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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

TITLE	DEPARTMENT	LICENSING BOARDS	CHAPTER
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
13	Labor	Electrical Contractors	18
14A	Crime Control & Public Safety	Electrolysis	19
15A	Environment and Natural Resources	Foresters	20
16	Public Education	Geologists	21
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
					non-substantial economic impact			substantial economic impact			
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	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	270th day from issue date
15:13	01/02/01	12/07/00	03/15/01	01/17/01	02/01/01	02/20/01	05/00/02	03/05/01	03/20/01	05/00/02	09/29/01
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	05/15/01	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
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16:12	12/17/01	11/26/01	02/15/02	01/02/02	01/16/02	01/22/02	05/00/02	02/15/02	02/20/02	05/00/02	09/13/02

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 after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

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

NOTICE OF 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.

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

U.S. Department of Justice

Civil Rights Division

JDR:RPL:HCL:jdh
DJ 166-012-3
2001-1541

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

July 16, 2001

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

Dear Mr. Weaver:

This refers to the creation of the Southwest Water District and the procedures for conducting the July 10, 2001, special bond election for the district in 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 May 29, 2001.

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

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 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

CHAPTER 14 – MENTAL HEALTH: GENERAL

Notice of Rule-making Proceedings *is hereby given by the Commission on Mental Health, Developmental Disabilities and Substance Abuse Services 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: *10 NCAC 14G, H, I, J, P, Q, R, S - Other rules may be proposed in the course of the rule-making process.*

Authority for the Rule-making: *G.S. 90-21.1; 90-21.5; 90-21.13; 90-101; 122C-3; 122C-4; 122C-51 through 59; 122C-62; 122C-64 through 67; 122C-111; 122C-211; 122C-221; 122C-231; 122C-241; 122C-242; 122C-266; 122C-285; 130A-383; 130A-389; 130A-398 through 400; 130A-415; 143B-10; 143B-147; 143B-403.1; 143B-403.2; 168.8; 7A, Article 44; 108A, Article 6*

Statement of the Subject Matter: *The Division of Mental Health, Developmental Disabilities and Substance Abuse Services intends to combine rules contained in the above Subchapters. Currently, rules contained in Subchapters 10 NCAC 14G, H, I and J govern Human Rights in State-Operated Facilities, and rules contained in Subchapters P, Q, R, and S govern Client Rights in Community Programs. Based on recommendations from advocacy groups and a review of these rules by the Division of MHDDSAS and Department staff, it was determined that rules governing client rights for both community and State-operated facilities should be consistent.*

Reason for Proposed Action: *Recommendations received from advocacy groups, and a thorough review, by the Division and the Department, of rules protecting the health, safety and welfare of clients in State-operated facilities and in communities resulted in a decision that client rights rules in State-operated facilities and in communities should be consistent.*

Comment Procedures: *Written comments should be submitted to Charlotte F. Hall, Rulemaking Coordinator, Division of MHDDSAS, 3012 Mail Service Center, Raleigh, NC 27699-3012.*

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CHAPTER 14 – MENTAL HEALTH: GENERAL

Notice of Rule-making Proceedings *is hereby given by Commission for Mental Health, Developmental Disabilities and Substance Abuse Services 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: *10 NCAC 14V. Other rules may be proposed in the course of the rule-making process.*

Authority for the Rule-making: *G.S. 122C-26; 143B-147*

Statement of the Subject Matter: *The Commission for Mental Health, Developmental Disabilities and Substance Abuse Services intends to adopt rules to carry out the Governor's initiative on mental health in order to improve the health, safety and welfare of residents in private psychiatric hospitals and mental health group homes. The rules are used by the Division of Facilities Services, Department of Health and Human Services to regulate these facilities.*

Reason for Proposed Action: *Governor Hunt's initiative required the agency to implement measures to improve the health, safety and welfare of residents in psychiatric hospitals and mental health group homes.*

Comment Procedures: *Written comments should be submitted to Cindy Kornegay, Program Accountability Section, Division of Mental Health, Developmental Disabilities and Substance Abuse Services (MHDDSAS), 3012 Mail Service Center, Raleigh, NC 27699-3012. Telephone No. 919-881-2446.*

TITLE 12 – DEPARTMENT OF JUSTICE

CHAPTER 10 - N.C. SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

Notice of Rule-making Proceedings *is hereby given by the NC Sheriffs' Education and Training Standards Commission 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: *12 NCAC 10B .0705-.0707, .0710-.0712, .1307 - Other rules may be proposed in the course of the rule-making process.*

Authority for the Rule-making: *G.S. 17E*

Statement of the Subject Matter:

12 NCAC 10B .0705 *- CERTIFICATION: SCHOOL DIRECTORS - Rule setting out initial requirements for obtaining School Director Certification to administer a commission-accredited Detention Officer Certification Course.*

12 NCAC 10B .0706 *- TERMS AND CONDITIONS OF SCHOOL DIRECTOR CERTIFICATION - Rule setting out requirements for maintaining School Director Certification to administer a commission-accredited Detention Officer Certification Course.*

12 NCAC 10B .0707 *- SUSPENSION: REVOCATION: OR DENIAL: SCHOOL DIRECTOR CERT - Rule setting out violations which may result in adverse action against School Director Certification for the commission-accredited Detention Officer Certification Course.*

12 NCAC 10B .0710 *- CERTIFICATION: SCHOOL DIRECTORS, TELECOMMUNICATOR CERTIFICATION COURSE - Rule setting out initial requirements for obtaining School Director Certification to administer a commission-accredited Telecommunicator Certification Course.*

12 NCAC 10B .0711 *- TERMS AND CONDITIONS OF TELECOMMUNICATOR SCHOOL DIRECTOR CERTIFICATION - Rule setting out requirements for maintaining School Director Certification to administer a commission-accredited Telecommunicator Certification Course.*

12 NCAC 10B .0712 *- SUSPENSION: REVOCATION: OR DENIAL: TELECOMMUNICATOR SCHOOL DIRECTOR CERT - Rule setting out violations which may result in adverse action against School Director Certification for the commission-accredited Detention Officer Certification Course.*

12 NCAC 10B .1307 *- COMPREHENSIVE WRITTEN EXAM - TELECOMMUNICATOR CERTIFICATION COURSE - Rule sets out requirements for state examination.*

Reason for Proposed Action:

12 NCAC 10B .0705 *- CERTIFICATION: SCHOOL DIRECTORS - Provision to deny School Director Certification if the applicant has had any other type of adverse action against certification for cause.*

12 NCAC 10B .0706 *- TERMS AND CONDITIONS OF SCHOOL DIRECTOR CERTIFICATION - Amend existing certifications to expire concurrently with other certification the individual may hold. Provision to take adverse action against School Director Certification if the director or applicant has had any other type of adverse action against certification for cause.*

12 NCAC 10B .0707 *- SUSPENSION: REVOCATION: OR DENIAL: SCHOOL DIRECTOR CERT - Provision to take adverse action against School Director Certification if the director or applicant has had any other type of adverse action against certification for cause.*

12 NCAC 10B .0710 *- CERTIFICATION: SCHOOL DIRECTORS, TELECOMMUNICATOR CERTIFICATION COURSE - Provision to deny School Director Certification if the applicant has had any other type of adverse action against certification for cause.*

12 NCAC 10B .0711 *- TERMS AND CONDITIONS OF TELECOMMUNICATOR SCHOOL DIRECTOR CERTIFICATION - Amend existing certifications to expire concurrently with other certification the individual may hold. Provision to take adverse action against School Director Certification if the director or applicant has had any other type of adverse action against certification for cause.*

12 NCAC 10B .0712 *- SUSPENSION: REVOCATION: OR DENIAL: TELECOMMUNICATOR SCHOOL DIRECTOR CERT - Provision to take adverse action against School Director Certification if the director or applicant has had any other type of adverse action against certification for cause.*

12 NCAC 10B .1307 *- COMPREHENSIVE WRITTEN EXAM - TELECOMMUNICATOR CERTIFICATION COURSE*

Change to broaden that language setting out the format of state examination. Change to erroneous language where "detention officer" should have read "telecommunicator."

Comment Procedures: *Questions or comments should be directed to Julia A. Lohman, Rule-making Coordinator, PO Drawer 629, Raleigh, NC 27602.*

TITLE 15A – DEPARTMENT OF ENVIROMENT AND NATURAL RESOURCES

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

Notice of Rule-making Proceedings *is hereby given by Environmental Management Commission 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: *15A NCAC 02C .0112. Other rules may be proposed in the course of the rule-making process.*

Authority for the Rule-making: *G.S. 87-87; 87-88*

Statement of the Subject Matter: *This Rule effects wells that require repair as a result of physical damage to the well casing or other event that has made a water well unusable or a source or channel for contamination.*

Reason for Proposed Action: *On June 28, 2001, the Office of Administrative Hearings held a hearing on Contested Case 00-EHR-1656. This case is identified by OAH as "Floyd V. Robertson, d/b/a Parsons Well Company v NC Department of Environment and Natural Resources". The Division of Water Quality relied on well grouting requirements in 15A NCAC 02C.0107 (e)(7) and policy decisions as the basis to require Mr. Robertson to grout a well liner within five working days after a casing has been set. Mr. Robertson contended that he was repairing a well using a liner casing. His view was that it was not appropriate for the Division to require grouting under this Rule since requirements to repair wells are found in 15A NCAC 02C .0112. He further contended that Rule .0112 does not specify a timetable for completion of grouting repaired wells. Based on the decision in this case from the Office of Administrative Hearings and to remove any possible ambiguity from the 15A NCAC 02C rules, the Division believes that it is necessary to initiate rulemaking under G.S. 150B.*

Comment Procedures: *Comments, data, statements and other information about this rulemaking may be submitted in writing to David Hance at ENR-DWQ-Groundwater Section, 1636 Mail Service Center, Raleigh, North Carolina, 27699-1636, Phone: (919) 715-6189; Fax: (919) 715-0588; email:*

David.Hance@ncmail.net. The Environmental Management Commission will accept comments through October 15, 2001.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

Notice of Rule-making Proceedings *is hereby given by North Carolina State Board of Dental 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 16B .0305; 16C .0305; .0310; 16D .0102; .0105; 16E .0104; 16F .0103; 16H .0104; 16I .0104; .0107; 16Q .0202-.0205; .0301-.0303; .0401; 16R .0102-.0103. Other rules may be proposed in the course of the rule-making process.*

Authority for the Rule-making: *G.S. 55B-5; 90-28; 90-29; 90-29.3; 90-30; 90-30.1; 90-31.1; 90-48; 90-223; 90-224; 90-225.1; 90-226; 90-227*

Statement of the Subject Matter: *Rules relating to: provisional licenses for dentists and dental hygienists; examination application and procedure for dentists and dental hygienists; dental assistant training; dentist and dental hygienist license renewal; general anesthesia use evaluations; requirements governing intern permits; corporate or limited liability company names for dental practices; sedation and general anesthesia permits and renewals; and continuing education requirements for dentists; temporary approval prior to site evaluations for general anesthesia and sedation permits; results of site evaluation and reevaluation for general anesthesia permits; equipment for administration of general anesthesia and sedation.*

Reason for Proposed Action:

1. To amend procedures for application for dental licensure examination;
2. To adopt rule addressing situation when applicant for dental license passes clinical portion of examination but fails written portion of examination;
3. To adopt rule addressing situation when applicant for dental hygiene license passes clinical portion of examination but fails written portion of examination;
4. To amend procedures for application for dental hygienist licensure examination;
5. To require a dental hygienist applicant who has failed the examination three times complete an additional course of study;
6. To define supervision of dentists holding provisional licenses;
7. To require completion of certain requirements prior to issuance of a provisional dental license;
8. To require completion of certain requirements prior to issuance of a provisional dental hygiene license;
9. To amend requirements for corporate or limited liability company names;
10. To clarify permissible functions of an assistant while training for classification as a Dental Assistant II;
11. To revise requirements on the renewal application form for dental hygienist license;
12. To clarify that dental hygienist license must be reinstated if it becomes void for failure to renew;
13. To amend evaluator requirements for general anesthesia evaluation and inspection and to address satellite office evaluations;
14. To require a dentist seeking a permit to administer sedation to submit documentation of completion of specific training;
15. To require a dentist renewing a general anesthesia or sedation permit to document completion of specific training;
16. To amend continuing education requirements for dentists;
17. To revise requirements on the renewal application form for a dental license;
18. To adopt requirements governing intern permits;
19. To revise requirements for temporary approval for general anesthesia and sedation permits;
20. To revise requirements for requesting site evaluation and reevaluation for a permit to administer general anesthesia; and
21. To revise equipment and auxiliary personnel requirements for administration of general anesthesia and sedation.

Comment Procedures: *Written comments may be submitted on the subject matter of the proposed rule-making to Lisa Thompson at the Board's office. The Board's address is 15100 Weston Parkway, Suite 101, Cary, North Carolina 27513.*

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CHAPTER 58 – REAL ESTATE COMMISSION

Notice of Rule-making Proceedings *is hereby given by NC Real Estate Commission 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 58. Other rules may be proposed in the course of the rule-making process.*

Authority for the Rule-making: *G.S. 93A-2(a), (a1), (b); 93A-3; 93A-3(c); 93A-4(a); 93A-4A; 93A-6(a), (b); 93A-33; 93A-4(c).*

Statement of the Subject Matter: *21 NCAC 58A .0104; .0107-.0110; .0114; .0303; .0503; .0507; .1400; 58B .0602; 58C .0106; .0215-.0216; .0302-.0304; .0603; .0605; 58E .0203; .0302-.0304; .0310; .0406*

Reason for Proposed Action:

21 NCAC 58A .0104 – *Amend to require that all rental property management agreements be in writing. Review rule with an eye toward clarifying language in the new agency rules which may be contradictory or unclear.*
21 NCAC 58A .0107 – A*mend to establish clear record keeping standards for licensees who act as custodians of property owner association monies, such as the type of data that must be maintained and the length of time it must be kept. Currently, no guidelines have been established for the maintenance of POA books. Amend to allow licensees to keep electronic or imaged*

copies of cancelled checks in lieu of keeping the original checks. Commission guidelines currently forbid licensees from keeping filmed, copied, or imaged checks. However, many banks currently utilize imaging technology to store images of checks and do not offer originals to their clients. This Rule change would allow licensees some flexibility to deal with the latest trend in banking.

21 NCAC 58A .0108 *- Amend to clarify that licensees must retain records for three years from the conclusion of a real estate transaction.*

21 NCAC 58A .0109 *- Amend to allow licensed travel agents to receive referral fees from real estate licensees.*

21 NCAC 58A .0110 *- Amend to clarify the requirement that all active brokers who are brokers-in-charge must take the Broker-In-Charge course every 5 years. A broker who is a sole practitioner/broker who fails to complete the Broker-In-Charge course within the required time period will be made inactive.*

21 NCAC 58A .0114 *- Amend to correct an inadvertent change in meaning in the Residential Property Disclosure statement and to clarify that the form calls for the seller's knowledge about problems with certain fixtures and improvements and not just the existence of the fixtures and improvements themselves.*

21 NCAC 58A .0303; .0503; .0507 *- Amend to allow all payments made to the Commission to be done electronically and to clarify that electronic signatures, in lieu of original signatures, will be permitted for particular submissions.*

21 NCAC 58A .0503 *- Amend to raise the license renewal fee from thirty-five dollars ($35.00) to forty dollars ($40.00).*

21 NCAC 58A .0507 *- Amend to provide that licensees who fail to provide proper payment for any fees owed to the Commission or to the Commission's contract service providers may be disciplined by the Commission.*

21 NCAC 58A .1400 *- Amend to allow closure of Recovery Fund cases which do not mature in a timely manner. The Commission currently has no mechanism in place to close these types of cases when they are not perfected.*

21 NCAC 58B .0602 *- Amend to consolidate and clarify the duties of a project broker.*

21 NCAC 58C .0106; .0216 *- Amend to delete the requirement for advance approval to change instructors. This change would allow schools more flexibility in scheduling and covering for staffing changes, illness, etc. and is appropriate because we now license instructors independently from a particular school.*

21 NCAC 58C .0215 *- Repeal the requirement that private real estate schools submit to the Commission quarterly reports on all prelicensing courses conducted and students enrolled in such courses.*

21 NCAC 58C .0302 *- Amend to expressly allow persons with out-of-state licenses to enroll in the broker course.*

21 NCAC 58C .0303 *- Amend to correct the reference to 30 hour courses. This reference was made obsolete by recent statutory changes which increased the hour requirements to 60 and 67 hours for the salesperson and broker courses.*

21 NCAC 58C .0304 *- Amend to clarify the weight of and passing requirement for prelicensing course examinations and to establish standards for handling students who cheat on any graded examination or assignment. Require providers of pre-licensing courses to meet some minimum standard to secure their examinations against cheating and theft.*

21 NCAC 58C .0603; .0605 *- Amend to reduce the length of the videotape that prelicensing instructor applicants must submit from two hours to one hour.*

21 NCAC 58C .0603; 58E .0203; .0303 - .0304 *- Amend to codify the application process for new instructor applicants. Applicants would be given a right to request a hearing subsequent to a denial of their application, and the specific application steps would be enumerated.*

21 NCAC 58E .0203 *- Amend to simplify the qualification options for continuing education update instructors, to make the qualification option based upon real estate licensure, education and experience more consistent with the qualification requirements for prelicensing instructors, and to provide that applicants who are approved prelicensing instructors will be considered to have satisfied licensure, education, experience and teaching qualification requirements for update instructors.*

21 NCAC 58E .0302; .0310; .0406 *- Amend to clarify the completion requirements for distance education study.*

21 NCAC 58E .0406 *- Amend to require that Continuing Education sponsors make their reports to the Commission electronically or on diskette. This change would eliminate scantron sheets and reduce the class time spent doing administrative tasks.*

Comment Procedures: *Written comments regarding the proposed rule-making action may be submitted to Pamela Millward, North Carolina Real Estate Commission, P.O. Box 17100, Raleigh, NC 27619-7100.*

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 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice *is hereby given in accordance with G.S. 150B-21.2 that the Commission for MHDDSAS intends to adopt the rules cited as 10 NCAC 14J .0211-.0212; 14R .0108-.0109; 14V .0203-.0204, .0801-.0803, amend the rules cited as 10 NCAC 14G .0102; 14J .0201, .0203-.0207; 14P .0101-.0102; 14Q .0101, .0303; 14R .0101, .0104-.0105; 14V .0104, .0202, .0208, .0304, .6002. Notice of Rule-making Proceedings was published in the Register on January 16, 2001 and February 15, 2001.*

Proposed Effective Date: *August 1, 2002*

Public Hearing:
Date: *September 17, 2001*
Time: *9:30 a.m.*
Location: *Brownstone Hotel, 1707 Hillsborough St. Raleigh, NC 27605*

Reason for Proposed Action: *HB 1520 requires the Commission for MHDDSAS to adopt rules to emphasize alternatives to use the 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 incident, 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. 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: *Written comments concerning this rulemaking action must be submitted to Cindy Kornegay, Program Accountability Section, Division of MHDDSAS, 3012 Mail Service Center, Raleigh, NC 27699 by September 17, 2001. In addition, oral presentation may be presented at the public hearing on September 17, 2001. Please contact either Cindy Kornegay or Charlotte Hall at 919-881-2446 should you plan to make a presentation, or e-mail Cindy.Kornegay@ncmail.net or Charlotte.Hall@ncmail.net.*

Fiscal Impact

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

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

☐ **Substantive (**≥$5,000,000**)**

☒ **None** *10 NCAC 14V .0104; .0202-.0204; .0208; .0304; .0801-.0803; .6002*

The following Rules differ from the temporary rule text published in the Register on January 16, 2001. The strikethrough and underlined text indicates the changes proposed compared to the text published January 16, 2001. The agency intends to file these as temporary amendments: 10 NCAC 14G .0102; 14J .0203-0207; .0211-.0212; 14P .0102; 14Q .0101; 14R .0104-.0105; .0108- .0109; 14V .0104; .0202-.0204.

The following rules do not differ from the temporary rule text published on January 16, 2001: 10 NCAC 14J .0201; 14P .0101; 14Q .0303; 14R .0101; 14V .0208; .0304; .0801-.0803; .6002.

CHAPTER 14 – MENTAL HEALTH: GENERAL

SUBCHAPTER 14G – COMMITTEES AND PROCEDURES

SECTION .0100 – PURPOSE: SCOPE: DEFINITION

10 NCAC 14G .0102 DEFINITIONS

(a) In addition to the definitions contained in this Rule, 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 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 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) "Paraprofessional" within the DMH/DD/SAS system of care means an individual who has:

(A) A GED/high school diploma and is provided monthly supervision by a qualified professional or professional associate with the population served; or

(B) No GED/high school diploma but has two years of supervised experience (full-time or part-time) in implementing treatment plans for the population being served and is provided twice a month supervision by a qualified professional or professional associate with the population served; or

(C) No GED/high school diploma and no experience with the population being served and is provided supervision weekly by a qualified professional or professional associate with the population served until two years of accumulated experience has been achieved. At the completion of two years of supervised experience, the individual will be supervised twice a month.

~~(30)~~(31) "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. Escorting means the temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a client to walk to a safe location.

(32) "Professional associate (PA)" within the DMH/DD/SAS system of care means an individual who is a:

(A) Graduate of a college or university with a Masters degree in a related human service field with less than one year of full-time, post-graduate

accumulated MH/DD/SA experience with the population served or for a substance abuse professional with less than one year of full-time post-graduate accumulated supervised experience in alcoholism and drug abuse counseling. Upon hiring, an individualized supervision plan shall be developed and supervision shall be provided by a qualified professional with the population served for the necessary period of time until the individual meets that one year of experience; or

(B) Graduate of a college or university with a baccalaureate degree in a related human service field with less than two years of full-time, post-baccalaureate accumulated MH/DD/SA experience with the population served or for a substance abuse professional with less than two years of full-time post-graduate accumulated supervised experience in alcoholism and drug abuse counseling. Upon hiring, an individualized supervision plan will be developed, and reviewed annually. Supervision will be provided by a qualified professional with the population served for the necessary period of time until the individual meets that two years of experience; or

(C) Graduate of a college or university with a baccalaureate degree in a field not related to human services with less than four years of full-time, post-baccalaureate accumulated MH/DD/SA experience with the population served or a substance abuse professional with less than four years of full-time post-graduate accumulated supervised experience in alcoholism and drug abuse counseling. Upon hiring, an individualized supervision plan shall be developed, and reviewed annually. Supervision shall be provided by a qualified professional with the population served for the necessary period of time until the individual meets that four years of experience.

~~(31)~~(33) "Protective device"~~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.

~~(32)~~(34) "Psychosurgery" means surgical procedures for the intervention in or alteration of a mental, emotional or behavior disorder.

~~(33)~~(35) "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.

~~(34)~~(36) "~~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.~~ "Qualified professional" means, within the MH/DD/SAS system of care, an individual serving in the following categories:

(A) Independent Practitioner: An independent practitioner is an individual who holds an unrestricted license, certificate, registration, issued by the board regulating the profession in question, in the following disciplines: Ph.D. Psychologist, Psychiatrist, Certified Clinical Social Worker, Advanced Practice Nurse with Psychiatric Certification, Licensed Clinical Social Worker, Licensed Occupational, Physical and Speech Therapist and who provides and bills MH/DD/SA services under their own provider number and through employment or contract with an area program or other billing provider.

(B) Independent Practitioner Provisional: An independent practitioner provisional has a limited, provisional and temporary license, certificate,

registration or permit in the disciplines listed above issued by the governing board regulating the profession and requires clinical supervision by a qualified independent practitioner and provides and bills MH/DD/SA services under their own provider number and through employment or contract with an area program or other billing provider; or

(C) Qualified Professional of MH/DD/SA Services

(i) Graduate of a college or university with a Masters degree in a related human service field and has one year of full-time, post-graduate accumulated MH/DD/SA experience with the population served and a substance abuse professional shall have two years of full-time post-graduate accumulated supervised experience in alcoholism and drug abuse counseling; or

(ii) Graduate of a college or university with a baccalaureate degree in a related human service field and has two years of full-time, post-baccalaureate accumulated MH/DD/SA experience with the population served and a substance abuse professional shall have two years of full-time post-graduate accumulated supervised experience in alcoholism and drug abuse counseling; or

(iii) Graduate of a college or university with a baccalaureate degree in a field not related to human services and has four years of full-time, post-baccalaureate accumulated MH/DD/SA experience with the population served and a substance abuse professional shall have four years of full-time post-graduate accumulated supervised experience in alcoholism and drug abuse counseling; or

(iv) A substance abuse professional shall have a counseling certification by the North Carolina Substance Abuse Professional Certification Board.

~~(35)~~(37) "Regional alcoholic rehabilitation center" means a state facility for substance abusers as specified in G.S. 122C-181(a)(3).

~~(36)~~(38) "Regional mental retardation center" means a state facility for the mentally retarded as specified in G.S. 122C-181(a)(2).

~~(37)~~(39) "Regional psychiatric hospital" means a state facility for the mentally ill as specified in G.S. 122C-181(a)(1).

~~(38)~~(40) "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.

~~(39)~~(41) "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.

~~(40)~~(42) "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.

~~(41)~~(43) "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)(36) ~~Subparagraph (b)(32)~~ in this Rule.

~~(42)~~(44) "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)~~(45) "State Facility Director" means the chief administrative officer or manager of a state facility or his designee.

~~(44)~~(46) "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)~~(47) "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)~~(48) "Treatment" means the act, method, or manner of habilitating or rehabilitating, caring for or managing a client's physical or mental problems.

~~(47)~~(49) "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)~~(50) "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)~~(51) "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)~~(52) "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.

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

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;

(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.

Authority G.S. 122C-51; 122C-57; 122C-59; 131E-67; 143B-147.

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) physical restraints ~~(~~including:

(A) mechanical restraints ~~(including protective devices used for behavioral control as specified in Rule .0207(b) of this Section)~~; or

(B) manual restraints;

(3) isolation time out;

(4) exclusionary time out for more than 15 minutes;

(5) time out for more than one hour;

(6) protective devices when used for behavioral control;

~~(6)~~(7) contingent withdrawal or delay of access to personal possessions or goods to which the client would ordinarily be entitled;

~~(7)~~(8) consistent deprivation of items or cessation of an activity which the client is scheduled to receive (other than basic necessities); and

~~(8)~~(9) 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 indicators, ~~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.

(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;

(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;

(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

(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;

(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, 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(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~~ Exceptions to Paragraph (c) of this Rule includes the use of seclusion, physical restraint and isolation time out, ~~which is regulated~~ as set forth in Rule .0206 of this ~~Section.~~ Section, and protective devices when used for behavioral control, as specified in Rule .0207 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 approved ~~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.

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

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~~ .0210 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.

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

10 NCAC 14J .0205 INDICATIONS FOR USE OF PHYSICAL 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

(3) as a measure of therapeutic treatment as specified in Rule ~~.0211~~ .0210 of this Section; and

(4) after appropriate consideration of the client's health status as specified in Rule .0203(b) of this Section; and

(5) after a less restrictive alternative has been attempted, or 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.

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

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 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, 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;

(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;

(C) notation of the frequency, intensity, and duration of the behavior and any precipitating circumstances contributing to the onset of the behavior;

(D) description of the intervention and the date, time and duration of its use;

(E) estimated amount of additional time needed in seclusion, physical restraint or isolation time out;

(F) signature and title of the state facility employee responsible for the use of the intervention; ~~and~~

(G) the time that the client was met with by the responsible professional; and

(H) description of the debriefing and planning with the client and the legally responsible person, if applicable, to eliminate or reduce the probability of the future use of restrictive interventions.

(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 of the legally responsible person of a minor client or an incompetent adult client when such notification has been requested.

(e) Seclusion, physical restraint and isolation time out shall not be employed as 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, 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;

(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 approved ~~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 but, after consideration of the health status of the client and discussion with the qualified 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 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 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 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 client's 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 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;

(C) documentation of the above observation and attention in the client 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) After a restrictive intervention is utilized, staff shall conduct debriefing and planning with the client and the legally responsible person, if applicable, to eliminate or reduce the probability of the future use of restrictive interventions. Debriefing and planning shall be conducted as appropriate to the level of cognitive functioning of the client.

(o)~~(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. 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;

(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.

(p) The facility shall collect and analyze data on the use of restraints and seclusion. The data collected and analyzed shall reflect for each incident:

(1) the type of procedure used and length of time employed;

(2) alternatives considered or employed; and

(3) the effectiveness of the procedure or alternative employed.

The facility shall analyze the data on at least a quarterly basis to monitor effectiveness, determine trends, and take corrective action where necessary. The facility shall make the data available to the Secretary of the Department of Health and Human Services upon request.

(q)~~(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 (p)~~(n)~~ of this Rule shall apply.

Authority G.S. 122C-51; 122C-53; 122C-57; 122C-60; 122C-62; 131E-67; 143B-147.

10 NCAC 14J .0207 PROTECTIVE DEVICES

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

(1) assure that the protective device ~~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 device ~~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 device ~~restraint~~ is used only upon the written order of a qualified professional that specifies the type of protective device and the duration and circumstances under which the protective device is used;

(6) assure and document that the staff applying the protective device ~~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 device, the degree of observation needed to assure the safety of those placed in restraints:

(A) The type of protective 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 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 device ~~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.

Authority G.S. 122C-51; 122C-57; 131E-67; 143B-147.

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~~ left with sole responsibility and supervision for an individual without immediate on-site availability of a trained colleague, 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~~ 90 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.

(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.

Authority G.S 143B-147.

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~~ left with sole responsibility and supervision for an individual without immediate on-site availability of a trained colleague, and shall not 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;

(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~~ approved 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.

Authority G.S. 143B-147.

SUBCHAPTER 14P – PROCEDURES AND GENERAL INFORMATION

SECTION .0100 – SCOPE AND DEFINITIONS

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.~~

Authority G.S. 122C-51; 131E-67; 143B-17; 143B-147.

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 procedure. Consent implies that the client or legally responsible person was provided with sufficient 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, 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. Escorting means the temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a client to walk to a safe location.

(20) "Protective device" 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. As provided in Rule .0105(b) of Subchapter 14R, the use of a protective device for behavioral control shall comply with the requirements specified in Rule .0104 in Subchapter 14R. ~~A protective device is a mechanical restraint device as defined in Paragraph (19) of this Rule only when it is used for the purpose or with the intent of controlling unacceptable behavior, as provided in Rule .0105(b) of Subchapter 14R.~~

(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.

(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.~~ Rule .0104 of Subchapter 14V.

(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 interventions include the emergency or planned use of seclusion, physical restraint (including the use of protective devices for the purpose or with the intent of controlling unacceptable behavior), isolation time-out, and any combination thereof.

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

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

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

(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.

(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.

(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.

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

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, 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 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 indicators, ~~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.~~ intervention; and

(3) following the utilization of a restrictive intervention, staff shall conduct debriefing and planning with the client and the legally responsible person, if applicable, to eliminate or reduce the probability of the future use of restrictive interventions. Debriefing and planning shall be conducted, as appropriate, to the level of cognitive functioning of the client.

Authority G.S. 122C-51; 143B-147.

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.

Authority G.S. 122C-51; 122C-57; 131E-67; 143B-147.

SUBCHAPTER 14R – TREATMENT OR REHABILITATION RIGHTS

SECTION .0100 – PROTECTIONS REGARDING INTERVENTION PROCEDURES

10 NCAC 14R .0101 LEAST RESTRICTIVE ALTERNATIVE

(a) ~~To~~ 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.

Authority G.S. 122C-51; 122C-53; 131E-67; 143B-147.

10 NCAC 14R .0104 SECLUSION, PHYSICAL RESTRAINT AND ISOLATION TIME OUT AND PROTECTIVE DEVICES USED FOR BEHAVIORAL CONTROL

(a) This Rule governs the use of restrictive interventions which shall include:
(1) seclusion;
(2) physical restraint; ~~restraint, including protective devices when used for the purpose or with the intent of controlling unacceptable behavior;~~
(3) isolation time-out ~~and;~~
(4) any combination thereof, including simultaneous use of seclusion and physical ~~restraint.~~ restraint; and
(5) protective devices used for behavioral control.
(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 (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.
(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:
(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 indicators, ~~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.
(3) the process for identifying, training, assessing competence and approving ~~privileging~~ facility employees who may authorize and implement restrictive interventions;
(4) the duties and responsibilities of qualified or responsible professionals regarding the use of restrictive interventions;

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

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

(7) the person responsible for checking the client's health status and assessing the possible consequences of the use of a restrictive intervention and, in such cases there shall be procedures regarding:

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

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

(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;

(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 activated if the room is to be used for 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) 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;

(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;

(C) the rationale for the use of the intervention, the appropriate positive or less restrictive interventions considered and used and the inadequacy of less restrictive intervention techniques that were used;

(D) a description of the intervention and the date, time and duration of its use;

(E) a description of accompanying positive methods of intervention; ~~and~~

(F) a description of the debriefing and planning with the client and the legally responsible person, if applicable, to eliminate or reduce the probability of the future use of restrictive interventions.

~~(F)~~(G) signature and title of the facility employee who initiated, and of the employee who further authorized, the use of the intervention.

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

(A) a facility employee approved ~~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 approved ~~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) The following precautions and actions shall be employed whenever a client is in:

(A) seclusion or physical restraint, including a protective 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: 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, ~~including protective 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~~ ;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) The use of a restrictive intervention shall be discontinued immediately at any indication of risk to the client's health or safety or immediately 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) 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) The use of a restrictive intervention 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) 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 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

(ii) a designee of the governing body.

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

(16) After a restrictive intervention is utilized, staff shall conduct debriefing and planning with the client and the legally responsible person if applicable to eliminate or reduce the probability of the future use of restrictive interventions. Debriefing and planning shall be conducted as appropriate to the level of cognitive functioning of the client.

~~(16)~~(17) 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, 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;

(vii) reason for use of the 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.

(18) The facility shall collect and analyze data on the use of restraints and seclusion. The data collected and analyzed shall reflect for each incident:

(A) the type of procedure used and the length of time employed;

(B) alternatives considered or employed; and

(C) the effectiveness of the procedure or alternative employed.

The facility shall analyze the data on at least a quarterly basis to monitor effectiveness, determine trends, and take corrective action where necessary. The facility shall make the data available to the Secretary upon request.

~~(17)~~(19) 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.

(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.

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

(1) 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 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)(9) and (e)(14) of this Rule 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 an advocate/client rights representative ~~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 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) 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 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 in the client record regarding the use of a planned intervention shall indicate:

(A) debriefing with staff, the ~~client~~ client, as appropriate to the level of cognitive functioning of the client, and the legally responsible person if applicable;

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

professional who approved the planned intervention; and

(C) review, at least monthly by the treatment/habilitation team that approved the planned intervention.~~every two weeks, by a qualified professional~~.

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

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 approved to use; ~~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. Copies of this Rule and other pertinent rules are published as Division publication RULES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE SERVICES, APSM 30-1,and may be purchased at a cost of 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.

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

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~~ shall not be ~~alone with them~~ left with sole responsibility and supervision for an individual without immediate on-site availability of a trained colleague, 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~~ 90 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,~~ 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~~ 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 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.

Authority G.S. 143B-147.

10 NCAC 14R .0109 TRAINING IN PHYSICAL RESTRAINT, SECLUSION AND ISOLATION TIME-OUT

(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) Physical restraint, seclusion and isolation time-out may be employed only by staff who have been trained and have demonstrated ~~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~~ shall not be left with sole responsibility and supervision for an individual without immediate on-site availability of a trained colleague, nor shall they be approved ~~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 approved ~~privileged~~ to use restrictive interventions;
(2) be currently certified in CPR; and
(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.

(p) Qualification 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.

Authority G.S. 143B-147.

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

SECTION .0100 – GENERAL INFORMATION

10 NCAC 14V .0104 STAFF DEFINITIONS

In addition to terms defined in G.S. 122C-3, ~~The~~ 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.
(10) "Licensed Psychologist" means an individual who is licensed to practice psychology in the State of North Carolina.
(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.~~

"Paraprofessional" within the DMH/DD/SAS system of care means an individual who has:

(a) A GED/high school diploma and is provided monthly supervision by a qualified professional or professional associate with the population served; or

(b) No GED/high school diploma but has two years of supervised experience (full-time or part-time) in implementing treatment plans for the population being served and is provided twice a month supervision by a qualified professional or professional associate with the population served; or

(c) No GED/high school diploma and no experience with the population being served and is provided supervision weekly by a qualified professional or professional associate with the population served until two years of accumulated experience has been achieved. At the completion of two years of supervised experience, the individual will be supervised twice a month.

(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 licensed or certified, but has not met the experience requirements.~~ "Professional associate (PA)" within the DMH/DD/SAS system of care means an individual who is a:

(a) Graduate of a college or university with a Masters degree in a related human service field with less than one year of full-time, post-graduate accumulated MH/DD/SA experience with the population served or for a substance abuse professional with less than one year of full-time post-graduate accumulated supervised experience in alcoholism and drug abuse counseling. Upon hiring, an individualized supervision plan shall be developed and supervision shall be provided by a qualified professional with the population served for the necessary period of time until the individual meets that one year of experience; or

(b) Graduate of a college or university with a baccalaureate degree in a related human service field with less than two years of full-time, post-baccalaureate accumulated MH/DD/SA experience with the population served or for a substance abuse professional with less than two years of full-time post-graduate accumulated supervised experience in alcoholism and drug abuse counseling. Upon hiring, an individualized supervision plan will be developed, and reviewed annually. Supervision will be provided by a qualified professional with the population served for the necessary period of time until the individual meets that two years of experience; or

(c) Graduate of a college or university with a baccalaureate degree in a field not related to human services with less than four years of full-time, post-baccalaureate accumulated MH/DD/SA experience with population served or a substance abuse professional with less than four years of full-time post-graduate accumulated supervised experience in alcoholism and drug abuse counseling. Upon hiring, an individualized supervision shall be developed, and reviewed annually. Supervision shall be provided by a qualified professional with the population served for the necessary period of time until the individual meets that four years of experience.

(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.

(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.

(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.

~~(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.

(18)(17) "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.

(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.

(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.

(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)(18) "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. means, within the MH/DD/SAS system of care, an individual serving in the following categories:

(a) Independent Practitioner: An independent practitioner is an individual who holds an unrestricted license, certificate, registration, issued by the board regulating the profession in question, in the following disciplines: Ph.D. Psychologist, Psychiatrist, Certified Clinical Social Worker, Advanced Practice Nurse with Psychiatric Certification, Licensed Clinical Social Worker, Licensed Occupational, Physical and Speech Therapist and who provides and bills MH/DD/SA services under their own provider number and through employment or contract with an area program or other billing provider;

(b) Independent Practitioner Provisional: An independent practitioner provisional has a limited, provisional and temporary license, certificate, registration or permit in the disciplines listed above issued by the governing board regulating the profession and requires clinical supervision by a qualified independent practitioner and provides and bills MH/DD/SA services under their own provider number and through employment or contract with an area program or other billing provider; or

(c) Qualified Professional of MH/DD/SA Services

(i) Graduate of a college or university with a Masters degree in a related human service field and has one year of full-time, post-graduate accumulated MH/DD/SA experience with the population served and a substance abuse professional shall have one year of full-time post-graduate accumulated supervised

experience in alcoholism and drug abuse counseling; or

(ii) Graduate of a college or university with a Baccalaureate degree in a related human service field and has two years of full-time, post-baccalaureate accumulated MH/DD/SA experience with the population served and a substance abuse professional shall have two years of full-time post-graduate accumulated supervised experience in alcoholism and drug abuse counseling; or

(iii) Graduate of college or university with a baccalaureate degree in a field not related to human services and has four years of full-time, post-baccalaureate accumulated MH/DD/SA experience with the population served and a substance abuse professional shall have four years of full-time post-graduate accumulated supervised experience in alcoholism and drug abuse counseling; or

(iv) A substance abuse professional shall have a counseling certification by the North Carolina Substance Abuse Professional Certification Board.

~~(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.~~

Authority G.S. 122C-3; 122C-25; 122C-26; 143B-147.

SECTION .0200 – OPERATION AND MANAGEMENT RULES

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;

(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 substantiated findings of abuse or neglect listed on the North Carolina Health Care Personnel Registry. ~~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 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 in each employee's file.

(h) 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) Except as permitted under 10 NCAC 14V .5602(b) of this Subchapter, at least one staff member shall be available in the facility at all times when a client is present. That staff member shall be trained in basic first aid including seizure management, currently certified to provide cardiopulmonary resuscitation, and trained in the Heimlich maneuver or other approved Red Cross First Aid techniques or its equivalent for relieving airway obstruction.

(j) The governing body ~~may~~ shall require medical statements from all direct care staff.. 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 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.

Authority G.S. 122C-26.

10 NCAC 14V .0203 PRIVILEGING AND TRAINING OF QUALIFIED PROFESSIONALS AND PROFESSIONAL ASSOCIATES

(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~~ professional associates 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.~~

Authority G.S. 122C-26.

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.~~

~~(c)~~(2) Paraprofessionals shall demonstrate knowledge, skills and abilities required to serve the client based on the client's individualized treatment or habilitation plan.

Authority G.S. 122C-26.

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 service 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.~~

Authority G.S. 122C-26; 122C-112: 122C-146; 130A-361; 143B-147.

SECTION .0300 – PHYSICAL PLANT RULES

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.

(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.

Authority G.S. 122C-26; 143B-147.

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.

Authority G.S. 122C-26; 122C-131.

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.

Authority G.S. 122C-26; 122C-131.

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 Subparagraphs (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 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 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.

Authority G.S. 122C-26; 122C-131.

SECTION .6000 - INPATIENT HOSPITAL TREATMENT FOR INDIVIDUALS WHO HAVE MENTAL ILLNESS OR SUBSTANCE ABUSE DISORDERS

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.

~~(c)~~(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:

(1) psychiatrist;
(2) licensed practicing psychologist;
(3) 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
(6) at least one staff member on duty trained in substance abuse withdrawal and symptoms of secondary complications to substance abuse.

Authority G.S. 122C-26; 143B-147.

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***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Department of Health and Human Services intends to amend the rules cited as 15A NCAC 19A .0101-.0103, .0202-.0203, .0205, .0207 .0209 .0801 and to repeal the rules cited as 15A NCAC 19A .0802-.0803. Notice of Rule-making Proceedings was published in the Register on June 15, 2001.*

Proposed Effective Date: *August 1, 2002*

Public Hearing:
Date: *September 6, 2001*
Time: *1:00 p.m.*
Location: *Cooper Building, 5th Floor Conference Room, 225 N. McDowell St., Raleigh, NC*

Reason for Proposed Action:
15A NCAC 19A .0101 – *Revisions are proposed to update the list of diseases and conditions reportable by physicians and laboratories.*
15A NCAC 19A .0102 – *Revisions are proposed to clarify the manner of reporting diseases and conditions reportable by physicians and laboratories.*
15A NCAC 19A .0103 – *Revisions are proposed to update the name of the HIV/STD Prevention and Care Branch.*
15A NCAC 19A .0202 – *Revisions are proposed to expand the HIV/STD control measures to ensure compliance with national standards.*
15A NCAC 19A .0203 – *Revisions are proposed to expand and update the hepatitis B control measures to ensure compliance with national standards.*
15A NCAC 19A .0205 – *Revisions are proposed to update the TB Control Program name and mailing address.*
15A NCAC 19A .0207 – *Revisions are proposed to update the General Communicable Disease Control Branch name and mailing address.*
15A NCAC 19A .0209 – *Revisions are proposed to add a requirement for serogroup testing for Haemophilus influenzae isolates.*
15A NCAC 19A .0801 – *Revisions are proposed to remove outdated portions of this Rule pertaining to tuberculosis control and to update the names of two branches.*
15A NCAC 19A .0802-.0803 – *It is proposed that these rules be repealed in their entirety in order to remove obsolete requirements.*

Comment Procedures: *Written comments concerning this rule-making action may be submitted within 30 days after the date of publication in this issue of the North Carolina Register. Comments must be submitted to Chris J. Hoke, Rule-making Coordinator, Division of Public Health, 2001 Mail Service Center, Raleigh, NC 27699-2001. Comments will be accepted through September 14, 2001.*

Fiscal Impact
☒ **State** *15A NCAC 19A .0202*
☐ **Local**
☐ **Substantive (**≥$5,000,000**)**
☒ **None** *15A NCAC 19A .0101-.0103, .0203, .0205, .0207, .0209, .0801-.0803*

CHAPTER 19 – HEALTH: EPIDEMIOLOGY

SUBCHAPTER 19A – COMMUNICABLE DISEASE CONTROL

SECTION .0100 – REPORTING OF COMMUNICABLE DISEASES

15A NCAC 19A .0101 REPORTABLE DISEASES AND CONDITIONS

(a) The following named diseases and conditions are declared to be dangerous to the public health and are hereby made reportable within the time period specified after the disease or condition is reasonably suspected to exist:

(1) acquired immune deficiency syndrome (AIDS) - 7 days;
(2) anthrax - 24 hours;
(3) botulism - 24 hours;
(4) brucellosis - 7 days;
(5) campylobacter infection - 24 hours;
(6) chancroid - 24 hours;
(7) chlamydial infection (laboratory confirmed) - 7 days;
(8) cholera - 24 hours;
(9) Creutzfeldt-Jakob disease – 7 days;
~~(9)~~(10) cryptosporidiosis - 24 hours;
~~(10)~~(11) cyclosporiasis - 24 hours;
~~(11)~~(12) dengue - 7 days;
~~(12)~~(13) diphtheria - 24 hours;
~~(13)~~(14) ~~E. coli 0157:H7 infection~~ *Escherichia coli*, shiga toxin-producing - 24 hours;
~~(14)~~(15) ehrlichiosis - 7 days;
~~(15)~~(16) encephalitis, arboviral - 7 days;
~~(16)~~(17) enterococci, vancomycin-resistant, from normally sterile site - 7 days;
~~(17)~~(18) foodborne disease, including but not limited to Clostridium perfringens, staphylococcal, and Bacillus cereus - 24 hours;
~~(18)~~(19) gonorrhea - 24 hours;
~~(19)~~(20) granuloma inguinale - 24 hours;
~~(20)~~(21) Haemophilus influenzae, invasive disease - 24 hours;
(22) Hantavirus infection – 7 days;
~~(21)~~(23) Hemolytic-uremic syndrome/thrombotic thrombocytopenic purpura - 24 hours;
~~(22)~~(24) hepatitis A - 24 hours;
~~(23)~~(25) hepatitis B - 24 hours;
~~(24)~~(26) hepatitis B carriage - 7 days;
~~(25)~~(27) hepatitis C, acute - 7 days;
~~(26)~~(28) human immunodeficiency virus (HIV) infection confirmed - 7 days;
~~(27)~~(29) legionellosis - 7 days;
~~(28)~~(30) leptospirosis - 7 days;
(31) listeriosis – 24 hours;
~~(29)~~(32) Lyme disease - 7 days;
~~(30)~~(33) lymphogranuloma venereum - 7 days;
~~(31)~~(34) malaria - 7 days;
~~(32)~~(35) measles (rubeola) - 24 hours;
~~(33)~~(36) meningitis, pneumococcal - 7 days;
~~(34)~~(37) meningococcal disease - 24 hours;
~~(35)~~(38) mumps - 7 days;
~~(36)~~(39) nongonococcal urethritis - 7 days;
~~(37)~~(40) plague - 24 hours;
~~(38)~~(41) paralytic poliomyelitis - 24 hours;
~~(39)~~(42) psittacosis - 7 days;
~~(40)~~(43) Q fever - 7 days;
~~(41)~~(44) rabies, human - 24 hours;
~~(42)~~(45) Rocky Mountain spotted fever - 7 days;
~~(43)~~(46) rubella - 24 hours;
~~(44)~~(47) rubella congenital syndrome - 7 days;
~~(45)~~(48) salmonellosis - 24 hours;
~~(46)~~(49) shigellosis - 24 hours;
(50) smallpox – 24 hours;
~~(47)~~(51) streptococcal infection, Group A, invasive disease - 7 days;
~~(48)~~(52) syphilis - 24 hours;
~~(49)~~(53) tetanus - 7 days;
~~(50)~~(54) toxic shock syndrome - 7 days;
~~(51)~~(55) toxoplasmosis, congenital - 7 days;
~~(52)~~(56) trichinosis - 7 days;
~~(53)~~(57) tuberculosis - 24 hours;
~~(54)~~(58) tularemia - 24 hours;
~~(55)~~(59) typhoid - 24 hours;
~~(56)~~(60) typhoid carriage (Salmonella typhi) - 7 days;
~~(57)~~(61) typhus, epidemic (louse-borne) - 7 days;
~~(58)~~(62) vibrio infection (other than cholera) - 24 hours;
~~(59)~~(63) whooping cough - 24 hours;
~~(60)~~(64) yellow fever - 7 days.

(b) For purposes of reporting; confirmed human immunodeficiency virus (HIV) infection is defined as a positive virus culture; repeatedly reactive EIA antibody test confirmed by western blot or indirect immunofluorescent antibody test; positive polymerase chain reaction (PCR) test; or other confirmed testing method approved by the Director of the State Public Health Laboratory conducted on or after February 1, 1990. In selecting additional tests for approval, the Director of the State Public Health Laboratory shall consider whether such tests have been approved by the federal Food and Drug Administration, recommended by the federal Centers for Disease Control and Prevention, and endorsed by the Association of State and Territorial Public Health Laboratory Directors.

(c) In addition to the laboratory reports for *Mycobacterium tuberculosis*, *Neisseria gonorrhoeae*, and syphilis specified in G.S. 130A-139, laboratories shall report:

(1) Isolation or other specific identification of the following organisms or their products from human clinical specimens:
(A) Any hantavirus.
(B) Arthropod-borne virus (any type).
~~(B)~~(C) *Bacillus anthracis*, the cause of anthrax.
~~(C)~~(D) *Bordetella pertussis*, the cause of whooping cough (pertussis).
(E) *Borrelia burgdorferi*, the cause of Lyme disease (confirmed tests).
~~(D)~~(F) *Brucella spp.*, the causes of brucellosis.
~~(E)~~(G) *Campylobacter spp.*, the causes of campylobacteriosis.
~~(F)~~(H) *Clostridium botulinum*, a cause of botulism.
~~(G)~~(I) *Clostridium tetani*, the cause of tetanus.
~~(H)~~(J) *Corynebacterium diphtheriae*, the cause of diphtheria.
~~(I)~~(K) *Coxiella burnetii*, the cause of Q fever.
~~(J)~~(L) *Cryptosporidium parvum*, the cause of human cryptosporidiosis.
~~(K)~~(M) *Cyclospora cayetanesis*, the cause of cyclosporiasis.
~~(L)~~(N) *Ehrlichia spp.*, the causes of ehrlichiosis.
~~(M)~~(O) ~~*Escherichia coli* O157:H7, a~~ Shiga toxin-producing *Escherichia coli*, a

cause of hemorrhagic colitis, hemolytic uremic syndrome, and thrombotic thrombocytopenic purpura.

~~(N)~~(P) *Francisella tularensis*, the cause of tularemia.

~~(O)~~(Q) Hepatitis B virus or any component thereof, such as hepatitis B surface antigen.

~~(P)~~(R) Human Immunodeficiency Virus, the ~~virus associated with~~ cause of AIDS.

~~(Q)~~(S) *Legionella spp.*, the causes of legionellosis.

~~(R)~~(T) *Leptospira spp.*, the causes of leptospirosis.

(U) *Listeria monocytogenes*, the cause of listeriosis.

(V) *Plasmodium falciparum, P. malariae, P. ovale, and P. vivax*, the causes of malaria in humans.

(W) Poliovirus (any), the cause of poliomyelitis.

~~(S)~~(X) Rabies virus.

~~(T)~~(Y) *Rickettsia rickettsii*, the cause of Rocky Mountain spotted fever.

(Z) Rubella virus.

~~(U)~~(AA) *Salmonella spp.*, the causes of salmonellosis.

~~(V)~~(BB) *Shigella spp.*, the causes of shigellosis.

(CC) Smallpox virus, the cause of smallpox.

~~(W)~~(DD) *Trichinella spiralis*, the cause of trichinosis.

~~(X)~~(EE) *Vibrio spp.*, the causes of cholera and other vibrioses.

(FF) Yellow fever virus.

~~(Y)~~(GG) *Yersinia pestis*, the cause of plague.

(2) Isolation or other specific identification of the following organisms from normally sterile human body sites:

(A) Group A *Streptococcus pyogenes* (group A streptococci).

(B) *Haemophilus influenzae*, serotype b.

(C) *Neisseria meningitidis*, the cause of meningococcal disease.

(D) Vancomycin-resistant *Enterococcus spp.*

(3) Positive serologic test results, as specified, for the following infections:

(A) Fourfold or greater changes or equivalent changes in serum antibody titers to:

(i) Any arthropod-borne viruses associated with meningitis or encephalitis in a human.

(ii) Any hantavirus.

(iii) *Chlamydia psittaci*, the cause of psittacosis.

(iv) *Coxiella burnetii*, the cause of Q fever.

(v) Dengue virus.

(vi) *Ehrlichia spp.*, the causes of ehrlichiosis.

(vii) Measles (rubeola) virus.

(viii) Mumps virus.

(ix) *Rickettsia rickettsii*, the cause of Rocky Mountain spotted fever.

(x) Rubella virus.

(xi) Yellow fever virus.

(B) The presence of IgM serum antibodies to:

(i) Chlamydia psittaci

~~(i)~~(ii) Hepatitis A virus.

~~(ii)~~(iii) Hepatitis B virus core antigen.

~~(iii)~~(iv) Rubella virus.

~~(iv)~~(v) Rubeola (measles) virus.

(vi) Yellow fever virus.

Authority G.S. 130A-134; 130A-135; 130A-139; 130A-141.

15A NCAC 19A .0102 METHOD OF REPORTING

(a) When a report of a disease or condition is required to be made pursuant to G.S. 130A-135 through 139 and 15A NCAC 19A .0101, the report shall be made to the local health director as follows:

(1) With the exception of laboratories, which shall proceed as in Subparagraph (d), for ~~For~~ diseases and conditions required to be reported within 24 hours, the initial report shall be made by telephone, and the report required by Subparagraph (2) of this Paragraph shall be made within seven days.

(2) In addition to the requirements of Subparagraph (1) of this Paragraph, the report shall be made on the communicable disease report card or in an electronic format provided by the Division of Epidemiology and shall include the name and address of the patient, the name and address of any minor's parent or guardian, and all other pertinent epidemiologic information.

(3) Until September 1, 1994, reports of cases of confirmed HIV infection identified by anonymous tests that are conducted at HIV testing sites designated by the State Health Director pursuant to 15A NCAC 19A .0202(10) shall be made on forms provided by the Department for that purpose. No communicable disease report card shall be required. Effective September 1, 1994, anonymous testing shall be discontinued and all cases of confirmed HIV infection shall be reported in accordance with 15A NCAC 19A .0102(a)(1) and (2).

(4) In addition to the requirements of Subparagraphs (1) and (2) of this Paragraph, forms or electronic formats provided by the Division of Epidemiology for collection of information necessary for disease control and

documentation of clinical and epidemiologic information about the cases shall be completed and submitted for the reportable diseases and conditions identified in 15A NCAC 19A .0101(a), namely, ~~(1), (4), (13), (20), (21), (22), (23), (24), (25), (26), (27), (28), (29), (31), (32), (33), (34), (35), (38), (39), (42), (43), (44), (49), (50), (52), (53), (54), (55), (56),~~ acquired immune deficiency syndrome (AIDS); brucellosis; cholera; cryptosporidiosis; cyclosporiasis; E. coli 0157:H7 infection; ehrlichiosis; Haemophilus influenzae, invasive disease; Hemolytic-uremic syndrome/thrombotic thrombocytopenic purpura; hepatitis A; hepatitis B; hepatitis B carriage; hepatitis C; human immunodeficiency virus (HIV) confirmed; legionellosis; leptospirosis; Lyme disease; malaria; measles (rubeola); meningitis, pneumococcal; meningococcal disease; mumps; paralytic poliomyelitis; psittacosis; Rocky Mountain spotted fever; rubella; rubella congenital syndrome; tetanus; toxic shock syndrome; trichinosis; tuberculosis; tularemia; typhoid; typhoid carriage (Salmonella typhi); vibrio infection (other than cholera); and ~~(59)~~ whooping cough.

(5) Communicable disease report cards, surveillance forms, and electronic formats are available from the General Communicable Disease Control Branch Surveillance Unit, ~~N.C. Division of Epidemiology, P.O. Box 29601,~~ 1902 Mail Service Center, Raleigh, NC ~~27626-0601~~, 27699-1902, (919) 733-3419, and from local health departments.

(b) Notwithstanding the time frames established in 15A NCAC 19A .0101 a restaurant or other food or drink establishment shall report all outbreaks or suspected outbreaks of foodborne illness in its customers or employees and all suspected cases of foodborne disease or foodborne condition in food-handlers at the establishment by telephone to the local health department within 24 hours in accordance with Subparagraph (a)(1) of this Rule. However, the establishment is not required to submit a report card or surveillance form pursuant to Subparagraphs (a)(2) and (a)(4) of this Rule.

(c) For the purposes of reporting by restaurants and other food or drink establishments pursuant to G.S.130A-138, the diseases and conditions to be reported shall be those listed in 15A NCAC 19A .0101(a), ~~(3), (5), (8), (9), (12), (16), (21), (44), (45), (51), (54), (55),~~ namely, anthrax; botulism; brucellosis; campylobacter infection; cholera; cryptosporidiosis; cyclosporiasis; E. coli 0157:H7 infection; hepatitis A; salmonellosis; shigellosis; streptococcal infection, Group A, invasive disease; trichinosis; tularemia; typhoid; typhoid carriage (Salmonella typhi); and ~~(57)~~ vibrio infection (other than cholera).

(d) Laboratories required to report test results pursuant to G.S. 130A-139 and 15A NCAC 19A .0101(c) shall report as follows:

(1) The results of the specified tests for syphilis and gonorrhea shall be reported to the local health department by the first and fifteenth of each month. Reports of the results of the specified tests for gonorrhea and syphilis shall include the specimen collection date, the patient's age, race, and sex, and the submitting physician's name, address, and telephone numbers.

(2) Positive darkfield examinations for syphilis and STS titers of 1:16 and above shall be reported within 24 hours by telephone to the HIV/STD ~~Control~~ Prevention and Care Branch at (919) 733-7301, or the HIV/STD ~~Control~~ Prevention and Care Branch Regional Office where the laboratory is located.

(3) With the exception of positive laboratory tests for human immunodeficiency virus, positive laboratory tests as defined in G.S. 130A-139(1) and 15A NCAC 19A .0101(c) shall be reported to the General Communicable Disease Control ~~Section~~ Branch electronically, by secure telefax or by telephone within the time periods specified for each reportable disease or condition in 15A NCAC 19A .0101(a). Confirmed positive laboratory tests for human immunodeficiency virus as defined in 15A NCAC 19A .0101(b) shall be reported to the HIV/STD ~~Control Section~~ Prevention and Care Branch within seven days of obtaining reportable test results. Reports shall include as much of the following information as the laboratory possesses: the specific name of the test performed; the source of the specimen; the collection date(s); the patient's name, age, race, ~~and sex;~~ sex, address, and county; and the submitting physician's name, address, and telephone number.

Authority G.S. 130A-134; 130A-135; 130A-138; 130A-139; 130A-141.

15A NCAC 19A .0103 DUTIES OF LOCAL HEALTH DIRECTOR: REPORT COMMUNICABLE DISEASES

(a) Upon receipt of a report of a communicable disease or condition pursuant to 15A NCAC 19A .0101, the local health director shall:

(1) immediately investigate the circumstances surrounding the occurrence of the disease or condition to determine the authenticity of the report and the identity of all persons for whom control measures are required. This investigation shall include the collection and submission for laboratory examination of specimens necessary to assist in the diagnosis and indicate the duration of control measures;

(2) determine what control measures have been given and ensure that proper control measures as provided in 15A NCAC 19A .0201 have been given and are being complied with;

(3) forward the report as follows:

(A) The local health director shall forward all authenticated reports made pursuant to G.S. 130A-135 to

137 of syphilis, chancroid, granuloma inguinale, and lymphogranuloma venereum within seven days to the regional office of the HIV/STD ~~Control~~ Prevention and Care Branch. In addition, the local health director shall telephone reports of all cases of primary, secondary, and early latent (under one year's duration) syphilis to the regional office of the HIV/STD ~~Control~~ Prevention and Care Branch within 24 hours of diagnosis at the health department or report by a physician.

(B) The local health director shall telephone all laboratory reports of reactive syphilis serologies to the regional office of the HIV/STD ~~Control~~ Prevention and Care Branch within 24 hours of receipt if the person tested is pregnant. This shall also be done for all other persons tested unless the dilution is less than 1:8 and the person is known to be over 25 years of age or has been previously treated. In addition, the written reports shall be sent to the regional office of the HIV/STD ~~Control~~ Prevention and Care Branch within seven days.

(C) Except as provided in (a)(3)(A) and (B) of this Rule, a local health director who receives a report pursuant to 15A NCAC 19A .0102 regarding a person residing in that jurisdiction shall forward the authenticated report to the Division of Epidemiology within seven days.

(D) Except as provided in (a)(3)(A) and (B) of this Rule, a local health director who receives a report pursuant to 15A NCAC 19A .0102 regarding a person who resides in another jurisdiction in North Carolina shall forward the report to the local health director of that jurisdiction within 24 hours. A duplicate report card marked "copy" shall be forwarded to the Division of Epidemiology within seven days.

(E) A local health director who receives a report pursuant to 15A NCAC 19A .0102 regarding a person who resided outside of North Carolina at the time of onset of the illness shall forward the report to the Division of Epidemiology within 24 hours.

(b) Whenever a cluster of cases of a reportable disease or condition occurs, the local health director shall investigate the cluster to determine if an outbreak exists. If an outbreak exists, the local health director shall submit to the Division of Epidemiology within 30 days a written report of the investigation, its findings, and the actions taken to control the outbreak and prevent a recurrence.

(c) Whenever a cluster of cases of a disease or condition occurs which is not required to be reported by 15A NCAC 19A .0101 but which represents a significant threat to the public health, the local health director shall investigate the cluster to determine if an outbreak exists. If an outbreak exists, the local health director shall give appropriate control measures consistent with 15A NCAC 19A .0200, and inform the Division of Epidemiology of the circumstances of the outbreak within seven days.

Authority G.S. 130A-141; 130A-144.

SECTION .0200 – CONTROL MEASURES FOR COMMUNICABLE DISEASES

15A NCAC 19A .0202 CONTROL MEASURES - HIV

The following are the control measures for the Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) infection:

(1) Infected persons shall:

(a) refrain from sexual intercourse unless condoms are used; exercise caution when using condoms due to possible condom failure;

(b) not share needles or syringes, or any other drug-related equipment, paraphernalia, or works that may be contaminated with blood through previous use;

(c) not donate or sell blood, plasma, platelets, other blood products, semen, ova, tissues, organs, or breast milk;

(d) have a skin test for tuberculosis;

(e) notify future sexual intercourse partners of the infection; if the time of initial infection is known, notify persons who have been sexual intercourse and needle partners since the date of infection; and, if the date of initial infection is unknown, notify persons who have been sexual intercourse and needle partners for the previous ~~year.~~ year; and

(f) comply with all control measures for HIV infection and AIDS specified in the American Public Health Association publication, Control of Communicable Diseases Manual, in those instances where such control measures are not in conflict with other requirements of this rule. This adoption by reference applies to all future additions of the Control of Communicable Diseases Manual.

(2) The attending physician shall:

(a) give the control measures in Item (1) of this Rule to infected patients, in

accordance with 15A NCAC 19A .0210;

(b) If the attending physician knows the identity of the spouse of an HIV-infected patient and has not, with the consent of the infected patient, notified and counseled the spouse appropriately, the physician shall list the spouse on a form provided by the Division of Epidemiology and shall mail the form to the Division; the Division will undertake to counsel the spouse; the attending physician's responsibility to notify exposed and potentially exposed persons is satisfied by fulfilling the requirements of Sub-Items (2)(a) and (b) of this Rule;

(c) advise infected persons concerning proper clean-up of blood and other body fluids;

(d) advise infected persons concerning the risk of perinatal transmission and transmission by breastfeeding.

(3) The attending physician of a child who is infected with HIV and who may pose a significant risk of transmission in the school or day care setting because of open, oozing wounds or because of behavioral abnormalities such as biting shall notify the local health director. The local health director shall consult with the attending physician and investigate the circumstances.

(a) If the child is in school or scheduled for admission and the local health director determines that there may be a significant risk of transmission, the local health director shall consult with an interdisciplinary committee, which shall include appropriate school personnel, a medical expert, and the child's parent or guardian to assist in the investigation and determination of risk. The local health director shall notify the superintendent or private school director of the need to appoint such an interdisciplinary committee.

(i) If the superintendent or private school director establishes such a committee within three days of notification, the local health director shall consult with this committee.

(ii) If the superintendent or private school director does not establish such a committee within three days of notification, the local health director shall establish such a committee.

(b) If the child is in school or scheduled for admission and the local health director determines, after consultation with the committee, that a significant risk of transmission exists, the local health director shall:

(i) notify the parents;

(ii) notify the committee;

(iii) assist the committee in determining whether an adjustment can be made to the student's school program to eliminate significant risks of transmission;

(iv) determine if an alternative educational setting is necessary to protect the public health;

(v) instruct the superintendent or private school director concerning appropriate protective measures to be implemented in the alternative educational setting developed by appropriate school personnel; and

(vi) consult with the superintendent or private school director to determine which school personnel directly involved with the child need to be notified of the HIV infection in order to prevent transmission and ensure that these persons are instructed regarding the necessity for protecting confidentiality.

(c) If the child is in day care and the local health director determines that there is a significant risk of transmission, the local health director shall notify the parents that the child must be placed in an alternate child care setting that eliminates the significant risk of transmission.

(4) When health care workers or other persons have a needlestick or nonsexual non-intact skin or mucous membrane exposure to blood or body fluids that, if the source were infected with HIV, would pose a significant risk of HIV transmission, the following shall apply:

(a) When the source person is known:

(i) The attending physician or occupational health care provider responsible for the exposed person, if other than the attending physician of

the person whose blood or body fluids is the source of the exposure, shall notify the attending physician of the source that an exposure has occurred. The attending physician of the source person shall discuss the exposure with the source and shall test the source for HIV infection unless the source is already known to be infected.

The attending physician of the exposed person shall be notified of the infection status of the source.

(ii) The attending physician of the exposed person shall inform the exposed person about the infection status of the source, offer testing for HIV infection as soon as possible after exposure and at reasonable intervals up to one year to determine whether transmission occurred, and, if the source person was HIV infected, give the exposed person the control measures listed in Sub-Items (1)(a) through (c) of this Rule. The attending physician of the exposed person shall instruct the exposed person regarding the necessity for protecting confidentiality.

(b) When the source person is unknown, the attending physician of the exposed person shall inform the exposed person of the risk of transmission and offer testing for HIV infection as soon as possible after exposure and at reasonable intervals up to one year to determine whether transmission occurred.

(c) A health care facility may release the name of the attending physician of a source person upon request of the attending physician of an exposed person.

(5) The attending physician shall notify the local health director when the physician, in good faith, has reasonable cause to suspect a patient infected with HIV is not following or cannot follow control measures and is thereby causing a significant risk of transmission. Any other person may notify the local health director when the person, in good faith, has reasonable cause to suspect a person infected with HIV is not following control measures and is thereby causing a significant risk of transmission.

(6) When the local health director is notified pursuant to Item (5) of this Rule, of a person who is mentally ill or mentally retarded, the local health director shall confer with the attending mental health physician or appropriate mental health authority and the physician, if any, who notified the local health director to develop an appropriate plan to prevent transmission.

(7) The Director of Health Services of the North Carolina Department of Correction and the prison facility administrator shall be notified when any person confined in a state prison is determined to be infected with HIV. If the prison facility administrator, in consultation with the Director of Health Services, determines that a confined HIV infected person is not following or cannot follow prescribed control measures, thereby presenting a significant risk of HIV transmission, the administrator and the Director shall develop and implement jointly a plan to prevent transmission, including making appropriate recommendations to the unit housing classification committee.

(8) The local health director shall ensure that the health plan for local jails include education of jail staff and prisoners about HIV, how it is transmitted, and how to avoid acquiring or transmitting this infection.

(9) Local health departments shall provide testing for HIV infection with pre- and post-test counseling at no charge to the patient. Third party payors may only be billed for HIV counseling and testing when such services are provided as a part of family planning and maternal and child health services. By August 1, 1991, the State Health Director shall designate a minimum of 16 local health departments to provide anonymous testing. Beginning September 1, 1991, only cases of confirmed HIV infection identified by anonymous tests conducted at local health departments designated as anonymous testing sites pursuant to this Sub-Item shall be reported in accordance with 15A NCAC 19A .0102(a)(3). All other cases of confirmed HIV infection shall be reported in accordance with 15A NCAC 19A .0102(a)(1) and (2). Effective September 1, 1994, anonymous testing shall be discontinued and all cases of confirmed HIV infection shall be reported in accordance with 15A NCAC 19A .0102(a)(1) and (2).

(10) Appropriate counseling for HIV testing shall include risk assessment, risk reduction guidelines, appropriate referrals for medical and psychosocial services, and, when the person tested is found to be infected with HIV,

control measures. Pre-test counseling may be done in a group or individually, as long as each individual is provided the opportunity to ask questions in private. Post-test counseling must be individualized.

(11) A local health department or the Department may release information regarding an infected person pursuant to G.S. 130A-143(3) only when the local health department or the Department has provided direct medical care to the infected person and refers the person to or consults with the health care provider to whom the information is released.

(12) Notwithstanding Rule .0201(d) of this Section, a local or state health director may require, as a part of an isolation order issued in accordance with G.S. 130A-145, compliance with a plan to assist the individual to comply with control measures. The plan shall be designed to meet the specific needs of the individual and may include one or more of the following available and appropriate services:

(a) substance abuse counseling and treatment;

(b) mental health counseling and treatment; and

(c) education and counseling sessions about HIV, HIV transmission, and behavior change required to prevent transmission.

(13) The Division of Epidemiology shall conduct a partner notification program to assist in the notification and counseling of partners of HIV infected persons. All partner identifying information obtained as a part of the partner notification program shall be destroyed within two years.

(14) Every pregnant woman shall be given HIV pre-test counseling, as described in 15A NCAC 19A .0202(10), by her attending physician as early in the pregnancy as possible. At the time this counseling is provided, ~~the physician shall encourage the pregnant woman to be tested for HIV infection.~~ and after ~~If~~ informed consent is obtained, the attending physician shall test the pregnant woman for HIV ~~infection as early in the pregnancy as possible.~~ infection, unless the pregnant woman refuses the HIV test.

Authority G.S. 130A-133; 130A-135; 130A-144; 130A-145; 130A-148(h).

15A NCAC 19A .0203 CONTROL MEASURES – HEPATITIS B

(a) The following are the control measures for hepatitis B infection. The infected persons shall:

(1) refrain from sexual intercourse unless condoms are used except when the partner is known to be infected with or immune to hepatitis B;

(2) not share needles or syringes;

(3) not donate or sell blood, plasma, platelets, other blood products, semen, ova, tissues, organs, or breast milk;

(4) if the time of initial infection is known, identify to the local health director all sexual intercourse and needle partners since the date of infection; and, if the date of initial infection is unknown, identify persons who have been sexual intercourse or needle partners during the previous six months;

(5) for the duration of the infection, notify future sexual intercourse partners of the infection and refer them to their attending physician or the local health director for control measures; and for the duration of the infection, notify the local health director of all new sexual intercourse partners;

(6) in all cases, identify to the local health director all current household contacts;

~~(6)~~(7) be tested six months after diagnosis to determine if they are chronic carriers, ~~annually for two years thereafter if they remain infected,~~ and when necessary to determine appropriate control measures for persons exposed pursuant to Paragraph (b) of this Rule.

(8) comply with all control measures for hepatitis B specified in the American Public Health Association publication, Control of Communicable Diseases Manual, in those instances where such control measures are not in conflict with other requirements of this Rule. This adoption by reference applies to all future additions of the Control of Communicable Diseases Manual.

(b) The following are the control measures for persons reasonably suspected of being exposed:

(1) when a person has had a sexual intercourse exposure to hepatitis B infection, the person shall be tested;

~~(1)~~(2) when a person has had sexual intercourse exposure to hepatitis B infection, the person shall be given an appropriate dose of hepatitis B immune globulin ~~or immune globulin, 0.06 ml/kg, IM~~ as soon as possible but no later than two weeks after the last exposure;

~~(2)~~(3) when a person is a household contact, sexual intercourse or needle sharing contact of a person who has remained infected with hepatitis B for six months or longer, the partner or household contact, if susceptible and at risk of continued exposure, shall be vaccinated against hepatitis B;

~~(3)~~(4) when a health care worker or other person has a needlestick, non-intact skin, or mucous membrane exposure to blood or body fluids that, if the source were infected with the hepatitis B virus, would pose a significant risk of hepatitis B transmission, the following shall apply:

(A) when the source is known, the source person shall be tested for hepatitis B infection, unless already known to be infected;

(B) when the source is infected with hepatitis B and the exposed person is:

(i) vaccinated, the exposed person shall be tested for anti-HBs and reimmunized if appropriate; ~~If anti-HBs is less than ten SRU by RIA or negative by EIA, the exposed person shall be given hepatitis B immune globulin, 0.06 ml/kg, IM immediately and a single does of hepatitis B vaccine within seven days;~~

(ii) not vaccinated, the exposed person shall be given an appropriate dose of hepatitis B immune ~~globulin, 0.06 ml/kg, IM~~ globulin immediately and, ~~if at high risk for future exposure,~~ begin vaccination with hepatitis B vaccine within seven days;

(C) when the source is unknown and the exposed person is:

(i) vaccinated, no intervention is necessary;

(ii) not vaccinated, begin vaccination with hepatitis B vaccine within seven days. ~~days if at high risk for future exposure~~.

~~(4)~~(5) infants born to infected mothers shall be given hepatitis B immune globulin, ~~0.5 ml, IM~~ as soon as maternal infection is known and infant is stabilized; vaccinated against hepatitis B beginning as soon as possible; and tested for HBsAg at ~~12~~ 9-15 months of age. Infants whose test results indicate no immunity and no infection after completing three doses of vaccine must receive additional doses of vaccine until either immunity is obtained or a total of three additional doses have been administered.

(c) The attending physician shall advise all patients known to be at high risk, including injection drug users, men who have sex with men, hemodialysis patients, and patients who receive frequent transfusions of blood products, that they should be vaccinated against hepatitis B if susceptible.

(d) The following persons shall be tested for hepatitis B infection:

(1) pregnant women unless known to be infected; and

(2) donors of blood, plasma, platelets, other blood products, semen, ova, tissues, or organs.

(e) The attending physician of a child who is infected with hepatitis B virus and who may pose a significant risk of transmission in the school or day care setting because of open, oozing wounds or because of behavioral abnormalities such as biting shall notify the local health director. The local health director shall consult with the attending physician and investigate the circumstances.

(f) If the child referred to in Paragraph (e) of this Rule is in school or scheduled for admission and the local health director determines that there may be a significant risk of transmission, the local health director shall consult with an interdisciplinary committee, which shall include school personnel, a medical expert, and the child's parent or guardian to assist in the investigation and determination of risk. The local health director shall notify the superintendent or private school director of the need to appoint such an interdisciplinary committee. If the superintendent or private school director establishes such a committee within three days of notification, the local health director shall consult with this committee. If the superintendent or private school director does not establish such a committee within three days of notification, the local health director shall establish such a committee.

(g) If the child referred to in Paragraph (e) of this Rule is in school or scheduled for admission and the local health director determines, after consultation with the committee, that a significant risk of transmission exists, the local health director shall:

(1) notify the parents;

(2) notify the committee;

(3) assist the committee in determining whether an adjustment can be made to the student's school program to eliminate significant risks of transmission;

(4) determine if an alternative educational setting is necessary to protect the public health;

(5) instruct the superintendent or private school director concerning appropriate protective measures to be implemented in the alternative educational setting developed by school personnel; and

(6) consult with the superintendent or private school director to determine which school personnel directly involved with the child need to be notified of the hepatitis B virus infection in order to prevent transmission and ensure that these persons are instructed regarding the necessity for protecting confidentiality.

(h) If the child referred to in Paragraph (e) of this Rule is in day care and the local health director determines that there is a significant risk of transmission, the local health director shall notify the parents that the child must be placed in an alternate child care setting that eliminates the significant risk of transmission.

(i) The physician shall recommend that chronic carriers receive hepatitis A vaccine (if susceptible).

Authority G.S. 130A-135; 130A-144.

15A NCAC 19A .0205 CONTROL MEASURES – TUBERCULOSIS

(a) The local health director shall promptly investigate all cases of tuberculosis disease and their contacts in accordance with the provisions of Control of Communicable Diseases Manual. Control of Communicable Diseases Manual is hereby incorporated by reference including subsequent amendments and editions. Copies of this publication may be purchased from the American Public Health Association, Publication Sales Department, Post Office Box 753, Waldora, MD 20604 for a cost of twenty-two dollars ($22.00) each plus five dollars ($5.00) shipping and handling. A copy is available for inspection in the General Communicable Disease Control ~~Section~~ Branch, Cooper Memorial Health Building, 225 N. McDowell Street, Raleigh, North Carolina 27603-1382.

(b) The following persons shall be skin tested for tuberculosis and given appropriate clinical, microbiologic and x-ray examination in accordance with the "Diagnostic Standards and Classification of Tuberculosis," published by the American Thoracic Society. The recommendations contained in this reference shall be the required control measures for evaluation, testing, and diagnosis for tuberculosis patients, contacts and suspects, except as otherwise provided in this Rule and are incorporated by reference including subsequent amendments and editions:

(1) Household and other close contacts of active cases of pulmonary and laryngeal tuberculosis. If the initial skin test is negative (0-4mm), and the case is confirmed by culture, a repeat skin test shall be performed three months after the exposure has ended;

(2) Persons reasonably suspected of having tuberculosis disease;

(3) Inmates in the custody of, and staff with direct inmate contact in, the Department of Corrections upon incarceration or employment, and annually thereafter;

(4) Patients and staff in long term care facilities upon admission or employment. The two-step skin test method shall be used if the individual has not had a documented tuberculin skin test within the preceding 12 months;

(5) Staff in adult day care centers providing care for persons with HIV infection or AIDS upon employment. The two-step skin test method shall be used if the individual has not had a documented tuberculin skin test within the preceding 12 months;

(6) Persons with HIV infection or AIDS.

A copy of "Diagnostic Standards and Classification of Tuberculosis" is available~~, at no charge,~~ by contacting the Department of ~~Environment, Health, and Natural Resources~~ Health and Human Services, Tuberculosis Control ~~Branch~~ Program, ~~Post Office Box 29601~~ 1902 Mail Service Center, Raleigh, North Carolina ~~27626-0601~~ 27699-1902.

(c) Treatment and follow-up for tuberculosis infection or disease shall be in accordance with "Treatment of Tuberculosis and Tuberculosis Infection in Adults and Children," published by the American Thoracic Society. The recommendations contained in this reference shall be the required control measures for testing, treatment, and follow-up for tuberculosis patients, contacts and suspects, except as otherwise provided in this Rule and are incorporated by reference including subsequent amendments and editions. Copies of this publication are available ~~available, at no charge,~~ by contacting the Department of ~~Environment and Natural Resources~~ Health and Human Services, Tuberculosis Control ~~Branch~~ Program, ~~Post Office Box 29601~~ 1902 Mail Service Center, Raleigh, North Carolina ~~27626-0601~~ 27699-1902.

(d) The attending physician or designee shall instruct all patients treated for tuberculosis regarding the potential side effects of the medications prescribed and to promptly notify the physician or designee if side effects occur.

(e) Persons with active tuberculosis disease shall complete a standard drug regimen from "Treatment of Tuberculosis and Tuberculosis Infections in Adults and Children."

(f) Persons with suspected or known active pulmonary or laryngeal tuberculosis are considered infectious and shall be managed using airborne precautions, including respiratory isolation, or quarantined in their home, with no new persons exposed, if:

(1) They have sputum smears which are positive for acid fast bacilli; and

(2) They have not received tuberculosis drug therapy or have just started therapy; and

(3) They have no evidence of clinical response or have poor clinical response to therapy.

(g) Persons with suspected or known active pulmonary or laryngeal tuberculosis are considered noninfectious and use of airborne precautions, including respiratory isolation, or quarantine in their home may be discontinued when:

(1) They have three consecutive daily sputum smears which are negative; or

(2) They have been compliant on tuberculosis medications to which the organism is judged to be susceptible, there is evidence of clinical improvement on the therapy, and the environment to which they are being released is such that transmission of tuberculosis organisms is unlikely.

Authority G.S. 130A-135; 130A-144.

15A NCAC 19A .0207 HIV AND HEPATITIS B INFECTED HEALTH CARE WORKERS

(a) The following definitions shall apply throughout this Rule:

(1) "Surgical or obstetrical procedures" means vaginal deliveries or surgical entry into tissues, cavities, or organs. The term does not include phlebotomy; administration of intramuscular, intradermal, or subcutaneous injections; needle biopsies; needle aspirations; lumbar punctures; angiographic procedures; endoscopic and bronchoscopic procedures; or placing or maintaining peripheral or central intravascular lines.

(2) "Dental procedure" means any dental procedure involving manipulation, cutting, or removal of oral or perioral tissues, including tooth structure during which bleeding occurs or the potential for bleeding exists. The term does not include the brushing of teeth.

(b) All health care workers who perform surgical or obstetrical procedures or dental procedures and who know themselves to be infected with HIV or hepatitis B shall notify the State Health Director. Health care workers who assist in these procedures in a manner that may result in exposure of patients to their blood and who know themselves to be infected with HIV or hepatitis B shall also notify the State Health Director. The notification shall be made in writing to the ~~Chief,~~ Head, General Communicable Disease Control ~~Section,~~ Branch, ~~P.O. Box 27687,~~ 1902 Mail Service Center, Raleigh, N.C. ~~27611-7687.~~ 27699-1902.

(c) The State Health Director shall investigate the practice of any infected health care worker and the risk of transmission to patients. The investigation may include review of pertinent medical and work records and consultation with health care professionals who may have information necessary to evaluate the clinical condition or practice of the infected health care worker. The attending physician of the infected health care worker shall be consulted. The State Health Director shall protect the confidentiality of the infected health care worker and may disclose the worker's infection status only when essential to the conduct of the investigation or periodic reviews pursuant to Paragraph (h) of this Rule. When the health care worker's infection status is disclosed, the State Health Director shall give instructions regarding the requirement for protecting confidentiality.

(d) If the State Health Director determines that there may be a significant risk of transmission of HIV or hepatitis B to patients, the State Health Director shall appoint an expert panel to evaluate the risk of transmission to patients, and review the practice, skills, and clinical condition of the infected health care worker, as well as the nature of the surgical or obstetrical procedures or dental procedures performed and operative and infection control techniques used. Each expert panel shall include an infectious disease specialist, an infection control expert, a person who practices the same occupational specialty as the infected health care worker and, if the health care worker is a licensed professional, a representative of the appropriate licensure board. The panel may include other experts. The State Health Director shall consider for appointment recommendations from health care organizations and local societies of health care professionals.

(e) The expert panel shall review information collected by the State Health Director and may request that the State Health Director obtain additional information as needed. The State Health Director shall not reveal to the panel the identity of the infected health care worker. The infected health care worker and the health care worker's attending physician shall be given an opportunity to present information to the panel. The panel shall make recommendations to the State Health Director that address the following:

(1) Restrictions that are necessary to prevent transmission from the infected health care worker to patients;

(2) Identification of patients that have been exposed to a significant risk of transmission of HIV or hepatitis B; and

(3) Periodic review of the clinical condition and practice of the infected health care worker.

(f) If, prior to receipt of the recommendations of the expert panel, the State Health Director determines that immediate practice restrictions are necessary to prevent an imminent threat to the public health, the State Health Director shall issue an isolation order pursuant to G.S. 130A-145. The isolation order shall require cessation or modification of some or all surgical or obstetrical procedures or dental procedures to the extent necessary to prevent an imminent threat to the public health. This isolation order shall remain in effect until an isolation order is issued pursuant to Paragraph (g) of this Rule or until the State Health Director determines the imminent threat to the public health no longer exists.

(g) After consideration of the recommendations of the expert panel, the State Health Director shall issue an isolation order pursuant to G.S. 130A-145. The isolation order shall require any health care worker who is allowed to continue performing surgical or obstetrical procedures or dental procedures to, within a time period specified by the State Health Director, successfully complete a course in infection control procedures approved by the Department of Environment, Health, and Natural Resources, Communicable Disease Control Section, in accordance with 15A NCAC 19A .0206(e). The isolation order shall require practice restrictions, such as cessation or modification of some or all surgical or obstetrical procedures or dental procedures, to the extent necessary to prevent a significant risk of transmission of HIV or hepatitis B to patients. The isolation order shall prohibit the performance of procedures that cannot be modified to avoid a significant risk of transmission. If the State Health Director determines that there has been a significant risk of transmission of HIV or hepatitis B to a patient, the State Health Director shall notify the patient or assist the health care worker to notify the patient.

(h) The State Health Director shall request the assistance of one or more health care professionals to obtain information needed to periodically review the clinical condition and practice of the infected health care worker who performs or assists in surgical or obstetrical procedures or dental procedures.

(i) An infected health care worker who has been evaluated by the State Health Director shall notify the State Health Director prior to a change in practice involving surgical or obstetrical procedures or dental procedures. The infected health care worker shall not make the proposed change without approval from the State Health Director. If the State Health Director makes a determination in accordance with Paragraph (c) of this Rule that there is a significant risk of transmission of HIV or hepatitis B to patients, the State Health Director shall appoint an expert panel in accordance with Paragraph (d) of this Rule. Otherwise, the State Health Director shall notify the health care worker that he or she may make the proposed change in practice.

(j) If practice restrictions are imposed on a licensed health care worker, a copy of the isolation order shall be provided to the appropriate licensure board. The State Health Director shall report violations of the isolation order to the appropriate licensure board. The licensure board shall report to the State Health Director any information about the infected health care worker that may be relevant to the risk of transmission of HIV or hepatitis B to patients.

Authority G.S. 130A-144; 130A-145.

15A NCAC 19A .0209 LABORATORY TESTING

All laboratories are required to do the following:

(1) When Neisseria ~~meningitis~~ meningitidis is ~~isolated,~~ isolated from a normally sterile site,

test the organism for specific serogroup or send the isolate to the State Public Health Laboratory for serogrouping; and

(2) When a stool culture is requested on a specimen from a person with bloody diarrhea, culture the stool for shiga-toxin producing E. coli ~~0157:H7~~ or send the specimen to the State Public Health ~~Laboratory.~~ Laboratory; and

(3) When Haemophilus influenzae is isolated, test the organism for specific serogroup or send the isolate to the State Public Health Laboratory for serogrouping.

Authority G.S. 130A-139.

SECTION .0800 – COMMUNICABLE DISEASE GRANTS AND CONTRACTS

15A NCAC 19A .0801 COMMUNICABLE DISEASE FINANCIAL GRANTS AND CONTRACTS

(a) The General Communicable Disease Control ~~Section~~ Branch may enter into financial arrangements with local health departments, community hospitals, nursing homes, or other convalescent facilities, and with physicians for the purpose of providing specific health care services for communicable diseases and the implementation of ~~the~~ control measures. ~~measures prescribed in this Rule.~~

(b) The HIV/STD ~~Control~~ Prevention and Care Branch may authorize a local health department to obtain required diagnostic and treatment services for persons with syphilis, gonorrhea, chancroid, lymphogranuloma venereum, and granuloma inguinale from physicians:

(1) The amount to be charged for these services shall be negotiated between the local health department and the physician and approved by the HIV/STD ~~Control~~ Prevention and Care Branch at the lowest agreeable rate, not to exceed approved Medicaid reimbursement rates. Drugs used in treatment may be provided to such physicians by the local health department.

(2) The physician shall bill the local health department for services provided. The bcal health department shall submit requests for payment to the HIV/STD ~~Control~~ Prevention and Care Branch on forms provided by the Division of Epidemiology.

~~(c) The Tuberculosis Control Branch may:~~

~~(1) Contract with hospitals to provide inpatient diagnostic and hospitalization services for eligible tuberculosis patients if:~~

~~(A) Private rooms with negative air pressure with respect to the hallways and other rooms are available;~~

~~(B) A qualified physician is willing to accept inpatient referrals from surrounding counties;~~

~~(C) There is a laboratory that performs mycobacterial studies at the hospital;~~

~~(D) There is a radiological department at the hospital, including a radiologist;~~

~~(E) There is an infection control program at the hospital to monitor the staff and patients to minimize the occurrence of nosocomial tuberculosis infection;~~

~~(F) There is a program at the hospital to ensure that the risk for employees developing or transmitting tuberculosis is low; and~~

~~(G) Funds are available.~~

~~(2) Contract with licensed nursing homes or other convalescent facilities to provide inpatient treatment and convalescent care to eligible tuberculosis patients if:~~

~~(A) Private rooms with negative air pressure with respect to the hallways and other rooms are available;~~

~~(B) A qualified physician is willing to accept inpatient referrals;~~

~~(C) There is an infection control program to monitor the staff and patients to minimize the occurrence of nosocomial tuberculosis infection;~~

~~(D) There is a program to ensure that the risk for employees developing or transmitting tuberculosis is low;~~

~~(E) Necessary laboratory tests, radiological and transportation services are available at the facility, through contracts, or by some other arrangement; and~~

~~(F) Funds are available.~~

Authority G S. 130A-5; 130A-135; 130A-144.

15A NCAC 19A .0802 ELIGIBILITY FOR TUBERCULOSIS HOSPITALIZATION SERVICES

~~(a) A patient shall be medically eligible for payment for up to seven days inpatient hospitalization for diagnosis of tuberculosis at a hospital designated by the Tuberculosis Control Branch pursuant to Rule .0801 of this Section and the patient is suspected of having Mycobacterium tuberculosis disease based upon the finding of one or more of the following:~~

~~(1) Evidence of acid-fast bacilli found by direct microscopy or by culture techniques;~~

~~(2) Histopathologic evidence of tuberculosis in an active form;~~

~~(3) Positive tuberculin skin test reaction using intermediate strength purified protein derivative (PPD), five tuberculin units and suggestive symptoms;~~

~~(4) X-ray or clinical evidence suggestive of the presence of tuberculosis in an active form; or~~

~~(5) Epidemiologic information supportive of a diagnosis of tuberculosis in an active form.~~

~~(b) If a patient is diagnosed as having Mycobacterium tuberculosis by a physician licensed to practice medicine in this State, then the patient shall be medically eligible for up to 21 days of hospitalization per year beginning the first day of financial eligibility for the treatment of the disease and for the cost of ambulance services from the contracting hospital to a program-designated medical facility.~~

~~(c) If the head of the Tuberculosis Control Branch determines that additional treatment is medically necessary because of the tuberculosis condition, the head of the Branch may extend the period of medical eligibility beyond the periods specified in Paragraph (a) and (b) of this Rule.~~
~~(d) The medical care payments described in this Rule are available only for services provided at a hospital which has contracted with the Tuberculosis Program for these services.~~
~~(e) Financial eligibility and payment procedures shall be determined in accordance with requirements for medical care payments found in 15A NCAC 24A.~~

Authority G.S. 130A-5; 130A-135; 130A-144.

15A NCAC 19A .0803 ELIGIBILITY FOR TUBERCULOSIS NURSING HOME SERVICES

~~(a) A patient shall be medically eligible for reimbursement for up to 60 days per year for treatment and convalescent services at a nursing home designated by the Tuberculosis Control Branch pursuant to Rule .0801 of this Section provided the following criteria are met:~~

~~(1) The applicant has active pulmonary or disseminated tuberculosis associated with incapacitation or significant debilitation which requires a SNF or ICF level of care. To aid in making this determination, the referring physician shall provide a treatment plan and project a length of stay for the patient at the nursing home.~~

~~(2) The applicant has positive bacteriology for tuberculosis. The positive bacteriology (AFB) must have been obtained within the preceding 14 days.~~

~~(3) The applicant does not need an acute level of hospital care for any condition.~~

~~(4) The applicant is 16 years of age or over.~~

~~(5) The applicant is referred by a licensed physician who has first-hand knowledge of the applicant's mental and physical condition. The referring physician shall furnish a summary of the applicant's physical and mental condition and known infirmities, and specific details of treatment and medication the applicant is taking with orders for dosage, frequency and duration. This summary shall include all known allergies and previous reactions to anti-tuberculosis and all other medications. In addition, dietary needs, pertinent xrays, and copies of laboratory reports shall be forwarded with the patient or in advance.~~

~~(6) The head of the Tuberculosis Control Branch may make exceptions to the criteria contained in Subparagraphs (1) through (5) of this Paragraph if the patient would be best treated for tuberculosis at a licensed nursing home.~~

~~(b) If the head of the Tuberculosis Control Branch determines that additional treatment or convalescent care at a licensed nursing home is medically necessary because of tuberculosis, the head of the Branch may extend medical eligibility for more than 60 days per year.~~

~~(c) Financial eligibility and payment procedures shall be determined in accordance with 15A NCAC 24A.~~

Authority G.S. 130A-5; 130A-135; 130A-144.

TITLE 16 – DEPARTMENT OF PUBLIC EDUCATION

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the State Board of Education intends to amend the rule cited as 16 NCAC 06D .0503. Notice of Rule-making Proceedings was not required under G.S. 115C-17.*

Proposed Effective Date: *December 1, 2001*

Public Hearing:
Date: *August 31, 2001*
Time: *1:00 p.m.*
Location: *Education Bldg, Room 224, 301 N. Wilmington, St., Raleigh, NC*

Reason for Proposed Action: *In response to requests from a number of school systems, the State Board of Education proposes to allow high school students who follow the career preparation course of study to complete four units in ROTC in partial fulfillment of the requirements for that course of study.*

Comment Procedures: *Comments may be presented orally at the hearing or in writing at the hearing, or by mail to Harry Wilson, Rule-making Coordinator, 301 N. Wilmington St., Raleigh, NC 27601-2825, fax (919) 807-3407, email hwilson@dpi.state.nc.us by September 14, 2001.*

Fiscal Impact
☐ **State**
☐ **Local**
☐ **Substantive (≥**$5,000,000**)**
☒ **None**

CHAPTER 6 – ELEMENTARY AND SECONDARY EDUCATION

SUBCHAPTER 06D – INSTRUCTION

SECTION .0500 – DEFINITIONS

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 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; or four credits in one of the four disciplines in arts education: theatre, music, visual arts, or dance; or beginning with the class entering ninth grade for the first time in the 2002-2003 school year, four credits in R.O.T.C.;

(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 02C .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 (4 English, 3 math, 3 science, 3 social studies, 1 health and physical education, and 6 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.

Authority G.S. 115C-12(9b); 115C-81(b)(4); N.C. Constitution, Article IX, Sec. 5.

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 02C .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 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Rule-making Agency: *Environmental Management Commission*

Rule Citation: *15A NCAC 02C .0107*

Effective Date: *August 3, 2001*

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

Authority for the rulemaking: *G.S. 87-87; 87-88; 143B-282; 150B*

Reason for Proposed Action: *To establish language in the rule that specifies the language in Section 1 of Session Law 2001-113 as the language of 15A NCAC 02C .0107(a)(3). The current text of 15A NCAC 02C .0107(a)(3) restricts the alternate minimum separation distances to properties with "…. an existing single family dwelling….". This rule will remove the words "an existing" from the text and specify that it applies to a single-family dwelling. Note that Section 4 of this law also states that Session Law 2001-113 is retroactively no longer in effect once the temporary rule is enacted that does what is specified in Section 1 of the law. Pursuant to requirements of the Office of Administrative Hearings, this temporary rule will go into effect seven days after it appears in the North Carolina Administrative Code. The abbreviated notice of the temporary rules will be given to the public through the Groundwater Section's website at "http://gw.ehnr.state.nc.us/"once the Codifier of Rules has approved it to go into the North Carolina Administrative Code. The enactment of the temporary rule will begin the rulemaking process in G.S. 150B-21.2 to adopt permanent changes to 15A NCAC 02C .0107 pursuant to this recent act of the General Assembly. It is proposed that the temporary rule be put into effect on or before August 3, 2001.*

Comment Procedures: *Comments, data, statements and other information about this rulemaking may be submitted in writing to David Hance at ENR-DWQ-Groundwater Section, 1636 Mail Service Center, Raleigh, North Carolina, 27699-1636, phone: (919) 715-6189; fax: (919) 715-0588; email: David.Hance@ncmail.net. The Environmental Management Commission will accept comments through October 15, 2001. Pursuant to G.S. 150B, publication of the temporary rule in the North Carolina Register serves as a 60-day notice for permanent rulemaking. Note that the text of the proposed permanent rule is* ***not*** *the same as that of the statutory language established by the legislature on May 14, 2001 through the passage of Session Law 2001-113. Unless comments reveal that other language is needed in 15A NCAC 02C .0107, the language for the permanent rule that will appear to the public at hearing will read as follows: "For a well serving* ~~*a*~~ ***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 "*

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02C – WELL CONSTRUCTION STANDARDS

SECTION .0100 - CRITERIA AND STANDARDS APPLICABLE TO WATER-SUPPLY AND CERTAIN OTHER TYPE WELLS

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 02N:
(i) with secondary containment ..... 50 ft.
(ii) without secondary containment ..... 100 ft.
(Q) Above ground or underground 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~~ a 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; and

(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 02C .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 02C .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.
  (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 02C .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) 10 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; S.L. 2001-113; Eff. February 1, 1976; Amended Eff. May 14, 2001; December 1, 1992; March 1, 1985; September 1, 1984; April 20, 1978; Temporary Amendment Eff. August 3, 2001.

* *

Rule-making Agency: *Environmental Management Commission*

Rule Citation: *15A NCAC 02D .1401-.1404, .1407-.1423*

Effective Date: *August 1, 2001*

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

Authority for the rulemaking: *G.S. 143-215.3(a)(1); 143-215.107(a)(5),(7),(10)*

Reason for Proposed Action: *The purpose of this rulemaking is to satisfy the requirements of 40 C.F.R. 51.121, which caps emissions of nitrogen oxides for North Carolina. To meet these requirements, the State must limit emissions of nitrogen oxides from sources in North Carolina. As the cap is based on emissions being reduced from large combustion sources, these Rules aim primarily at reducing emission from large combustion sources. Once EPA approves these Rules as part of the State Implementation Plan, they will replace similar rules that the EPA is planning to impose in North Carolina. 40 C.F.R. 51.121 required submittal by September 30, 1999. This submittal date was delayed a year by the courts. Last October the EMC adopted temporary rules and submitted those temporary rules to the EPA to satisfy the requirements of 40 C.F.R. 51.121. However, the EPA returned that submittal because the temporary rules had not gone through a public hearing process. To correct this procedural problem, the EMC has taken these Rules through the hearings process.*

Comment Procedures: *Comments should be sent to, and additional information concerning these Rules may be obtained by contacting Mr. Thomas C. Allen, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641, or at (919) 733-1489 or (919) 715-7476 (fax), email address is thom.allen@ncmail.net.*

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02D – AIR POLLUTION CONTROL REQUIREMENTS

SECTION .1400 – NITROGEN OXIDES

15A NCAC 02D .1401 DEFINITIONS

For the purpose of this Section, the following definitions apply:

(1) "Acid rain program" means the federal program for the reduction of acid rain including 40 CFR Parts 72, 75, 76, and 77.

(2) "Actual emissions" means for Rules .1416 through .1422 of this Section, emissions of nitrogen oxides as measured and calculated according to 40 CFR Part 75, Subpart H.

(3) "Actual heat input" means for Rules .1416 through .1422 of this Section, heat input as measured and calculated according to 40 CFR Part 75, Subpart H.

~~(2)~~(4) "Averaging set of sources" means all the stationary sources included in an emissions averaging plan according to Rule .1410 of this Section.

~~(3)~~(5) "Averaging source" means a stationary source that is included in an emissions averaging plan in accordance to Rule .1410 of this Section. ~~Section except during start-up and shutdown.~~

(6) "Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

~~(4)~~(7) "Combined cycle system" means a system consisting of one or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.

(8) "Diesel engine" means a compression ignited two- or four-stroke engine in which liquid fuel injected into the combustion chamber ignites when the air charge has been compressed to a temperature sufficiently high for auto-ignition.

(9) "Dual fuel engine" means a compression ignited stationary internal combustion engine that is burning liquid fuel and gaseous fuel simultaneously.

~~(5)~~(10) "Emergency generator" means a stationary internal combustion engine used to generate electricity only during the loss of primary power at the facility that is beyond the control of the owner or operator of the facility or during maintenance when necessary to protect the environment. An emergency generator may be operated periodically to ensure that it will operate.

~~(6)~~(11) "Emergency use internal combustion engines" means stationary internal combustion engines used to drive pumps, aerators, and other equipment only during the loss of primary

power at the facility that is beyond the control of the owner or operator of the facility or during maintenance when necessary to protect the environment. An emergency use internal combustion engine may be operated periodically to ensure that it will operate.

~~(7)~~(12) "Excess emissions" means an emission rate that exceeds the applicable limitation or standard; for the purposes of this definition, nitrogen oxides emitted by a source covered under Rules .1416, .1417, or .1418 of this Section during the ozone season above its allocation, as may be adjusted under Rule .1419 of this Section, are not considered excess emissions. ~~standard, except during startup and shutdown operations.~~

~~(8)~~(13) "Fossil fuel-fired" ~~Fuel"~~ means~~n~~ e a n s :

(a) For sources that began operation before Janu

Heretofore Janu

(26) "Seasonal energy output" means the total energy output of a combustion source during the year beginning May 1 through September 30.

~~(17)~~(27) "Shutdown" means the cessation of operation of a source or its emission control equipment.

(28) "Source" means a stationary boiler, combustion turbine, combined cycle system, reciprocating internal combustion engine, or indirect-fired process heater or a stationary article, machine, process equipment, or other contrivance, or combination thereof, from which nitrogen oxides emanate or are emitted.

~~(18)~~(29) "Startup" means the commencement of operation of any source that has shutdown or ceased operation for a period sufficient to cause temperature, pressure, process, chemical, or pollution control device imbalance that would result in excess emissions.

~~(19)~~(30) "Stationary internal combustion engine" means ~~an~~ a reciprocating internal combustion engine that is not self propelled; however, it may be mounted on a vehicle for portability.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (7), (10);
Eff. April 1, 1995;
Temporary Amendment Eff. August 1, 2001; November 1, 2000.

15A NCAC 02D .1402 APPLICABILITY

(a) The requirements of this Section shall only apply from May 1 through September 30.

(b) Rule .1416 through 1423 of this Section ~~applies~~ applies statewide. ~~statewide effective May 1, 2001.~~

(c) Effective November 1, 2000 Rule .1409 of this Section applies to the sources identified in Paragraph (b) of Rule .1409 of this Section.

~~(c)~~(d) With the exceptions stated in Paragraph ~~(g)~~ (h) of this Rule, this Section shall apply to:

(1) Charlotte/Gastonia, consisting of Mecklenburg and Gaston Counties in accordance with Paragraph ~~(d)~~ (e) 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)~~ (f) of this Rule; or

(3) Raleigh/Durham, consisting of Durham and Wake Counties and Dutchville Township in Granville County in accordance with Paragraph ~~(f)~~ (g) of this Rule.

~~(d)~~(e) 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)~~(f) 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)~~(g) 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)~~(h) Except for Subparagraph (5) of this Rule, this Paragraph does not apply to the types of sources described at Rule .1417(a) of this Section. This Section does not apply to any:

(1) source not required to obtain an air permit under 15A NCAC 02Q .0102 or is an insignificant activity as defined at 15A NCAC 02Q .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~~ through 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) stationary reciprocating internal combustion engine less than 2400 brake horsepower that operates no more than the following hours beginning May 1 through September 30:

(A) for diesel engines:

$$t = \frac{833{,}333}{ES}$$

(B) for natural gas-fired engines:

$$t = \frac{700{,}280}{ES}$$

where t equals time in hours and ES equals engine size in horsepower.

~~(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),(7),(10); Eff. April 1, 1995; Amended Eff. April 1, 1997; July 1, 1995; April 1, 1995; Temporary Amendment Eff. November 1, 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. August 1, 2001.

15A NCAC 02D .1403 COMPLIANCE SCHEDULES

(a) Applicability. This Rule applies to all sources covered by Rules .1416, 1417, Rule .1409(b), Rule .1402(d) of this Section. ~~Paragraph (b) or (c) of Rule .1402 of this Section.~~

(b) Contingency plan schedule. The owner or operator of a source subject to this Rule because of the applicability of Paragraphs ~~(d), (e), or (f)~~ (e), (f), or (g) 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~~ .1415 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;

Specification 3, shall be used. If flow monitoring is required, 40 CFR Part 60, Appendix B, Specification 6, shall be used.

(3) The owner or operator of the following sources shall not be required to use continuous emission monitors unless the Director determines that a continuous emission monitor is necessary under Rule .0611 of this Subchapter to show compliance with the rules of this Section:

(A) a boiler or indirect-fired process heater covered under Rule .1407 of this Section with a maximum heat input less than or equal to 250 million Btu per hour; or

(B) stationary internal combustion engines covered under Rule .1409 of this Section except for engines covered under Paragraph (b) of Rule .1409 of this Section.

(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~~. Missing data.

(1) If data from continuous emission monitoring systems required to meet the requirements of 40 CFR Part 75 are not available at a time that the source is operated, the procedures in 40 CFR Part 75 shall be used to supply the missing data.

(2) For continuous emissions monitors not covered under Subparagraph (1) of this Paragraph, data shall be available for at least 95 percent of the emission sources 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 through 75.37 shall be used to supply the missing data.

(f) Quality assurance for continuous emissions monitors.

(1) The owner or operator of a continuous emission monitor required to meet 40 CFR Part 75, Subpart H, shall follow the quality assurance and quality control requirements of 40 CFR Part 75, Subpart H.

(2) For a continuous emissions monitor not covered under Subparagraph (1) of this Paragraph, the owner or operator of the continuous emissions monitor shall follow the quality assurance and quality control requirements of 40 CFR Part 60, Appendix F, if the monitor is required to be operated annually under another rule. If the continuous emissions monitor is being operated only to satisfy the requirements of this Section, then the quality assurance and quality control requirements of 40 CFR Part 60, Appendix F, shall apply except that

(A) A relative accuracy test audit shall be conducted after January 1 and before May 1 of each year;

(B) One of the following shall be conducted at least once between May 1 and September 30 of each year:

(i) a linearity test, according to 40 CFR Part 75, Appendix A, Section 3.2, 6.2, and 7.1; or

(ii) a relative accuracy audit, according to 40 CFR Part 60, Appendix F, Section 5 and 6; or

(iii) a cylinder gas audit according to 40 CFR Part 60, Appendix F, Section 5 and 6; and

(C) A daily calibration drift test shall be conducted according to 40 CFR Part 60, Appendix F, Section 4.0.

~~(f)~~(g) Interim reporting. The owner or operator of a source covered under Rules ~~.1416~~ .1416, .1417, or .1418 of this Section shall report to the Director no later than July ~~31~~ 30 the tons of nitrogen oxides emitted during the previous May and June. No later than October 30, ~~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.

(h) Recordkeeping and reporting requirements for large sources. The owner or operator of a source covered under Rules .1416, .1417, or .1418 of this Section shall comply with the recordkeeping and reporting requirements of 40 CFR Part 96, Budget Trading Program for State Implementation Plans.

~~(g)~~(i) Averaging time for continuous emissions monitors. 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. Sources covered under Rule .1416, .1417, or .1418 of this Section shall comply with the averaging time requirements of 40 CFR Part 75. A 24-hour block average described in Rule .0606 of this Subchapter shall be used when a continuous emissions monitoring system is used to determine compliance with a short-term pounds-per-million-Btu standard in Rule .1418 of this Section.

~~(i)~~(j) Heat input. Heat input shall be determined:

(1) for sources using a monitoring system meeting the requirements of 40 CFR Part 75, using the procedures in 40 CFR Part 75; or

(2) for sources not using a monitoring system meeting the requirements of 40 CFR Part 75, using:

(A) a method in 15A NCAC 2D .0501, or

(B) the best available heat input data.

Compliance shall be determined by summing the actual emissions from the engines listed in the table at each facility for the ozone season and comparing those sums to the limits in the table. Compliance may be achieved through trading under Paragraph (g) of this Rule if the trades are approved before the ozone season.

~~(b)~~(c) If this Rule becomes applicable to a stationary internal combustion engine ~~permitted before November 1, 2000,~~ pursuant to Rule .1402(d) of this Section, then after reasonable effort as defined in Rule .1401 of this Section, the emissions from a stationary internal combustion engine are greater than the applicable limitation in Paragraph (a) of this Rule, or if the requirements of this Rule are not RACT for the particular stationary internal combustion engine, the owner or operator may petition the Director for an alternative limitation or standard according to Rule .1412 of this Section.

(d) For the engines identified in Paragraph (b) of this Rule and any engine involved in emissions trading with one or more of the engines identified in Paragraph (b) of this Rule, the owner or operator shall determine compliance using:

(1) a continuous emissions monitoring system which meets the applicable requirements of Appendices B and F of 40 CFR part 60 and Rule .1404 of this Section; or

(2) an alternate monitoring and recordkeeping procedure based on actual emissions testing and correlation with operating parameters.

The installation, implementation, and use of this alternate procedure allowed under Subparagraph (d)(2) of this Rule shall be approved by the Director before it may be used. The Director may approve the alternative procedure if he finds that it can show the compliance status of the engine.

~~(c)~~(e) If a stationary internal combustion engine is permitted to operate more than 475 hours during the ozone season, compliance ~~Compliance~~ with the limitation established for a stationary internal combustion engine under Paragraph (a) of this Rule shall be determined using annual source testing according to Rule .1415 of this Section. If a source covered under this Rule can burn more than one fuel, then the owner or operator of the source may choose not to burn one or more of these fuels during the ozone season. If the owner or operator chooses not to burn a particular fuel, the source testing required under this Rule shall not be required for that fuel.

(f) If a stationary internal combustion engine is permitted to operate no more than 475 hours during the ozone season, the owner or operator of the stationary internal combustion engine shall show compliance with the limitation under Paragraph (a) of this Rule with source testing during the first ozone season of operation according to Rule .1415 of this Section. Each year after that, the owner or operator of the stationary internal combustion engine shall comply with the annual tune-up requirements of Rule .1414 of this Section.

(g) The owner or operator of a source covered under Paragraph (b) of this Rule may offset part or all of the allowable emissions of that source by reducing the emissions of another source at that facility by an amount equal to or greater than the allowable emissions being offset. Only actual decreased emissions that have not previously been relied on to comply with Subchapter 02D or 02Q of this Chhapor Title 40 of the Code of Federal Regulations can be used to offset the emissions of another source. The person requesting the offset shall submit the following information to the Director:

(1) identification of the source, including permit number, providing the offset and what the new allowable emission rate for the source will be;

(2) identification of the source, including permit number, receiving the offset and what the new allowable emission rate for the source will be;

(3) the amount of allowable emissions in tons per ozone season being offset;

(4) a description of the monitoring, recordkeeping, and reporting that shall be used to show compliance; and

(5) documentation that the offset is an actual decrease in emissions that has not previously been relied on to comply with Subchapter 02D or 02Q of this Chapter or Title 40 of the Code of Federal Regulations.

The Director may approve the offset if he finds that all the information required by this Paragraph has been submitted and that the offset is an actual decrease in emissions that have not previously been relied on to comply with Subchapter 02D or 02Q of this Chapter or Title 40 of the Code of Federal Regulations. If the Director approves the offset, he shall put the new allowable emission rates in the respective permits.

History Note: *Authority G.S. 143-215.3(a)(1); 143-215.66; 143-215.107(a)(5), (7), (10);*
Eff. April 1, 1995;
Temporary Amendment Eff. August 1, 2001; November 1, 2000.

15A NCAC 02D .1410 EMISSIONS AVERAGING

(a) This Rule shall not apply to sources ~~participating in the nitrogen oxide budget trading program under Rule .1419~~ covered under Rules .1416, .1417, or .1418 of this Section. Sources that have obtained an alternative limitation as provided by Rule .1412 of this Section or that apply seasonal fuel switching as provided by Rule .1411 of this Section are not eligible to participate in an emissions averaging plan under this Rule.

(b) With the exceptions in Paragraph (a) ~~(d)~~ of this Rule, the owner or operator of a facility with two or more sources with comparable plume rise and subject to the requirements of this Section for all such sources as determined by Rule .1402 of this Section may elect to apply an emissions averaging plan according to Paragraph (c) of this Rule. An emission averaging plan may be used if the total NO_x emissions from the averaged set of sources based on the total heat input are equal to or less than the NO_x emissions that would have occurred if each source complied with the applicable limitation.

(c) To request approval of an emissions averaging plan to comply with the requirements of this Section, the owner or operator of a facility shall submit a written request to the Director including the following information:

(1) the name and location of the facility;

(2) information identifying each source to be included under the averaging plan;

(3) the maximum heat input rate for each source;

(4) the fuel or fuels combusted in each source;

(5) the maximum allowable NO_x emission rate proposed for each averaging source;

(6) a demonstration that the nitrogen oxide emissions of the sources being averaged when operated together at the maximum daily heat input rate, will be less than or equal to the NO_x emissions if each source complied with the applicable limitation of this Section individually;

(7) an operational plan to provide reasonable assurance that the sources being averaged will satisfy Subparagraph (5) of this Paragraph when the combined maximum daily heat input rate is less than the permitted maximum heat input rate; and

(8) the method to be used to determine the actual NO_x emissions from each source.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.107(a)(5), (7), (10);
Eff. April 1, 1995;
Temporary Amendment Eff. August 1, 2001; November 1, 2000.

15A NCAC 02D .1411 SEASONAL FUEL SWITCHING

(a) This Rule shall not apply to ~~facilities~~ sources covered under Rules ~~.1402(b)~~ .1416, .1417 or .1418 of this Section.

(b) The owner or operator of a ~~utility or non-utility~~ coal-fired or oil-fired boiler subject to the requirements ~~of this Section as determined by Rule .1402~~ of Rule .1407 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_x emission limit for October 1 through April 30 that will result in annual NO_x emissions of less than or equal to the NO_x 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_x 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;
Temporary Amendment Eff. November 1, 2000;
Amended Eff. April 1, 2001;
Temporary Amendment Eff. August 1, 2001.

15A NCAC 02D .1412 PETITION FOR ALTERNATIVE LIMITATIONS

(a) If the owner or operator of a source subject to the requirements of Rules .1407, .1408, or .1409 of this Section: ~~Section permitted before October 31, 2000:~~

(1) cannot achieve compliance with the applicable limitation after reasonable effort ~~the installation and optimization of combustion modification technology or other NO_x control technology~~ to satisfy the requirements of Rules .1407, .1408, or .1409 of this Section or if the requirements of Rules .1407, .1408, or .1409 of this Section are not RACT for the particular source; and

(2) cannot provide reasonable assurance for overall compliance at a facility through the implementation of an emissions averaging plan as provided for in Rule .1410 of this Section; ~~the owner or operator may petition the Director for an alternative limitation according to Paragraph (b) of this Rule.~~

the owner or operator may petition the Director for an alternative limitation according to Paragraph (b) or (b)(c) of this Rule.

(b) To petition the Director for an alternative limitation, the owner or operator of the source shall submit;

(1) the name and location of the facility;

(2) information identifying the source for which an alternative limitation is being requested;

(3) the maximum heat input rate for the source;

(4) the fuel or fuels combusted in the source;

(5) the maximum allowable NO_x emission rate proposed for the source for each fuel;

(6) a demonstration that the source has satisfied the requirements to apply for an alternative limitation under Paragraph (a) of this Rule; and

(7) a demonstration that the proposed alternative limitation is RACT for that source. ~~satisfies the requirements for RACT.~~

(c) If the source is required to comply with best achievable control technology under Rule .0530, Prevention of Significant Deterioration of this Subchapter, the owner or operator of the source shall provide the information required under Subparagraphs (b)(1) through (6) of this Rule and documentation that the source is required to use best available control technology and is complying with that requirement. For this source, its best available control technology shall be considered RACT without any further demonstrations.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.107(a)(5), (7), (10);

bes.

range established by the equipment manufacturer to ensure that the emission limitation for nitrogen oxides has not been exceeded; and ~~the oxygen or carbon dioxide concentration of the stack gas, the carbon monoxide concentration of the stack gas or smoke spot number, stack gas temperature, and any additional information necessary to specify the operating conditions of the boiler after each adjustment for minimizing excess air; and~~

~~(6)~~(7) any other information requested by the Director to show that the boiler, indirect-fired process heat, or stationary internal combustion engine is being operated and maintained in a manner to minimize the emissions of nitrogen oxides. ~~as a condition of approval of a RACT standard.~~

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10);
Eff. April 1, 1995;
Temporary Amendment Eff. August 1, 2001; November 1, 2000.

15A NCAC 02D .1415 TEST METHODS AND PROCEDURES

(a) Method 7E or Method 19 at 40 CFR Part 60, Appendix A or other equivalent method approved by Director shall be used when source testing is used to demonstrate compliance with a limitation established according to this Section. For stationary ~~gas~~ combustion turbines, Method 20 at 40 CFR Part 60, Appendix A or other equivalent method approved by Director shall be used when source testing is used to demonstrate compliance with a limitation established according to this Section. The procedures specified in Methods 1, 2, 2F, 2G, 3, 3A, 3B, and 4 of 40 CFR Part 60, Appendix A, shall be used to measure velocity, flow rate, and molecular weight and to calculate heat input, as necessary, to determine compliance.

(b) When compliance with a limitation established according to this Section is determined using source testing, such testing shall be conducted according to this Rule. The owner or operator of a source subject to the requirements of this Section shall demonstrate compliance when the Director requests such demonstration. The Director shall explain to the owner or operator the basis for requesting a demonstration of compliance and shall allow reasonable time for testing to be performed.

(c) Before conducting a source test, the owner or operator of the sources to be tested shall submit to the Director a testing protocol describing what is to be tested and the test method or methods that will be used. The Director shall approve or disapprove the protocol within 45 days after receipt.

(d) The owner or operator shall notify the Director and obtain the Director's approval at least 21 days before beginning a test to demonstrate compliance with this Section so that the Division may observe the test. The notification required by this Paragraph shall include:

(1) a statement of the purpose of the proposed test;
(2) the location and a description of the facility where the test is to take place;
(3) the proposed test method and a description of the test procedures, equipment, and sampling points; and
(4) a schedule setting forth the dates that:
  (A) the test will be conducted and data collected;
  (B) the final test report will be submitted.

(e) The final test report shall be submitted to the Director no later than 45 days after the test data have been collected.

(f) The owner or operator shall be responsible for all costs associated with any tests required to demonstrate compliance with this Section.

(g) The owner or operator shall maintain records of tests performed to demonstrate compliance with this Section according to Rule .1404 of this Section.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10);
Eff. April 1, 1995;
Temporary Amendment Eff. August 1, 2001; November 1, 2000.

15A NCAC 02D .1416 EMISSION ALLOCATION FOR UTILITY COMPANIES

(a) Before the EPA promulgation of revisions after November 1, 2000, to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina, the following limits apply:

(1) Carolina Power & Light. The total emissions from all the coal-fired boilers and combustion turbines that are not listed in Rule .1417 of this Section at Carolina Power & Light Company's Asheville, Cape Fear, Lee, Mayo, Roxboro, Sutton, and Weatherspoon facilities shall not exceed:
  (A) 12,019 tons per ozone season for 2004;
  (B) 15,566 tons per ozone season for 2005;
  (C) 14,355 tons per ozone season for 2006 and each year thereafter until revised according to Rule .1420 of this Section; and
  (D) after revising the emission allocations according to Rule .1420 of this Section, the sum of the emission allocations calculated under Rule .1420 of this Section for boilers and combustion turbines at the Carolina Power & Light Company's facilities named in the Subparagraph. (When a revision is made under Rule .1420 of this Section, each boiler and combustion turbine shall be given a specific emission allocation under Rule .1420 of this Section. The emission allocations of these boilers and combustion turbines shall be summed, and this sum shall be the allowable emission rate for the coal-fired boilers and combustion turbines at the Carolina Power & Light

Company's facilities named in this Subparagraph.).

Furthermore individual sources at these facilities named in this table in this Subparagraph shall not exceed the nitrogen oxide emissions allocations in the table beginning May 31 through September 30, 2004 and May 1 through September 30, 2005 and each year thereafter until revised according to Rule .1420 of this Section:

FACILITY	SOURCE	EMISSION ALLOCATIONS (tons/season) 2004	EMISSION ALLOCATIONS (tons/season) 2005	EMISSION ALLOCATIONS (tons/season) 2006 and later
Asheville, Buncombe Co	1	551	714	659
	2	538	697	643
Cape Fear Chatham Co	5	286	371	342
	6	406	526	485
Lee Wayne Co	1	145	188	173
	2	159	206	190
	3	465	603	556
Mayo Person Co	1	1987	2572	2373
Roxboro Person Co	1	861	1115	1028
	2	1602	2075	1914
	3	1773	2295	2116
	4	1698	2199	2028
L V Sutton New Hanover Co.	1	182	236	217
	2	198	256	236
	3	806	1044	962
Weatherspoon Robeson Co.	1	85	110	102
	2	97	125	116
	3	180	234	215

(2) Duke Power. The total emissions from all the coal-fired boilers and combustion turbines that are not listed in Rule .1417 of this Section at Duke Power Company's Allen, Belews Creek, Buck, Cliffside, Dan River, Marshall, and Riverbend facilities shall not exceed:

(A) 17,816 tons per ozone season for 2004;

(B) 23,072 tons per ozone season for 2005;

(C) 21,278 tons per ozone season for .2006 and each year thereafter until revised according to Rule .1420 of this Section; and

(D) after revising the emission allocations according to Rule .1420 of this Section, the sum of the emission allocations calculated under Rule .1420 of this Section for boilers and combustion turbines at the Duke Power Company's facilities named in this Subparagraph. (When a revision is made under Rule .1420 of this Section, each boiler and combustion turbines shall be given a specific emission allocation under Rule .1420 of this Section. The emission allocations of these boilers and combustion turbines shall be summed, and this sum shall be the allowable emission rate for the coal-fired boilers and combustion turbines at the Duke Power Company's facilities named in this Subparagraph.)

Furthermore individual sources at these facilities named in the table in this Subparagraph shall not exceed the nitrogen oxide emissions allocations in the table beginning May 31 through September 30, 2004 and May 1 through September 30, 2005 and each year thereafter until revised according to Rule .1420 of this Section:

FACILITY	SOURCE	EMISSION ALLOCATIONS (tons/season) 2004	EMISSION ALLOCATIONS (tons/season) 2005	EMISSION ALLOCATIONS (tons/season) 2006 and later
G G Allen Gaston Co.	1	350	453	418
	2	355	460	424
	3	590	764	705
	4	528	683	630
	5	678	748	690
Belews Creek Stokes Co.	1	2591	3356	3095
	2	3020	3911	3608
Buck Rowan Co.	5	66	86	79
	6	73	95	87
	7	78	101	93
	8	319	413	381
	9	337	437	403
Cliffside Cleveland Co.	1	76	98	91
	2	82	106	98
	3	107	138	128
	4	120	156	144
	5	1326	1717	1584
Dan River Rockingham Co.	1	132	171	157
	2	144	186	172
	3	304	394	363
Marshall Catawba Co.	1	1011	1309	1207
	2	1056	1367	1261
	3	1784	2311	2131
	4	1764	2285	2107
Riverbend Gaston Co.	10	299	387	357
	7	216	280	258
	8	225	291	268
	9	285	369	340

(b) After the EPA promulgates revisions after November 1, 2000, to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina, the following limits apply:

(1) Carolina Power & Light. The total emissions from all the coal-fired boilers and combustion turbines that are not listed in Rule .1417 of this Section at Carolina Power & Light Company's Asheville, Cape Fear, Lee, Mayo, Roxboro, Sutton, and Weatherspoon facilities shall not exceed:

(A) 12,019 tons per ozone season in 2004;

(B) 15,024 tons per ozone season for 2005;

(C) 11,320 tons per ozone season for 2006 and each year thereafter until revised according to Rule .1420 of this Section; and

(D) after revising the emission allocations according to Rule .1420 of this Section, the sum of the emission allocation of the sources named in this Rule calculated under Rule .1420 of this Section for boilers and combustion turbines at the Carolina Power & Light Company's facilities named in this Subparagraph. (When a revision is made under Rule .1420 of this Section, each boiler and combustion turbine shall be given a specific emission allocation under Rule .1420 of this Section. The emission allocations of these boilers and combustion turbines shall be summed, and this sum shall be the allowable emission rate for the coal-

fired boilers and combustion turbines at the Carolina Power & Light Company's facilities named in this Subparagraph)

Furthermore, individual sources at these facilities named in the table in this Subparagraph shall not exceed the nitrogen oxide emissions allocations in the table beginning May 31 through September 30, 2004 and May 1 through September 30, 2005 and each year thereafter until revised according to Rule .1420 of this Section:

FACILITY	SOURCE	EMISSION ALLOCATIONS (tons/season) 2004	EMISSION ALLOCATIONS (tons/season) 2005	EMISSION ALLOCATIONS (tons/season) 2006 and later
Asheville Buncombe Co	1	551	689	519
	2	538	672	507
Cape Fear Chatham Co	5	286	358	270
	6	406	508	382
Lee Wayne Co	1	145	182	137
	2	159	199	150
	3	465	582	438
Mayo Person Co	1	1987	2483	1872
Roxboro Person Co	1	861	1076	811
	2	1602	2003	1509
	3	1773	2215	1669
	4	1698	2122	1599
L V Sutton New Hanover Co.	1	182	228	171
	2	198	247	186
	3	806	1007	759
Weatherspoon Robeson Co.	1	85	107	80
	2	97	121	91
	3	180	225	170

(2) Duke Power. The total emissions from all the coal-fired boilers and combustion turbines that are not listed in Rule .1417 of this Section at Duke Power Company's Allen, Belews Creek, Buck, Cliffside, Dan River, Marshall, and Riverbend facilities shall not exceed:

(A) 17,816 tons per ozone season;

(B) 22,270 tons per ozone season for 2005;

(C) 16,780 tons per ozone season for 2006 and each year thereafter until revised according to Rule .1420 of this Section; and

(D) after revising the emission allocations according to Rule .1420 of this Section, the sum of the emission allocation calculated under Rule .1420 of this Section for boilers and combustion turbines at the Duke Power Company's facilities named in this Subparagraph. (When a revision is made under Rule .1420 of this Section, each boiler and combustion turbine shall be given a specific emission allocation under Rule .1420 of this Section. The emission allocation of these boilers and combustion turbines shall be summed, and this sum shall be the allowable emission rate for the coal-fired boilers and combustion turbines at the Duke Power Company's facilities named in this Subparagraph.)

Furthermore, individual sources at these facilities named in the table in this Subparagraph shall not exceed the nitrogen oxide emissions allocations in the table beginning May 31 through September 30, 2004 and May 1 through September 30, 2005 and each year thereafter until revised according to Rule .1420 of this Section:

FACILITY	SOURCE	EMISSIONALLOCATIONS (tons/season) 2004	EMISSION ALLOCATIONS (tons/season) 2005	EMISSIONALLOCATIONS (tons/season) 2006 and later
G G Allen Gaston Co.	1	350	437	329
	2	355	444	334
	3	590	737	556
	4	528	660	497
	5	578	722	544
Belews Creek Stokes Co.	1	2591	3239	2441
	2	3020	3775	2846
Buck Rowan Co.	5	66	83	63
	6	73	91	69
	7	78	97	73
	8	319	399	300
	9	337	422	318
Cliffside Cleveland Co.	1	76	95	71
	2	82	102	77
	3	107	134	101
	4	120	150	113
	5	1326	1658	1249
Dan River Rockingham Co.	1	132	165	124
	2	144	180	135
	3	304	380	286
Marshall Catawba Co.	1	1011	1263	952
	2	1056	1320	994
	3	1784	2230	1680
	4	1764	2206	1662
Riverbend Gaston Co.	10	299	374	282
	7	216	270	204
	8	225	281	212
	9	285	356	268

(c) Posting of emission allocation. The Director shall post the emission allocations for sources covered under this Rule on the Division's web page.

(d) Trading. Sources may comply with the requirements of this Rule using the nitrogen oxide budget trading program set out in Rule .1419 of this Section.

(e) Monitoring. The owner or operator of a source subject to this Rule shall show compliance using a continuous emission monitor that meets the requirements of 40 CFR Part 75, Subpart H, with such exceptions as allowed under 40 CFR Part 75, Subpart H or 40 CFR Part 96.

(f) 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.

(g) Violations. If, at the end of the ozone season, the owner or operator of a source whose actual emissions of nitrogen oxides exceed the emission allocation in Paragraph (a) or (b) of this Rule cannot obtain enough credits under Rule .1419 of this Section to offset these excess emissions, then that source shall be considered in violation for each day that the aggregate emissions of nitrogen oxides exceeded the emission allocations in Paragraph (a) or (b) of this Rule beginning May 1 (May 31 for 2004) through September 30 of that ozone season. (If the owner or operator of the source has traded away or otherwise transferred emission allocations of that source, then the emission allocations traded or otherwise transferred shall be subtracted from the source's emission allocations under this Rule before determining compliance.)

(h) Modification and reconstruction. The modification or reconstruction of a source covered under this Rule shall not make that source a "new" source under this Rule. A source that is modified or reconstructed shall retain its emission allocations under Paragraph (a) or (b) of this Rule.

(i) 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.

~~(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; Temporary Amendment Eff. August 1, 2001.

15A NCAC 02D .1417 EMISSION ALLOCATIONS FOR LARGE COMBUSTION SOURCES

(a) Applicability. This Rule applies to the sources listed in Paragraph (b) of this Rule ~~and~~ or to the following types of sources that are permitted before November 1, 2000, and are not covered under Rule .1416 of this Section:

(1) fossil fuel-fired stationary boilers, combustion turbines, or combined cycle systems serving a generator with a nameplate capacity greater than 25 megawatts electrical and selling any amount of electricity; or

(2) fossil fuel-fired stationary boilers, combustion turbines, or combined cycle systems having a maximum design heat input greater than 250 million Btu per hour that are not covered under Subparagraph (1) of this Paragraph. ~~Paragraph; and~~

~~(3) the following types of reciprocating internal combustion engines:~~

~~(A) rich burn stationary internal combustion engines rated at equal or greater than 2,400 brake horsepower;~~

~~(B) lean burn stationary internal combustion engines rated at equal or greater than 2,400 brake horsepower;~~

~~(C) diesel stationary internal combustion engines rated at equal or greater than 3,000 brake horsepower; or~~

~~(D) dual fuel stationary internal combustion engines rated at equal or greater than 2,400 brake horsepower~~.

(b) Initial ~~allowable~~ emission allocations. ~~rates~~.

(1) Before the EPA promulgation of revisions after November 1, 2000, to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina, the following limits apply:

(A) ~~Sources~~ Except as allowed under Paragraph (d) of this Rule, sources named in the table in this Subparagraph shall not exceed the nitrogen oxide (NO_x) emission allocations ~~limits~~ in the table beginning May 31 through September 30, 2004 and May 1 through September 30 for 2005 ~~(the ozone season), 2004~~ and each year thereafter until revised according to Rule .1420 of this Section:

FACILITY	SOURCE	NO_x EMISSION ALLOCATIONS (tons/season) 2004	~~ALLOWABLE SEASONAL~~ NO_X ~~EMISSIONS~~ EMISSION ALLOCATIONS (tons/season) ~~2004 and~~ 2005	~~ALLOWABLE SEASONAL~~ NO_X ~~EMISSIONS~~ EMISSION ALLOCATIONS (tons/season) 2006 and later
Butler Warner Generating, Cumberland Co.	Combustion Turbine 1	27	33	49

FACILITY	SOURCE	NO_x EMISSION ALLOCATIONS (tons/season) 2004	~~ALLOWABLE SEASONAL~~ NO_X ~~EMISSIONS~~ EMISSION ALLOCATIONS (tons/season) ~~2004 and~~ 2005	~~ALLOWABLE SEASONAL~~ NO_X ~~EMISSIONS~~ EMISSION ALLOCATIONS (tons/season) 2006 and later
	Combustion Turbine 2	27	33	~~49~~
	Combustion Turbine 3	27	33	~~49~~
	Combustion Turbine 6	28	~~33~~ 35	52
	Combustion Turbine 7	27	33	~~49~~
	Combustion Turbine 8	27	33	~~49~~
	Combustion Turbine 4	34	~~86~~ 43	~~126~~ 63
	Combustion Turbine 5	35	43	63
Cogentrix-Rocky Mount, Edgecombe Co.	Boiler	319	398	351
Cogentrix-Elizabethtown, Bladen Co.	Coal boiler	115	143	126
Cogentrix-Kenansville, Duplin Co.	Stoker boiler	103	128	113
Cogentrix-Lumberton, Robeson Co.	Coal boiler	114	142	125
Cogentrix-Roxboro, Person Co.		175	218	192
Cogentrix-Southport, Brunswick Co.		356	~~443~~	391
~~Ed Generators.~~			~~0.15~~	~~0.15~~
			~~0.15~~	~~0.15~~
~~Fayetteville, Cumberland Co.~~			~~565~~	~~565~~
~~Kitty Hawk, Dare Co.~~			~~0.5~~	~~0.5~~
			~~0.4~~	~~0.4~~
Duke Power, Lincoln	~~Simple-Cycle~~ Combustion Turbine	18	~~19~~ 23	~~20~~ 23
	~~Simple-Cycle~~ Combustion Turbine	18	~~19~~ 23	~~20~~ 23
	~~Simple-Cycle~~ Combustion Turbine	18	~~19~~ 23	~~20~~ 23
	~~Simple-Cycle~~ Combustion Turbine	18	~~19~~ 23	~~19~~ 23
	~~Simple-Cycle~~ Combustion Turbine	18	~~19~~ 23	~~19~~ 23
	~~Simple-Cycle~~ Combustion Turbine	18	~~19~~ 23	~~19~~ 23
	~~Simple-Cycle~~ Combustion	18	~~19~~ 23	~~19~~ 23

FACILITY	SOURCE	NO_x EMISSION ALLOCATIONS (tons/season) 2004	~~ALLOWABLE SEASONAL~~ NO_X ~~EMISSIONS~~ EMISSION ALLOCATIONS (tons/season) ~~2004 and~~ 2005	~~ALLOWABLE SEASONAL~~ NO_X ~~EMISSIONS~~ EMISSION ALLOCATIONS (tons/season) 2006 and later
	Turbine			
	~~Simple-Cycle~~ Combustion Turbine	18	~~19~~ 23	~~19~~ 23
	~~Simple-Cycle~~ Combustion Turbine	18	~~19~~ 23	~~19~~ 23
	~~Simple-Cycle~~ Combustion Turbine	18	~~19~~ 23	~~19~~ 23
	~~Simple-Cycle~~ Combustion Turbine	18	~~19~~ 23	19 23
	~~Simple-Cycle~~ Combustion Turbine	18	~~19~~ 23	~~19~~ 23
	~~Simple-Cycle~~ Combustion Turbine	18	19 23	~~19~~ 23
	~~Simple-Cycle~~ Combustion Turbine	18	~~19~~ 23	~~19~~ 23
	~~Simple-Cycle~~ Combustion Turbine	18	~~19~~ 23	~~19~~ 23
	~~Simple-Cycle~~ Combustion Turbine	19	~~19~~ 24	~~19~~ 24
Panda-Rosemary, Halifax Co.		35	43	32
		25	31	23
Roanoke Valley, Halifax Co.		447	557	492
		142	178	167
~~Tobbaccoville~~ RJ Reynolds Tobbaccoville Facility, Forsyth Co.	Boiler 1	194	243	64
	Boiler 2	218	273	64
	Boiler 3	178	223	64
	Boiler 4	190	238	64
UNC-CH, Orange Co.	Boiler 5, 6, and 7	116	145	128
	Boiler 8	120	150	113
~~Wiccacon~~			~~1~~	~~1~~
CP&L, Lee Plant, Wayne County	~~Simple-Cycle~~ Combustion Turbine	25	31	31
	~~Simple-Cycle~~ Combustion Turbine	25	31	31

FACILITY	SOURCE	NO_x EMISSION ALLOCATIONS (tons/season) 2004	~~ALLOWABLE SEASONAL~~ NO_X ~~EMISSIONS~~ EMISSION ALLOCATIONS (tons/season) ~~2004 and~~ 2005	~~ALLOWABLE SEASONAL~~ NO_X ~~EMISSIONS~~ EMISSION ALLOCATIONS (tons/season) 2006 and later
	~~Simple-Cycle~~ Combustion Turbine	92	115	115
	~~Simple-Cycle~~ Combustion Turbine	92	115	115
Dynegy, Rockingham County	~~Simple-Cycle~~ Combustion Turbine	34	42	42
	~~Simple-Cycle~~ Combustion Turbine	33	42	42
	~~Simple-Cycle~~ Combustion Turbine	33	42	42
	~~Simple-Cycle~~ Combustion Turbine	33	41	41
	~~Simple-Cycle~~ Combustion Turbine	33	41	41
CP&L, Woodleaf, Rowan County	~~Simple-Cycle~~ Combustion Turbine	22	27	27
	~~Simple-Cycle~~ Combustion Turbine	22	27	27
	~~Simple-Cycle~~ Combustion Turbine	22	27	27
	~~Simple-Cycle~~ Combustion Turbine	21	27	27
	~~Simple-Cycle~~ Combustion Turbine	22	27	27
CP&L, Mark's Creek, Richmond County	~~Simple-Cycle~~ Combustion Turbine	22	27	27
	~~Simple-Cycle~~ Combustion Turbine	22	27	27
	~~Simple-Cycle~~ Combustion Turbine	22	27	27
	~~Simple-Cycle~~ Combustion Turbine	22	27	27
	~~Simple-Cycle~~ Combustion Turbine7	21	27	27
	~~Simple-Cycle~~	21	27	27

FACILITY	SOURCE	NO_x EMISSION ALLOCATIONS (tons/season) 2004	~~ALLOWABLE SEASONAL~~ NO_X ~~EMISSIONS~~ EMISSION ALLOCATIONS (tons/season) ~~2004 and~~ 2005	~~ALLOWABLE SEASONAL~~ NO_X ~~EMISSIONS~~ EMISSION ALLOCATIONS (tons/season) 2006 and later
	Combustion Turbine			
	~~Simple-Cycle~~ Combustion Turbine	22	28	28
CP&L, Asheville, Buncombe County	~~Simple-Cycle~~ Combustion Turbine	60	75	75
	~~Simple-Cycle~~ Combustion Turbine	60	75	75

(B) ~~Sources~~ Except as allowed under Paragraph (d) of this Rule, sources named in the table in this Subparagraph shall not exceed the nitrogen oxide (NO_x) emission allocations ~~limits~~ in the table beginning May 1 through September 30 for 2004 and May 1 through September 30 for 2005 ~~(the ozone season), 2004~~ and each year thereafter until revised according to Rule .1420 of this Section:

FACILITY	SOURCE	~~ALLOWABLE SEASONAL~~ NO_X ~~EMISSIONS~~ EMISSION ALLOCATIONS (tons/season) 2004	~~ALLOWABLE SEASONAL~~ NO_X ~~EMISSIONS~~ EMISSION ALLOCATIONS (tons/season) 2005	~~ALLOWABLE SEASONAL~~ NO_X ~~EMISSIONS~~ EMISSION ALLOCATIONS (tons/season) 2006 and later
Weyerhaeuser Paper Co., Martin Co.	Riley boiler	~~709~~ 566	709	379
	Package boiler	~~25~~ 20	25	25
Blue Ridge Paper Products, Haywood Co.	Pulverized coal dry bottom boiler	~~265~~ 212	265	141
	Pulverized coal dry bottom boiler	~~234~~ 187	234	125
	Pulverized coal dry bottom boiler	~~447~~ 358	447	239
	Pulverized coal, wet bottom boiler	~~456~~ 365	456	244
	Boiler	~~169~~ 135	169	90
International Paper Corp., Halifax Co.	Wood/bark-fired boiler-no. 6 oil-fired boiler-pulverized coal, dry bottom boiler	~~648~~ 518	648	346
Weyerhaeuser Co. New Bern Mill, Craven Co.	#1 power boiler	~~226~~ 181	226	121
	#2 power boiler	~~72~~ 58	72	72
International. Paper, Columbus Co.	#3 power boiler	~~158~~ 126	158	84
	#4 power boiler	~~418~~ 334	418	223

FACILITY	SOURCE	~~ALLOWABLE SEASONAL~~ NO_X ~~EMISSIONS~~ EMISSION ALLOCATIONS (tons/season) 2004	~~ALLOWABLE SEASONAL~~ NO_X ~~EMISSIONS~~ EMISSION ALLOCATIONS (tons/season) 2005	~~ALLOWABLE SEASONAL~~ NO_X ~~EMISSIONS~~ EMISSION ALLOCATIONS (tons/season) 2006 and later
Fieldcrest-Cannon, Plant 1, Cabarrus Co.		~~217~~ 174	217	116
~~Transcontinental. Gas Pipeline – Station. 160, Rockingham Co.~~	~~Mainline engine #11~~	~~127~~	~~25~~	~~25~~
	~~Mainline engine #12~~	~~127~~	~~25~~	~~25~~
	~~Mainline engine #13~~	~~152~~	~~30~~	~~30~~
	~~Mainline engine #14~~	~~155~~	~~31~~	~~31~~
	~~Mainline engine #15~~	~~187~~	~~37~~	~~37~~
~~Transcontinental. Gas Pipeline – Station. 150, Iredell Co.~~	~~Mainline engine #12~~	~~66~~	~~13~~	~~13~~
	~~Mainline engine #13~~	~~68~~	~~13~~	~~13~~
	~~Mainline engine #14~~	~~127~~	~~25~~	~~25~~
	~~Mainline engine #15~~	~~127~~	~~25~~	~~25~~
~~Transcontinental. Gas Pipeline – Station 155, Davidson Co.~~	~~Mainline engine #2~~	~~127~~	~~25~~	~~25~~
	~~Mainline engine #3~~	~~109~~	~~22~~	~~22~~
	~~Mainline engine #4~~	~~187~~	~~37~~	~~37~~
	~~Mainline engine #5~~	~~108~~	~~21~~	~~21~~
	~~Mainline engine #6~~	~~108~~	~~21~~	~~21~~

(2) After the EPA promulgates revisions after November 1, 2000 to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina, the following limits apply:

(A) ~~Sources~~ Except as allowed under Paragraph (d) of this Rule, sources named in the table in this Subparagraph shall not exceed the nitrogen oxide (NO_x) emission allocations ~~limits~~ in the table beginning May 1 through September 30 for 2004 and May 1 through September 30 for 2005 ~~30 (the ozone season), 2004~~ and each year thereafter until revised according to Rule .1420 of this Section:

FACILITY	SOURCE	NO_x EMISSION ALLOCATIONS (tons/season) 2004	~~ALLOWABLE SEASONAL~~ NO_X ~~EMISSIONS~~ EMISSION ALLOCATIONS (tons/season) ~~2004~~ 2005	~~ALLOWABLE SEASONAL~~ NO_X ~~EMISSIONS~~ EMISSIONS ALLOCATIONS (tons/season) ~~2005~~ 2006 and later
Butler Warner Generating,	Combustion Turbine 1	27	33	49

FACILITY	SOURCE	NO_x EMISSION ALLOCATIONS (tons/season) 2004	~~ALLOWABLE SEASONAL~~ NO_X ~~EMISSIONS~~ EMISSION ALLOCATIONS (tons/season) ~~2004~~ 2005	~~ALLOWABLE SEASONAL~~ NO_X ~~EMISSIONS~~ EMISSIONS ALLOCATIONS (tons/season) ~~2005~~ 2006 and later
Cumberland Co.				
	Combustion Turbine 2	27	33	~~49~~
	Combustion Turbine 3	27	33	~~49~~
	Combustion Turbine 6	28	~~33~~ 35	52
	Combustion Turbine 7	27	33	~~49~~
	Combustion Turbine 8	27	33	~~49~~
	Combustion Turbine 4	34	~~86~~ 23	~~126~~ 63
	Combustion Turbine 5	35	43	63
Cogentrix-Rocky Mount, Edgecombe Co.	Boiler	319	398	351
Cogentrix-Elizabethtown, Bladen	Coal boiler	115	143	126
Cogentrix-Kenansville, Duplin Co.	Stoker boiler	103	128	113
Cogentrix-Lumberton, Robeson Co.	Coal boiler	114	142	125
Cogentrix-Roxboro, Person Co.		175	218	192
Cogentrix-Southport, Brunswick Co.		356	~~443~~ 444	~~391~~ 392
~~Ed Generators~~			~~0.15~~	~~0.15~~
			~~0.15~~	~~0.15~~
~~Fayetteville, Cumberland Co.~~			~~565~~	~~565~~
~~Kitty Hawk, Dare Co.~~			~~0.5~~	~~0.5~~
			~~0.4~~	~~0.4~~
Duke Power, Lincoln	~~Simple-Cycle~~ Combustion Turbine	18	~~19~~ 23	~~20~~ 26
	~~Simple-Cycle~~ Combustion Turbine	18	~~19~~ 23	~~20~~ 26
	~~Simple-Cycle~~ Combustion Turbine	18	~~19~~ 23	~~20~~ 26

FACILITY	SOURCE	NO_x EMISSION ALLOCATIONS (tons/season) 2004	~~ALLOWABLE SEASONAL~~ NO_X ~~EMISSIONS~~ EMISSION ALLOCATIONS (tons/season) ~~2004~~ 2005	~~ALLOWABLE SEASONAL~~ NO_X ~~EMISSIONS~~ EMISSIONS ALLOCATIONS (tons/season) ~~2005~~ 2006 and later
	~~Simple-Cycle~~ Combustion Turbine	18	~~19~~ 23	~~19~~ 26
	~~Simple-Cycle~~ Combustion Turbine	18	~~19~~ 23	~~19~~ 26
	~~Simple-Cycle~~ Combustion Turbine	18	~~19~~ 23	~~19~~ 26
	~~Simple-Cycle~~ Combustion Turbine	18	~~19~~ 23	~~19~~ 26
	~~Simple-Cycle~~ Combustion Turbine	18	~~19~~ 23	~~19~~ 26
	~~Simple-Cycle~~ Combustion Turbine	18	~~19~~ 23	~~19~~ 26
	~~Simple-Cycle~~ Combustion Turbine	18	~~19~~ 23	~~19~~ 26
	~~Simple-Cycle~~ Combustion Turbine	18	~~19~~ 23	~~19~~ 26
	~~Simple-Cycle~~ Combustion Turbine	18	~~19~~ 23	~~19~~ 26
	~~Simple-Cycle~~ Combustion Turbine	18	~~19~~ 23	~~19~~ 26
	~~Simple-Cycle~~ Combustion Turbine	18	~~19~~ 23	~~19~~ 26
	~~Simple-Cycle~~ Combustion Turbine	18	~~19~~ 23	~~19~~ 26
	~~Simple-Cycle~~ Combustion Turbine	19	~~19~~ 24	~~19~~ 27
Panda-Rosemary, Halifax Co.		35	43	32
		25	31	23
Roanoke Valley, Halifax Co.		447	~~557~~ 558	~~492~~ 493
		142	178	167
~~Tobbaccovill~~ RJ Reynolds Tobbaccoville Facility,	Boiler 1	194	243	64

FACILITY	SOURCE	NO_x EMISSION ALLOCATIONS (tons/season) 2004	~~ALLOWABLE SEASONAL~~ NO_X ~~EMISSIONS~~ EMISSION ALLOCATIONS (tons/season) ~~2004~~ 2005	~~ALLOWABLE SEASONAL~~ NO_X ~~EMISSIONS~~ EMISSIONS ALLOCATIONS (tons/season) ~~2005~~ 2006 and later
Forsyth Co.				
	Boiler 2	218	273	64
	Boiler 3	178	223	64
	Boiler 4	190	238	64
UNC-CH, Orange Co.	Boiler 5, 6, and 7	116	145	128
	Boiler 8	120	150	113
~~Wiccacon~~			~~1~~	~~1~~
CP&L, Lee Plant, Wayne County	~~Simple-Cycle~~ Combustion Turbine	25	31	31
	~~Simple-Cycle~~ Combustion Turbine	25	31	31
	~~Simple-Cycle~~ Combustion Turbine	92	115	115
	~~Simple-Cycle~~ Combustion Turbine	92	115	115
Dynegy, Rockingham County	~~Simple-Cycle~~ Combustion Turbine	34	42	42
	~~Simple-Cycle~~ Combustion Turbine	33	42	42
	~~Simple-Cycle~~ Combustion Turbine	33	42	42
	~~Simple-Cycle~~ Combustion Turbine	33	41	41
	~~Simple-Cycle~~ Combustion Turbine	33	41	41
CP&L, Woodleaf, Rowan County	~~Simple-Cycle~~ Combustion Turbine	22	27	27
	~~Simple-Cycle~~ Combustion Turbine	22	27	27
	~~Simple-Cycle~~ Combustion Turbine	22	27	27
	~~Simple-Cycle~~ Combustion Turbine	21	27	27
	~~Simple-Cycle~~ Combustion Turbine	22	~~27~~ 28	~~27~~ 28
CP&L, Mark's	~~Simple-Cycle~~	22	27	27

FACILITY	SOURCE	NO_x EMISSION ALLOCATIONS (tons/season) 2004	~~ALLOWABLE SEASONAL~~ NO_X ~~EMISSIONS~~ EMISSION ALLOCATIONS (tons/season) ~~2004~~ 2005	~~ALLOWABLE SEASONAL~~ NO_X ~~EMISSIONS~~ EMISSIONS ALLOCATIONS (tons/season) ~~2005~~ 2006 and later
Creek, Richmond County	Combustion Turbine			
	~~Simple-Cycle~~ Combustion Turbine	22	27	27
	~~Simple-Cycle~~ Combustion Turbine	22	27	27
	~~Simple-Cycle~~ Combustion Turbine	22	27	27
	~~Simple-Cycle~~ Combustion Turbine	21	27	27
	~~Simple-Cycle~~ Combustion Turbine	21	27	27
	~~Simple-Cycle~~ Combustion Turbine	22	28	27 28
CP&L, Asheville, Buncombe County	~~Simple-Cycle~~ Combustion Turbine	60	75	75
	~~Simple-Cycle~~ Combustion Turbine	60	75	75

(B) ~~Sources~~ Except as allowed under Paragraph (d) of this Rule, sources named in the table in this Subparagraph shall not exceed the nitrogen oxide (NO_x) emission allocations ~~limits~~ in the table beginning May 31 through September 30 for 2004 and May 1 through September 30 for 2005 ~~(the ozone season), 2004~~ and each year thereafter until revised according to Rule .1420 of this Section:

FACILITY	SOURCE	NO_X EMISSION ALLOCA - TIONS (tons/season) 2004	~~ALLOWABLE SEASONAL~~ NO_X ~~EMISSIONS~~ EMISSION ALLOCA - TIONS (tons/season) ~~2004~~ 2005	~~ALLOWABLE SEASONAL~~ NO_X ~~EMISSIONS~~ EMISSION ALLOCA - TIONS (tons/season) ~~2005~~ 2006 and later
Weyerhaeuser Paper Company, Martin Co.	Riley boiler	566	~~709~~ 708	379
	Package boiler	20	25	25
Blue Ridge Paper Products,	Pulverized coal dry	212	265	141

FACILITY	SOURCE	NO_X EMISSION ALLOCA - TIONS (tons/season) 2004	~~ALLOWABLE SEASONAL~~ NO_X ~~EMISSIONS~~ EMISSION ALLOCA - TIONS (tons/season) ~~2004~~ 2005	~~ALLOWABLE SEASONAL~~ NO_X ~~EMISSIONS~~ EMISSION ALLOCA - TIONS (tons/season) ~~2005~~ 2006 and later
Haywood Co.	bottom boiler			
	Pulverized coal dry bottom boiler	187	234	125
	Pulverized coal dry bottom boiler	358	447	239
	Pulverized coal, wet bottom boiler	365	456	244
	Boiler	135	169	90
International Paper Corp., Halifax Co.	Wood/bark-fired boiler- no. 6 oil-fired boiler- pulverized coal, dry bottom boiler	518	648	346
Weyerhaeuser Co. New Bern Mill, Craven Co.	#1 power boiler	181	226	121
	#2 power boiler	58	72	72
International. Paper, Columbus Co.	#3 power boiler	126	158	84
	#4 power boiler	334	418	223
Fieldcrest-Cannon, Plant 1, Cabarrus Co.		174	217	116
~~Transcontinental. Gas Pipeline Station. 160, Rockingham Co.~~	~~Mainline engine #11~~		~~127~~	~~25~~
	~~Mainline engine #12~~		~~127~~	~~25~~
	~~Mainline engine #13~~		~~152~~	~~30~~
	~~Mainline engine #14~~		~~155~~	~~31~~
	~~Mainline engine #15~~		~~187~~	~~37~~
~~Transcontinental. Gas Pipeline Station. 150, Iredell Co.~~	~~Mainline engine #12~~		~~66~~	~~13~~
	~~Mainline engine #13~~		~~68~~	~~13~~
	~~Mainline~~		~~127~~	~~25~~

FACILITY	SOURCE	NO_X EMISSION ALLOCA - TIONS (tons/season) 2004	~~ALLOWABLE SEASONAL~~ NO_X ~~EMISSIONS~~ EMISSION ALLOCA - TIONS (tons/season) ~~2004~~ 2005	~~ALLOWABLE SEASONAL~~ NO_X ~~EMISSIONS~~ EMISSION ALLOCA - TIONS (tons/season) ~~2005~~ 2006 and later
	~~engine #14~~			
	~~Mainline engine #15~~		~~127~~	~~25~~
~~Transcontinental. Gas Pipeline Station 155, Davidson Co.~~	~~Mainline engine #2~~		~~127~~	~~25~~
	~~Mainline engine #3~~		~~109~~	~~22~~
	~~Mainline engine #4~~		~~187~~	~~37~~
	~~Mainline engine #5~~		~~108~~	~~21~~
	~~Mainline engine #6~~		~~108~~	~~21~~

(3) Any source covered under this Rule but not listed in Subparagraphs (b)(1) or (2) of this Paragraph shall have ~~an allowable~~ a nitrogen oxide ~~seasonal rate~~ emission allocation of zero tons per season beginning May 31 through September 30 for 2004 and May 1 through September 30 for 2005 ~~(the ozone season), 2004~~ and each year thereafter until revised according to Rule .1420 of this Section:

(c) Posting of ~~allowable emissions~~. emission allocations. The Director shall post the ~~allowable~~ emission allocations ~~rates~~ for sources covered under this Rule on the Division's web page.

(d) Trading. ~~Facilities~~ Sources may comply with the requirements of this Rule using the nitrogen oxide budget trading program set out in Rule .1419 of this ~~Section or otherwise obtaining offsets under Rule .1420(f) or (g) of this~~ Section.

(e) Monitoring. The owner or operator of a ~~facility~~ source subject to this Rule shall ~~use~~ show compliance using a continuous emission monitor that meets the requirements of 40 CFR Part 75, Subpart H, with such exceptions as allowed under 40 CFR Part 75, Subpart H or 40 CFR Part 96. ~~monitors to show compliance.~~

(f) 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.

(g) Violations. If at the end of the ozone season, the owner or operator of a source whose actual emissions of nitrogen oxides exceed the ~~limit~~ emission allocation in Paragraph (b) of this Rule cannot obtain enough credits under Rule .1419 of this Section to offset these excess emissions, then that source shall be considered in violation for each day that the aggregate emissions of nitrogen oxides exceeded the ~~allowable emissions~~ emission allocation under Paragraph (b) of this Rule beginning May 1 (May 31 for 2004) through September 30 of that ozone season. (If the owner or operator of the source has traded away or otherwise transferred emission allocations for that source, then the emission allocations traded or otherwise transferred shall be subtracted from the source's emission allocations under this Rule before determining compliance.)

(h) Modification and ~~reconstruction~~. reconstruction, replacement, retirement, or change of ownership. The modification or reconstruction of a source covered under this Rule shall not make that source a "new" source under this Rule. A source that is modified or reconstructed shall retain its ~~allowable~~ emission allocation ~~rate~~ under Paragraph (b) of this Rule. If one or more sources covered under this Rule is replaced, the new source shall receive the allocation of the source, or sources, that it replaced instead of an allocation under Rule .1421 of this Section. If the owner of a source changes, the emission allocations under this Rule and revised emission allocations made under Rule .1420 of this Section shall remain with the source. If a source is retired, the owner or operator of the source shall follow the procedures in 40 CFR 96.5. The allocations of a retired source shall remain with the owner or operator of the retired source until a reallocation occurs under Rule .1420 of this Section when the allocation shall be removed and given to other sources if the retired source is still retired.

(i) 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), (7), (10);
Temporary Adoption Eff. November 1, 2000;
Temporary Amendment Eff. August 1, 2001.

15A NCAC 02D .1418 NEW ELECTRIC GENERATING UNITS, LARGE BOILERS, AND LARGE I/C ENGINES

(a) Electric generating units. Emissions of nitrogen oxides from any fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system permitted after October 31, 2000, serving a generator with a nameplate capacity greater than 25 megawatts electrical and selling any amount of electricity shall not exceed:

(1) 0.15 pounds per million Btu for gaseous and solid fuels and 0.18 pounds per million Btu for liquid fuels if it is not covered under Rule .0530 (prevention of significant deterioration) or .0531 (nonattainment area major new source review) of this Subchapter;

(2) 0.15 pounds per million Btu for gaseous and solid fuels and 0.18 pounds per million Btu for liquid fuels or best available control technology requirements of Rule .0530 of this Subchapter, whichever requires the greater degree of reduction, if it is covered under Rule .0530 of this Subchapter; or

(3) lowest available emission rate technology requirements of Rule .0531 of this Subchapter if it is covered under Rule .0531 of this Subchapter.

(b) Large boilers. Emissions of nitrogen oxides from any fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system having a maximu m design heat input greater than 250 million Btu per hour which is permitted after October 31, 2000, and not covered under Paragraph (a) of this Rule, shall not exceed:

(1) 0.17 pounds per million Btu for gaseous and solid fuels and 0.18 pounds per million Btu for liquid fuels if it is not covered under Rule .0530 (prevention of significant deterioration) or .0531 (nonattainment area major new source review) of this Subchapter;

(2) 0.17 pounds per million Btu for gaseous and solid fuels and 0.18 pounds per million Btu for liquid fuels or best available control technology requirements of Rule .0530 of this Subchapter, whichever requires the greater degree of reduction, if it is covered under Rule .0530 of this Subchapter; or

(3) lowest available emission rate technology requirements of Rule .0531 of this Subchapter if it is covered under Rule .0531 of this Subchapter.

(c) Internal combustion engines. The following reciprocating internal combustion engines permitted after October 31, 2000, shall comply with the applicable requirements in ~~40 CFR Part 98, Subpart A, Emissions of NO_x from Stationary Reciprocating Internal Combustion Engines,~~ Rule .1423 of this Section if the engine is not covered under Rule .0530 (prevention of significant deterioration) or .0531 (nonattainment area major source review) of this Subchapter:

(1) rich burn stationary internal combustion engines rated at equal or greater than 2,400 brake horsepower;

(2) lean burn stationary internal combustion engines rated at equal or greater than 2,400 brake horsepower;

(3) diesel stationary internal combustion engines rated at equal or greater than 3,000 brake horsepower; or

(4) dual fuel stationary internal combustion engines rated at equal or greater than ~~2,400~~ 4,400 brake horsepower.

If the engine is covered under Rule .0530 of this Subchapter, it shall comply with the requirements of ~~Subparagraphs (c)(1) through (c)(4) of this Paragraph~~ Rule .1423 of this Section or the best available control technology requirements of Rule .0530 of this Subchapter, whichever requires the greater degree of reduction. If the engine is covered under Rule .0531 of this Subchapter, it shall comply with lowest available emission rate technology requirements of Rule .0531 of this Subchapter.

(d) Monitoring. The owner or operator of a source subject to this ~~rule~~ Rule except internal combustion engines shall ~~use~~ show compliance using continuous emission monitors that meets the requirements of 40 CFR Part 75, Subpart H, with such exceptions as allowed under 40 CFR Part 75, Subpart H or 40 CFR Part 96. ~~monitors to show compliance.~~ Internal combustion engines shall comply with the monitoring requirements in Rule .1423 of this Section. Monitors shall be installed before the first ozone season in which the source will operate and shall be operated each day during the ozone season that the source operates.

(e) Offsets. ~~Except for internal combustion engines covered under Paragraph (c) of this Rule, the owner or operator of a source covered under this Rule shall include in the permit application a demonstration of allocations or offsets adequate to meet the allowable emissions for the source.~~ If emission allocations are ~~that allocation is~~ not granted under Rule .1421 of this Section or ~~is~~ are insufficient to offset the emissions of the source, the owner or operator of the source shall acquire ~~reductions in emissions~~ emission allocations of nitrogen oxides under Rule .1419 of this Section from other sources sufficient to offset its emissions. Sources may comply with the require ments of this Rule using the nitrogen oxide budget trading program set out in Rule .1419 of this ~~Section or obtaining offsets under Rule .1420(f) or (g) of this~~ Section. The owner or operator of internal combustion engines covered under Paragraph (c) of this Rule shall not be required to obtain ~~offsets~~ emission allocations or emission reductions.

History Note: *Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (7), (10);*
Temporary Adoption Eff. November 1, 2000;
Temporary Amendment Eff. August 1, 2001.

15A NCAC 02D .1419 NITROGEN OXIDE BUDGET TRADING PROGRAM

(a) Definitions. For the purposes of this Rule, the definitions in 40 CFR Part 96.2 shall apply except that:

(1) "Permitting agency" means the North Carolina Division of Air Quality: and

(2) "Fossil ~~Fuel"~~ fuel fired" means fossil fuel as defined under Rule .1401 of this Section.

(b) Existing sources. ~~Facilities and sources~~ Sources covered under Rule .1416 or .1417 of this Section may comply with the

requirements of Rule .1416 or .1417 of this Section using the procedures of and complying with the requirements of 40 CFR Part 96, Budget Trading Program for State Implementation Plans, with the following exceptions:

(1) Permit applications shall be submitted following the procedures and schedules in this Section and in Subchapter 02Q of this Title instead of the procedures and schedules in 40 CFR Part 96; and

(2) The dates and schedules for monitoring systems in 40 CFR Part 96 shall not apply; however, if a source operates during the ozone season, ~~a source shall not participate in the nitrogen oxide budget trading program under this Rule until it has installed and is operating~~ it shall have installed and begun operating by May 1, 2004, a continuous emissions monitoring system that complies with 40 CFR Part 96.

(c) New sources. ~~Facilities and~~ Except for internal combustion engines, sources covered under Rule .1418 of this Section may comply with the requirements of Rule .1418 of this Section using the procedures of and complying with the requirements of 40 CFR Part 96, Budget Trading Program for State Implementation Plans, with the following exceptions:

(1) Permit applications shall be submitted following the procedures and schedules in this Section and in Subchapter 2Q of this Title instead of the procedures and schedules in 40 CFR Part 96; and

(2) The dates and schedules for monitoring systems in 40 CFR Part 96 shall not apply; however, a source shall not operate during the ozone season ~~participate in the nitrogen oxide budget trading program under this Rule~~ until it has installed and is operating a continuous emissions monitoring system that complies with 40 CFR Part 96.

(d) Opt-in provisions. Sources not covered under Rules .1416, .1417, or .1418 of this Section or internal combustion engines may opt-into ~~in to~~ the budget trading program of 40 CFR Part 96 by following the procedures and requirements of 40 CFR Part 96, Subpart I, including using continuous emission monitors that meet the requirements of 40 CFR Part 75, Subpart H. ~~I.~~

(e) Divisional requirements. The Director and the Division of Air Quality shall follow the procedures of 40 CFR Part 96 in reviewing permit applications and issuing permits for NO_x Budget sources, in approving or disapproving monitoring systems for NO_x Budget sources, and in taking enforcement action against NO_x Budget sources. The Director may issue permits after May 1, 2003, for sources covered under this Section that are participating in the nitrogen oxide budget trading program under this Section. The provisions of 40 CFR Part 96 pertaining to early reduction credits shall not apply.

(f) Submitting ~~allowance~~ emission allocations to the EPA. For sources covered under Rules .1416, .1417, or .1418, ~~facilities participating in the NO_x budget trading program~~, the Director shall submit to the Administrator of the Environmental Protection Agency NO_x ~~allowance~~ emission allocations according to 40 CFR Part 96. The Environmental Management Commission and the Director shall follow Rule .1416, .1417, and .1420 for ~~allowance~~ emission allocations instead of the methodology specified in 40 CFR Part 96. The Environmental Management Commission and the Director shall follow, Rule .1421 of this Section for set-asides and new source allocations instead of the provisions of 40 CFR Part 96. The Environmental Management Commission and the Director shall follow Rule .1422 of this Section for distributing the compliance supplement pool instead of the provisions of 40 CFR Part 96.

(g) EPA to administer. The United States Environmental Protection Agency (EPA) shall administer the budget trading program of 40 CFR Part 96 on behalf of North Carolina. The Director shall provide the EPA the information necessary under 40 CFR Part 96 for the EPA to administer 40 CFR Part 96 on behalf of North Carolina. The owner or operator of each source covered under Rule .1416, .1417, or .1418, except internal combustion engines, of this Section shall establish an account, designate an authorized account representative, and comply with the other requirements of 40 CFR Part 96 as necessary for the EPA to administer the nitrogen oxide budget trading program on behalf of North Carolina.

(h) Restrictions on trading. NO_x ~~allowances~~ emission allocations obtained under this Rule shall not be used to meet the emission limits for a source if compliance with that emission limit is required as part of the State Implementation Plan to attain or maintain the ambient air quality ozone standard. Sources covered under Rule .0531 (nonattainment area major new source review) of this Subchapter shall not use the nitrogen oxide budget trading program to comply with Rule .0531 of this Subchapter.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10);
Temporary Adoption Eff. November 1, 2000;
Temporary Amendment Eff. August 1, 2001.

15A NCAC 02D .1420 PERIODIC REVIEW AND REALLOCATIONS

(a) Periodic Review. ~~By~~ In 2006 and every five years thereafter, the Environmental Management Commission shall review the ~~allowable tons per season~~ emission allocations ~~limits~~ of sources covered under Rules .1416, .1417, or .1418 of this Section and decide if any revisions are needed. In making this decision the Environmental Management Commission shall consider the following:

(1) the size of the allocation pool for new source growth under Rule .1421 of this Section;

(2) the amount of emissions allocations requested under Rule .1421 of this Section;

(3) the amount of emissions allocations available through nitrogen oxide budget trading program;

(4) the impact of reallocation on existing sources;

(5) the impact of reallocations on sources covered under Rule .1421 of this Section;

(6) impact on future growth; and

(7) other relevant information on the impacts of reallocation.

(b) Procedures for making revisions. In making these revisions, the Environmental Management Commission shall decide if the revised ~~allowable~~ emission allocations ~~rates~~ shall be based on energy input or energy output. Once this decision is made, the

Division shall calculate the revised allowable emission allocation ~~rate~~ of sources covered under this Rule using the following procedure:

(1) The seasonal energy input (or energy output) for each source covered under this Rule is calculated by averaging the two highest seasonal energy inputs (or energy outputs) for the four most recent years. If the source operated only one of these four years, the seasonal energy input (or energy output) for that year is used. If the source did not operate in any of these years, its projected seasonal energy input (or energy output) is used. The seasonal energy inputs (or energy outputs) are in terms of million Btu per season. The season is beginning May 1 through September 30;

(2) Seasonal emission allocations ~~rates~~ in terms of pounds per season are calculated for each source covered under this Rule as follows:

(A) For fossil fuel-fired stationary boilers, combustion turbines, or combined cycle systems serving a generator with a nameplate capacity greater than 25 megawatts electrical and selling any amount of electricity, the seasonal energy input (or energy output) for each source is multiplied by ~~by:~~

~~(i)~~ 0.15 pounds per million Btu. ~~Btu if it is not covered under Rule .0530 (prevention of significant deterioration) or .0531 (nonattainment area major new source review) of this Subchapter;~~

~~(ii) 0.15 pounds per million Btu or best available control technology requirements of Rule .0530 of this Subchapter, whichever requires the greater degree of reduction, if it is covered under Rule .0530 of this Subchapter; or~~

~~(iii) lowest available emission rate technology requirements of Rule .0531 of this Subchapter if it is covered under Rule .0531 of this Subchapter.~~

(B) For fossil fuel-fired stationary boilers, combustion turbines, or combined cycle systems having a maximum design heat input greater than 250 million Btu per hour that are not covered under Part (A) of this Subparagraph, the seasonal energy input (or energy output) for each source is multiplied ~~by:~~ by

~~(i)~~ 0.17 pounds per million Btu. ~~Btu if it is not covered under Rule .0530 (prevention of significant deterioration) or .0531 (nonattainment area major new source review) of this Subchapter;~~

~~(ii) 0.17 pounds per million Btu or best available control technology requirements of Rule .0530 of this Subchapter, whichever requires the greater degree of reduction, if it is covered under Rule .0530 of this Subchapter; or~~

~~(iii) lowest available emission rate technology requirements of Rule .0531 of this Subchapter if it is covered under Rule .0531 of this Subchapter.~~

~~(C) For rich burn stationary internal combustion engines rated at equal or greater than 2,400 brake horsepower, lean burn stationary internal combustion engines rated at equal or greater than 2,400 brake horsepower, diesel stationary internal combustion engines rated at equal or greater than 3,000 brake horsepower, or dual fuel stationary internal combustion engines rated at equal or greater than 2,400 brake horsepower covered under Rule .1417 of this Section, the seasonal energy input (or energy output) for each source is multiplied by 0.91 pounds per million Btu.~~

(3) The individual ~~seasonal~~ emission allocation ~~rates~~ calculated under Subparagraph (2) of this Paragraph are divided by 2000 pounds per ton:

(4) The individual source ~~tonnage seasonal~~ emission allocation ~~rates~~ calculated under Subparagraph (3) of this Paragraph are summed; and

(5) Each individual source ~~tonnage seasonal~~ emission allocation ~~rate~~ calculated under Subparagraph (3) of this Paragraph is multiplied by:

(A) ~~40,814~~ 39,863 plus 50 percent of any available credits from the inspection/maintenance program if the cumulative ~~tonnage seasonal~~ emission allocation ~~rate~~ calculated in Subparagraph (4) of this Paragraph is greater than ~~40,814~~ 39,863 until the EPA promulgation of revisions after November 1, 2000, to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina; or

(B) ~~34,504~~ 33,553 plus 50 percent of any available credits from the inspection/maintenance program if

the cumulative tonnage seasonal emission rate calculated in Subparagraph (4) of this Paragraph is greater than ~~34504~~ 33,553 after the EPA promulgation of revisions after November 1, 2000, to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina.

This product is then divided by the cumulative ~~tonnage seasonal~~ emission allocation ~~rate~~ calculated in Subparagraph (4) of this Paragraph. This calculated rate, rounded to the nearest ton, is the revised ~~allowable~~ emission allocation ~~rate~~ for that source.

(c) Adjustments to reallocation. If any source has been permitted for and has complied with an emission rate of 0.10 pounds per million Btu or less, it shall receive the greater of the emission allocations calculated under Paragraph (b) of this Rule and its current emission allocations. The current emission allocations retained shall be summed, and this sum shall be subtracted from the multiplier in Subparagraph (b)(5) of this Rule. Then the emission allocations shall be revised under Paragraph (d) of this Rule using this new smaller multiplier.

~~(c)~~(d) Process for adopting revised ~~limits.~~ emission allocations. The Environmental Management Commission may ~~make these revisions~~ revise emission allocations under this Rule without going through rulemaking. The Director shall put the new ~~allowable~~ emission allocation ~~rates~~ in the respective air quality permits after they are approved by the Environmental Management Commission. ~~If the source is participating in the nitrogen oxide budget trading program under Rule .1419 of this Section, the~~ The Director shall notify the Environmental Protection Agency of the new ~~allowable~~ emission allocation. ~~rate.~~

~~(d)~~(e) Public hearing. Before approving the ~~allowable emissions~~ emission allocations calculated under Paragraph (b) or (c) of this Rule, the Environmental Management Commission shall hold a public hearing on the determination under Paragraph (b) or (c) of this Rule. The public hearing shall allow at least 45 days for comments from the time that the notice appears in the North Carolina Register.

~~(e)~~(f) Compliance with new limits. The new ~~allowable~~ emission allocation ~~rates~~ shall become effective at the beginning of the third ozone season following the adoption of the new ~~allowable~~ emission allocation ~~rate (tons per season)~~ by the Environmental Management Commission.

~~(f) Transfer of Allowable Emission Rates. The owner or operator of a source covered under Rule .1416, .1417, or .1418 of this Section may transfer part or all of the allowable emissions of that source to another source covered under Rule .1416, .1417, or .1418 of this Section. Such transfers shall be permanent unless the Director and the involved parties agree to an alternative proposal. The person requesting the transfer shall submit the following information to the Director:~~

~~(1) the name, address, and permit number of the source providing the allowable emissions to be transferred and the new allowable emission rate for this source;~~

~~(2) the name, address, and permit number of the source receiving the allowable emissions to be transferred and the new allowable emission rate for this source;~~

~~(3) the amount of allowable emissions in tons per season being transferred; and~~

~~(4) documentation that the owner or operator of the source providing the allowable emissions and the owner or operator receiving the allowable emissions agree to the transfer.~~

~~The Director may approve the transfer if he finds that all the information required by this Paragraph has been submitted and that the amount of allowable emissions being transferred are available to be transferred. If the Director approves the transfer, he shall put the new allowable emission rates in the respective permits and shall notify the Environmental Protection Agency of the new allowable emission rates if one or more of the sources involved in the transfer are participating in the trading program under Rule .1419 of this Section. Any allowable emissions transferred under this Paragraph shall expire when the new allowable emission rates become effective under Paragraph (e) of this Rule.~~

~~(g) Offsets from non-covered sources. The owner or operator of a source covered under Rule .1416, .1417, or .1418 of this Section may offset part or all of the allowable emissions of that source by reducing the emissions of another source in North Carolina not covered under Rule .1416, .1417, or .1418 of this Section by an amount equal to or greater than the allowable emissions being offset. Only actual decreased emissions that have not previously been relied on to comply with Subchapter 2D or 2Q of this Title or Title 40 of the Code of Federal Regulations can be used to offset the emissions of another source. The person requesting the offset shall submit the following information to the Director:~~

~~(1) the name, address, and permit number of the source providing the offset and what the new allowable emission rate for the source will be;~~

~~(2) the name, address, and permit number of the source receiving the offset and what the new allowable emission rate for the source will be;~~

~~(3) the amount of allowable emissions in tons per season being offset;~~

~~(4) a description of the monitoring (which shall be a continuous emissions monitoring system), recordkeeping, and reporting that shall be used to show compliance;~~

~~(5) documentation that the offset is an actual decrease in emissions that has not previously been relied on to comply with Subchapter 2D or 2Q of this Title or Title 40 of the Code of Federal Regulations and,~~

~~(6) documentation that the owner or operator of the source providing the allowable emissions and the owner or operator of the source receiving the allowable emissions agree to the offset.~~

~~The Director may approve the offset if he finds that all the information required by this Paragraph has been submitted and that the offset is an actual decrease in emissions that have not previously been relied on to comply with Subchapter 2D or 2Q of this Title or Title 40 of the Code of Federal Regulations. If the Director approves the offset, he shall put the new allowable emission rates in the respective permits and shall notify the~~

~~Environmental Protection Agency of the new allowable emission rates if one or more of the sources involved in the transfer are participating in the trading program under Rule .1419 of this Section. Any allowable emissions established under this Paragraph shall expire when the new allowable emission rates become effective under Paragraph (e) of this Rule.~~

~~(h)~~(g) Posting of ~~allowable emissions.~~ emission allocations. The Director shall post the ~~allowable~~ emission allocations ~~rates~~ calculated or transferred under this Rule on the Division's web page.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10);
Temporary Adoption Eff. November 1, 2000;
Temporary Amendment Eff. August 1, 2001.

15A NCAC 02D .1421 ALLOCATIONS FOR NEW GROWTH OF MAJOR POINT SOURCES

(a) Purpose. The purpose of this Rule is to establish an allocation pool from which ~~allowable seasonal emissions~~ emission allocations of nitrogen oxides may be allocated to sources permitted after October 31, 2000.

(b) Eligibility. This Rule applies only to the following types of sources covered under Rule .1418 of this Section, and permitted after October 31, 2000:

(1) fossil fuel-fired stationary boilers, combustion turbines, or combined cycle systems serving a generator with a nameplate capacity greater than 25 megawatts electrical and selling any amount of electricity; or

(2) fossil fuel-fired stationary boilers, combustion turbines, or combined cycle systems having a maximum design heat input greater than 250 million Btu per hour that ~~is~~ are not covered under Subparagraph (1) of this Paragraph.

(c) Requesting allocation. To receive ~~an allocation~~ emission allocations under this Rule, the owner or operator of the ~~facility~~ source shall provide the following written documentation to the ~~Director:~~ Director before January 1 of the year preceding the ozone season for which the emission allocation is sought:

(1) a description of the combustion source or sources including heat input; ~~the date on which operation began or is planned to begin;~~

(2) evidence that the source complies with the emission limit under Rule .1418 of this Section;

(3) an estimate of the actual emissions of nitrogen oxides in tons per ozone season;

(4) the expected hours of operation during the ozone season;

(5) the date on which the source is expected to begin operating if it is not already operating;

~~(4)~~(6) the tons per ozone season of emission allocations ~~allocation~~ being requested (the amount requested shall be the lesser of the estimated actual emissions under Subparagraph (3) of this Paragraph or the product of the emission limit under Rule .1418 of this Section times the maximum design heat input in millions of Btu per hour times the number of hours that the source is projected to operate not to exceed 3672 hours divided by 2000); ~~requested, not to exceed 500;~~ and

~~(5)~~(7) a description of the monitoring, recordkeeping, and reporting plan that will assure continued compliance.

(d) Approving requests. The Director may approve a request for emissions allocation if he finds that:

(1) All the information and documentation required under Paragraph (c) of this Rule has been submitted;

(2) The request was received before January 1;

~~(2)~~(3) The source is eligible for ~~an allocation~~ emission allocations under this Rule;

~~(3)~~(4) The source complies with Rule .1418 of this Section;

~~(4)~~(5) The requested ~~allocation does~~ emission allocations do not exceed the estimated actual emissions of nitrogen oxides; ~~and~~

(6) The source has or is likely to have an air quality permit before the end of the upcoming ozone season; and

(7) The source is operating or is scheduled to begin operating before the end of the upcoming ozone season.

~~(5) The requested allocation does not exceed 500 tons per season or the amount remaining in the allocation pool under this Rule, whichever is less.~~

~~The Director shall only approve emissions allocations under this Rule for years in which operation occurs.~~

(e) Preliminary allocations. By March 1 before each ozone season, the Director shall have calculated and posted on the Division's web page preliminary emission allocations for sources whose requests under this Rule he has approved. Preliminary emission allocations shall be determined as follows:

(1) If the emission allocations requested do not exceed the amount in the pool, each source shall have a preliminary allocation equal to its request.

(2) If the emission allocations requested exceed the amount in the pool, each source's emission allocations shall be calculated as follows:

(A) For each source, its maximum design heat input in millions of Btu per hour is multiplied by the number of hours that the source is projected to operate not to exceed 3672 hours; this product is the source's seasonal heat input;

(B) The seasonal heat inputs calculated under Part (A) of this Subparagraph are summed.

(C) For each source, its seasonal heat input calculated under Part (A) of this Subparagraph is multiplied by the tons of emission allocations in the allocation pool and divided by the sum of seasonal heat inputs calculated under Part (B) of this Subparagraph; this amount is the

source's preliminary emission allocations.

The preliminary emission allocations computed under this Paragraph may be revised under Paragraph (f) of this Rule after the ozone season. Emissions allocations issued under this Paragraph are solely for planning purposes and are not reported to the EPA to be recorded in allowance tracking system account. The emission allocations granted under Paragraph (f) of this Rule shall be the emission allocations granted the source to offset its emissions.

~~(e)~~(f) Final allocations. According to Paragraph (g) of this Rule, the Director shall grant emission allocations for each source for which he has approved an allocation from the allocation pool as follows:

(1) For each individual source, its allowable emission rate under Rule .1418 of this Section is multiplied by its heat input during the ozone season. This product is divided by 2000.

(2) The lesser of the source's actual emissions of nitrogen oxides, the value calculated under Subparagraph (1) of this Paragraph, or the preliminary emission allocations determined under Paragraph (e) of this Rule shall be the source's emission allocation from the allocation pool.

Emissions allocations granted under this Paragraph are reported to the EPA to be recorded in allowance tracking system account.

~~Adjustments by the Director. The Director shall reduce the amount of emissions allocation requested under this Rule if he determines that the emissions allocation requested exceeds the amount in the allocation pool or exceeds the actual emissions of nitrogen oxides. If the emissions allocation requested exceeds the amount in the allocation pool, the Director shall reduce the emission allocation to the amount in the allocation pool. If the emissions allocation requested exceeds the actual emissions of nitrogen oxides, the Director shall reduce the emission allocation to the actual emissions.~~

(g) Issuance of final allocations. By November 1 following each ozone season, the Director shall issue final allocations according to Paragraph (f) of this Rule and shall notify each source that receives an allocation of the amount of allocation that it has been granted. By November 1 following the ozone season, the Director shall also notify the EPA of allocations issued and to whom they have been issued and the amount issued to each source. The Director shall post the final allocations on the Division's web page.

~~(f)~~(h) Initial allocation pool.

(1) Before the EPA promulgation of revisions after November 1, 2000, to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina, the allocation pool shall contain the following:

(A) in 2004, ~~1,197~~ 122 tons;

(B) in 2005, ~~1,197~~ 599 tons;

(C) in 2006, ~~1,010~~ 505 tons;

(D) in 2007, ~~2,116~~ 1058 tons; and

(E) in 2008 and each year after that, 50 percent of any available credits from the inspection/maintenance program.

(2) After the EPA promulgates revisions to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina, the allocation pool shall contain the following:

(A) in 2004, ~~1,198~~ 122 tons;

(B) in 2005, ~~1,010~~ 78 tons;

(C) in 2006, ~~2,233~~ 1117 tons;

(D) in 2007, ~~3,339~~ 1670 tons; and

(E) in 2008 and each year after that, 50 percent of any available credits from the inspection/maintenance program.

~~(g)~~(i) Changes in the allocation pool. ~~The Director shall revise the allocation pool each time he approves a request for an allocation by subtracting the approved amount from the allocation pool.~~ Beginning in 2008, the Director shall add to the allocation pool by ~~May~~ March 1 of each year any available credits from the inspection/maintenance program.

(j) Carryover. Emission allocations remaining in the allocation pool at the end of the year shall be carried over into the next year for use during the next ozone season.

(k) Future requests. Once the owner or operator of a source has made a request under this Rule for emission allocations from the allocation pool, he does not have to request emission allocations under this Rule in future years. The request shall automatically be included in following years as long as the source remains eligible for emission allocations under this Rule.

(l) Lost of eligibility. Once a source receives emission allocations under Rule .1420 of this Section, it shall no longer be eligible for emission allocations under this Rule.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10);
Temporary Adoption Eff. November 1, 2000;
Temporary Amendment Eff. August 1, 2001.

15A NCAC 02D .1422 COMPLIANCE SUPPLEMENT POOL CREDITS

(a) Purpose. The purpose of this Rule is to regulate North Carolina's eligibility for and use of the Compliance Supplement Pool under 40 CFR 51.121(e)(3).

(b) Eligibility. Facilities covered under Rule .1416 of this Section may earn Compliance Supplement Pool Credits for those nitrogen oxide emissions reductions required by Rule .1416 of this Section that are achieved after September 30, 1999 and before May 1, 2003, and are beyond the total emission reductions required under 40 CFR Part 76.

(c) Credits. The Compliance Supplement Pool Credits earned under the auspices of this Rule shall be tabulated in terms of tons of nitrogen oxides reduced per ozone season. The control device, modification, or change in operational practice that enables the combustion source or sources to achieve the emissions reductions shall be permitted. The facility shall provide the Division of Air Quality with written notification certifying the installation and operation of the control device or the modification or change in operational practice that enables the combustion source or sources to achieve the emissions reduction. Only emission reductions that are beyond emission reductions required under 40 CFR Part 76 are credible. Compliance Supplement Pool Credits are counted in successive seasons through May 1, 2003. Seasonal credits shall be recorded in a Division of Air Quality database and will accumulate in this database until May 1, 2003. At that point a cumulative total of all the Compliance Supplement Pool Credits earned during the

entire period shall be tabulated. These credits will then be available for use by the State of North Carolina to achieve compliance with the State ozone season NOx budget.

(d) Requesting credits. In order to earn Compliance Supplement Pool Credits, the owner or operator of the facility shall provide the following written documentation to the Director before January 1, 2003.

(1) the combustion source or sources involved in the emissions reduction;

(2) the start date of the emissions reduction;

(3) a description of the add-on control device, modification, or change in operational practice that enables the combustion source or sources to achieve the emissions reduction;

(4) the current, or baseline, emissions of nitrogen oxides of the combustion source or sources involved in this reduction in terms of tons of nitrogen oxides per season;

(5) the amount of reduction of emissions of nitrogen oxides achieved by this action in terms of tons of nitrogen oxides per season per combustion source involved;

(6) the total reduction of nitrogen oxides achieved by this action in terms of tons of nitrogen oxides per season for all the combustion sources involved;

(7) a demonstration that the proposed action have reduced the emissions of nitrogen oxides from the combustion sources involved by the amount specified in Subparagraphs (d)(5) and (d)(6) of this Rule; and

(8) a description of the monitoring, recordkeeping, and reporting plan used to ensure continued compliance with the proposed emissions reduction activity; continuous emissions monitors shall be used to monitor emissions.

(e) Approving requests. Before any Compliance Supplement Pool Credits can be allocated, the Director shall have to approve them. The Director may approve credits if he finds that:

(1) early emissions reductions are beyond the reductions required under 40 CFR Part 76, Acid Rain Nitrogen Oxides Emission Reduction Program,

(2) the emission reductions are achieved after September 30, 1999, and before May 1, 2003, and

(3) all the information and documentation required under Paragraph (d) of this Rule have been submitted.

The Director shall notify the owner or operator of the source and EPA of his approval or disapproval of a request and of the amount of Compliance Supplement Pool Credits approved. If the Director disapproves a request or part of a request, he shall explain in writing to the owner or operator of the source the reasons for disapproval.

(f) Compliance supplement pool. The Director shall verify that the Compliance Supplement Pool Credits do not exceed a combined total of 10,737 tons for the ozone seasons of the years 2003, 2004, and 2005.

(g) Interim report. The owner or operators of the facility shall submit to the Director by January 1, 2001 and January 1, 2002 an interim report that contains the information in Paragraph (d) of this Rule for the previous ozone season.

(h) Recording credits. Based on the interim reports submitted under Paragraph (g) of this Rule, the Division shall record the Compliance Supplement Pool Credits earned under the auspices of this Rule in a central database. The Division of Air Quality shall maintain this database. These credits shall be recorded in terms of tons of emissions of nitrogen oxides reduced per season with the actual start date of the reduction activity. Based on the final formal request submitted under Paragraph (d) of this Rule as approved under Paragraph (e) of this Rule, the Director shall finalize the Compliance Supplement Pool Credits earned and record the final earned credits in the Division's database.

(i) Use of credits. Compliance Supplement Pool Credits shall be available for Carolina Power & Light Co. and Duke Power Co. to use in 2003. The allocations of Carolina Power & Light Co.'s sources and Duke Power Co.'s sources in Rule .1416 of this Section shall be reduced for 2004 or 2005 by the amount of Compliance Supplement Pool Credits used in 2003 using the procedures in Paragraph (k) of this Rule. Compliance Supplement Pool Credits not used in 2003 shall be available for use by the Director of the Division of Air Quality to offset exceedances of the emissions of nitrogen oxides in order to achieve compliance with the North Carolina ozone season NOx budget after May 1, 2004, but no later than May 1, 2006. The credits shall be used on a one for one basis, that is, one ton per season of credit can be used to offset one ton, or less, per season of excess emissions to achieve compliance with the requirements of Rules .1416 or .1417 of this Section. All credits shall expire and will no longer be available for use after May 1, 2006

(j) Reporting. The Director shall report:

(1) to the EPA, Carolina Power & Light Co. and Duke Power Co. by

(A) March 1, 2003 the Compliance Supplement Pool Credits earned by Carolina Power & Light Co. and by Duke Power Co., and

(B) March 1, 2004 the reductions in allocations calculated under Paragraphs (k) and (l) of this Rule; and

(2) to the EPA by:

(A) December 1, 2003, the Compliance Supplement Pool Credits used beginning May 1 through September 30, 2003;

(B) December 1, 2004, the Compliance Supplement Pool Credits used beginning May 31 through September 30, 2004; and

(C) December 1, 2005, the Compliance Supplement Pool Credits used beginning May 1 through September 30, 2005.

(k) Using Compliance Supplement Pool Credits in 2003. Carolina Power & Light Co. and Duke Power Co. may use Compliance Supplement Pool Credits in 2003. If they do use Compliance Supplement Pool Credits in 2003, then the allocations for their sources in Rule .1416 of this Section shall be reduced for 2004 or 2005 by the amount of Compliance Supplement Pool Credits used in 2003. Before the Director

approves the use of Compliance Supplement Pool Credits in 2003, the company shall identify the sources whose allocations are to be reduced to offset the Compliance Supplement Pool Credits requested for 2003 and the year (2004 or 2005) in which the allocation is reduced. The Director shall approve no more than 4,295 tons for Carolina Power & Light Co. and no more than 6,442 tons for Duke Power Co. The Director shall approve no more than 5,771 tons being offset by reductions in allocations in 2004 and no more than 4,966 tons being offset by reductions in allocations in 2005.

(l) Failure to receive sufficient credits. If the sum of Compliance Supplement Pool Credits received by Carolina Power & Light Co. and Duke Power Co. are less than 10,737 tons, the following procedure shall be used to reduce the allocations in Rule .1416 of this Section:

(1) If the Compliance Supplement Pool Credits received by Carolina Power & Light Co. are less than 4,295 tons, and the Compliance Supplement Pool Credits received by Duke Power Co. are greater than or equal to 6,442 tons, the allocation for Carolina Power & Light Co.'s sources shall be reduced by amount obtained by subtracting from 10,737 tons the sum of Compliance Supplement Pool Credits received by Carolina Power & Light Co. and Duke Power Co. The allocations of Carolina Power & Light Co.'s sources shall be reduced using the procedure in Subparagraph (4) of this Paragraph.

(2) If the Compliance Supplement Pool Credits received by Duke Power Co. are less than 6,442 tons, and the Compliance Supplement Pool Credits received by Carolina Power & Light Co. are greater than or equal to 4,295 tons, the allocation for Duke Power Co.'s sources shall be reduced by amount obtained by subtracting from 10,737 tons the sum of Compliance Supplement Pool Credits received by Carolina Power & Light Co. and Duke Power Co. The allocations of Duke Power Co.'s sources shall be reduced using the procedure in Subparagraph (4) of this Paragraph.

(3) If the Compliance Supplement Pool Credits received by Carolina Power & Light Co. are less than 4,295 tons, and the Compliance Supplement Pool Credits received by Duke Power Co. are less than 6,442 tons:

(A) The allocation for Carolina Power & Light Co.'s sources shall be reduced by amount obtained by subtracting from 4,295 tons the Compliance Supplement Pool Credits received by Carolina Power & Light Co. The allocations of Carolina Power & Light Co.'s sources shall be reduced using the procedure in Subparagraph (4) of this Paragraph; and

(B) The allocation for Duke Power Co.'s sources shall be reduced by amount obtained by subtracting from 6,442 tons the Compliance Supplement Pool Credits received by Duke Power Co. The allocations of Duke Power Co.'s sources shall be reduced using the procedure in Subparagraph (4) of this Paragraph.

(4) When the allocations in Rule .1416 of this Section for Carolina Power & Light Co.'s sources or for Duke Power Co.'s sources are required to be reduced, the following procedure shall be used:

(A) If the reduction required is less than or equal to 4,966 tons, then following procedure shall be used:

(i) The allocation of all sources listed in Rule .1416 of this Section for 2005 for Carolina Power & Light Co. or Duke Power Co. are summed.

(ii) The reduction required under Subparagraphs (1), (2), or (3) of this Paragraph is subtracted from the sum computed under Subpart (i) of this Part.

(iii) The allocation of each source listed in Rule .1416 of this Section for 2005 for Carolina Power & Light Co. or Duke Power Co. is multiplied by the value computed under Subpart (ii) of this Part and divided by the value computed Subpart (i) of this Part. The result is the revised allocation for that source.

(B) If the reductions required is more than 4,966 tons, then the following procedure shall be used:

(i) The reductions for the allocations for 2005 is determined using the procedure under Part (A) of this Subparagraph and substituting 4,966 as the reduction required under Subpart (A)(ii) of this Subparagraph.

(ii) The reduction for the allocations for 2004 shall be determined using the following procedure:

(I) The reduction require required under Subparagraphs (1), (2), or (3) of this Paragraph is

subtracted from 4,966.

(II) The allocations of all sources listed in Rule .1416 of this Section for 2004 for Carolina Power & Light Co. or Duke Power Co. for 2004 are summed.

(III) The allocation of each source listed in Rule .1416 of this Section for 2004 for Carolina Power & Light Co. or Duke Power Co. is multiplied by the value computed under Sub-Subpart (I) of this Subpart and divided by the value computed Sub-Subpart (II) of this Subpart. The result is the revised allocation for that source

(m) If allocations are reduced in 2004 or 2005 for Carolina Power & Light Co. or Duke Power Co. under Paragraphs (k) or (l) of this Rule, the company whose allocations are reduced shall reduce its allocations by returning allowances through the use of allowances transfers to the State following the procedures in 40 CFR Part 96. These allowances shall be retired.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10);
Temporary Adoption Eff. August 1, 2001.

15A NCAC 02D .1423 LARGE INTERNAL COMBUSTION ENGINES

(a) Applicability. This Rule applies to the following internal combustion engines subject to Rule .1418 of this Section and permitted after October 30, 2000:

(1) rich burn stationary internal combustion engines rated at equal or greater than 2,400 brake horsepower,

(2) lean burn stationary internal combustion engines rated at equal or greater than 2,400 brake horsepower,

(3) diesel stationary internal combustion engines rated at equal or greater than 3,000 brake horsepower, or

(4) dual fuel stationary internal combustion engines rated at equal or greater than 4,400 brake horsepower,

(b) Emission limitation. The owner or operator of a stationary internal combustion engine shall not cause to be emitted into the atmosphere nitrogen oxides in excess of the following applicable limit, expressed as nitrogen dioxide corrected to 15 percent parts per million by volume (ppmv) stack gas oxygen on a dry basis, averaged over a rolling 30-day period, as may be adjusted under Paragraph (c) of this Rule:

MAXIMUM ALLOWABLE EMISSION CONCENTRATION FOR STATIONARY INTERNAL COMBUSTION ENGINES
(parts per million)

Engine Type	Limitation
Rich-burn	110
Lean-burn	125
Diesel	175
Dual fuel	125

(c) Adjustment. Each emission limit expressed in Paragraph (b) of this Rule may be multiplied by X, where X equals the engine efficiency (E) divided by a reference efficiency of 30 percent. Engine efficiency (E) shall be determined using one of the methods specified in Subparagraphs (1) or (2) of this Paragraph, whichever provides a higher value. However, engine efficiency (E) shall not be less than 30 percent. An engine with an efficiency lower than 30 percent shall be assigned an efficiency of 30 percent.

(1)

$$E = \frac{(\text{Engine output})*(100)}{\text{Energy input}}$$

where energy input is determined by a fuel measuring device accurate to plus or minus 5 percent and is based on the higher heating value (HHV) of the fuel. Percent efficiency (E) shall be averaged over 15 consecutive minutes and measured at peak load for the applicable engine.

(2)

$$E = \frac{\text{Manufafturer's Rated Efficiency [continuous] at LHV})*(\text{LHV})}{\text{HHV}}$$

where LHV is the lower heating value of the fuel; and HHV is the higher heating value of the fuel.

(d) Compliance determination and monitoring. The owner or operator of an internal combustion engine subject to the requirements of this Rule shall determine compliance using:

(1) a continuous emissions monitoring system (CEMS) which meets the applicable requirements of Appendices B and F of 40 CFR part 60, excluding data obtained during periods specified in Paragraph (g) of this Rule and Rule .1404 of this Section; or

(2) an alternate calculated and recordkeeping procedure based on actual emissions testing and correlation with operating parameters.

The installation, implementation, and use of this alternate procedure shall be approved by the Director before it may be used. The Director may approve the alternative procedure if he finds that it can show the compliance status of the engine.

(e) Reporting requirements. The owner or operator of a stationary internal combustion engine subject to this Rule submit:

(1) a report documenting the engine's total nitrogen oxide emissions beginning May 1 through September 30 of each year to the Director by October 31 of each year, beginning with the year of first ozone season that the engine operates.

(2) an excess emissions and monitoring systems performance report, according to the requirements of 40 CFR 60.7(c) and 60.13, if a continuous emissions monitoring system is used.

(f) Recordkeeping requirements. The owner or operator of a stationary internal combustion engine subject to this Rule shall maintain all records necessary to demonstrate compliance with the Rule for two calendar years at the facility at which the engine is located. The records shall be made available to the Director upon request. The owner or operator shall maintain records of the following information for each day the engine operates:

(1) identification and location of the engine;

(2) calendar date of record;

(3) the number of hours the engine operated during each day, including startups, shutdowns, and malfunctions, and the type and duration of maintenance and repairs;

(4) date and results of each emissions inspection;

(5) a summary of any emissions corrective maintenance taken;

(6) the results of all compliance tests; and

(7) if a unit is equipped with a continuous emission monitoring system:

(A) identification of time periods during which nitrogen oxide standards are exceeded, the reason for the exceedance, and action taken to correct the exceedance and to prevent similar future exceedances; and

(B) identification of the time periods for which operating conditions and pollutant data were not obtained including reasons for not obtaining sufficient data and a description of corrective actions taken.

(g) Exemptions. The emission standards of this Rule shall not apply to the following periods of operation:

(1) start-up and shut-down periods and periods of malfunction, not to exceed 36 consecutive hours; and

(2) regularly scheduled maintenance activities.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10);
Temporary Adoption Eff. August 1, 2001.

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Rule-making Agency: *NC Wildlife Resources Commission*

Rule Citation: *15A NCAC 10F .0323*

Temporary Effective Date: *August 15, 2001*

Findings Reviewed and Approved by: *Julian Mann*

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the NC Wildlife Resources Commission intends to amend the rule cited as 15A NCAC .0323. Notice of Rule-making Proceedings was published in the Register on June 1, 2001.*

Proposed Effective Date: *August 1, 2002*

Authority for the rulemaking: *G.S. 75A-3; 75A-15*

Public Hearing:
Date: *August 30, 2001*
Time: *10:00 a.m.*
Location: *Room 332, Archdale Building, 512 N. Salisbury St., Raleigh, NC*

Reason for Proposed Action: *The Burke County Board of Commissioners initiated the no-wake zone pursuant to G.S 75A-15 to protect public safety in the areas by restricting vessel speed.*

Comment Procedures: *The North Carolina Wildlife Resources Commission has authority to adopt temporary rules pursuant to G.S. 150B-21.1(a1). Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments through September 14, 2001. Such written comments must be delivered or mailed to the NC Wildlife Resources Commission, 1701 Mail Service Center, Raleigh, NC 27699-1701.*

Fiscal Impact
☐ **State**
☒ **Local**
☐ **Substantive (**≥$5,000,000**)**
☐ **None**

CHAPTER 10 – WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10F – MOTORBOATS AND WATER SAFETY

SECTION .0300 – LOCAL WATER SAFETY REGULATIONS

15A NCAC 10F .0323 BURKE COUNTY

(a) Regulated Areas. This Rule applies only to the following waters or portions of waters described as follows:

(1) Lake Hickory;

(2) Lake James;

(A) Holiday Shores Subdivision as delineated by appropriate markers;

(B) Lake James Campground as delineated by appropriate markers;

(C) Laurel Pointe Subdivision as delineated by appropriate markers;

(D) Boyd Moore Cove as delineated by appropriate markers;

(E) East Shores development as delineated by appropriate markers;

(F) Eastern shore of Lake James at Mallard Cove.

(3) Lake Rhodhiss.

(b) Speed Limit. No person shall operate a vessel at greater than no-wake speed within 50 yards of any designated and marked public boat launching ramp, bridge, marina, boat storage structure, boat service area, dock, or pier, or while on the waters of the regulated areas described in Paragraph (a) of this Rule.

(c) Speed Limit in Mooring Areas. No person shall operate a vessel at greater than no-wake speed while within a marked mooring area established with the approval of the Executive Director, or his representative, on the regulated areas described in Paragraph (a) of this Rule.

(d) Restricted Swimming Areas. No person operating or responsible for the operation of a vessel shall permit it to enter any marked public swimming area established with the approval of the Executive Director, or his representative, on the regulated areas described in Paragraph (a) of this Rule.

(e) Placement and Maintenance of Markers. The Board of Commissioners of Burke County is designated a suitable agency for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers, if applicable. With regard to marking the regulated areas described in Paragraph (a) of this Rule, all of the supplementary standards listed in Rule .0301(g) of this Section shall apply.

History Note: Authority G.S. 75A-3; 75A-15;
Eff. July 1, 1976;
Amended Eff. December 1, 1995; December 1, 1994; December 1, 1992; March 1, 1992;
Temporary Amendment Eff. April 1, 1999;
Amended Eff. July 1, 2000;
Temporary Amendment Eff. August 15, 2001.

This Section contains the agenda for the next meeting of the Rules Review Commission on Thursday, August 16, 2001, 10:00 a.m. at 1307 Glenwood Avenue, Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners by Friday, August 10, 2001 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	**Appointed by House**
Paul Powell - Chairman	John Arrowood - 1st Vice Chairman
Robert Saunders	Jennie J. Hayman 2nd Vice Chairman
Laura Devan	Walter Futch
Jim Funderburke	Jeffrey P. Gray
David Twiddy	George Robinson

RULES REVIEW COMMISSION MEETING DATES

August 16, 2001	October 18, 2001
September 20, 2001	November 15, 2001

RULES REVIEW COMMISSION

Commission Review/Administrative Rules
Log of Filings (Log #178)
June 21, 2001 through July 20, 2001

DENR/ENVIRONMENTAL MANAGEMENT COMMISSION			
Definitions	15A	NCAC 02D .1401	Amend
Applicability	15A	NCAC 02D .1402	Amend
Compliance Schedule	15A	NCAC 02D .1403	Amend
Recordkeeping Reporting Monitoring	15A	NCAC 02D .1404	Amend
Utility Boilers	15A	NCAC 02D .1406	Amend
Boilers and Indirect-Fired Process Heaters	15A	NCAC 02D .1407	Amend
Stationary Combustion Turbines	15A	NCAC 02D .1408	Amend
Stationary Internal Combustion Engines	15A	NCAC 02D .1409	Amend
Emission Averaging	15A	NCAC 02D .1410	Amend
Seasonal Fuel Switching	15A	NCAC 02D .1411	Amend
Petition for Alternative Limitations	15A	NCAC 02D .1412	Amend
Sources not Otherwise Listed in This Section	15A	NCAC 02D .1413	Amend
Turn-up Requirements	15A	NCAC 02D .1414	Amend
Test Methods and Procedures	15A	NCAC 02D .1415	Amend
Emission Allocations for Utility Companies	15A	NCAC 02D .1416	Amend
Emission Allocations for Large Combustion	15A	NCAC 02D .1417	Amend
New Electric Generating Units, Large Boilers and	15A	NCAC 02D .1418	Amend
Nitrogen Oxide Budget Trading Program	15A	NCAC 02D .1419	Amend
Periodic Review and Reallocations	15A	NCAC 02D .1420	Amend
Allocations for New Growth of Major Point	15A	NCAC 02D .1421	Amend
Compliance Supplement Pool Credits	15A	NCAC 02D .1422	Amend
Large Internal Combustion Engines	15A	NCAC 02D .1423	Amend
DENR/WILDLIFE RESOURCES COMMISSION			
Shining Lights In Deer Areas	15A	NCAC 10B .0115	Amend
TRANSPORTATION, DEPARTMENT OF/DIVISION OF MOTOR VEHICLES			
Safety of Operation and Equipment	19A	NCAC 03D .0801	Amend
Purpose of Regulations	19A	NCAC 03J .0101	Amend
Definitions	19A	NCAC 03J .0102	Amend
Requirements	19A	NCAC 03J .0201	Amend
Original Application	19A	NCAC 03J .0202	Amend
Renewal Applications	19A	NCAC 03J .0203	Amend
Duplicate Copies	19A	NCAC 03J .0204	Amend
Branch Offices	19A	NCAC 03J .0206	Amend
Surrender of Licenses	19A	NCAC 03J .0207	Amend

Inspections	19A	NCAC 03J .0305	Amend
Course of Instruction	19A	NCAC 03J .0306	Amend
Reports To Be Submitted	19A	NCAC 03J .0308	Amend
Vehicle Equipment	19A	NCAC 03J .0401	Amend
Registration Insurance Inspection	19A	NCAC 03J .0402	Amend
Requirements	19A	NCAC 03J .0501	Amend
Original Application	19A	NCAC 03J .0502	Amend
Renewal Application	19A	NCAC 03J .0503	Amend
Duplicate Copies	19A	NCAC 03J .0504	Amend
Surrender of Licenses	19A	NCAC 03J .0507	Amend
Requirements	19A	NCAC 03J .0601	Amend
Prohibited Contract Provisions	19A	NCAC 03J .0602	Amend
Filing of Contract With The Division	19A	NCAC 03J .0603	Amend
Contract Provisions	19A	NCAC 03J .0604	Amend
Advertising	19A	NCAC 03J .0703	Amend
Grounds for Revocation or Suspension	19A	NCAC 03J .0801	Amend
Instructor License Suspension or Revocation	19A	NCAC 03J .0802	Amend
Requirements	19A	NCAC 03J .0901	Amend
Original Application	19A	NCAC 03J .0902	Amend
Renewal Application	19A	NCAC 03J .0903	Amend
Duplicate Copies	19A	NCAC 03J .0904	Amend
Surrender of Licenses	19A	NCAC 03J .0906	Amend
STATE BOARDS/DENTAL EXAMINERS, BOARD OF			
Location	21	NCAC 16A .0104	Amend
STATE BOARDS/NC BOARD OF PHYSICAL THERAPY EXAMINERS			
Grounds for Probation	21	NCAC 48G .0401	Amend
DEPARTMENT OF ADMINISTRATION/STATE PERSONNEL COMMISSION			
State Personnel Commission Procedures	25	NCAC 01B .0437	Amend
Unlawful Workplace Harassment	25	NCAC 01C .0214	Amend
Appeals	25	NCAC 01J .0603	Amend

AGENDA
RULES REVIEW COMMISSION
August 16, 2001

I. Call to Order and Opening Remarks

II. Review of minutes of last meeting

III. Follow Up Matters
- A. DHHS/Commission for MH/DD/SAS - 10 NCAC 45G .0306 Objection on 6/21/01 (DeLuca)
- B. DHHS/Commission for MH/DD/SAS – 10 NCAC 45H .0203 and .0204 Objection on 6/21/01 (DeLuca)
- C. Criminal Justice Education & Training Standards Commission - 12 NCAC 9B .0101 Objection on 07/19/01 (Bryan)
- D. Commission for Health Services – 15A NCAC 18A .3334 Objection on 04/19/01; 07/19/01 (Bryan)
- E. State Board of Education - 16 NCAC 6D .0305 Objection on 07/19/01 (Bryan)
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- G. NC Board of Physical Therapy Examiners – 21 NCAC 48A .0105 Objection on 07/19/01 (Bryan)
- H. NC Board of Physical Therapy Examiners – 21 NCAC 48B .0101; .0104 Objection on 07/19/01 (Bryan)
- I. NC Board of Physical Therapy Examiners – 21 NCAC 48C .0102 Objection on 07/19/01 (Bryan)
- J. NC Board of Physical Therapy Examiners – 21 NCAC 48E .0110 Objection on 07/19/01 (Bryan)
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IV. Review of rules (Log Report #178)

V. Commission Business

VI. Next meeting: Thursday; September 20; 2001

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.ncoah.com/hearings.

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Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Sammie Chess Jr.
Beecher R. Gray
Melissa Owens Lassiter
James L. Conner, II
Beryl E. Wade
A.B. (Butch) Elkins

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STATE OF NORTH CAROLINA	**IN THE OFFICE OF ADMINISTRATIVE HEARINGS**
COUNTY OF FORSYTH	**00 DST 0776**

BRUCE E. COLVIN **Petitioner,**	)	
v.	)	**RECOMMENDED DECISION**
BOARD OF TRUSTEES OF THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM, **Respondent.**	)	

THIS CAUSE came on for hearing and was heard in Winston-Salem, North Carolina, before Administrative Law Judge Beecher R. Gray on May 25, 2001, pursuant to the 6-5-00 PETITION FOR CONTESTED CASE HEARING ("PETITION") filed with the North Carolina Office of Administrative Hearings ("OAH") in the above-captioned action.

APPEARANCES

For the Petitioner:
Bruce E. Colvin
P.O. Box 1026
Clemmons, NC 27012-1026
Pro se

For the Respondent:
Robert M. Curran
Assistant Attorney General
North Carolina Department of Justice
P.O. Box 629
Raleigh, NC 27602-0629
Attorney for Respondent

WITNESSES

The following persons testified for the Petitioner:

Timothy S. Bryan, former Retirement Systems Division Deputy Director.

Bernita P. Colvin, Petitioner's spouse.

Bruce E. Colvin, Petitioner.

Rhonda B. Stevens, Retirement Systems Division Pension Fund Coordinator.

Tonja L. Triplette, Retirement Systems Division Administrative Assistant II.

The following person testified for the Respondent:

J. Marshall Barnes, III, Retirement Systems Division Deputy Director.

EXHIBITS

Petitioner's numbered exhibits admitted into evidence:

(1) 6-23-99 letter from Tonja L. Triplette to the Petitioner.

(2) Petitioner's 5-9-73 United States military FORM DD 214.

(3) 3-10-00 letter from the Petitioner to Rhonda B. Stevens.

(4) 3-17-00 letter from Rhonda B. Stevens to the Petitioner.

(5) 3-23-00 letter from the Petitioner to Rhonda B. Stevens.

(6) 6-11-99 e-mail from the Petitioner to nc_retirement@treasurer.state.nc.us.

(7) 6-17-99 e-mail from Tonja L. Triplette to the Petitioner.

(8) 8-30-99 letter from the Petitioner to Tonja L. Triplette.

(9) 9-21-99 letter from Timothy S. Bryan to the Petitioner.

Respondent's numbered exhibits admitted into evidence:

(1) 1-12-89 memorandum from Forsyth County Personnel Director Dwight D. Defee to the Local Governmental Employees' Retirement System ("LGERS"), with a copy of the Petitioner's 5-9-73 FORM DD 214 attached thereto.

(2) 1-31-89 letter from Glen W. Wall to the Petitioner.

(3) 8-31-90 memorandum from Forsyth County Personnel Director Dwight D. Defee to the LGERS, with a copy of the Petitioner's 5-9-73 FORM DD 214 attached thereto.

(4) 9-17-90 letter from Glen W. Wall to the Petitioner.

(5) 11-8-90 letter from the Petitioner to Glen W. Wall.

(6) 12-7-90 letter from Glen W. Wall to the Petitioner.

(7) 12-12-90 letter from the Petitioner to Glen W. Wall.

(8) 12-17-90 letter from the Petitioner to Glen W. Wall.

(9) 12-19-90 RET. FORM 100, calculation of cost to purchase military service.

(10) 12-21-90 letter from the Petitioner to Elaine Benson.

(11) 1-9-91 letter from Delores P. Davis to the Petitioner.

(12) Petitioner's 3-27-68 FORM DD 214.

ISSUES

1. Is the Petitioner entitled by law to purchase service credit in the LGERS for the active duty military service he served in the United States Air Force ("USAF") and the United States Air Force Reserve ("USAFRES") between January 2, 1968, and February 6, 1978?

2. If the Petitioner is so entitled, how much such LGERS service credit is he entitled to purchase and what is the appropriate effective date for computing the Petitioner's cost to purchase said service credit?

OPINION OF THE ADMINISTRATIVE LAW JUDGE

Based upon careful consideration of the material and relevant testimony and evidence presented during the 5-25-01 hearing, the documents and exhibits received into evidence during said hearing, and the entire administrative record in this proceeding (OAH file no. 00 DST 0776), the undersigned makes the following:

FINDINGS OF FACT

1. At the call of the case on May 25, 2001, the parties jointly submitted an ORDER ON FINAL PRE-TRIAL CONFERENCE signed by the Petitioner and by the Respondent's counsel, and dated May 25, 2001. The undersigned approved, signed, and filed said ORDER. The stipulations contained in said ORDER are hereby incorporated by reference as if fully set forth herein.

2. At the call of the case on May 25, 2001, the undersigned denied the Respondent's pending 10-17-00 written motion titled MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT, and then heard the contested case in full on the merits.

3. On January 2, 1968, the Petitioner voluntarily enlisted for a tour of active duty military service in the USAF, attending USAF Officer Candidate School with the rank of Staff Sergeant (E-5) from January 2 through March 27, 1968. As a result of said military service, the USAF issued to the Petitioner a FORM DD 214 (dated March 27, 1968) that states that the Petitioner served an active duty tour of two months and twenty-six days' duration as a USAF Staff Sergeant.

4. On March 28, 1968, after having successfully completed Officer Candidate School, the Petitioner was commissioned as an officer (2nd Lieutenant) in the USAF. From March 28, 1968, through May 9, 1973, the Petitioner served a continuous tour of active duty as an officer-pilot in the USAF. Upon his 5-9-73 discharge from the USAF and as a result of said military service, the USAF issued to the Petitioner a second military FORM DD 214 (dated May 9, 1973) that states that the Petitioner served an active duty tour

of five years, one month, and eleven days' duration as a USAF officer, with a total active duty military service accumulation as of May 9, 1973, of five years, four months, and seven days.

5. Upon leaving the USAF in 1973, the Petitioner joined the USAFRES as an officer-pilot, serving in said capacity through February 6, 1978. During said period, the Petitioner was obligated by a written READY RESERVE SERVICE AGREEMENT which states in part, "I certify that as a member of the Ready Reserve … I am and will remain immediately available for active duty, including active duty for training, to which I may be ordered in accordance with law.".

6. While the Petitioner was a member of the USAFRES, the USAFRES ordered him to serve numerous short tours of active duty to fly missions, train, and "maintain currency." Both parties now concur that the sum of said required active duty USAFRES tours served by the Petitioner between September 16, 1973, and February 6, 1978, is 339 days. The Petitioner was never issued a FORM DD 214 for any active duty military service he served during said period.

7. On February 7, 1978, the Petitioner was hired by Forsyth County, North Carolina, government ("County"). He remained a full-time County employee from February 7, 1978, until he retired on June 30, 2000. From July 1, 2000, to the present, the Petitioner has been a retired LGERS member, receiving a monthly retirement allowance from the LGERS.

8. The County was a participating employer member in the LGERS at all times between February 7, 1978, and June 30, 2000. During said period, the County and the Petitioner regularly made their contributions to the LGERS on the Petitioner's behalf in accordance with State law.

9. The Retirement Systems Division of the State of North Carolina Department of State Treasurer ("Division") handles the day-to-day management of the LGERS on behalf of the Respondent.

10. North Carolina General Statute 128-26(j1) allows member employees in the LGERS to purchase creditable service in the LGERS for time spent on active duty in the United States military. The provisions of N.C.G.S. 128-26 are hereby incorporated by reference as if fully set forth herein.

11. In January 1989, the Petitioner telephoned the Division to inquire about the procedures he needed to follow in order to purchase creditable service in the LGERS for all of the active duty military service he served in the USAF and USAFRES between January 2, 1968, and February 6, 1978. Division Benefits Counselor Glen W. Wall spoke with the Petitioner and told him that, under the rules in place in the LGERS, an applicant could only purchase creditable service in the LGERS for the active duty military service showing on a FORM DD 214, if a FORM DD 214 were available, and that, in the Petitioner's situation, the Petitioner was only entitled to purchase LGERS service credit for his active duty tour of five years, one month, and eleven days (for March 28, 1968, through May 9, 1973), as shown on his 5-9-73 FORM DD 214. Mr. Wall told the Petitioner that he was ineligible to purchase LGERS service credit for his USAF active duty military service from January 2, 1968, through March 27, 1968, and for any of his USAFRES active duty military service.

12. In response to said conversation, the Petitioner had the County Personnel Department send Mr. Wall an Eligibility-for-Retirement-Credit Memorandum (dated January 12, 1989) along with a copy of the Petitioner's 5-9-73 FORM DD 214, certifying that the Petitioner was eligible to purchase creditable service in the LGERS for time spent on active duty in the United States military.

13. On January 31, 1989, Mr. Wall mailed a written statement to the Petitioner in which Mr. Wall confirmed his contention that the Petitioner was only entitled to purchase five years and one month of prior active duty military service (for March 28, 1968, through May 9, 1973) and in which he quoted the Petitioner's cost to purchase LGERS service credit for said period if the Petitioner made said purchase by December 1, 1989.

14. The Petitioner did not subsequently purchase any creditable service in the LGERS during 1989.

15. In August 1990, the Petitioner telephoned Mr. Wall and again sought to purchase creditable service in the LGERS for all of the active duty military service he served in the USAF and USAFRES between January 2, 1968, and February 6, 1978. Mr. Wall reiterated the position he took in 1989: that the Petitioner was only entitled to purchase LGERS service credit for the active duty tour of five years, one month, and eleven days (for March 28, 1968, through May 9, 1973) shown on the Petitioner's 5-9-73 FORM DD 214.

16. In response to said conversation, the Petitioner again had the County Personnel Department send Mr. Wall an Eligibility-for-Retirement-Credit Memorandum (dated August 31, 1990) along with a copy of the Petitioner's 5-9-73 FORM DD 214, certifying that the Petitioner was eligible to purchase creditable service in the LGERS for time spent on active duty in the United States military.

17. On September 17, 1990, Mr. Wall mailed a written statement to the Petitioner in which Mr. Wall again confirmed his contention that the Petitioner was only entitled to purchase five years and one month of prior active duty military service (for March 28, 1968, through May 9, 1973) and in which he quoted the Petitioner's cost to purchase LGERS service credit for said period if the Petitioner made said purchase by December 1, 1990.

18. The Petitioner timely purchased said five years and one month of LGERS service credit in 1990.

19. Presuming that Mr. Wall correctly stated the rules that Mr. Wall claimed the LGERS was operating under, but dissatisfied that Mr. Wall did not appear to be following said rules (i.e., Mr. Wall's refusal to allow the Petitioner to purchase the remaining two months and twenty-six days of active duty military service also showing on the Petitioner's FORM DD 214), the

Petitioner telephoned the Division to discuss the matter with any Benefits Counselor other than Mr. Wall. On December 21, 1990, the Petitioner spoke with Benefits Counselor Elaine Benson, telling her that he had just purchased LGERS service credit for a portion of the active duty military service he served between January 2, 1968, and February 6, 1978, and that he desired to purchase LGERS service credit for the remainder of said active duty military service. Like Mr. Wall before her, Ms. Benson told the Petitioner that he could only purchase LGERS service credit for active duty military service showing on a FORM DD 214. However, she did authorize the Petitioner to purchase an additional two months and twenty-six days (rounded off to three months) of LGERS service credit (for January 2, 1968, through March 26, 1968); and the Petitioner timely purchased said service credit at the cost calculated for a 1990 purchase.

20. In June 1999, after being told by the County Personnel Director that the LGERS's creditable service purchase rules had allegedly been revised, the Petitioner again contacted the Division, again seeking to purchase LGERS service credit for his active duty military service in the USAFRES between September 16, 1973, and February 6, 1978. Division employees Timothy S. Bryan and Tonja L. Triplette told the Petitioner that the LGERS rules had not changed and that, since the Petitioner had already purchased LGERS service credit for all of the active duty military service showing on his 5-9-73 FORM DD 214, it appeared that the Petitioner had already purchased all of the LGERS service credit to which he was entitled. Mr. Bryan did agree to review whatever documentation the Petitioner possessed relating to the USAFRES active duty military service, and he told the Petitioner to mail a copy of the documentation to him. The Petitioner responded that said documentation was too voluminous to copy and mail, and asked that a face-to-face meeting be set up for such a review.

21. On January 6, 2000, the Petitioner met with Rhonda B. Stevens (then a Division Benefits Counselor) in Raleigh, offering her voluminous documentation that verified the Petitioner's tours of active duty military service with the USAFRES. Ms. Stevens, believing that a FORM DD 214 was always required in order for a military veteran to purchase LGERS service credit, informed the Petitioner that he was ineligible to purchase LGERS service credit for any of his tours of active duty military service with the USAFRES.

22. By his April 6, 2000, letter, then Deputy Division Director Timothy S. Bryan issued the first and only written final agency decision regarding the Petitioner's attempts to purchase LGERS service credit for his active duty military service, refusing to allow the Petitioner to purchase LGERS service credit for any of his active duty military service with the USAFRES.

23. The Petitioner timely appealed the 4-6-00 final agency decision by filing his PETITION, contesting said denial.

24. The Respondent's 6-28-00 RESPONDENT'S PREHEARING STATEMENT continues to take the position always taken by the Respondent throughout the Petitioner's attempts to purchase LGERS service credit for his active duty military service, alleging that the Petitioner is not entitled to purchase LGERS service credit for any of his active duty military service with the USAFRES. While the Respondent has never amended its 6-28-00 RESPONDENT'S PREHEARING STATEMENT to indicate any change in its position, subsequent to June 28, 2000, and after discussions with its counsel, the Respondent now acknowledges that the Petitioner is in fact entitled to purchase LGERS service credit for the 339 days of active duty military service he served with the USAFRES between September 16, 1973, and February 6, 1978.

25. At no time relevant to this contested case action has N.C.G.S. 128-26 required that a military veteran attempting to purchase LGERS service credit for prior active duty military service must have that military service documented by a FORM DD 214. "Satisfactory evidence of the service claimed" is all that is required.

26. At no time relevant to this contested case action has the Respondent ever adopted or been under the constraints of formal rules that deal with the issues raised by the Petitioner in his Petition or that required an applicant seeking to purchase LGERS service credit for prior active duty military service to have that military service documented by a FORM DD 214. The Division's purported requirement that all active duty military service be documented by a FORM DD 214 was neither required by law nor by a formally adopted rule, but was merely an administrative tool that made handling such applications easier and "cleaner" for the Division staff. According to Deputy Division Director J. Marshall Barnes, there have been no formal rules adopted in accordance with State law regarding creditable service allowed for retirement purposes.

27. The Respondent acknowledges that, in both 1989 and 1990, Mr. Wall did not properly process the Petitioner's requests to purchase LGERS service credit.

28. During the 5-25-01 hearing, when asked what else the Petitioner could have done to get the Division to allow him to purchase LGERS service credit for his USAFRES active duty military service, Mr. Bryan's only response was that the Petitioner needed to "aggressively pursue" getting the benefits to which he was entitled.

29. The Petitioner's numerous short tours of active duty military service as a USAFRES aircrew member who flew overseas missions is rather unusual and is different from the typical military service experienced by members of a United States Reserve or National Guard unit.

30. Neither Mr. Bryan (a former fifteen-year employee with the Division) nor Mr. Barnes (a nineteen-year employee with the Division) could recall anyone ever being permitted to purchase LGERS service credit for active duty military service with a United States Reserve or National Guard unit served by the veteran prior to becoming a contributing member in the LGERS.

31. The Petitioner continues to allege that, by refusing to allow him to purchase LGERS service credit for all of the active duty military service he served between January 2, 1963, and February 6, 1978, the Respondent has failed to comply with the mandate of N.C.G.S. 128-26 and federal law, and has thereby violated the Constitutionally protected rights of the Petitioner and other similarly situated military veterans.

32. Glen W. Wall is still a Division employee. He did not appear for the 5-25-01 hearing. The Petitioner had a subpoena issued for Mr. Wall's appearance. However, when the case was called on May 25, 2001, the Petitioner did not know if the Wake County Sheriff had served said subpoena upon Mr. Wall. The Petitioner alleged that counsel Curran had promised to bring all current Division employees named on the Petitioner's witness list to the 5-25-01 hearing without the necessity of their being subpoenaed. Mr. Curran alleged that he had only promised to bring Mr. Bryan (then a Division employee) to the 5-25-01 hearing without subpoena. Mr. Wall was not scheduled to work from May 21-24. However, he was scheduled to work on May 25. Mr. Curran said that he did not know if Mr. Wall knew about the 5-25-01 hearing. At the close of the presentation of evidence during the 5-25-01 hearing, the undersigned offered both parties the opportunity to continue the case in order for Mr. Wall to appear and testify or be deposed by the Petitioner. Both parties knowingly and willfully declined to accept said offer to continue, stating that they were prepared for the undersigned to issue the RECOMMENDED DECISION without further hearing or delay. The undersigned then rendered and issued this RECOMMENDED DECISION.

Based upon the foregoing findings of fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The OAH has personal and subject matter jurisdiction to hear the Petitioner's 6-5-00 PETITION.

2. The undersigned has the authority to issue this RECOMMENDED DECISION.

3. Beginning in 1989, the Petitioner has attempted to purchase all of the creditable service time in the LGERS to which he is entitled as a result of his active duty military service with the USAF between January 2, 1968, and May 9, 1973, and his active duty military service with the USAFRES between September 16, 1973, and February 6, 1978.

4. In accordance with N.C.G.S. 128-26(j1), the Petitioner is now and has been entitled to purchase LGERS service credit for the 339 days he was required to serve on active duty military service with the USAFRES between September 16, 1973, and February 6, 1978.

5. Without good or just cause and through no fault of the Petitioner, the Respondent has arbitrarily and inequitably denied the Petitioner the opportunity to purchase LGERS service credit for all of the active duty military service he served between January 2, 1963, and February 6, 1978.

6. For good cause shown, the Petitioner should be permitted to purchase LGERS service credit for all of his active duty military service between September 16, 1973, and February 6, 1978.

Based upon the foregoing findings of fact and conclusions of law, the undersigned makes the following:

RECOMMENDED DECISION

1. The Respondent allow the Petitioner to purchase LGERS service credit for all of his active duty military service between January 2, 1968, and February 6, 1978, including the 339 days he spent on active duty military service with the USAFRES between September 16, 1973, and February 6, 1978.

2. The Respondent allow the Petitioner to purchase said LGERS service credit at the cost it would have been had he been permitted to make said purchase on December 1, 1990.

3. The Respondent promptly and accurately calculate the cost for the Petitioner to purchase said LGERS service credit and promptly provide said calculations and cost to the Petitioner in writing.

4. After the Petitioner receives said cost, the Respondent allow him a reasonable period of time during which to purchase said LGERS service credit.

5. If the Petitioner timely purchases said LGERS service credit, the Respondent consider and treat said purchase as having occurred on December 1, 1990, recalculating both retroactively and prospectively the Petitioner's LGERS retirement benefits as though the Petitioner possessed all of said LGERS service credit prior to the date of his 6-30-00 retirement, and appropriately adjusting the Petitioner's retirement allowance accordingly.

ORDER

In accordance with N.C.G.S. 150B-36(b3), it is hereby ordered that the agency serve a copy of its final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

NOTICE

1. In accordance with N.C.G.S. 150B-36(a), 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.

2. The agency making the final decision is required by N.C.G.S. 150B-36(b3) to serve a copy of its final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

3. The agency that will make the final decision in this contested case is the Respondent Board of Trustees of the Local Governmental Employees' Retirement System.

This the 6th day of July 2001, *nunc pro tunc*, May 25, 2001.

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Beecher R. Gray
Administrative Law Judge