on Hall 3, the Medicare unit. Petitioner was in a bad mood and complained to Leah Frye, L.P.N., about her assignment. She also complained to other staff throughout the shift. (T vol I, pp 18-19, 22-23, 39, 149-150, 172-73; Resp Exh 1, 3, 4, 16, 17, and 18)

10. After Petitioner arrived on the unit, Michelle Hawkins, a nurse aide, told Petitioner about the residents she was assigned to care for that night. Ms. Hawkins took Petitioner into the room of one of the residents, V.O. The two aides stood and talked at the foot of V.O.'s bed. Petitioner mentioned that she was tired. Petitioner also stated that she had worked all week and had been to three classes. She said she did not like being called in to work on the weekends. Ms. Hawkins told Petitioner about V.O.'s condition. Ms. Hawkins also told Petitioner that V.O. was easygoing, cooperative, and able to assist in her care. (T vol I, pp 23, 78, 150-51, 120; Resp Exh 1 and 21 pg 3)

11. V.O. was seventy-six years old at the time of her admission to Twin Rivers in June 1999. V.O. had been admitted to Twin Rivers to recuperate from total knee replacement surgery and gain strength before returning home. V.O. is a thin-boned, small-framed woman who suffers from longstanding deformative rheumatoid arthritis. She is extremely frail and has chronic pain because of her illness. She takes high doses of pain medication and muscle relaxants for the pain. V.O. is crippled due to multiple joint deformities and contractures secondary to her arthritis.

12. V.O.'s nutritional status was poor when she was admitted to Twin Rivers. The Twin Rivers staff encouraged V.O. to eat to improve her strength. She ate mostly finger foods because, with her arthritis, she could feed herself more easily. The staff described V.O. as being very pleasant, easy to care for, and having a sweet personality. She only called for assistance when she needed the bedpan or pain medication.

13. V.O. could not get out of bed on her own, but she assisted with her own care to the extent that she was able. For example, she would help the staff by turning or rolling over when they needed her to. Still, she was limited in what she could do. V.O. was never able to place one hand on each of the side rails to pull herself up to a sitting position, but with help, she could place one hand on a side rail, and pull or roll herself onto her side. (T vol I, pp 42, 73, 120-21, 134, 138, 149, 173, 192; T vol II, p 31; Resp Exh 15 and 17; Deposition transcript, pp 3, 5; Resp Exh A and B)

14. During her admission to Twin Rivers, V.O. was alert and was able to ask for a bedpan whenever she needed it. She had never soiled the bed before July 2, 1999.

15. On the evening of July 2, 1999, V.O. had been given a laxative and was incontinent of bowel. V.O. was not ordinarily incontinent so she was not wearing a diaper. Sometime after supper, V.O. rang her call bell for assistance three or four times. She needed to use the bedpan. Petitioner was on duty at the time. V.O. waited approximately fifteen to twenty minutes for assistance. She understood that staff could not always come immediately when called. Despite V.O.'s repeated calls, no one came to assist her. (T vol I, pp 43-44, 78; 149; Resp Exh 1 and 21)

16. V.O. could not wait any longer and had a bowel movement in her bed. Petitioner came into V.O.'s room. Petitioner was angry and very upset with V.O. because V.O. had soiled the bed. (T vol I, pp 44-45, 78, 100; Resp Exh 1 and 21)

17. After going to get clean bed sheets, Petitioner returned and began changing V.O.'s bed. Petitioner yanked the sheets on the bed. Petitioner was rough and began pushing V.O. with force from one side of the bed to the other. Petitioner pushed V.O. into the side of the bed while trying to change the sheets. V.O. told Petitioner to stop hurting her. V.O. said, "Please don't do that. Please don't do that." Petitioner ignored V.O. and continued pushing V.O. around in the bed until she finished changing the bed sheets. (T vol I, pp 44-45, 54, 59-60, 78; Resp Exh 1 and 21)

18. Petitioner also took off V.O.'s gown because it was also soiled. V.O. usually pulled her gown over her elbow because she cannot pull it up over her head due to her arthritic condition. Petitioner pulled V.O.'s gown up over V.O.'s head and this hurt V.O.'s right shoulder. V.O. told Petitioner, "Please don't hurt me, please don't hurt me." Again, Petitioner ignored V.O. and continued hurting V.O. while taking the gown off. Petitioner then dropped V.O.'s gown on the floor with the dirty bed linens. V.O. asked Petitioner to leave the gown in her room so that her daughter could wash it. Petitioner, again, ignored V.O., rolled up the soiled gown with the dirty sheets, and left the room. (T vol I, pp 46, 54-56, 61-62, 86-87; Resp Exh 1 and 21)

19. Petitioner claimed that she helped V.O. pull up her gown, but V.O. took the gown off her arms and over her head.
20. In contrast, another staff member had dressed V.O. many times, but could never get V.O. to take off her own clothes. Dr. Fraser had been V.O.'s treating rheumatologist since 1993. Dr. Fraser opined that since he had been treating V.O., she had difficulty raising her arms above her head. (T vol I, pp 30, 134; Fraser Deposition, pp 6-7)
21. V.O. was very upset about the way Petitioner had treated her. V.O. felt Petitioner had been too rough, very rude and had hurt her. However, V.O. also felt there was nothing she could do. V.O. did not realize at the time that her shoulder had been injured. (T vol I, pp 46-47; Resp Exh 1)
22. Michelle Hawkins checked on V.O. later in the evening, and saw V.O. crying and upset. V.O. told Ms. Hawkins that Petitioner had been too rough with her when rolling her over, that Petitioner had pulled her shoulder, and that Petitioner had hurt her. After talking with V.O., Ms. Hawkins went to Petitioner and told her that, if she had to change V.O.'s bed again, Ms. Hawkins would help her. Petitioner said, "Okay." (T vol I, pp 46-47, 53-54, 153-54, 156; Resp Exh 17 and 18)
23. Later in the shift, V.O. soiled the bed again. Petitioner and Ms. Hawkins went to V.O.'s room to change her. Petitioner walked to V.O.'s bed, placed her hands on V.O.'s low back and buttocks, and pushed V.O. over. When Ms. Hawkins worked with V.O. before, she never had to push V.O. to turn her over, because V.O. would help by turning or rolling herself over onto one side. Petitioner and Ms. Hawkins cleaned V.O. and changed the bed sheets.
24. Michelle Hawkins noticed that Petitioner had a bad attitude the entire night. Petitioner had complained about something every time she had talked with Ms. Hawkins. (T vol I, pp 153-54, 164; Resp Exh 17, 18)
25. V.O.'s daughter, Diane Hawkins, came to visit V.O. later that evening. Ms. Hawkins told V.O.'s daughter about her conversation with V.O. V.O. also told her daughter that her arm had been hurt. (T vol I, pp 68, 156)
26. When unit nurse Leah Frye, L.P.N., checked on V.O. that evening, V.O. asked Frye for Percocet because she was having neck pain. V.O. continued to hurt through the night and the next morning. V.O. felt intense pain in her shoulder all the way up her neck. She knew that something was wrong other than arthritis. She informed the nurse on duty that she was hurting very badly. (T vol I, pp 47, 56, 81-82, 87; 175; Resp Exh 1 and 19)
27. On July 5, 1999, V.O. informed the treatment nurse, Carrie Skinner Toler, L.P.N., that she was having severe pain between her right neck and shoulder. Ms. Toler had just returned from vacation and had not worked during the weekend. This was the first time Ms. Toler had heard V.O. complain of this particular pain. It was a spasm-like pain that was different from V.O.'s typical complaints of generalized arthritic pain. Ms. Toler examined V.O.'s neck because that is where V.O. indicated that the pain was located. Ms. Toler did not do a complete assessment, as she later admitted she should have done. Ms. Toler did not remove V.O.'s clothes to examine V.O.'s shoulder because V.O. had indicated the pain was in her neck. Ms. Toler did not find anything wrong with V.O.'s neck. V.O. was given a whirlpool treatment to try to relax the muscles in her neck and to relieve the pain.
28. V.O. also told the physical therapist about her shoulder pain and the physical therapist massaged her shoulder. (T vol I, pp 48, 57, 119, 122-25, 132, 138-39, 145, 147; Resp Exh 1; Resp Exh 12, 14, 15)
29. On July 6, 1999, V.O. complained again of severe neck pain. V.O. had an appointment that day with her orthopedist, Dr. Werthman, for an examination on her knee replacement. V.O. told Dr. Werthman about her new pain, but Dr. Werthman did not examine V.O.'s shoulder. Dr. Werthman instructed V.O. to use a heating pad on her neck, but did not document this in his notes. (T vol I, pp 49, 57-58, 126; Resp Exh 1, 11)
30. On July 7, 1999, V.O. continued to complain of right-sided neck pain and told staff that the pain was not getting any better. Since Ms. Toler had returned to work on July 5, 1999, V.O.'s only complaints had been about her neck pain. V.O. demonstrated with her hand where she felt the pain. Ms. Toler faxed a note to V.O.'s rheumatologist, David Fraser, M.D., to request an increase in V.O.'s pain medication. While Dr. Fraser did not call back that day, he did call the next day, and indicated that he needed to see V.O. in his office before changing her medication. (T vol I, 48-49; Resp Exh 14)
31. On July 8, 1999, V.O. had an appointment with Dr. Fraser. V.O.'s daughter was present during the examination. When Dr. Fraser walked into the examining room, he noticed that one of V.O.'s shoulders looked different from the other. V.O. told Dr. Fraser about the pain in her neck and he examined her. The pain in V.O.'s neck was an acute or recent problem. V.O. ordinarily had

difficulty raising her arms over her head, but the problem with her right arm had worsened. V.O.'s shoulder appeared to Dr. Fraser, to be dislocated.

32. Dr. Fraser believed that the neck pain V.O. had experienced before the office visit was probably related to the dislocated shoulder. To confirm the diagnosis, Dr. Fraser x-rayed the shoulder. Dr. Fraser had never known V.O. to have a dislocated shoulder, even though he documented in his visit note that her shoulder "dislocates quite regularly." Dr. Fraser acknowledged that he should have stated that V.O.'s shoulder *subluxed* regularly, meaning that her shoulder was loose and wiggled in the socket. (T vol I, p 49; Resp Exh 1 and 29; Fraser Deposition, pp 3, 6-8, 10; Resp Exh A)

33. After reading the x-ray, Dr. Fraser diagnosed that V.O. had an anterior dislocated humeral head. Anterior dislocation is caused by pulling, shoving, or some sort of trauma from the back. Dr. Fraser could not tell how long V.O.'s shoulder had been dislocated. The pain medication that V.O. was taking might have masked some of the pain from the dislocated shoulder. (T vol I, p 50; Fraser Deposition transcript, pp 11, 13, 14, 16; Resp Dep. Exh A)

34. V.O. initially acted surprised by the diagnosis. She and her daughter looked at each other and one of them remarked that they might know how the shoulder was injured. Neither V.O. nor her daughter told Dr. Fraser what they were thinking or how they thought that V.O. had been injured. (T vol I, pp 228-29; Fraser Deposition transcript, p 9)

35. Dr. Fraser instructed V.O. to go directly to the emergency room for treatment. V.O. went to the Craven Regional Medical Center Emergency Room. V.O. told the Emergency Room physician, Gregory Risk, M.D., that she had been slammed into the side of a bed and that she had experienced right shoulder pain ever since. (T vol I, p 50; Deposition Resp Exh B)

36. Harold M. Vandersea, M.D., an orthopedic surgeon, made multiple unsuccessful attempts to put V.O.'s shoulder back in place. He placed V.O.'s right arm in a sling and gave V.O. additional pain medication. (T vol I, pp 51-52, 59-60, 232; Deposition Resp Exh B)

37. When V.O. returned to Twin Rivers, she was quite upset, but reluctant to say anything. As Ms. Toler had a good relationship with V.O., Toler assured V.O. that she could talk with her if she wanted. V.O. told Ms. Toler that she was afraid to say anything, because she was afraid her daughter would start trouble and was afraid that the aide who had hurt her would be mean to her. She just wanted to get her strength back and go home. V.O. told Ms. Toler that she did not want to start trouble or be a burden to anyone. (T vol I, pp 127-28, 141, 143; Resp Exh 15)

38. Except for the Saturday morning following the incident, V.O. continued to feed herself and to turn herself as she had before her diagnosis, albeit with increased pain and difficulty. According to Dr. Fraser, a person with a dislocated shoulder can continue to use the arm and hand on the side with the dislocation.

39. Anne Bennett, a licensed physical therapy assistant, who had treated V.O. with physical therapy, opined that she had observed people with shoulder dislocations continue performing the same activities that they had done before the dislocation. (T vol I, pp 133-34, 163, 239-40; Fraser Deposition, p 13; Resp Exh 15)

40. On the afternoon of July 8, 1999, Twin Rivers Assistant Director of Nursing Lynn DeBue, R.N., learned about V.O.'s injury and the July 2, 1999 incident with Petitioner. Ms. DeBue conducted Twin Rivers' investigation into the incident by interviewing the individuals involved. Ms. DeBue interviewed Petitioner by telephone on the afternoon of July 9, 1999. Petitioner admitted to Ms. DeBue that, on July 2, 1999, while assisting V.O. after V.O. had diarrhea, V.O. had requested that Petitioner handle her more gently. Petitioner stated that she tried to be more gentle. Petitioner also stated that V.O. had two episodes of diarrhea that night and that Michelle Hawkins helped her change V.O. one time. (T vol I, pp 187-88; Resp Exh 21)

41. Approximately eight hours later, Petitioner prepared a written statement stating that she entered V.O.'s room shortly after 5 p.m. to help V.O. with the bedpan. Petitioner said that V.O. told her at that time that she was being too rough. Petitioner stated that V.O. never said anything about her being rough after the first time she was in Petitioner's room. (Resp Exh 7)

42. On July 9, 1999, Ms. DeBue interviewed V.O. When Ms. DeBue's questioned V.O. about the events of July 2, 1999, V.O. responded:

It's not you all's fault. The CNA Sharon stood at the end of my bed speaking with Michelle. She stated, "I'm tired. I worked four days in the hospital and classes and I don't like being called in to work on the weekend."

(Resp Exh 21, p 3)

43. V.O. advised Ms. DeBue that she had been given a laxative and that she had called for a bedpan. V.O. stated that she had an accident in the bed before the nurse aide responded. When Petitioner came into her room, Petitioner was upset with V.O. V.O. stated that Petitioner yanked her bedclothes and pushed V.O. from side to side. V.O. explained that when Petitioner pushed her to the right, V.O. asked her to stop because it hurt. Petitioner responded, "I can't help it" and continued to push V.O.

44. V.O. told Ms. DeBue that Petitioner had also stripped her clothes off, and that Petitioner was very rude and obviously very tired. She also said that Petitioner did not say anything when V.O. ask her to please stop. V.O. further stated that she started having neck pain the next day. V.O. told the nurses and the physical therapist that the Percocet was not helping. (T vol I, p 196; Resp Exh 21 p 3)

45. V.O. was upset during her interview with Ms. DeBue. She stated that she was afraid that someone else would come into her room and something else might happen. She was also concerned about what Petitioner might do to another resident. (Resp Exh 21, pp 3-4)

46. Leah Frye, L.P.N., also wrote a statement as part of the facility's investigation. Ms. Frye recalled that V.O. had requested Percocet for neck pain that evening, but did not say anything about her shoulder. (Resp Exh 19)

47. On July 15, 1999, the Twin Rivers administrator reported the July 2, 1999 incident to the Health Care Personnel Registry ("HCPR") as an allegation of abuse. Respondent screened the allegation to determine if an investigation was warranted by reviewing the information that had been provided by the facility. The information included: (1) a statement made by V.O., (2) V.O.'s diagnosis, (3) a Petitioner's statement, (4) other witnesses' statements, (5) Petitioner's time card and assignment sheets, (5) documentation of Petitioner's training on resident rights, (6) Petitioner's prior disciplinary actions, (7) the resident's treatment plan and care plan, (8) medical record documentation supporting the allegation, (9) V.O.'s medication administration records, (10) V.O.'s physicians' orders, and V.O.'s nurses' notes, (11) V.O.'s social assessments, (12) V.O.'s emergency room records, the x-ray report and the rheumatology consult report.

48. After reviewing the information, Respondent determined that an investigation into the allegation of abuse was warranted. By letter dated August 24, 1999, Respondent notified Petitioner that the allegation of abuse would be investigated and listed on the Health Care Personnel Registry. (T vol I, pp 223-24; Resp Exh's 23 and 25)

49. Investigator Pam Anderson, R.N., investigated the allegation for the Health Care Personnel Registry. Ms. Anderson visited Twin Rivers and reviewed V.O.'s medical record, Petitioner's personnel file and in-service records, the assignment sheets and time sheets.

50. Ms. Anderson also interviewed V.O. in her home. At that time, V.O. was alert, oriented, and her long and short-term memory were intact. Ms. Anderson found V.O. to be very credible. V.O. told the investigator, "I hate for someone to lose their job, but you just can't treat people like that." V.O. also stated that she repeatedly asked V.O. to stop pushing her into the side-rails and that Petitioner did not stop. (T vol I, pp 204-05, 209-10; Resp Exh 1)

51. Ms. Anderson interviewed Michelle Hawkins, and found her statement to be consistent with V.O.'s statement. Ms. Hawkins opined that Petitioner had a bad attitude that night and was not happy about being called in to work on the weekend. When Ms. Hawkins stopped by V.O.'s room to check on V.O., Hawkins saw that V.O. was very upset and crying. V.O. indicated to Hawkins that Petitioner had been rough with her and had hurt her shoulder. Ms. Hawkins accompanied Petitioner the next time Petitioner changed V.O.'s sheets and gowns. Ms. Hawkins stated that although V.O. was capable of turning herself, Petitioner still pushed V.O. on her side. In this statement, Ms. Hawkins stated that Petitioner had pushed V.O. too hard for V.O.'s small frame. (T vol I, pp 54, 160; Resp Exh 18)

52. At hearing, Ms. Hawkins acknowledged that (1) she had not witnessed abuse when she assisted Petitioner in cleaning V.O. on July 2, 1999, and (2) when she assisted Petitioner in changing and cleaning V.O., she thought Petitioner used the appropriate procedures in changing V.O.'s bed sheets and removing V.O.'s soiled night gown.

53. Ms. Anderson interviewed Petitioner who stated that V.O. was capable of sitting up, turning without assistance, and that she hardly had any reason to touch V.O. Petitioner stated:

V.O. rolled onto her side and I put her on the bedpan three times. I stripped her bed twice. I also changed her nightgown. I had no reason to be touching her.

(Resp Exh 8)

54. Ms. Anderson also interviewed Dr. Fraser, who stated that V.O. had not complained to him of shoulder pain before the dislocation. When Ms. Anderson interviewed Dr. Vandersea, he advised that V.O. had told him in the Emergency Room on July 8, 1999 that she had been in pain for approximately five days. Ms. Anderson thought this statement was consistent with V.O.'s independent statement that the intense pain began on July, 3, 1999. (T vol I, p 211)

55. In reviewing V.O.'s medical record, Ms. Anderson found that the documentation in the record supported V.O.'s statement. Although V.O. had complained of generalized arthritis pain before the incident involving Petitioner, "neck pain" was not specifically mentioned in the medical record until after the incident on July 2, 1999. (T vol I, pp 211-12, 237-38)

56. As a result of the investigation, Ms. Anderson concluded that, on July 2, 1999, Petitioner had abused V.O. by pushing V.O. into the bed rails and jerking on her arms. Ms. Anderson explained that V.O. was a very small, frail woman, because of her medical condition. The information obtained in her investigation showed that Petitioner had pushed V.O. forcefully around in the bed, and Petitioner had continued to push and hurt V.O. even after V.O. had asked Petitioner to stop.

57. During her testimony, Ms. Anderson opined that she would have substantiated abuse in this case even if V.O.'s shoulder had not been dislocated. Ms. Anderson noted that V.O. had been in the facility since June 17, 1999, but had not complained of pain when moved (by other aides), until Petitioner worked with her on July 2, 1999. (T vol I, pp 241-43)

58. Anne Bennett is a physical therapy assistant who often worked with V.O. Even though V.O. suffered from chronic pain, V.O. had never complained of pain during her physical therapy sessions because proper techniques were used. When Bennett saw V.O., on July 9, 1999, V.O. told her that her shoulder had been dislocated six days earlier. (T vol II, pp 45-46)

59. Dr. Fraser could not give an opinion to a reasonable degree of medical certainty that Petitioner's care for V.O. on July 2, 1999 caused V.O.'s dislocated shoulder. However, Dr. Fraser opined that a person with a dislocated shoulder can still move the arm up, and that pushing and pulling of a person with V.O.'s frame and medical condition could cause her shoulder to be dislocated. (Pet Exh pg 14-15)

60. At hearing, Petitioner introduced evidence that there had been no prior complaints of physical abuse of patients filed against her since she had been a nurse's aide since 1991. Petitioner's past and present supervisors and relatives of prior patients opined that Petitioner had not treated patients roughly or unnecessarily inflicted physical pain upon patients when Petitioner cared for and treated these patients.

61. Petitioner contended that other nurse aides or Petitioner's daughter could have caused V.O.'s dislocated shoulder between July 2, 1999 when Petitioner cared for V.O., and Petitioner's July 6, 1999 visit with Dr. Werthman. Specifically, she points to Dr. Fraser's opinion that V.O.'s dislocated shoulder could have occurred in any number of ways. This argument has no merit as Petitioner failed to present any evidence supporting or proving that V.O.'s shoulder was dislocated in some other way and not by Petitioner's handling of V.O. on July 2, 1999.

62. The evidence presented showed that many patients who suffer from rheumatoid arthritis experience discomfort and pain in their joints upon any movement. Some patients often complain of increased pain while being physically moved or cared for by others. However, the evidence also showed that V.O. had not complained about how other health care personnel or nurse aides physically handled, touched or cared for her before July 2, 1999.

Based upon the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following:

**CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter pursuant to Chapters 131E and 150B of the North Carolina General Statutes.
2. All parties have been correctly designated and there is no question as to misjoinder or nonjoinder.
3. As a nurse aide working in a nursing facility, Petitioner is subject to the provisions of N.C. Gen. Stat. § 131E-255 and § 131E-256.



**CONTESTED CASE DECISIONS**

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4. 10 NCAC 3B.1001(1) incorporates by reference the definition of “abuse” found at 42 CFR Part 488.301. 42 CFR Part 488.301 defines “abuse” as: “the willful infliction of injury, unreasonable confinement, intimidation or punishment which results in physical harm, pain, or mental anguish.”

5. A preponderance of the evidence proves that on July 2, 1999, Petitioner, while employed as a nurse aide at Twin Rivers Nursing Center in New Bern, North Carolina, abused V.O., a resident, by forcefully pushing the resident around in the bed and into the bed rail, and roughly pulling the resident’s gown over the resident’s head and thus, pulling the resident’s shoulder.

The resident is a frail, small-framed seventy-six year old woman who suffers from severe rheumatoid arthritis and who has multiple joint deformities and contractures. The resident informed Petitioner that Petitioner was hurting her, but Petitioner ignored the resident and continued to handle the resident roughly and continued to hurt the resident. Petitioner’s actions caused the resident both physical harm, pain and mental anguish.

6. The consistency between the statements of the Twin Rivers staff that were interviewed and V.O.’s statement, the Petitioner’s attitude and disposition on July 2, 1999, V.O.’s credibility, and V.O.’s specific complaint of neck pain not previously mentioned until after July 2, 1999, together show by a preponderance of evidence that Petitioner abused V.O. on July 2, 1999.

7. A preponderance of the evidence does not prove that Petitioner jerked V.O.’s arms.

8. Respondent did not err in substantiating the allegation of abuse against Petitioner.

**RECOMMENDED DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned recommends the Respondent’s decision to place a finding of abuse with Petitioner’s name in the Nurse Aide Registry and the Health Care Personnel Registry be **UPHELD**.

**NOTICE**

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

The agency is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. N.C. Gen. Stat. § 150-36(a). The agency is required by N.C. Gen. Stat. § 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

This the 16<sup>th</sup> day of November, 2000.

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Melissa Owens Lassiter  
Administrative Law Judge