

# ***NORTH CAROLINA REGISTER***

**VOLUME 33 • ISSUE 18 • Pages 1851 – 1921**

**March 15, 2019**

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For questions or concerns regarding the Administrative Procedure Act or any of its components, consult with the agencies below. The bolded headings are typical issues which the given agency can address, but are not inclusive.

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**NORTH CAROLINA REGISTER**  
Publication Schedule for January 2019 – December 2019

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	RRC Meeting Date	Earliest Eff. Date of Permanent Rule	270 <sup>th</sup> day from publication in the Register
33:13	01/02/19	12/06/18	01/17/19	03/04/19	03/20/19	04/18/19	05/01/19	09/29/19
33:14	01/15/19	12/19/18	01/30/19	03/18/19	03/20/19	04/18/19	05/01/19	10/12/19
33:15	02/01/19	01/10/19	02/16/19	04/02/19	04/22/19	05/16/19	06/01/19	10/29/19
33:16	02/15/19	01/25/19	03/02/19	04/16/19	04/22/19	05/16/19	06/01/19	11/12/19
33:17	03/01/19	02/08/19	03/16/19	04/30/19	05/20/19	06/20/19	07/01/19	11/26/19
33:18	03/15/19	02/22/19	03/30/19	05/14/19	05/20/19	06/20/19	07/01/19	12/10/19
33:19	04/01/19	03/11/19	04/16/19	05/31/19	06/20/19	07/18/19	08/01/19	12/27/19
33:20	04/15/19	03/25/19	04/30/19	06/14/19	06/20/19	07/18/19	08/01/19	01/10/20
33:21	05/01/19	04/09/19	05/16/19	07/01/19	07/22/19	08/15/19	09/01/19	01/26/20
33:22	05/15/19	04/24/19	05/30/19	07/15/19	07/22/19	08/15/19	09/01/19	02/09/20
33:23	06/03/19	05/10/19	06/18/19	08/02/19	08/20/19	09/19/19	10/01/19	02/28/20
33:24	06/17/19	05/24/19	07/02/19	08/16/19	08/20/19	09/19/19	10/01/19	03/13/20
34:01	07/01/19	06/10/19	07/16/19	08/30/19	09/20/19	10/17/19	11/01/19	03/27/20
34:02	07/15/19	06/21/19	07/30/19	09/13/19	09/20/19	10/17/19	11/01/19	04/10/20
34:03	08/01/19	07/11/19	08/16/19	09/30/19	10/21/19	11/21/19	12/01/19	04/27/20
34:04	08/15/19	07/25/19	08/30/19	10/14/19	10/21/19	11/21/19	12/01/19	05/11/20
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34:06	09/16/19	08/23/19	10/01/19	11/15/19	11/20/19	12/19/19	01/01/20	06/12/20
34:07	10/01/19	09/10/19	10/16/19	12/02/19	12/20/19	01/16/20	02/01/20	06/27/20
34:08	10/15/19	09/24/19	10/30/19	12/16/19	12/20/19	01/16/20	02/01/20	07/11/20
34:09	11/01/19	10/11/19	11/16/19	12/31/19	01/21/20	02/20/20	03/01/20	07/28/20
34:10	11/15/19	10/24/19	11/30/19	01/14/20	01/21/20	02/20/20	03/01/20	08/11/20
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34:12	12/16/19	11/21/19	12/31/19	02/14/20	02/20/20	03/19/20	04/01/20	09/11/20

This document is prepared by the Office of Administrative Hearings as a public service and is not to be deemed binding or controlling.

## **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) text of proposed rules;
- (3) text of permanent rules approved by the Rules Review Commission;
- (4) emergency rules
- (5) Executive Orders of the Governor;
- (6) 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; and
- (7) other information the Codifier of Rules determines to be helpful to the public.

**COMPUTING TIME:** In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

### **FILING DEADLINES**

**ISSUE DATE:** The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

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

### **NOTICE OF TEXT**

**EARLIEST DATE FOR PUBLIC HEARING:** The hearing date shall be at least 15 days after the date a notice of the hearing is published.

**END OF REQUIRED COMMENT PERIOD**  
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

**DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION:** The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.



# State of North Carolina

**ROY COOPER**  
GOVERNOR

February 18, 2019

**EXECUTIVE ORDER NO. 90**

**ESTABLISHING THE GOVERNOR'S ENTREPRENEURIAL COUNCIL**

**WHEREAS**, entrepreneurship is a significant part of the State of North Carolina's vibrant and dynamic economy; and

**WHEREAS**, North Carolina's economic growth is driven by the financial, food and grocery manufacturing, information technology, advanced manufacturing, and pharmaceutical sectors; and

**WHEREAS**, the State of North Carolina is committed to identifying, implementing, and supporting policies that foster and promote entrepreneurship, economic development, and sustainable, high-quality jobs; and

**WHEREAS**, collaborations between the state and entrepreneurs have helped assist North Carolina workers and businesses in transitioning to the new economy; and

**WHEREAS**, additional measures can ensure that there is continued entrepreneurial growth and innovation in the state's economy, particularly in the state's financial, food and grocery manufacturing, information technology, advanced manufacturing, and pharmaceutical sectors; and

**WHEREAS**, the State should identify what, if any, new strategic investments are needed in higher education and other areas to ensure continued entrepreneurial growth and innovation; and

**WHEREAS**, capitalizing on prior public-private initiatives will help prepare the state's workers and businesses to compete successfully in the new economy; and

**WHEREAS**, a new advisory council will identify and support the implementation of policies that promote entrepreneurship in the state.

**NOW, THEREFORE**, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

**Section 1. Establishment**

The Governor's Entrepreneurial Council ("the Council") is hereby established within the Office of the Governor.

**Section 2. Membership**

- a. The Governor shall have sole appointment authority and shall appoint at least twelve (12) members to the Council. This does not include the ex-officio member included in Section 2.d of this Executive Order. All members shall serve at the pleasure of the Governor.
- b. The Council shall be comprised of representatives from public and private entities, businesses, organizations, and non-profits. At least (5) five members shall be representatives from the following:
  - i. A higher learning institution;
  - ii. A company or non-profit focusing on entrepreneurial development;
  - iii. The health sciences sector;
  - iv. A financial investment entity or institution; and
  - v. The technology sector.

The remaining Council members shall have expertise, experience, or training in economic development, education, entrepreneurship, and/or workforce development.

- c. Members shall represent the diverse demographic groups and geographic regions of the state.
- d. The Secretary of the North Carolina Department of Commerce, or the Secretary's designee, shall serve as an ex-officio Council member.
- e. Any vacancy on the Council shall be filled by the Governor.
- f. The chair of the Council shall be designated by the Governor and serve at the Governor's pleasure.

**Section 3. Meetings**

- a. The Council shall meet upon the call of the chair or upon the written request of a majority of the Council's membership.
- b. The Council may conduct meetings using any conferencing means.
- c. A majority of the Council's total membership shall constitute a quorum for the transaction of business.

**Section 4. Duties**

The Council shall have the following duties:

- a. Formulate and propose policies to the Office of the Governor and the North Carolina General Assembly that would promote entrepreneurship in the state, particularly in the financial, food and grocery manufacturing, information technology, advanced manufacturing, and pharmaceutical sectors.
- b. Provide an annual report to the Office of the Governor documenting the state of entrepreneurship in North Carolina.
- c. Examine and identify means through which the North Carolina Community College system and the University of North Carolina system can help support entrepreneurship.
- d. Review existing state and local small business programs and identify whether and/or how these programs should be improved.
- e. Review best practices for entrepreneurial development and determine the feasibility of implementing such measures in North Carolina.

- f. Identify strategies to improve coordination and collaboration among stakeholders in entrepreneurial development.
- g. Identify and review new and existing applied research and technology deployments.
- h. Identify additional public and private infrastructure investments that will help maintain the State's economic competitiveness.
- i. Identify new potential funding and/or financing sources for entrepreneurs within the state.
- j. Provide advice and input in consultation with the Office of the Governor on other issues affecting or related to entrepreneurship in the State of North Carolina.
- k. Take any additional steps necessary to foster and promote entrepreneurship in the State of North Carolina.

**Section 5. Administration**

- a. The North Carolina Department of Commerce and the Office of the Governor shall provide staff and administrative support services for the Council.
- b. Except as provided by this Executive Order or other law, the Council shall formulate any policies, procedures, or definitions necessary to carry out its advisory duties under this Executive Order.
- c. Council members shall serve without compensation but may receive necessary travel and subsistence expenses in accordance with state law and the policies and rules of the North Carolina Office of State Budget and Management.

**Section 6. Duration**

This Executive Order is effective immediately. It supersedes and replaces all other Executive Orders on this subject. It shall remain in effect until February 28, 2022, pursuant to N.C. Gen. Stat. § 147-16.2, or until rescinded.

**IN WITNESS WHEREOF**, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 18<sup>th</sup> day of February in the year of our Lord two thousand and nineteen.

  
\_\_\_\_\_  
Roy Cooper  
Governor

**ATTEST:**

  
\_\_\_\_\_  
Elaine F. Marshall  
Secretary of State



**NORTH CAROLINA RATE BUREAU****PUBLIC NOTICE**

Notice is hereby given pursuant to North Carolina General Statute 58-36-120 that on February 13, 2019 the North Carolina Rate Bureau made filings for an increase in insurance rates for two Mobile Home insurance policies programs (MH(C) and MH(F)) under its jurisdiction. Public notice of the filings is being published in two newspapers with statewide distribution and in the North Carolina Register. The Commissioner of Insurance may or may not schedule and conduct a hearing with respect to the filings. This information is being posted on the web sites of the North Carolina Rate Bureau and the North Carolina Department of Insurance. The filings only relate to Mobile Home insurance policies under the jurisdiction of the North Carolina Rate Bureau and do not affect Dwelling Fire and Extended Coverage or Homeowners insurance policies or rates not part of the Mobile Home policy programs.



**Note from the Codifier:** The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days. Statutory reference: G.S. 150B-21.2.

**TITLE 02 – DEPARTMENT OF AGRICULTURE AND  
CONSUMER SERVICES**

**Notice** is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Board of Agriculture intends to amend the rule cited as 02 NCAC 38 .0401, repeal the rule cited as 02 NCAC 52B .0205, and readopt with substantive changes the rule cited as 02 NCAC 52B .0204.

Pursuant to G.S. 150B-21.17, the Codifier has determined that publication of the complete text of the rules proposed for repeal is impractical. The text of the repealed rules is accessible on the OAH Website: <http://www.ncoah.com>.

**Link to agency website pursuant to G.S. 150B-19.1(c):** <http://www.ncagr.gov/AdministrativeRules/ProposedRules/index.htm>

**Proposed Effective Date:** July 1, 2019

**Instructions on How to Demand a Public Hearing:** (must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rules by submitting a request in writing no later than March 30, 2019 to Tina Hlabse, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001. Please include in the request your name, address, and telephone number.

**Reason for Proposed Action:** We have received an industry request to make an exception to 2018 NIST Handbook 130 regarding the sale of potatoes. The current regulation allows for potatoes to be sold either by weight or dry measure. The current proposal would allow loose, unwrapped potatoes to also be sold individually, or by count, to stay consistent with Handbook 130 language. To ensure quality, industry would prefer to have only "US Grade No. 1" potatoes available by count. Language has been included for shipping containers and invoicing documents to assist retailers in being assured of the grade of potato they received and can offer it for sale accordingly.

02 NCAC 52B .0204 was classified as necessary with substantive public interest during the HB 74 review process and is now going through the readoption process. The rule is being readopted with substantive changes updating the general import requirement to mirror 9 CFR Part 86 and by updating the format of the rule for ease of readability and citations for ease of accessibility. In addition, the Veterinary Division has combined and incorporated the requirements of 02 NCAC 52B .0205 for ease of access. Combined, the public will be able to find the requirements for importing cattle under one rule. 02 NCAC 52B .0205 which deals with cattle fever tick and scabies can now be found under paragraph (c) of 02 NCAC 52B .0204.

02 NCAC 52B .0205 is proposed for repeal because the amendments to 02 NCAC 52B .0204 incorporates the requirements of this rule.

**Comments may be submitted to:** Tina Hlabse, 1001 Mail Service Center, Raleigh, NC 27699-1001, email [tina.hlabse@ncagr.gov](mailto:tina.hlabse@ncagr.gov)

**Comment period ends:** May 14, 2019

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact (check all that apply).**

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected
- ☐ Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Substantial economic impact (≥\$1,000,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required by G.S. 150B-21.4
- ☒ No fiscal note required by G.S. 150B-21.3A(d)(2)

**CHAPTER 38 - CONSUMER STANDARDS**

**SECTION .0400 - METHOD OF SALE OF  
COMMODITIES**

**02 NCAC 38 .0401 ADOPTION BY REFERENCE**

The Board hereby adopts by reference including subsequent amendments and editions the NIST Handbook 130, "Method of Sale of Commodities Regulation" with the following additions and exceptions:

- (1) The preferred method for measuring fireplace and stove wood is by the cord or fractional parts of a cord, however, nothing in Section 2.4, "Fireplace and Stove Wood", shall be construed as preventing the purchaser and seller of

- fireplace or stove wood from agreeing on a quantity other than a cord or fractional parts of a cord.
- (2) Section 2.20, "Gasoline-Oxygenate Blends" is deleted.
  - (3) Section 2.19. shall apply only to kerosene sold in a container or kerosene sold through a retail device. In addition, a container or a device shall indicate for 1-K kerosene "SUITABLE FOR USE IN UNVENTED HEATERS" and for 2-K kerosene "MAY NOT BE SUITABLE FOR USE IN UNVENTED HEATERS".
  - (4) In Section 2.21., the temperature compensation requirements shall not be mandatory. However, if a company elects to sell liquefied petroleum gas on a temperature compensated basis, then all meters in the truck fleet shall be equipped with an activated automatic temperature compensator which shall remain in continuous operation for a period of not less than one year.
  - (5) The price for propane dispensed into containers of less than 240 pounds water capacity may be on a minimum price basis provided that the seller displays the minimum price at the point of container fill and the point of sale. This Rule shall not apply to propane container exchange sales where an empty or partially empty container is exchanged for a full one.
  - (6) Any variety of potatoes, defined as edible tubers in Section 2.3.2 of the NCWM Policy Interpretations and Guidelines section may also be sold by count providing they meet corresponding standard of "US Grade No. 1" as found in the most current version of the United States Department of Agriculture (USDA) "United States Standards for Sweet Potatoes" or the USDA "United States Standards for Potatoes," as appropriate. Any commercial shipping boxes or other containers, shipping documents and invoices shall be marked as "US Grade No. 1" potatoes.

Copies of NIST Handbook 130, "Method of Sale of Commodities Regulation" are available for inspection in the Office of the Director of the Standards Division and may be obtained for free at <http://www.nist.gov/pml/wmd/pubs/index.cfm>. Copies of the "United States Standards for Sweet Potatoes" and "United States Standards for Potatoes" are available for free at <http://www.ams.usda.gov/grades-standards/vegetables>.

Authority G.S. 81A-4; 150B-21.6.

## CHAPTER 52 – VETERINARY DIVISION

### SUBCHAPTER 52B - ANIMAL DISEASE

#### SECTION .0200 - ADMISSION OF LIVESTOCK TO NORTH CAROLINA

#### 02 NCAC 52B .0204 IMPORTATION REQUIREMENTS: BRUCELLOSIS CATTLE

~~(a) All cattle imported into North Carolina are subject to the following requirements: All cattle imported into North Carolina shall comply with 9 CFR Part 86, which shall be incorporated by reference including any amendments or subsequent editions. Copies of the Code of Federal Regulations may be obtained at no cost by accessing the website of the U.S. Government Printing Office at <http://www.gpoaccess.gov/cfr/index.html>.~~

- ~~(1) All cattle shall be identified by ear tag, or tattoo;~~
- ~~(2) cattle originating from any certified brucellosis-free State, as defined in 9 Code of Federal Regulations (CFR) 78.1, may enter North Carolina provided the following is recorded on the official health certificate:~~
  - ~~(A) individual identification of each animal;~~
  - ~~and~~
  - ~~(B) brucellosis status of the State of origin;~~
- ~~(3) no cattle shall be accepted (other than those consigned to immediate slaughter) which have been adult vaccinated, in accordance with the current edition of the Uniform Methods and Rules for Brucellosis Eradication of the United States Department of Agriculture Animal and Plant Health Inspection Service, against brucellosis or originate from infected, exposed or quarantined herds.~~

~~(b) In addition to the requirements of Paragraph (a) of this Rule, cattle imported from brucellosis class A states, as defined in 9 CFR 78.1, shall comply with the following:~~

- ~~(1) all females and bulls eight months of age and older must test negative for brucellosis within 30 days prior to entry into North Carolina, except:~~
  - ~~(A) dairy heifers under 20 months of age that are vaccinated against brucellosis;~~
  - ~~(B) heifers of the beef breeds less than 24 months of age that are vaccinated against brucellosis; or~~
  - ~~(C) cattle originating from any certified, brucellosis free herd, as defined in 9 CFR 78.1, provided the following is recorded on the official health certificate:~~
    - ~~(i) individual identification of each animal;~~
    - ~~(ii) herd certification number;~~
    - ~~(iii) date of last herd test; and~~

- ~~(2) cattle from class A states which originate from the farm of origin and move directly to a state or federally licensed stockyard or to a farm in North Carolina in compliance with this Rule are not required to be tested between 45 and 120 days after entry. However, retests may be performed by a representative of the State Veterinarian at no expense to the owner. Eligible cattle which have been commingled in a stockyard prior to importation must, in addition to the requirements of this Rule, test~~

~~negative for brucellosis between 45 and 120 days after arrival in this state.~~

(b) Brucellosis requirements for cattle imported into North Carolina:

- (1) Cattle originating from any validated brucellosis-free state, as defined in 9 CFR 78.1, may enter North Carolina provided the following is recorded on the official interstate certificate of veterinary inspection or owner shipper statement:
  - (A) Individual identification of each animal as required by 9 CFR Part 86; and
  - (B) Brucellosis status of the state of origin.
- (2) No cattle shall be accepted, other than those consigned to immediate slaughter, which have been adult vaccinated, in accordance with the current edition of the Uniform Methods and Rules for Brucellosis Eradication of the United States Department of Agriculture-Animal and Plant Health Inspection Service (USDA-APHIS), against brucellosis or originate from infected, exposed or quarantined herds. A copy of the Uniform Methods and Rules for Brucellosis Eradication may be obtained at no cost by accessing the website of USDA-APHIS at [https://www.aphis.usda.gov/animal\\_health/animal\\_diseases/brucellosis/downloads/umr\\_bovine\\_bruc.pdf](https://www.aphis.usda.gov/animal_health/animal_diseases/brucellosis/downloads/umr_bovine_bruc.pdf).
- (3) In addition, cattle imported from brucellosis class A states, as defined in 9 CFR 78.1, shall comply with the following:
  - (A) All females and bulls eight months of age and older must test negative for brucellosis within 30 days prior to entry into North Carolina, except:
    - (i) Dairy heifers under 20 months of age that are vaccinated against brucellosis;
    - (ii) Heifers of the beef breeds less than 24 months of age that are vaccinated against brucellosis; or
    - (iii) Cattle originating from any certified brucellosis-free herd, as defined in 9 CFR 78.1, provided the individual identification of each animal, herd certification number, and date of last herd test is recorded on the official health certification; and
  - (B) Cattle from class A states which originate from the farm of origin and move directly to a state or federally licensed stockyard or to a farm in North Carolina in compliance with

this Rule are not required to be tested between 45 and 120 days after entry. However, retests may be performed by a representative of the State Veterinarian at no expense to the owner. Eligible cattle which have been commingled in a stockyard prior to importation must, in addition to the requirements of this Rule, test negative for brucellosis between 45 and 120 days after arrival in North Carolina.

(4) In addition, cattle imported from class B states, as defined in 9 CFR 78.1, shall comply with the following:

- (A) A permit must be issued to the person importing the cattle by the State Veterinarian of North Carolina prior to entry;
  - (B) All females and bulls eight months of age or older must test negative within 30 days prior to entry into North Carolina except:
    - (i) Dairy heifers under 20 months of age that are vaccinated against brucellosis;
    - (ii) Heifers of the beef breeds less than 24 months of age that are vaccinated against brucellosis; or
    - (iii) Cattle originating from any certified brucellosis-free herd, as defined in 9 CFR 78.1, provided that the individual identification of each animal, herd certification number, and date of last herd test is recorded on the official health certificate; and
  - (C) All cattle shall be quarantined upon arrival and must test negative between 45 and 120 days after arrival in order to be released from quarantine.
- ~~(e) In addition to the requirements of Paragraph (a) of this Rule, cattle imported from class B states, as defined in 9 CFR 78.1, shall comply with the following:~~
- ~~(1) a permit must be issued to the person importing the cattle by the State Veterinarian of North Carolina prior to entry;~~
  - ~~(2) all females and bulls eight months of age or older must test negative within 30 days prior to entry into North Carolina except:~~
    - ~~(A) dairy heifers under 20 months of age that are vaccinated against brucellosis;~~
    - ~~(B) heifers of the beef breeds less than 24 months of age that are vaccinated against brucellosis;~~

~~(C) cattle originating from any certified brucellosis free herd, as defined in 9 CFR 78.1, provided that the following is recorded on the official health certificate:~~

- ~~(i) individual identification of each animal;~~
- ~~(ii) herd certification number; and~~
- ~~(iii) date of last herd test;~~

~~(3) all cattle shall be quarantined upon arrival and must test negative between 45 and 120 days after arrival in order to be released from quarantine.~~

(c) Cattle fever tick and scabies importation requirements:

- (1) No cattle infested with ticks, *Boophilus annulatus*, *B. microplus*, or *Rhipicephalus evertsi evertsi*, or exposed to such infestation shall be shipped, trailed, driven, or otherwise imported into the state for any purpose.
- (2) No cattle affected with scabies shall be shipped, trailed, driven or otherwise imported into the state for any purpose. No cattle recently exposed to scabies or from an area quarantined on account of scabies shall be imported into the state except in accordance with 9 CFR Part 73.

*Authority G.S. 106-307.5; 106-361; 106-400.*

**02 NCAC 52B .0205 IMPORTATION REQUIREMENTS: CATTLE FEVER TICK AND SCABIES**

*Authority G.S. 106-307.5; 106-361; 106-400.*

**TITLE 12 – DEPARTMENT OF JUSTICE**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Criminal Justice Education and Training Standards Commission intends to adopt the rules cited as 12 NCAC 09B .0314, .0315, .0504, .0505; 09G .0417, .0418 and amend the rules cited as 12 NCAC 09B .0301, .0305; and 09G .0311.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<http://ncdoj.gov/getdoc/82ec95af-b758-4888-b831-8fdd5cc9beb4/Public-Haing-02-14-17.aspx>

**Proposed Effective Date:** August 1, 2019

**Public Hearing:**

**Date:** May 22, 2019

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

**Location:** Wake Technical Community College-Public Safety Training Center, 321 Chapanoke Road, Raleigh, NC 27603

**Reason for Proposed Action:** To provide clarity regarding instructor student intimate relationships. Specified certification

*requirements for Diversion Investigators, Supervisors and Qualified assistants.*

**Comments may be submitted to:** Charminique Williams, PO Drawer 149, Raleigh, NC 27602; phone (919) 779-8206; fax (919) 779-8210; email [cdwilliams@ncdoj.gov](mailto:cdwilliams@ncdoj.gov)

**Comment period ends:** May 22, 2019

**Procedure for Subjecting a Proposed Rule to Legislative Review:**

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact (check all that apply).**

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Substantial economic impact (≥\$1,000,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required by G.S. 150B-21.4

**CHAPTER 09 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS**

**SUBCHAPTER 09B - STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT: EDUCATION: AND TRAINING**

**SECTION .0300 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE INSTRUCTORS**

**12 NCAC 09B .0301 CERTIFICATION OF INSTRUCTORS**

(a) A person participating in a Commission-certified criminal justice training course or program as an instructor, teacher, professor, lecturer, or other participant making presentations to the class shall first be certified by the Commission as an instructor.

(b) The Commission shall certify instructors under the following categories: General Instructor Certification, Specialized Instructor Certification, or Professional Lecturer Certification as outlined in Rules .0302, .0304 and 0306 of this Section. Instructor certification shall be granted on the basis of documented qualifications of experience, education, and training in accord

with the requirements of this Section and as stated on the applicant's Request for Instructor Certification Form.

(c) In addition to all other requirements of this Section, each instructor certified by the Commission to teach in a Commission-certified course shall remain competent in his or her specialized areas. Such competence shall include remaining current in the instructor's area of expertise, which shall be demonstrated by attending and completing all updated instructor training courses required by the Commission.

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

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

(e) The Commission shall deny, suspend, or revoke an instructor's certification ~~if~~ when the Commission finds that the person:

- (1) has failed to meet and maintain any of the requirements for qualification;
- (2) has failed to remain knowledgeable in the person's areas of expertise;
- (3) has failed to deliver training in a manner consistent with the instructor lesson plans outlined in the "Instructor Training Manual" as found in 12 NCAC 09B .0209;
- (4) has failed to follow specific guidelines outlined in the "Basic Law Enforcement Training Course Management Guide" as found in 12 NCAC 09B .0205;
- (5) has demonstrated unprofessional personal conduct in the delivery of Commission-mandated training. For the purposes of this Subparagraph, unprofessional personal conduct means an act that is: job-related conduct that constitutes a violation of State or federal law; conviction or commission of a criminal offense, as set out in 12 NCAC 09A .0204; the willful violation of Rules of this Chapter; conduct that is detrimental to instruction in the Commission's mandated courses; the abuse of a client or student whom the instructor is teaching or supervising or falsification of an instructor application or in other employment documentation; or an amorous, dating or sexual relationship ("intimate relationship"), even when apparently consensual, between a student enrolled in the Basic Law Enforcement Training program and any instructor, School Director or Qualified Assistant involved in the delivery of that program in which the student is enrolled. An exception to the rule is an intimate

existing relationship (engaged or married) between a student and an instructor, School Director or Qualified Assistant that precedes the individual's status as student and he or she subsequently enrolls in a Basic Law Enforcement Training program. The instructor, School Director or Qualified Assist shall immediately notify their respective managing personnel in writing of the existing intimate relationship.

- (6) has demonstrated instructional incompetence;
- (7) has knowingly and willfully obtained or attempted to obtain instructor certification by deceit, fraud, or misrepresentation;
- (8) has failed to meet or maintain good moral character as defined in: In re Willis, 288 N.C. 1, 215 S.E. 2d 771 appeal dismissed 423 U.S. 976 (1975); ~~in re~~ State v. Harris, 216 N.C. 746, 6 S.E. 2d 854 (1940); ~~in~~ In re Legg, 325 N.C. 658, 386 S.E. 2d 174(1989); ~~in~~ In re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); ~~in~~ In re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E. 2d 647 (1983); and later court decisions that cite these cases as authority, and as required to effectively discharge the duties of a criminal justice instructor;
- (9) has failed to deliver training in a manner consistent with the Qualified Retired Law Enforcement Officers Firearms Qualification Certification Program as found in 12 NCAC 09H .0102;
- (10) has knowingly and willfully aided or attempted to aid any person in obtaining qualification or certification under the Qualified Retired Law Enforcement Officers Firearms Qualification Certification Program by deceit, fraud, or misrepresentation;
- (11) has committed or been convicted of an offense which could result in the denial, suspension, or revocation of an officer's law enforcement certification, pursuant to 12 NCAC 09G .0504; or
- (12) has knowingly made a material misrepresentation of any information required for certification or accreditation.

(f) When a person certified as a law enforcement officer by the North Carolina Criminal Justice Education and Training Standards Commission (Commission), the North Carolina Sheriffs Education and Training Standards Commission (Sheriffs' Commission), the North Carolina Department of Insurance, Office of State Fire Marshal, Fire Rescue Commission (Fire Commission), or Office of Emergency Medical ~~Services~~ Services, and the North Carolina Company/Campus Police Program; or a similar North Carolina, out of state or federal approving, certifying or licensing agency; has been denied certification or had his or her certification suspended or revoked ~~his or her law enforcement officer or fire and rescue certification suspended or revoked~~ by their respective Commission, Commission or agency,

that person shall report the suspension or revocation to the Criminal Justice Standards within ~~30 days~~, five days. He or she shall also have his or her General Instructor Certification (if applicable) similarly and automatically suspended or revoked for the same time period as his or her respective Commission certification.

- (1) This suspension or revocation of the General Instructor certification shall also include suspension or revocation to any Commission recognized Specialized or additional instructor certification, as outlined in 12 NCAC 09B .0304.
- (2) If the term of suspension or revocation exceeds the expiration date of the instructor's initial certification expiration date, he or she shall forfeit their certifications as a General Instructor and Specialized Instructor and shall be required to obtain certification pursuant to the requirements of 12 NCAC 09B .0302 before any instruction may be delivered in any Commission-approved or mandated training, including the completion of a subsequent General Instructor's training course in its entirety.
- (3) If the term of suspension or revocation does not exceed the expiration date of the instructor's initial certification expiration date, the instructor shall be reinstated as a General Instructor only upon reinstatement of his or her law enforcement officer certification by the Commission. The terms of renewal for the existing General Instructor and Specialized Instructor certifications shall remain subject to all renewal requirements pursuant to 12 NCAC 09B .0303(c) by the next immediate expiration date.

*Authority G.S. 17C-6.*

**12 NCAC 09B .0305 TERMS AND CONDITIONS OF SPECIALIZED INSTRUCTOR ~~C~~CERTIFICATION CERTIFICATION**

(a) An applicant meeting the requirements for Specialized Instructor Certification as set forth in Rule .0304 of this Section shall be issued a certification to expire three years from the date of issuance. The applicant shall apply for certification as a Specialized Instructor within 60 days after the date the applicant achieved a passing score on the state comprehensive exam for the respective Specialized Instructor training course.

(b) Where certification for both General Probationary Instructor as set forth in Rule .0303 of this Section and Specialized Instructor Certification are issued on the same date, the instructor is required to instruct, within 36 months after certification, a minimum of 12 hours in each of the topics for which Specialized Instructor Certification was granted, and that instruction was provided in a Commission-accredited basic training, Specialized Instructor Training, Commission-recognized in-service training course, or training course delivered pursuant to 12 NCAC 10B .0601, .1302, or .2005. The instructor may satisfy the teaching requirement for

the General Probationary Instructor certification by teaching any specialized topic for which certification has been issued.

(c) When Specialized Instructor Certification is issued during an existing period of General Probationary Instructor Certification, the specialized instructor may satisfy the teaching requirement for the General Probationary Certification by teaching the specialized subject for which certification has been issued.

(d) The term of certification as a specialized instructor shall not exceed 36 months. An application for renewal shall contain, in addition to the requirements listed in Rule .0304 of this Section, documentary evidence that the applicant has remained active in the instructional process during the previous three-year period. Such documentary evidence shall include the following:

- (1) proof that the applicant has, within the three-year period preceding application for renewal, instructed at least 12 hours in each of the topics for which Specialized Instructor Certification was granted, and that instruction was provided in a Commission-accredited basic training, Specialized Instructor Training, Commission-recognized in-service training course, or training course delivered pursuant to 12 NCAC 10B .0601, .1302, or .2005. Acceptable documentary evidence shall include official Commission records submitted by School Directors or In-Service Training Coordinators and written certification from a School Director or In-Service Training Coordinator;
- (2) proof that the applicant has, within the three-year period preceding application for renewal, attended and completed all instructor updates that have been issued by the Commission. Acceptable documentary evidence shall include official Commission records submitted by School Directors or In-Service Training Coordinators, or copies of certificates of completion issued by the institution which provided the instructor updates; and
  - (A) a favorable written recommendation from a School Director or In-Service Training Coordinator completed on a Commission Renewal of Instructor and Professional Lecturer Certification Form (Form F-12A) that the instructor taught at least 12 hours in each of the topics for which Specialized Instructor Certification was granted. The teaching shall have been provided in a Commission-accredited basic training, Specialized Instructor Training course, pursuant to Rule 12 NCAC 09C .0401, Commission-recognized in-service training course, or training course delivered pursuant to 12 NCAC 09F .0101, 12 NCAC 09H .0101, 12 NCAC 10B .0601, .1302, or .2005;
  - (B) a favorable written evaluation by a School Director, Qualified Assistant,

In-Service Training Coordinator, or another Specialized Instructor certified in the same specialized subject, based on an on-site classroom evaluation of a presentation by the instructor in a Commission-accredited basic training, Specialized Instructor Training, Commission-recognized in-service training course, or in-service training course delivered pursuant to 12 NCAC 10B .0601, .1302, or .2005 during the three-year period of Specialized Instructor Certification. Such evaluation shall be certified on a Criminal Justice Instructor Evaluation Form F-16, located on the agency's website:

<http://www.ncdoj.gov/getdoc/c2eba6a-a-12bc-4303-bf4b-5fa0431ef5a1/F-16-6-11.aspx>;

- (C) proof that the applicant has met the requirement set forth in Rule .0303(c) of this Section;
- (D) proof that the individual applying for renewal as a Specialized Firearms Instructor has achieved a minimum score of 92 on the day and night Basic Law Enforcement Training firearms qualification courses, administered by a certified Specialized Firearms Instructor, within the three-year period preceding the application for renewal; and
- (E) proof that the individual applying for renewal as a Specialized Physical Fitness Instructor has passed the Basic Law Enforcement Training Police Officer Physical Abilities Test, administered by a certified Specialized Physical Fitness Instructor, within the three-year period preceding the application for renewal.

(e) Certification as a Specialized Instructor in the First Responder, Physical Fitness, Explosive and Hazardous Materials, and Juvenile Justice Medical Emergencies topic areas as outlined in Rule .0304(d)(1), (g)(2), (i)(1), and (j)(1) of this Section shall remain in effect for 36 months from the date of issuance. During the 36 month term all non-Commission certificates required in Rule .0304(d)(1), (g)(2), (i)(1), and (j)(1) for Specialized Instructor certification in the First Responder, Physical Fitness, Explosive and Hazardous Materials, and Juvenile Justice Medical Emergencies topical areas shall be maintained.

(f) The use of guest participants in a delivery of the "Basic Law Enforcement Training Course" shall be permissible. However, such guest participants are subject to the on-site supervision of a Commission-certified instructor and shall be authorized by the School Director. A guest participant shall be used only to complement the primary certified instructor of the block of instruction and shall not replace the primary instructor.

*Authority G.S. 17C-6.*

**12 NCAC 09B .0314 CERTIFICATION OF DIVERSION INVESTIGATORS AND SUPERVISORS**

(a) The diversion training courses for investigators and supervisors shall be designed to provide the trainee with the skills and knowledge to proficiently perform the function of a law enforcement Diversion Investigator or Supervisor. The diversion training course for investigators shall be for a period of 24 hours and 4 hours online training for the diversion investigator supervisor. To be certified as a diversion investigator or supervisor he or she shall complete the diversion training courses and achieve a passing score of 70 percent on the comprehensive written examination.

(b) Only employed or appointed personnel of a law enforcement agency shall be enrolled in the diversion training courses. Such a trainee shall not be certified as a diversion investigator until the Basic Law Enforcement Training course, pursuant to Rule .0205 of this Subchapter, has been completed with passing scores and probationary or general law enforcement certification has been granted. Sheriffs and deputy sheriffs shall be allowed to participate in the diversion training courses on a space available basis at the discretion of the Diversion Training Course school director without having enrolled, in or having completed with passing scores, the Basic Law Enforcement Training course, pursuant to Rule .0205 and Rule .0206 of this Subchapter and without being currently certified in a probationary status or hold Justice Officer certification. The Diversion Training Courses required for certification shall include but not limited to the topic areas and minimum number of hours as outlined in the Diversion Training Courses.

(c) Those Special Agents with the North Carolina State Bureau of Investigation previously deemed diversion investigators as of July 1, 2019 shall be automatically granted certification under this rule for a period of three years.

(d) The "Diversion Training Courses" as authored by the North Carolina State Bureau of Investigation, and published by the North Carolina Justice Academy is to be applied as basic curriculum for the diversion training course for investigators and supervisors as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division  
North Carolina Department of Justice  
1700 Tyron Park Drive  
Post Office Drawer 149  
Raleigh, North Carolina 27602

and may be obtained at cost from the Academy at the following address:

North Carolina Justice Academy  
Post Office Box 99  
Salemburg, North Carolina 28385

*Authority G.S. 17C-6; 17E-4, 90-113.74E.*

**12 NCAC 09B .0315 TERMS AND CONDITIONS OF DIVERSION INVESTIGATORS AND SUPERVISORS CERTIFICATION**

(a) The term of certification as a diversion investigator and supervisor is indefinite, provided the investigator and supervisor

complete during each calendar year a diversion course one-hour refresher training provided by the North Carolina Justice Academy. The Standards Division shall post on its website on January 1 of the current year the list of diversion investigators and supervisors who have met this requirement during the previous calendar year.

(b) If the diversion investigator and or supervisor fail to meet the diversion training course refresher training specified in Paragraph (a) of this Rule, the certification period for the investigator and or supervisor shall cease, and the investigator and or supervisor shall be required to complete the diversion training course in its entirety.

*Authority G.S. 17C-6; 17E-4, 90-113.74E.*

## **SECTION .0500 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE SCHOOL DIRECTORS**

### **12 NCAC 09B .0504      CERTIFICATION OF QUALIFIED ASSISTANT**

(a) If the accredited institution or agency assigns additional responsibilities to the certified School Director during the planning, development, and implementation of an accredited basic recruit training course, a qualified assistant shall be designated to assist the School Director in the administration of the course. To be eligible to serve as a Qualified Assistant, an applicant shall:

- (1) be selected by the School Director;
- (2) have four years of practical experience as a criminal justice officer or as an administrator or specialist in a field directly related to the criminal justice system;
- (3) be certified as a General Instructor, pursuant to Rule .0302 of this Subchapter, if certified as a Qualified Assistant for a Criminal Justice Instructor Training Course;
- (4) if serving as a Qualified Assistant for an Instructor Training Course, must complete an Instructor Orientation Course as offered by the North Carolina Justice Academy;
- (5) have completed an orientation course conducted by Standards Division staff; and
- (6) participate in the annual training conducted by Commission staff.

(b) Any person(s) designated by a School Director to act as, or who performs the duties of, a Qualified Assistant in the delivery or presentation of a Commission-mandated training course shall have on file confirmation from the Commission acknowledging designation as Qualified Assistant prior to acting in an official capacity as a Qualified Assistant.

(c) The School Director shall submit to the Criminal Justice Standards Division the Qualified Assistant Application form. The Qualified Assistant Application Form is located on the agency's website at no cost <http://ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Criminal-Justice-Education-and-Training-Standards/Forms-and-Publications.aspx>. The Qualified Assistant Application Form includes the following information:

- (1) accredited school name and contact information;
- (2) applicants name and contact information;
- (3) applicants instructor certification number; and
- (4) School Director name and signature.

(d) The School Director shall ensure that the persons selected meet(s) the requirement set forth in Paragraphs (a) and (b) of this Rule.

(e) When directed by the School Director, the Qualified Assistant will assist in the planning, developing, coordinating, and delivering of Commission-mandated training courses as outlined in Rule .0202 of this Subchapter.

*Authority G.S. 17C-6.*

### **12 NCAC 09B .0505      TERMS AND CONDITIONS OF QUALIFIED ASSISTANT CERTIFICATION**

(a) The term of certification as a Qualified Assistant is three years from the date the Commission issues the certification, unless earlier terminated by action of the Commission. The application for renewal shall include documentation meeting the requirements of Rule 12 .0504(a) and (b) of this Section.

(b) The Commission may deny, suspend, or revoke certification as a Qualified Assistant when the Commission finds that the person has failed to meet or continually maintain any of the requirements for qualification or through performance fails to comply with program rules and procedures of the Commission or otherwise demonstrates incompetence.

(c) Prior to the Commission's action denying, suspending, or revoking a Qualified Assistant's certification, the Standards Division may notify the person that a deficiency appears to exist and may attempt, in an advisory capacity, to assist the person in correcting the deficiency.

(d) The Commission shall deny, suspend or revoke the certification of a Qualified Assistant when they have found the person has engaged in any conduct outlined in Rule .0301(e) and (f) of this Subchapter.

*Authority G.S. 17C-6.*

## **SUBCHAPTER 09G - STANDARDS FOR CORRECTIONS EMPLOYMENT, TRAINING, AND CERTIFICATION**

### **SECTION .0300 - CERTIFICATION OF CORRECTIONAL OFFICERS, PROBATION/PAROLE OFFICERS, AND INSTRUCTORS**

#### **12 NCAC 09G .0311      TERMS AND CONDITIONS OF SPECIALIZED INSTRUCTOR CERTIFICATION**

(a) An applicant meeting the requirements for Specialized Instructor Certification shall be issued a certification to expire three years from the date of issuance. The applicant shall apply for certification as a specialized instructor within 60 days from the date of completion of a specialized instructor course.

(b) Where certifications for both General Probationary Instructor and Specialized Instructor are issued on the same date, the instructor shall be required to instruct within 36 months after certification, a minimum of 12 hours in each of the topics for which Specialized Instructor Certification was granted in a



Commission-accredited basic training, Specialized Instructor Training, Commission-recognized in-service training course, or training course delivered pursuant to 12 NCAC 10B .0601, .1302, or .2005. The instructor may satisfy the teaching requirement for the General Probationary Instructor certification by teaching any specialized topic for which certification has been issued.

(c) When Specialized Instructor Certification is issued during an existing period of General Probationary Instructor Certification the specialized instructor may satisfy the teaching requirement for the General Probationary Certification by teaching the specialized subject for which certification has been issued.

(d) The term of certification as a specialized instructor shall not exceed 36 months. An application for renewal shall contain, in addition to the requirements listed in Rule .0310 of this Section, documentary evidence that the applicant has remained active in the instructional process during the previous three-year period. Such documentary evidence shall include the following:

- (1) proof that the applicant has, within the three-year period preceding application for renewal, instructed at least 12 hours in each of the topics for which Specialized Instructor Certification was granted, and that instruction was provided in a Commission-accredited basic training, Specialized Instructor Training, or Commission-recognized in-service training course. Acceptable documentary evidence shall include official Commission records submitted by School Directors or In-Service Training Coordinators, and written certification from a School Director or In-Service Training Coordinator;
- (2) proof that the applicant has, within the three-year period preceding application for renewal, attended and completed all instructor updates that have been issued by the Commission. Acceptable documentary evidence shall include official Commission records submitted by School Directors or In-Service Training Coordinators, or copies of certificates of completion issued by the institution which provided the instructor updates; and

- (A) a favorable written recommendation from a School Director or In-Service Training Coordinator completed on a Commission Renewal of Instructor and Professional Lecturer Certification Form that the instructor taught at least 12 hours in each of the topics for which Specialized Instructor Certification was granted. Such teaching shall have been provided in a Commission-accredited basic training, Specialized Instructor Training course, pursuant to Rule .0310 of this Section, or Commission-recognized in-service training course;
- (B) a favorable written evaluation by a School Director, Qualified Assistant, In-Service Training Coordinator, or

another instructor certified in the same specialized subject, based on an on-site classroom evaluation of a presentation by the instructor in a Commission-accredited basic training, Specialized Instructor Training, or Commission-recognized in-service training course, during the three-year period of Specialized Instructor Certification. Such evaluation shall be certified on a Criminal Justice Instructor Evaluation Form F-16, located on the agency's website: <http://www.ncdoj.gov/getdoc/c2eba6a-a-12bc-4303-bf4b-5fa0431ef5a1/F-16-6-11.aspx>.

(C) has met the requirement set forth in Rule .0309(c) of this Section.

(e) The use of guest participants in a delivery of a Commission-mandated training course pursuant to this Section shall be permissible. However, such guest participants are subject to the on-site supervision of a Commission-certified instructor and shall be authorized by the School Director. A guest participant shall be used only to complement the primary certified instructor of the block of instruction and shall not replace the primary instructor.

*Authority G.S. 17C-6.*

#### **SECTION .0400 – MINIMUM STANDARDS FOR TRAINING OF CORRECTIONAL OFFICERS, PROBATION/PAROLE OFFICER, AND PROBATION/PAROLE OFFICERS-SURVEILLANCE**

##### **12 NCAC 09G .0417      CERTIFICATION OF QUALIFIED ASSISTANT**

(a) If the accredited institution or agency assigns additional responsibilities to the certified School Director during the planning, development, and implementation of an accredited basic recruit training course, a qualified assistant shall be designated to assist the School Director in the administration of the course. To be eligible to serve as a Qualified Assistant, an applicant shall:

- (1) be selected by the School Director;
- (2) have four years of practical experience as a criminal justice officer or as an administrator or specialist in a field directly related to the criminal justice system;
- (3) be certified as a General Instructor, pursuant to Rule .0308 of this Subchapter, if certified as a Qualified Assistant for an Instructor Training Course;
- (4) if serving as a Qualified Assistant for an Instructor Training Course, must complete an Instructor Training Orientation Course as offered by the North Carolina Justice Academy;
- (5) have completed an orientation course conducted by Standards Division staff; and
- (6) participate in the annual training conducted by Commission staff.

(b) Any person(s) designated by a School Director to act as, or who performs the duties of, a Qualified Assistant in the delivery or presentation of a Commission-mandated training course shall have on file confirmation from the Commission acknowledging designation as Qualified Assistant prior to acting in an official capacity as a Qualified Assistant.

(c) The School Director shall submit to the Criminal Justice Standards Division the Qualified Assistant Application Form F-10(QA). The Qualified Assistant Application Form F-10(QA) is located on the agency's website at no cost <http://ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Criminal-Justice-Education-and-Training-Standards/Forms-and-Publications.aspx> The Qualified Assistant Application Form includes the following information:

- (1) accredited school name and contact information;
- (2) applicants name and contact information;
- (3) applicants instructor certification number; and
- (4) school director name and signature.

(d) The School Director shall ensure that the persons selected meet(s) the requirement set forth in Paragraphs (a) and (b) of this Rule.

(e) When directed by the School Director, the Qualified Assistant will assist in the planning, developing, coordinating, and delivering of Commission-mandated training courses as outlined in Rule .0408 of this Section.

Authority G.S. 17C-6.

#### **12 NCAC 09G .0418 TERMS AND CONDITIONS OF QUALIFIED ASSISTANT CERTIFICATION**

(a) The term of certification as a Qualified Assistant is three years from the date the Commission issues the certification, unless earlier terminated by action of the Commission. The application for renewal shall include documentation meeting the requirements of Rule .0417(a) and (b) of this Section.

(b) The Commission may deny, suspend, or revoke certification as a Qualified Assistant when the Commission finds that the person has failed to meet or continually maintain any of the requirements for qualification or through performance fails to comply with program rules and procedures of the Commission or otherwise demonstrates incompetence.

(c) Prior to the Commission's action denying, suspending, or revoking a Qualified Assistant's certification, the Standards Division may notify the person that a deficiency appears to exist and may attempt, in an advisory capacity, to assist the person in correcting the deficiency.

(d) The Commission shall deny, suspend or revoke the certification of a Qualified Assistant when they have found the person has engaged in any conduct outlined in Rule .0307 of this Subchapter.

Authority G.S. 17C-6.

### **TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY**

*Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Environmental Management Commission intends to readopt with substantive changes the rules cited as 15A NCAC 02D .1802 and .1806 and readopt without substantive changes the rules cited as 15A NCAC 02D .1801, .1803, .1804, .1807 and .1808.*

*Pursuant to G.S. 150B-21.2(c)(1), the text of rules to be readopted without substantive changes are not required to be published. The text of the rules is available on the OAH website: <http://reports.oah.nc.us/ncac.asp>.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** <http://deq.nc.gov/about/divisions/air-quality/air-quality-rules/rules-hearing-process>

**Proposed Effective Date:** November 1, 2019

**Instructions on How to Demand a Public Hearing:** *(must be requested in writing within 15 days of notice): To request a public hearing, please contact Patrick Knowlson, Rule Development Branch Supervisor, Division of Air Quality, at [patrick.knowlson@ncdenr.gov](mailto:patrick.knowlson@ncdenr.gov) by March 30, 2019.*

**Reason for Proposed Action:** *To receive comments on the proposed readoption of air quality rules in 15A NCAC 02D .1800, Control of Odors, and the revised regulatory impact analysis approved by the Office of State Budget and Management (OSBM) on October 5, 2018.*

*On June 13, 2018, OSBM approved a regulatory impact analysis for the proposed readoption of rules in 15A NCAC 02D .0540, Particulates from Fugitive Dust Emission Sources, 15A NCAC 02D Section .1800, Control of Odors, and 15A NCAC 02D Section .1900, Open Burning, to meet the requirements of G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules.*

*The June 13, 2018 version of the regulatory impact analysis did not incorporate the applicable provisions of Session Law 2017-108, An Act to Amend Certain Laws Governing Agricultural Matters. Therefore, the Division of Air Quality revised 15A NCAC 02D .1806, Control and Prohibition of Odorous Emissions, and the regulatory impact analysis to encompass the applicable odor provisions to the Session Law. On October 5, 2018, the OSBM officially approved the Division of Air Quality's revisions to the regulatory impact analysis.*

*Subsequently, on November 8, 2018, the North Carolina Environmental Management Commission approved the proposed rule readoptions and the revised October 5, 2018 regulatory impact analysis to proceed to public hearing and comment.*

*The proposed rules and regulatory impact analysis were published in the North Carolina Register, Volume 33, Issue 12, and posted on the Division of Air Quality website for the public comment period from December 17, 2018 to February 15, 2019. Also, two public hearings were held in Clinton and Raleigh North Carolina. However, upon further review, the Division of Air Quality inadvertently posted the incorrect June 13, 2018, regulatory impact analysis on its website instead of the correctly revised October 5, 2018 regulatory impact analysis containing the fiscal impacts of Session Law 2017-108.*

*Only the language in the regulatory impact analysis has changed from the version posted during the previous public comment period. The language in the proposed rule amendments in this public notice are unchanged from the rule language posted for public comment from December 17, 2018 to February 15, 2019.*

**Comments may be submitted to:** Patrick Knowlson, 217 West Jones St., 1641 Mail Service Center, Raleigh, NC 27699-1641, phone (919) 707-8711, fax (919) 707-8711, email [daq.publiccomments@ncdenr.gov](mailto:daq.publiccomments@ncdenr.gov) (Please type "Group 4 RIA" in subject line)

**Comment period ends:** May 14, 2019

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact (check all that apply).**

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected
- ☐ Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Substantial economic impact (≥\$1,000,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required by G.S. 150B-21.4
- ☒ No fiscal note required by G.S. 150B-21.3A(d)(2)

## CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

### SUBCHAPTER 02D - AIR POLLUTION CONTROL REQUIREMENTS

#### SECTION .1800 - CONTROL OF ODORS

##### 15A NCAC 02D .1801 DEFINITIONS (READOPTIO WITHOUT SUBSTANTIVE CHANGES)

##### 15A NCAC 02D .1802 CONTROL OF ODORS FROM ANIMAL OPERATIONS USING LIQUID ANIMAL WASTE MANAGEMENT SYSTEMS

- (a) Purpose. The purpose of this Rule is to control objectionable odors from animal operations beyond the boundaries of animal operations.
- (b) Applicability. This Rule shall apply to all animal operations using liquid animal waste management systems.

(c) Required management practices. All animal operations shall be required to implement applicable management practices for the control of odors as follows:

- (1) ~~The~~ the carcasses of dead animals shall be disposed of within 24 hours after becoming aware of the death of the animal according to the methods approved by the State Veterinarian for disposal of dead domesticated animals ~~under pursuant to G.S. 106-403; G.S. 106-403 and 02 NCAC 52C .0102. 02 NCAC 52C .0102 is hereby incorporated by reference and includes subsequent amendments or editions;~~
- (2) ~~Waste~~ waste from animal wastewater application spray systems shall be applied in such a manner and ~~under pursuant to~~ such conditions to prevent drift from the irrigation field of the wastewater spray beyond the boundary of the animal operation, except waste from application spray systems may be applied in an emergency to maintain safe lagoon freeboard if the owner or operator notifies the Department and resolves the emergency with the Department as written in Section ~~HL-6 III.13~~ III.13 of the Swine Waste Operation General Permit;
- (3) ~~Animal~~ animal wastewater application spray system intakes shall be located near the liquid surface of the animal wastewater lagoon;
- (4) ~~Ventilation~~ ventilation fans shall be maintained according to the ~~manufacturer's~~ manufacturer's specifications; and
- (5) ~~Animal~~ animal feed storage containers located outside of animal containment buildings shall be covered except when ~~necessary to remove or add feed; removing or adding feed.~~ this ~~This~~ Subparagraph ~~does~~ shall not apply to the storage of silage or hay or to commodity boxes with ~~roofs; and roofs.~~

~~All animal operations shall be in compliance with this Paragraph by June 1, 1999.~~

(d) Odor management plan (OMP) for existing animal operations for swine. Animal operations for swine that meet the criteria in the table in this Paragraph shall submit an odor management plan to the ~~Director according to the schedule in the table in this Paragraph.~~ Director. The odor management plan shall describe how odors are currently being controlled and how these odors will be controlled in the future. ~~The odor management plan shall contain the elements described in Rule .1803(a) of this Section.~~ The animal operation shall be required to submit its odor management plan only once. The odor management plan shall:

- (1) identify the name, location, and owner of the animal operation;
- (2) identify the name, title, address, and telephone number of the person filing the plan;
- (3) identify the sources of odor within the animal operation;
- (4) describe how odor will be controlled from:
  - (A) the animal houses;
  - (B) the animal wastewater lagoon, if used;

- (C) the animal wastewater application lands, if used;
- (D) waste conveyances and temporary accumulation points; and
- (E) other possible sources of odor within the animal operation;
- (5) contain a diagram showing all structures and lagoons at the animal operation, forced air directions, and approximate distances to structures or groups of structures within 3,000 feet of the property line of the animal operation; a recent or updated aerial photograph instead of
- (6) a diagram provided the items required by this Subparagraph are shown;
- (7) for existing animal operations, contain a schedule not to exceed six months by which the plan will be implemented;
- (8) describe how the plan will be implemented, including training of personnel;
- (9) describe inspection and maintenance procedures; and
- (10) describe methods of monitoring and recordkeeping to verify compliance with the plan.

100 pounds steady state live weight of swine		Distance in feet to the boundary of the nearest neighboring occupied property with an inhabitable structure, business, school, hospital, church, outdoor recreational facility, national park, State <del>Park</del> <u>parks</u> , historic property, or child care center	Date by when the odor management plan is to be submitted
at least	but less than		
10,000	20,000	less than or equal to 3,000	<del>January 15, 2002</del>
20,000	40,000	less than or equal to 4,000	<del>July 15, 2004</del>
40,000		less than or equal to 5,000	<del>January 15, 2004</del>

For the purposes of this Rule, the distance shall be measured from the edge of the barn or lagoon, whichever is closer, to the boundary of the neighboring occupied property with an inhabitable structure, business, school, hospital, church, outdoor recreational facility, national park, State ~~Park~~ parks, historic property, or child care center. All animal operations for swine that are of the capacity size in the table in this Paragraph shall submit ~~by the date specified in this table~~ either an odor management plan or documentation that no neighboring occupied property with an inhabitable structure, business, school, hospital, church, outdoor recreational facility, national park, State ~~Park~~ parks, historic property, or child care center is within the distances specified in the ~~table as of the date that the submittal is due.~~ table. ~~After July 15, 2002, the~~ The Director may require existing animal operations for swine with a steady state live weight of swine between ~~1,000 100,000 to 10,000 1,000,000 pounds steady state live weight hundredweights~~ to submit an odor management plan if the Director determines pursuant to Paragraph (g) of this Rule that these animal operations ~~may~~ cause or contribute to an objectionable odor. The Director may require an existing animal operation to submit a best management plan (BMP) pursuant to 15A NCAC 02D .1803, ~~under then submit the BMP pursuant to Paragraph (h) of this Rule if the existing animal operation fails to submit an odor management plan by the schedule in this Paragraph of this Rule.~~ plan.

(e) Location of objectionable odor determinations.

- (1) For an existing animal operation that does not meet the following siting requirements:
  - (A) at least ~~1500~~ 1,500 feet from any occupied residence not owned by the owner of the animal operation;
  - (B) at least ~~2500~~ 2,500 feet from any school, hospital, church, outdoor recreation ~~facility.~~ Facility, national ~~park; parks,~~ State Park, parks, historic property, or child care center; and

- (C) at least 500 feet from any property boundary;
- objectionable odors shall be determined at neighboring occupied property not owned by the owner of the animal operation, such as businesses, schools, hospitals, churches, outdoor recreation facilities, national parks, State ~~Parks, parks,~~ historic properties, or child care centers that are affected.
- (2) For a new animal operation or existing animal operation that meets the siting requirements in Subparagraph (1) of this Paragraph, objectionable odors shall be determined beyond the boundary of the animal operation.
- (f) Complaints. The Director shall respond to complaints about objectionable odors from animal operations as follows:
  - (1) Complaints shall be ~~investigated to the extent practicable.~~ investigated;
  - (2) Complaints may be used to assist in determination of a best management plan failure or a control technology ~~failure.~~ failure;
  - (3) The Director shall respond to complaints within ~~30 days.~~ days of receipt of the complaint;
  - (4) Complaint response shall ~~at least include a written response of the Director's evaluation of the complaint.~~ complaint;
  - (5) The investigation of a complaint shall be completed as expeditiously as possible considering the meteorology, activities at the animal operation, and other conditions occurring at the time of the ~~complain.~~ complaint.
- (g) Determination of the existence of an objectionable odor. In ~~deciding~~ determining if an animal operation is causing or contributing to an objectionable odor, the factors the Director may consider ~~one or more of the following:~~ include:

- (1) the nature, intensity, frequency, pervasiveness, and duration of the odors from the animal operation;
- (2) complaints received about objectionable odors from the animal operation;
- (3) emissions from the animal operation of known odor causing compounds, such as ammonia, total volatile organics, hydrogen sulfide sulfide, or other sulfur compounds at levels that could cause or contribute to an objectionable odor;
- (4) any epidemiological studies associating health problems with odors from the animal operation or documented health problems associated with odors from the animal operation provided by the State Health Director; or
- (5) any other evidence, including records maintained by neighbors, that show that the animal operation is causing or contributing to an objectionable odor.

(h) ~~Requirement~~ Requirements for a best management plan for ~~controlling control of~~ odors from existing animal operations. If the Director ~~finds~~ determines that an existing animal operation is causing or contributing to an objectionable odor, the owner or operator of the animal operation shall:

- (1) submit to the Director as soon as practical, but not to exceed 90 days after receipt of written notification from the Director that the animal operation is causing or contributing to an objectionable odor, a best management plan for odor control as described in 15A NCAC 02D .1803; Rule .1803 of this Section; and
- (2) be in compliance with the terms of the best management plan within 30 days after the Director approves the best management ~~plan~~ plan, or an approved compliance schedule by the Director (approved compliance schedule is an alternate schedule to 30 days). (compliance with an approved compliance schedule in the best management plan is deemed to be in compliance with the plan).

(i) Requirement for amendment to the best management plan. No later than 60 days from completion of a compliance schedule in an approved best management plan or if the best management plan contains no compliance schedule, no later than 60 days from the implementation date of the best management plan, the Director shall determine whether the plan has been properly implemented. If the Director determines at any time that a plan submitted ~~under~~ pursuant to Paragraph (h) of this Rule does not control objectionable odors from the animal operation, the Director shall require the owner or operator of the animal operation to amend the plan to incorporate additional or alternative measures to control objectionable odors from the animal operation. The owner or operator shall:

- (1) submit a revised best management plan to the Director as soon as practical but not later than 60 days after receipt of written notification from the Director that the plan is inadequate; and

- (2) be in compliance with the revised best management plan within 30 days after the Director approves the revisions to the best management ~~plan~~ plan (approved compliance schedule is an alternate schedule to 30 days). (compliance with an approved compliance schedule in the best management plan is deemed to be in compliance with the plan).

(j) ~~Plan failure.~~ Any of the following conditions shall constitute failure of a best management plan:

- (1) ~~failing to submit the initial best management plan required under Paragraph (h) of this Rule within 90 days of receipt of written notification from the Director that the animal operation is causing or contributing to an objectionable odor;~~
- (2) ~~failing to submit a revised best management plan required under Paragraph (i) of this Rule within 60 days of receipt of written notification from the Director that the animal operation is causing or contributing to an objectionable odor;~~
- (3) ~~failing to correct all deficiencies in a submitted best management plan under Rule .1803(c) of this Section within 30 days of receipt of written notification from the Director to correct these deficiencies;~~
- (4) ~~failing to implement the best management plan after it has been approved; or~~
- (5) ~~finding by the Director, using the criteria under Paragraph (g) of this Rule, that, after the best management plan has been implemented and revised no more than one time (voluntary revisions and revisions made pursuant to 15A NCAC 2D .1803(c) shall not be counted as revisions under this Subparagraph); the best management plan does not adequately control objectionable odors from the animal operation and will not adequately control objectionable odors even with further amendments.~~

(j)(k) Requirements for control technology. After the best management plan has been implemented and revised no more than one time excluding voluntary revisions and revisions made pursuant to 15A NCAC 02D .1803(c), If a A plan failure occurs, shall constitute a finding by the Director, using the criteria pursuant to Paragraph (g) of this Rule. If a plan failure occurs, the Director shall require the owner or operator of the animal operation to install control technology to control odor from the animal operation. The owner or operator shall submit within Within 90 days from receipt of written notification from the Director of a plan failure, the owner or operator shall submit a permit application for control technology and an installation schedule. If the owner or operator demonstrates to the Director that a permit application cannot be submitted within 90 days, the Director may shall extend the time for submittal up to an additional 90 days. days if the owner or operator demonstrates the delay in submitting the application was beyond his or her control. Control technology shall be determined according to Subparagraph (1) of this Paragraph. The installation schedule

shall contain the increments of progress described in Subparagraph (2) of this Paragraph. The owner or operator may at any time request adjustments in the installation schedule and shall in his or her request explain why the schedule cannot be met. If the Director finds ~~that the request reason for not meeting the schedule is valid~~, to be accurate, the Director shall revise the installation schedule as requested; however, the Director shall not extend the final compliance date beyond 24 months from the date that the permit was first issued for the control technology. The owner or operator shall certify to the Director within five days after the deadline for each increment of progress described in Subparagraph (2) of this Paragraph whether the required increment of progress has been met.

- (1) Control technology. The owner or operator of an animal operation shall identify control technologies that are technologically feasible for his or her animal operation and shall select the control technology or control technologies that results in the greatest reduction of odors considering human health, energy, environmental, and economic impacts and other costs. The owner or operator shall explain the reasons for selecting the control technology or control technologies. If the Director finds that the selected control technology or control technologies will effectively control odors following the procedures in 15A NCAC ~~2Q~~ 02Q .0300 or .0500, he or she shall approve the installation of the control technology or control technologies for this animal operation upon permit issuance. The owner or operator of the animal operation shall comply with all terms and conditions in the permit.
- (2) Installation schedule. The installation schedule for control technology shall contain the following increments of progress:
  - (A) a date by which contracts for odor control technology shall be awarded or orders shall be issued for purchase of component ~~parts; parts or materials~~;
  - (B) a date by which on-site construction or installation of the odor control technology shall begin;
  - (C) a date by which on-site construction or installation of the odor control technology shall be completed; and
  - (D) a date by which final compliance shall be achieved.

Control technology shall be in place and operating as soon as practical but not to exceed 12 months from the date that the permit is issued for control technology.

~~(k)(4) New or modified animal operations. This Paragraph does not apply to activities exempted from the moratorium on construction or expansion of swine farms in S.L. 1997, c. 458, s. 1-1 provided that the owner or operator demonstrates to the Director that the activity will not result in an objectionable odor. The following requirements shall apply to new or modified animal operations:~~

- (1) Before beginning construction, the owner or operator of a new or modified animal operation raising or producing swine shall submit and have an approved best management plan and shall meet the ~~following~~; following setbacks. A house or lagoon that is a component of an animal operation shall be constructed:
  - (A) at least ~~4500~~ 1,500 feet from any occupied residence not owned by the owner of the animal operation;
  - (B) at least ~~2500~~ 2,500 feet from any school, hospital, church, outdoor recreation facility, national park, State ~~Park, parks~~, historic property, or child care center; and
  - (C) at least 500 feet from any property boundary;
- (2) Before beginning construction, the owner or operator of a new or modified animal operation other than swine shall submit and have an approved best management plan.
- (3) For new or modified animal operations raising or producing swine, the outer perimeter of the land area onto which waste is applied that is a component of an animal operation shall be:
  - (A) at least 75 feet from any boundary of property on which an occupied residence not owned by the owner of the animal operation is ~~located~~; located; and
  - (B) at least 200 feet from any occupied residence not owned by the owner of the animal operation.
- (4) The Director shall either approve or disapprove the best management plan submitted ~~under~~ pursuant to this Paragraph within 90 days after receipt of the plan. If the Director disapproves the plan, he or she shall identify the ~~plan's~~ plan's deficiency.

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(11); 143-215.108(a); 150B-21.6*

**15A NCAC 02D .1803 BEST MANAGEMENT PLANS FOR ANIMAL OPERATIONS (READoption WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02D .1804 REPORTING REQUIREMENTS FOR ANIMAL OPERATIONS (READoption WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02D .1806 CONTROL AND PROHIBITION OF ODOROUS EMISSIONS**

- (a) Purpose. The purpose of this Rule is to provide for the control and prohibition of objectionable odorous emissions.
- (b) Definitions. For the purpose of this ~~Rule~~ Rule, the following definitions shall apply:

- (1) "Commercial purposes" means activities that require a ~~state~~ State or local business license to operate.
- (2) "Temporary activities or operations" means activities or operations that are less than 30 days in duration during the course of a calendar year and do not require an air quality permit.
- (c) Applicability. With the ~~exceptions~~ exemptions in Paragraph (d) of this Rule, this Rule shall apply to all operations that ~~may~~ produce odorous emissions that can cause or contribute to objectionable odors beyond the facility's boundaries.
- (d) Exemptions. The requirements of this Rule do not apply to:
- (1) processes at kraft pulp mills identified in 15A NCAC 02D Rule .0528 of this Section, and ~~covered under subject to Rule 15A NCAC 02D .0524 or .0528 of this Section; .0528;~~
  - (2) processes at facilities that produce feed-grade animal proteins or feed-grade animal fats and oils identified in ~~and covered under Rule .0539;~~ 15A NCAC 02D .0539;
  - (3) motor vehicles and transportation facilities;
  - (4) all on-farm animal and agricultural operations, including dry litter operations and operations ~~covered under Rule .1804 of this Section;~~ subject to 15A NCAC 02D .1804;
  - (5) municipal wastewater treatment plants and municipal wastewater handling systems;
  - (6) restaurants and food preparation facilities that prepare and serve food on site;
  - (7) single family dwellings not used for commercial purposes;
  - (8) materials odorized for safety purposes;
  - (9) painting and coating operations that do not require a business license; ~~or~~
  - (10) all temporary activities or ~~operations.~~ operations; or
  - (11) any facility that stores products that are grown, produced, or generated on one or more agricultural operations and that are "renewable energy resources," as defined in G.S. 62-133.8(a)(8) if the facility identifies the sources of potential odor emissions and specifies odor management practices in their permit pursuant to 15A NCAC 02Q .0300 or .0500 to minimize objectionable odor beyond the property lines.
- (e) Control Requirements. The owner or operator of a facility subject to this Rule shall not operate the facility without implementing management practices or installing and operating odor control equipment sufficient to prevent odorous emissions from the facility from causing or contributing to objectionable odors beyond the facility's boundary.
- (f) Odor management plan. If the Director determines, pursuant to Paragraph (i) of this Rule, that a source or facility subject to this Rule is causing or contributing to objectionable odors beyond its property boundary by the procedures described in Paragraph (i) of this Rule, the owner or operator shall develop and submit an odor management plan within 60 days of receipt of written notification from the Director of an objectionable odor determination. The odor management plan shall:

- (1) identify the sources of odorous emissions;
- (2) describe how odorous emissions will be controlled from each identified source;
- (3) describe how the plan will be implemented; and
- (4) contain a schedule by which the plan will be implemented.

Upon receipt of an approval letter from the Director for the odor management plan, the source or facility shall implement the approved plan within 30 days, unless an alternative schedule of implementation is approved as part of the odor management plan submittal. If the Director finds that the odor management plan does not meet the requirements of this Paragraph or that the plan is insufficient to address the specific odor concerns, he or she shall notify the owner or operator of any deficiencies in the proposed plan. The owner or operator shall have 30 days after receipt of written notification from the Director to resubmit the odor management plan correcting the stated deficiencies with the plan or the schedule of implementation. If the owner or operator fails to correct the plan deficiencies with the second draft plan submittal or repeatedly fails to meet the deadlines set forth in this Paragraph or Paragraph (g) of this Rule, the Director shall notify the owner or operator in writing that they are required to comply with the maximum feasible control requirements in Paragraph (h) of this Rule.

(g) Odor management plan revision. If after the odor management plan has been implemented, the Director determines that the plan fails to eliminate objectionable odor emissions from a source or facility using the procedures described in Paragraph (i) of this Rule, he or she shall require the owner or operator of the facility to submit a revised plan. Within 60 days after receiving written notification from the Director of a new objectionable odor determination, the owner or operator of the facility shall submit a revision to their odor management plan following the procedures and timelines in Paragraph (f) of this Rule. If the revised plan, once implemented, fails to eliminate objectionable odors, then the source or facility shall comply with requirements in Paragraph (h) of this Rule.

(h)(f) Maximum feasible controls. If an amended odor management plan does not prevent objectionable odors beyond the facility's boundary, If the Director determines that a source or facility subject to this Rule is emitting an objectionable odor by the procedures described in Paragraph (g) of this Rule, the Director shall require the owner or operator to implement maximum feasible controls for the control of odorous emissions. (Maximum Maximum feasible controls shall be determined according to the procedures in Rule .1807 of this Section.) 15A NCAC 02D .1807. The owner or operator shall:

- (1) within 180 days of receipt of written notification from the Director of the requirement to implement maximum feasible controls, complete the determination process outlined in 15A NCAC 2D .1807 and submit the completed maximum feasible control determination process along with a permit application for maximum feasible controls and a compliance schedule to the Division of Air Quality; the compliance schedule shall contain the following increments of progress: complete the process outlined in 15A NCAC 02D .1807

and submit a complete permit application according to 15A NCAC 02Q .0300 or 15A NCAC 02Q .0500, as applicable, within 180 days of receipt of written notice from the Director requiring implementation of maximum feasible controls. The application shall include a compliance schedule containing the following increments of progress:

- (A) a date by which contracts for the odorous emission control systems and equipment shall be awarded or orders shall be issued for purchase of component parts;
  - (B) a date by which on-site construction or installation of the odorous emission control systems and equipment shall begin;
  - (C) a date by which on-site construction or installation of the odorous emission control systems and equipment shall be completed; and
  - (D) a date by which final compliance shall be achieved.
- (2) install and begin operating maximum feasible controls within 18 months after receiving written notification from the Director of the requirement to implement maximum feasible controls, ~~have installed and begun operating maximum feasible controls. controls. The owner or operator may request an extension to implement maximum feasible controls. The Director shall approve an extension request if he or she finds that the extension request is the result of circumstances beyond the control of the owner or operator.~~

The owner or operator shall certify to the Director within five days after the deadline for each increment of progress in this Paragraph whether the required increment of progress has been met.

~~(i)(g)~~ Determination of the existence of an objectionable odor. A source or facility is causing or contributing to an objectionable odor when:

- (1) ~~A~~ a member of the Division staff determines by field investigation that an objectionable odor is present by taking into account the nature, intensity, pervasiveness, duration, and source of the odor and other pertinent factors;
- (2) ~~The~~ the source or facility emits known ~~odor causing~~ odor-causing compounds such as ammonia, total volatile organics, hydrogen sulfide, or other sulfur compounds at levels that cause objectionable odors beyond the property line of that source or facility; or
- (3) ~~The~~ the Division receives from the State Health Director epidemiological studies associating health problems with odors from the source or facility facility. or evidence of documented health problems associated with odors from the source or facility provided by the State Health Director.

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).*

**15A NCAC 02D .1807 DETERMINATION OF MAXIMUM FEASIBLE CONTROLS FOR ODOROUS EMISSIONS (READOPTED WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02D .1808 EVALUATION OF NEW OR MODIFIED SWINE FARMS (READOPTED WITHOUT SUBSTANTIVE CHANGES)**

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Wildlife Resources Commission intends to adopt the rule cited as 15A NCAC 10A .1601.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** [www.ncwildlife.org](http://www.ncwildlife.org)

**Proposed Effective Date:** August 1, 2019

**Public Hearing:**

**Date:** April 9, 2019

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

**Location:** Commission HQ, 1751 Varsity Drive, Raleigh, NC 27606

**Reason for Proposed Action:** *G.S. 113-270.1B(e) requires the Commission to adopt rules to establish fees for hunting, fishing, trapping, and activity licenses issued and administered by the Commission. Additionally, the Commission was given the authority to increase hunting, fishing, trapping, and activity license fees by the total increase of the CPI-U over the period of time since the last fee change. This proposed new rule is necessary to comply with the statutory requirement.*

**Comments may be submitted to:** Rulemaking Coordinator, 1701 Mail Service Center, Raleigh, NC 27699-1701; email [regulations@ncwildlife.org](mailto:regulations@ncwildlife.org)

**Comment period ends:** May 14, 2019

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.



**Fiscal impact (check all that apply).**

- ☒ **State funds affected**
- ☐ **Environmental permitting of DOT affected**
- ☐ **Analysis submitted to Board of Transportation**
- ☐ **Local funds affected**
- ☒ **Substantial economic impact (≥\$1,000,000)**
- ☒ **Approved by OSBM**
- ☐ **No fiscal note required by G.S. 150B-21.4**

**CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY**

**SUBCHAPTER 10A - WILDLIFE RESOURCES COMMISSION**

**SECTION .1600 – FEES FOR WILDLIFE RESOURCES COMMISSION LICENSES**

**15A NCAC 10A .1601 LICENSES FEES**

(a) License fees established by the Commission in this Rule shall be subject to the requirements of G.S. 113-270.1B(e).

(b) The following fees shall apply to combination hunting and inland fishing licenses issued by the Commission, as set forth in G.S. 113-270.1C:

- (1) Resident Annual Combination Hunting and Inland Fishing License - \$26.50.
- (2) Resident Disabled Veteran Lifetime Combination Hunting and Inland Fishing License - \$10.60.
- (3) Resident Totally Disabled Lifetime Combination Hunting and Inland Fishing License - \$10.60.

(c) The following fees shall apply to sportsman licenses issued by the Commission, as set forth in G.S. 113-270.1D:

- (1) Annual Sportsman License - \$53.01.
- (2) Infant Lifetime Sportsman License - \$212.00.
- (3) Youth Lifetime Sportsman License - \$371.00.
- (4) Adult Resident Lifetime Sportsman License - \$530.00.
- (5) Nonresident Lifetime Sportsman License - \$1,272.00.
- (6) Age 70 Resident Lifetime Sportsman License - \$15.90.
- (7) Resident Disabled Veteran Lifetime Sportsman License - \$106.00.
- (8) Resident Totally Disabled Lifetime Sportsman License - \$106.00.

(d) The following fees shall apply to hunting licenses issued by the Commission, as set forth in G.S. 113-270.2:

- (1) Resident State Hunting License - \$21.20.
- (2) Lifetime Resident Comprehensive Hunting License - \$265.00.
- (3) Controlled Hunting Preserve Hunting License - \$21.20.
- (4) Resident Annual Comprehensive Hunting License - \$38.16.
- (5) Nonresident State Hunting Licenses:
  - (A) Season License - \$84.81.
  - (B) Ten-Day License - \$63.61.

(e) The following fees shall apply to special activity licenses issued by the Commission, as set forth in G.S. 113-270.3:

- (1) Resident Big Game Hunting License - \$13.78.
- (2) Nonresident Bear Hunting License - \$238.52.
- (3) Bear Management Stamp - \$10.60.
- (4) Nonresident Big Game Hunting License:
  - (A) Season License - \$84.81.
  - (B) Ten-Day License - \$63.61.
- (5) Bonus Antlerless Deer License - \$10.60.
- (6) Game Land License - \$15.90.
- (7) Falconry License - \$10.60.
- (8) Migratory Waterfowl Hunting License - \$13.78.
- (9) Resident American Alligator License - \$250.00.
- (10) Nonresident American Alligator License - \$500.00.
- (11) Resident Elk License - \$500.00.
- (12) Nonresident Elk License - \$1,000.00.

(f) The following fees shall apply to hunting and fishing guide licenses issued by the Commission, as set forth in G.S. 113-270.4:

- (1) Resident Hunting and Fishing Guide License - \$15.90.
- (2) Nonresident Hunting and Fishing Guide License - \$159.02.

(g) The following fees shall apply to trapping licenses issued by the Commission, as set forth in G.S. 113-270.5:

- (1) Resident State Trapping License - \$31.80.
- (2) Nonresident State Trapping License - \$132.51.

(h) The following fees shall apply to hook-and-line licenses in inland and joint fishing waters issued by the Commission, as set forth in G.S. 113-271:

- (1) Resident Annual Comprehensive Inland Fishing License - \$26.50.
- (2) Resident State Inland Fishing License - \$21.20.
- (3) Lifetime Resident Comprehensive Inland Fishing License - \$265.00.
- (4) Nonresident State Inland Fishing License - \$38.16.
- (5) Short-Term Inland Fishing License:
  - (A) Resident 10-day Inland Fishing License - \$7.42.
  - (B) Nonresident 10-day Inland Fishing License - \$19.08.
- (6) Age 70 Resident Lifetime Inland Fishing License - \$15.90.
- (7) Resident Disabled Veteran Lifetime Inland Fishing License - \$10.60.
- (8) Resident Totally Disabled Lifetime Inland Fishing License - \$10.60.
- (9) Special Landholder and Guest Fishing License - \$106.01.

(i) The following fees shall apply to the Special Trout License and Mountain Heritage Trout Waters 3-day Fishing License issued by the Commission, as set forth in G.S. 113-272:

- (1) Special Trout License - \$13.78.
- (2) Mountain Heritage Trout Waters 3-Day Fishing License - \$5.30.

- (j) The following fees shall apply to special device licenses issued by the Commission, as set forth in G.S. 113-272.2:
- (1) Resident Special Device License - \$79.51.
  - (2) Nonresident Special Device License - \$530.05.
- (k) The fee for a collection license issued by the Commission as set forth in G.S. 113-272.4 shall be \$5.30.
- (l) The fee for a captivity license issued by the Commission as set forth in G.S. 113-272.5 shall be \$5.30.
- (m) The following fees shall apply to dealer licenses issued by the Commission as set forth in G.S. 113-273:
- (1) Resident Fur-dealer License - \$63.61.
  - (2) Nonresident Fur-dealer License - \$318.03.
  - (3) Fur-dealer Station License - \$127.21.
  - (4) Controlled Hunting Preserve Operator License - \$53.01.
  - (5) Game Bird Propagation License - \$5.30.
  - (6) Furbearer Propagation License - \$26.50.
  - (7) Taxidermy License - \$10.60.
- (n) The following fees shall apply to unified hunting and fishing licenses issued by the Commission, as set forth in G.S. 113-351:
- (1) Annual Resident Unified Sportsman/Coastal Recreational Fishing License - \$68.90.
  - (2) Annual Resident Unified Inland/Coastal Recreational Fishing License - \$42.40.
  - (3) Lifetime Unified Sportsman/Coastal Recreational Fishing Licenses:
    - (A) Infant Lifetime Unified Sportsman/Coastal Recreational Fishing License - \$291.50.
    - (B) Youth Lifetime Unified Sportsman/Coastal Recreational Fishing License - \$477.00.
    - (C) Resident Adult Lifetime Unified Sportsman/Coastal Recreational Fishing License - \$715.50.
    - (D) Nonresident Adult Lifetime Unified Sportsman/Coastal Recreational Fishing License - \$1,643.00.
    - (E) Resident Age 70 Lifetime Unified Sportsman/Coastal Recreational Fishing License - \$31.80.
    - (F) Resident Disabled Veteran Lifetime Unified Sportsman/Coastal Recreational Fishing License - \$116.60.
    - (G) Resident Totally Disabled Lifetime Unified Sportsman/Coastal Recreational Fishing License - \$116.60.
  - (4) Resident Lifetime Unified Inland/Coastal Recreational Fishing License - \$477.00.
- (o) The following fees shall apply to Coastal Recreational Fishing Licenses issued by the Commission, as set forth in G.S. 113-174.2:
- (1) Annual Resident Coastal Recreational Fishing License - \$15.90.
  - (2) Annual Nonresident Coastal Recreational Fishing License - \$31.80.

- (3) Ten-Day Resident Coastal Recreational Fishing License - \$5.30.
- (4) Ten-Day Nonresident Coastal Recreational Fishing License - \$10.60.
- (5) Infant Lifetime Coastal Recreational Fishing License - \$106.00.
- (6) Youth Lifetime Coastal Recreational Fishing License - \$159.00.
- (7) Resident Adult Lifetime Coastal Recreational Fishing License - \$265.00.
- (8) Nonresident Adult Lifetime Coastal Recreational Fishing License - \$530.00.
- (9) Resident Age 70 Lifetime Coastal Recreational Fishing License - \$15.90.
- (10) Resident Disabled Veteran Coastal Recreational Fishing License - \$10.60.
- (11) Resident Totally Disabled Coastal Recreational Fishing License - \$10.60.

Authority G.S. 113-270.1B; 113-134.

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Wildlife Resources Commission intends to amend the rule cited as 15A NCAC 10B .0106.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** [www.ncwildlife.org](http://www.ncwildlife.org)

**Proposed Effective Date:** September 1, 2019

**Public Hearing:**

**Date:** April 9, 2019

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

**Location:** Commission HQ, 1751 Varsity Drive, Raleigh, NC 27606

**Reason for Proposed Action:** *The proposed changes will streamline administrative processes and align rule with current business practices; remove barriers that prohibit individuals with minor wildlife violations from becoming a WDCA; create a reasonable testing requirement that aligns with other WRC testing requirements; and remove barriers for Animal Control Officers (ACO) acting in an official capacity, to take wild animals exhibiting signs of rabies.*

**Comments may be submitted to:** Rulemaking Coordinator, 1701 Mail Service Center, Raleigh, NC 27699-1701; email [regulations@ncwildlife.org](mailto:regulations@ncwildlife.org)

**Comment period ends:** May 14, 2019

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from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact (check all that apply).**

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Substantial economic impact (≥\$1,000,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required by G.S. 150B-21.4

**CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY**

**SUBCHAPTER 10B - HUNTING AND TRAPPING**

**SECTION .0100 - GENERAL REGULATIONS**

**15A NCAC 10B .0106 WILDLIFE TAKEN FOR DEPREDACTIONS**

(a) Depredation permits allow the taking of undesirable or excess wildlife resources as described in Subparagraphs (1) and (2) of this Paragraph. Only employees of the Wildlife Resources Commission (Commission) and Wildlife Damage Control Agents (WDCA) may issue depredation permits. ~~Each permit~~ Permits shall be written on a form supplied by the Commission. No permit is needed for the owner or lessee of a property to take wildlife while committing depredations on ~~the~~ that property; however the manner of taking, disposition of dead wildlife, and reporting requirements as described in this Rule still apply.

(b) No permit shall be issued to take any endangered or threatened species of wildlife listed under 15A NCAC 10I, except alligators, by reason of depredations to property. Only the Executive Director or his or her designee may issue depredation permits for Special Concern species listed in 15A NCAC 10I .0105 and for alligators. An individual may take an endangered or threatened species in immediate defense of his or her own life or of the lives of others without a permit. Any endangered or threatened species that may constitute a demonstrable but non-immediate threat to human safety shall be reported to a federal or ~~state~~ State wildlife enforcement officer, who, upon verification of the report, may take or remove the specimen as provided by 15A NCAC 10I .0102. Depredation permits for other species ~~shall~~ may be issued under the following conditions:

- (1) for taking wildlife that is or has been damaging or destroying ~~property~~ property, provided there is evidence of property damage. No permit may be issued for the taking of ~~any~~ migratory birds and other federally-protected animals unless a ~~corresponding~~ corresponding, valid U.S. Fish

and Wildlife Service depredation ~~permit~~, permit(s), if required, has been issued. A permit issued pursuant to this Rule shall name the species allowed to be taken and may ~~contain~~ include limitations as to age, sex, ~~or any other condition, such as~~ type of depredation, location of animal or damage, and local ~~laws, within the species so named.~~ laws. The permit shall be issued to a landholder or an authorized representative of a unit of local government for depredations on public ~~property; and the property.~~ The permit shall be used only by individuals named on the permit.

(2) for taking of wildlife resources in circumstances of overabundance or when the wildlife resources present a danger to human safety. ~~Cities~~ Cities, as defined in G.S. ~~160A-1(2)~~ 160A-1(2), seeking ~~such~~ a depredation permit pursuant to these circumstances shall apply to the ~~Executive Director~~ Commission using a ~~form supplied by the Commission~~ requesting an application available from the Commission. The application shall include the following information:

- (A) the name and location of the city;
- (B) the acreage of the affected property;
- (C) a map of the affected property;
- (D) the signature of an authorized city representative;
- (E) the nature of the overabundance or the threat to public safety; and
- (F) a description of previous actions taken by the city to ameliorate the problem.

~~(b)(c)~~ Wildlife Damage Control Agents; Agents. Upon completion of a training course designed for the purpose of reviewing and updating information on wildlife laws and safe, humane wildlife handling techniques, and demonstration of a knowledge of wildlife laws and safe, humane wildlife handling techniques, an individual ~~with no record of wildlife law violations that, within the last five years, has not been convicted of a wildlife misdemeanor as specified in G.S. 113-294 that resulted in a license suspension or revocation may apply to the Wildlife Resources Commission (Commission)~~ to become a Wildlife Damage Control Agent (WDCA). WDCA. Those ~~persons~~ individuals who demonstrate knowledge of wildlife laws and safe, humane wildlife handling techniques by a passing score of ~~85~~ 80 percent or better on a written examination provided by a representative of the ~~Wildlife Resources Commission~~, in cooperation with the training course provider, shall be approved. Those ~~persons~~ individuals failing to obtain a passing score shall be given one chance for re-testing without re-taking the course. Those ~~persons~~ individuals approved as agents by the Commission may then issue depredation permits for depredation as defined in Subparagraph (a)(1) of this Rule to landholders and be listed as a second party to provide the control service. WDCAs may not issue depredation permits for coyotes in the counties of Beaufort, Dare, Hyde, Tyrrell, Washington; big game animals; bats; or ~~any~~ species listed as endangered, threatened, or special concern under 15A NCAC 10I .0103, .0104, and .0105 of this Chapter. WDCAs

shall annually report to the ~~Wildlife Resources~~ Commission the number and disposition of animals ~~taken, by county, annually, by county.~~ Records shall be available for inspection by a ~~Wildlife Enforcement~~ wildlife enforcement officer at any time during ~~normal business hours. These business hours are~~ the posted business hours of the Commission at ncwildlife.org. ~~WDCA status shall be revoked at any time by the~~ The Executive Director shall revoke WDCA status when there is evidence of violations of wildlife laws, failure to report, or inhumane treatment of animals by the WDCA. A WDCA may not charge for the permit, but may charge for his or her investigations and control services. ~~In order to maintain a knowledge of current laws, rules, and techniques, each~~ Each WDCA shall renew his or her agent status every three years by showing proof of having attended at least one training course provided for the purpose of reviewing and updating information on wildlife laws and safe, humane wildlife handling techniques within the previous 12 months or agency approved continuing education credits.

~~(e)~~(d) Each depredation permit shall have an expiration date or time after which the depredation permit is no longer valid. The depredation permit authorizes possession of any wildlife resources taken under the permit and shall be retained as long as the wildlife resource is in the permittee's possession. All individuals taking wildlife resources under the authority of a depredation permit shall comply with the conditions written on the permit and the requirements specified in this Rule.

~~(d)~~(e) Manner of Taking:

- (1) Taking Without a Permit. Wildlife taken without a permit while committing depredations to property may, during the open season on the species, be taken by the landholder by any lawful method. During the closed season, such depredating wildlife may be taken without a permit only by the use of firearms or archery equipment as defined in 15A NCAC 10B .0116.
- (2) Taking With a Permit. Wildlife taken under a depredation permit may be taken only by the method or methods authorized by the permit. When trapping is authorized, in order to limit the taking to the intended purpose, the permit may specify a reasonable distance from the property sought to be protected, ~~according to the particular circumstances,~~ within which the traps shall be set. The Executive ~~Director~~ Director, Commission employee, or agent may also ~~state state,~~ in a permit authorizing trapping ~~trapping,~~ whether or not bait may be used and the type of ~~bait, if any,~~ bait that is authorized based upon factors such as type of depredation, locations of animal or damage, and local laws. In addition to any trapping restrictions that may be contained in the permit, the method of trapping shall be in accordance with the requirements and restrictions imposed by G.S. 113-291.6 and other local laws passed by the General Assembly. No depredation permit shall authorize the use of poisons or pesticides in taking wildlife except in accordance with the

provisions of the North Carolina Pesticide Law of 1971, G.S. 143, Article 52, the Structural Pest Control Act of 1955, G.S. 106, Article 4C, and G.S. 113, Article 22A. No depredation permit shall authorize the taking of wildlife by any method by any landholder upon the lands of another except when the individual is listed as a second party on a depredation permit.

- (3) Intentional Wounding. It is unlawful for any landholder, with or without a depredation permit, to intentionally ~~to~~ wound a wild animal in a manner so as not to cause its immediate death as suddenly and humanely as the circumstances permit.

~~(e)~~(f) Disposition of Wildlife Taken:

- (1) Generally. Except as provided by Subparagraphs (e)(2) through (5) of this Paragraph, any wildlife killed without a permit while committing depredations shall be buried or otherwise disposed of in a safe and sanitary manner on the property. Wildlife killed under a depredation permit may be transported to an alternate disposal site if desired. Anyone in possession of carcasses of animals being transported under a depredation permit shall have the depredation permit in his or her possession. Except as provided by Subparagraphs (e)(2) through (5) of this Rule, all wildlife killed under a depredation permit shall be buried or otherwise disposed of as stated on the permit.
- (2) Deer and feral swine. The edible portions of feral swine and deer may be retained by the landholder for consumption but shall not be transported from the property where the depredations took place without a valid depredation permit. The landholder may give a second party the edible portions of the feral swine and deer taken under the depredation permit. The receiver of the edible portions shall hold a copy of the depredation permit. The nonedible portions of any deer carcass, including head, hide, feet, and antlers, shall be disposed of as specified in Subparagraph (1) of this Paragraph or turned over to a wildlife enforcement officer for disposition.
- (3) Fox. Any fox killed under a depredation permit may be disposed of as described in Subparagraph (1) of this Paragraph or, upon compliance with the fur tagging requirements of 15A NCAC 10B .0400, the carcass or pelt thereof may be sold to a licensed fur dealer.
- (4) Furbearing Animals. The carcass or pelt of any furbearing animal killed during the open season for taking such furbearing animal for control of depredations to property, whether with or without a permit, may be sold to a licensed fur dealer provided that the person offering such carcass or pelt for sale has a valid hunting or

trapping license; provided further that bobcats and otters may only be sold upon compliance with any required fur tagging requirement set forth in 15A NCAC 10B .0400.

- (5) Animals Taken Alive. Wild animals in the order Carnivora, armadillos, groundhogs, nutria, and beaver shall be humanely euthanized either at the site of capture or at a facility designed to humanely handle the euthanasia or released on the property where captured. Feral swine shall be euthanized while still in the trap in accordance with G.S. 113-291.12. For all other animals taken alive, the animal shall be euthanized or released on property with permission of the landowner. When the relocation site is public property, written permission shall be obtained from ~~an~~ appropriate the local, state, State, or federal official authorized to manage the property before any animal may be released. Animals transported or held for euthanasia shall be euthanized within 12 hours of capture. Anyone in possession of live animals being transported for relocation or euthanasia under a depredation permit shall have the depredation permit in his or her possession.

~~(f)(g)~~ Reporting Requirements. Any landholder who kills an alligator; ~~a coyote~~ coyote, in the counties of Beaufort, Dare, Hyde, Tyrrell, or Washington; deer; Canada goose; bear; elk; or wild turkey under a valid depredation permit shall report ~~such the~~ the kill on the form provided with the ~~permit~~ permit, including the number and species of animal(s) killed, and mail submit the form upon the expiration date of the depredation permit to the Wildlife Resources Commission. Any landowner who kills a coyote in the counties of Beaufort, Dare, Hyde, Tyrrell, and Washington shall report ~~such kill as directed the kill, including the number of coyotes killed,~~ on the form provided with the depredation permit. The killing and method of disposition of every alligator; coyote in the counties of Beaufort, Dare, Hyde, Tyrrell, and Washington; bear; or elk taken without a permit shall be reported to the Wildlife Resources Commission within 24 hours following the time of such killing.

(h) Exemption for Animal Control Officers. Animal Control Officers, as defined by G.S. 130A-184(1) and when in the performance of official duties, shall be exempt from obtaining a depredation permit when taking wild animals that:

- (1) Exhibit visible signs of rabies;
- (2) Exhibit unprovoked aggression that may be associated with rabies;
- (3) Are suspected to be rabid; or
- (4) Have exposed or potentially exposed humans, pets, or livestock to rabies.

Authority G.S. 113-134; 113-273; 113-274; 113-291.4; 113-291.6; 113-300.1; 113-300.2; 113-307; 113-331; 113-333; 113-334(a); 113-337.

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Wildlife Resources Commission intends to adopt the rules cited as 15A NCAC 10H .1401-.1406.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** [www.ncwildlife.org](http://www.ncwildlife.org)

**Proposed Effective Date:** *January 1, 2020*

**Public Hearing:**

**Date:** *April 9, 2019*

**Time:** *2:00 p.m.*

**Location:** *WRC HQ, 1751 Varsity Drive, Raleigh, NC 27606*

**Date:** *April 11, 2019*

**Time:** *7:00 p.m.*

**Location:** *WRC HQ, 1751 Varsity Drive, Raleigh, NC 27606*

**Reason for Proposed Action:** *In 2013, the General Assembly amended G.S. 113-272.5, Captivity license, to provide for the issuance of these licenses for exhibition purposes. Effective September 30, 2015, farmed captive cervids were transferred from the issuance of these licenses for exhibition purposes. Effective September 30, 2015, farmed captive cervides were transferred from the Commissison to the NC Department of Agriculture and Consumer Services via G.S. 106-549.97. Because of these changes, the agency's captivity rules required revision to ensure of the intent of the statues was clear and unambiguous in rule, and to specify terminology for consistent application. Additionally, it was necessary to distinguish the regulatory differences between holding wildlife for rehabilitation purposes from holding wildlife in long-term captivity. To accomplish this, the existing captivity rules in 15A NCAC 10H, subsections .0301-.0304 were revised and reorganized into a new Section of Subchapter 10H (15A NCAC 10H .1400 – Wildlife Captivity and Rehabilitation). The Commission voted last April to repeal existing rules with a delayed effective date of January 1, 2020. The rule proposed herein will replace them. These rules split rehabilitation and longterm captivity requirements, incorporate necessary definitions and provisions to be used throughout the subchapter, detail enforcement actions, and specify reporting requirements and form contents. The new Section will apply to all captivity licenses issued by the Commission as of January 1, 2020 and to those non-farmed cervid facilities issued a license prior to September 30, 2015.*

**Comments may be submitted to:** *Rulemaking Coordinator, 1701 Mail Service Center, Raleigh, NC 27699-1701; email [regulations@ncwildlife.org](mailto:regulations@ncwildlife.org)*

**Comment period ends:** *May 14, 2019*

**Procedure for Subjecting a Proposed Rule to Legislative Review:** *If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the*

legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact (check all that apply).**

- ☒ **State funds affected**
- ☐ **Environmental permitting of DOT affected**
- ☐ **Analysis submitted to Board of Transportation**
- ☒ **Local funds affected**
- ☐ **Substantial economic impact (≥\$1,000,000)**
- ☒ **Approved by OSBM**
- ☐ **No fiscal note required by G.S. 150B-21.4**

**CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY**

**SUBCHAPTER 10H - REGULATED ACTIVITIES**

**SECTION .1400 – WILDLIFE CAPTIVITY AND REHABILITATION**

**15A NCAC 10H .1401 DEFINITIONS AND GENERAL REQUIREMENTS FOR CAPTIVITY LICENSES**

(a) The rules in this Section apply to all captivity licenses issued by the Wildlife Resources Commission, including those applicable to non-farmed cervids in accordance with G.S. 106-549.97.

(b) The possession of any species of native wild animal or wild bird and any member of the family Cervidae is unlawful, unless the individual in possession obtains a captivity license from the Commission as provided by this Rule. This Rule shall not apply to any endangered, threatened, or special concern species as defined by 15A NCAC 10I .0100 or farmed cervids as defined by G.S. 106-549.97.

(c) Captivity licenses may be issued by the Commission to qualified individuals meeting the requirements for rehabilitation and captivity licenses detailed in this Section for holding of wild animals or wild birds alive in captivity for scientific, educational, exhibition, or other purposes, as specified in G.S. 113-272.5.

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

- (1) "Category" means a designation on a captivity license for rehabilitation that defines a species or subset of species.
- (2) "Educational institution" or "scientific research institution" means any public or private school, facility, organization, or institution of vocational, professional, or higher education that uses live animals as part of a course of training, or for research, or other experiments, and is at least 50 percent funded by grants, awards, loans, or contracts from a department, agency, or instrumentality of federal, State, or

local government. These terms do not include elementary or secondary schools.

(3) "Education" means providing instruction or information to the public about wild animals or wild birds.

(4) "Enclosure" means a structure housing captive wild animals or wild birds that prevents escape, protects the animal from injury, and is equipped with structural barriers to prevent any physical contact between the animal and the public.

(5) "Exhibition" means any display of wild animals or wild birds for the public, whether for-profit or not-for-profit.

(6) "Facility" means a designated location in North Carolina where wild animals or wild birds are held for rehabilitation or holding purposes. This includes enclosures, rooms, and buildings.

(7) "Farmed cervid" as defined in G.S. 106-549.97.

(8) "Foster" or "surrogate" means a bird held under a U.S. Fish and Wildlife Service federal migratory bird rehabilitation permit used to rear wild birds being held under a captivity license for rehabilitation.

(9) "Habituation" means causing a wild animal or wild bird to temporarily lose fear of humans, pets, or objects that impacts its ability to survive in the wild unassisted.

(10) "Imprinting" means causing a wild animal or wild bird to permanently lose fear of humans, pets, or objects that impacts its ability to survive in the wild unassisted, and is a non-reversible condition.

(11) "Migratory birds" means all birds as defined in G.S. 113-129.

(12) "Native" means a wild animal or wild bird that occurs or historically occurred in the wild in North Carolina.

(13) "Nest box" or "den" means a structure that provides a retreat area that is within, attached to, or adjacent to an enclosure.

(14) "Non-farmed cervid" as defined in G.S. 106-549.97.

(15) "Non-native" means a wild animal or wild bird that has not historically occurred in the wild in North Carolina.

(16) "Pet" means any animal kept or used for amusement or companionship.

(17) "Publicly operated zoo" means a park or facility where living animals are kept and exhibited to the public, and that is operated by a federal, State, or local government agency.

(18) "Rabies species" are raccoon, skunk, fox, bat, bobcat, or coyote.

(19) "Residence" means a private home, dwelling unit in a multiple family structure, hotel, motel, camp, manufactured home, or any other place where people reside.

- (20) "Shelter" means a structure or feature that protects captive wild animals or wild birds from direct sunlight and precipitation.
- (21) "Scientific use" and "scientific purpose" means the use of wild animals or wild birds for application of the scientific method to investigate any relationships amongst natural phenomena or to solve a biological or medical problem. This definition applies only to educational or scientific research institutions unless otherwise approved by the Commission.
- (22) "Unfit" means wild animals or wild birds that are:
  - (A) incapacitated by injury or other means to the extent that they cannot feed or care for themselves without human assistance;
  - (B) rendered imprinted by proximity to humans, pets, or objects; or
  - (C) a non-native species.
- (23) "Wild animal" means game animals, fur-bearing animals, and all other wild mammals except feral swine or marine mammals found in coastal fishing waters.
- (24) "Wild bird" as defined in 15A NCAC 10B .0121.

(e) Individuals interested in obtaining a captivity license for rehabilitation or a captivity license for holding shall apply for the license by completing and submitting the appropriate forms set forth in Rule .1406 of this Section.

(f) Applicants for either license shall meet the following requirements:

- (1) Be 18 years of age or older at the time of application;
- (2) Have no criminal convictions under Article 47 of Chapter 14, of the North Carolina General Statutes within 10 years of the date of application; and
- (3) Have no criminal convictions under the federal Animal Welfare Act within 10 years of the date of application.

(g) No captivity license shall be transferable either by license holder or by site of a holding facility.

(h) Captivity licenses are annual licenses and shall terminate no later than December 31 of the year the license is issued.

(i) Except as otherwise provided, no transportation permit shall be required to move wild animals or wild birds held under a captivity license within the State. Any person transporting an animal that is held under a captivity license shall have the captivity license in his or her possession. An exportation or importation permit as defined in G.S. 113-274(c)(3) is required to transport wild animals or wild birds into or out of the State.

(j) Individuals holding a captivity license shall comply with North Carolina Department of Agriculture and Consumer Services requirements for disclosing reportable diseases. A list of current reportable diseases may be found on the North Carolina Department of Agriculture and Consumer Services website, this list is hereby incorporated by reference, including subsequent amendments and editions and may be found at [www.ncagr.gov](http://www.ncagr.gov).

*Authority G.S. 106-549.97(b); 113-134; 113-272.5; 113-274.*

### **15A NCAC 10H .1402 CAPTIVITY LICENSE FOR REHABILITATION**

(a) A captivity license for rehabilitation shall be required for lawful possession of injured, crippled, orphaned, or otherwise unfit native wild animals or wild birds for the purpose of providing short term care and eventual release into the animal's natural habitat. A captivity license for rehabilitation shall not be issued for:

- (1) Endangered, threatened, or special concern species as defined by 15A NCAC 10I .0100. Rehabilitation of these species requires an endangered species permit from the Commission;
- (2) Domestic animals;
- (3) Feral swine;
- (4) Nutria;
- (5) Coyote;
- (6) Adult black bear; or
- (7) Adult white-tailed deer or elk.

(b) A captivity license for rehabilitation shall not be issued for the purpose of holding wild animals or wild birds:

- (1) As pets;
- (2) For education, exhibition, or scientific purposes, except as provided in Rule .1403 of this Section;
- (3) For dog training;
- (4) For hunting; or
- (5) Acquired unlawfully.

(c) Individuals who do not possess a captivity license for rehabilitation may take temporary possession of injured, crippled, or orphaned wild animals or wild birds, provided they are surrendered to a North Carolina licensed veterinarian or an individual licensed under this Rule within 24 hours of taking possession of such animals.

(d) North Carolina licensed veterinarians providing medical care to sick, injured, or crippled wild animals or wild birds are not required to have a license for rehabilitation from the Commission. North Carolina licensed veterinarians without a captivity license for rehabilitation may hold wild animals or wild birds until the animal is medically stable. Once medically stable, the wild animal or wild bird shall be transferred to an individual possessing a captivity license for rehabilitation with the appropriate category for the given species. Licensed veterinarians rehabilitating wild animals or wild birds shall have a valid captivity license for rehabilitation.

(e) Individuals applying for a captivity license for rehabilitation that have never held this license in North Carolina or a similar license in another state, shall be designated as an apprentice. The following requirements shall apply to an apprentice license:

- (1) On the application, the apprentice shall designate a mentor with a valid captivity license for rehabilitation in NC, who has held that license for two or more years;
- (2) An apprentice shall complete at least 12 months of supervised rehabilitation activities under a licensed rehabilitator; and

- (3) An apprentice license shall only authorize the possession of squirrels, rabbits, and opossums.
- (f) Individuals applying for a captivity license for rehabilitation shall meet statutory and regulatory requirements including those in G.S. 113-272.5 and Rule .1401 of this Section. Individuals seeking to rehabilitate migratory birds shall provide proof of a valid and concurrent U.S. Fish and Wildlife Service Federal Migratory Bird Rehabilitation permit for each category of migratory birds to be rehabilitated. The Commission shall indicate on the captivity license for rehabilitation the categories of wild animals and wild birds that the individual is licensed to possess.
- (g) Required facilities.
- (1) Individuals holding a captivity license for rehabilitation shall conduct their rehabilitation activities at the facility designated on their license that meets the minimum standards set forth in the "Miller, E.A., edition, 2000. Minimum Standards for Wildlife Rehabilitation, 3rd edition. National Wildlife Rehabilitators Association, St. Cloud, MN. 116 pages. ISBN 1-931439-00-1." This publication is available online, free of charge, at <http://www.nwrawildlife.org/page/MinimumStandards> and is hereby incorporated by reference, excluding subsequent amendments and editions.
  - (2) All wild animals and wild birds undergoing rehabilitation shall be separated from pets, domestic animals, livestock, and non-native animals.
  - (3) All wild animals shall be kept in separate enclosures by species.
  - (4) Rehabilitation in a residence shall have designated, separate rooms used only for housing, treatment, and rehabilitation.
  - (5) Handling of animals shall be for treatment only.
- (h) Wild animals or wild birds showing symptoms of or believed to be infected with a zoonotic disease shall be euthanized or treated prior to release, based upon advice from a North Carolina licensed veterinarian.
- (i) Release of rehabilitated wild animals and wild birds.
- (1) All rehabilitated wild animals and wild birds shall be released as soon as the animal can be expected to survive in the wild or has attained full recovery from illness or injury, as determined by the rehabilitator or a North Carolina licensed veterinarian.
  - (2) Wild animals and wild birds may remain in a rehabilitation facility for no longer than 180 days. If a longer rehabilitation period is needed, the license holder shall notify the Commission in writing. The Commission shall consider extended rehabilitation on a case-by-case basis by evaluation, which may include the nature of the animal's condition and recommended treatment plan.
  - (3) Wild animals and wild birds shall not be released on property owned by another unless

- the rehabilitator has written permission dated within the last 12 months from the landowner.
- (4) The following conditions render a wild animal or wild bird non-releasable and the animals shall be humanely euthanized:
- (A) any animal with deformities or injuries that preclude survival without human assistance in the wild after treatment;  
or
  - (B) any animal that has become imprinted.  
However, the Commission shall consider transfer of wild animals and wild birds on a case-by-case basis when written authorization is requested from the Commission. The wild animal or wild bird shall only be transferred to an individual or facility with a captivity license for holding as set forth in Rule .1403 of this Section when written authorization is obtained from the Commission.
- (j) Transfer of Animals.
- (1) Wild animals originating outside the State shall not be accepted for the purpose of rehabilitation unless written authorization is obtained from the Commission.
  - (2) Wild animals received for rehabilitation may not be exported outside the State for the purpose of rehabilitation or release after rehabilitation unless written authorization is obtained from both the Commission and the state where the wild animal will be exported to or released from.
  - (3) It shall be unlawful for a license holder to sell any wild animal or wild bird being held under a license for rehabilitation.
  - (4) It shall be lawful for a license holder to transfer a wild animal or wild bird to another individual who possesses a valid captivity license for rehabilitation with the appropriate category for the given species.
- (k) White-tailed Deer Fawn.
- (1) Only individuals holding a captivity license for rehabilitation with the white-tailed deer fawn category may possess, rehabilitate, and release white-tailed deer fawns. To become licensed to rehabilitate white-tailed deer fawns, an individual shall meet all the requirements of the captivity license for rehabilitation.
  - (2) No white-tailed deer fawn shall be possessed until the applicant has constructed or acquired an enclosure for keeping fawn that complies with the standards set forth in Paragraph (g) of this Rule, and the facility has been verified by a representative of the Commission.
  - (3) Any white-tailed deer fawn held for more than 48 hours shall be permanently tagged using only Commission-provided tags.
  - (4) Orphaned white-tailed deer fawns shall be held for no longer than 90 days. Injured white-tailed deer fawns shall be held for no longer than 180



days or until December 31, whichever occurs first. If a longer rehabilitation period is needed, the license holder shall notify the Commission in writing. The Commission shall consider extended rehabilitation on a case-by-case basis. A fawn shall be considered an adult on December 31 of the birth year.

- (5) Records of all white-tail deer fawn rehabilitation shall be maintained on a form, as set forth in Rule .1406 of this Section, provided by the Commission at [www.ncwildlife.org](http://www.ncwildlife.org), and submitted to the Commission within 15 days of expiration of the license or prior to the request for reissuance of the license.

- (6) Any individual or facility with the white-tailed deer category may not rehabilitate white-tailed fawn on properties licensed for farmed cervids.

**(l) Elk Calves.**

- (1) Only individuals under a signed cooperative agreement with the Commission to meet conservation objectives shall be authorized to rehabilitate elk calves.

- (2) Individuals in a cooperative agreement with the Commission shall obtain a captivity license for rehabilitation with the elk calf category. To become licensed to rehabilitate elk calves, an individual shall meet all the requirements of the captivity license for rehabilitation.

- (3) Any elk calves held for more than 48 hours shall be permanently tagged using only Commission-provided tags.

- (4) Any individual or facility with the elk calf category may not rehabilitate elk calves on properties licensed for farmed cervids.

- (5) No elk calf shall be possessed until the applicant has constructed or acquired an enclosure for keeping elk calves that complies with the standards set forth in Paragraph (g) of this Rule, and the facility has been verified by a representative of the Commission.

- (6) Records of all elk calf rehabilitation shall be maintained on a form, as set forth in Rule .1406 of this Section, provided by the Commission at [www.ncwildlife.org](http://www.ncwildlife.org), and submitted to the Commission within 15 days of expiration of the license or prior to the request for reissuance of the license

**(m) Black Bear Cubs.**

- (1) Only individuals under a signed cooperative agreement with the Commission to meet conservation objectives shall be authorized to rehabilitate black bear cubs.

- (2) Individuals in a cooperative agreement with the Commission shall obtain a captivity license for rehabilitation with the black bear category. To become licensed to rehabilitate black bear cubs, an individual shall meet all the requirements of the captivity license for rehabilitation.

- (3) No black bear shall be possessed until the applicant has constructed or acquired an enclosure for keeping black bear that complies with the standards set forth in Paragraph (g) of this Rule, and the facility has been verified by a representative of the Commission.

**(n) Rabies Species.**

- (1) Only individuals holding a captivity license for rehabilitation with the rabies species category may possess, rehabilitate, or release rabies species. To become licensed to rehabilitate rabies species, an individual shall meet all requirements of the general captivity license for rehabilitation and shall:

- (A) have held an active rehabilitation license within or outside of the State for at least the previous three years and have rehabilitated during that time;

- (B) certify 12 hours of rabies, or species-specific training;

- (C) certify up-to-date rabies immunization in accordance with current Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention at [www.CDC.gov](http://www.CDC.gov) for any rehabilitator, staff member or volunteer, who may come in contact with rabies species. Proof of immunization to demonstrate that the vaccine was administered shall be provided upon the request of the Commission or authorized representative and shall be kept at the license holder's facility;

- (D) provide the name and contact information of a North Carolina licensed veterinarian with whom the rehabilitator has consulted and who agrees to provide necessary medical treatment to the rabies species. Contact information for the veterinarian shall be posted at the facility where the rabies species are being rehabilitated;

- (E) certify notification to the appropriate animal control authority and local health department prior to making application to the Commission, to inform them of their anticipated activities and location. Contact information for these agencies shall be posted at the facility where the rabies species are being rehabilitated.

- (F) have separate facilities from non-rabies species adequate for the species to be rehabilitated. Enclosures within the facility shall prevent escape of the animal and exposure to people, pets, livestock, and other captive or free-

- ranging wildlife. Exterior caging shall be locked and surrounded by double fencing or a solid wall barrier; and
- (G) coordinate with appropriate local health department regarding euthanasia and testing of rabies species. A written protocol for testing shall be posted at the facility and made available for inspection by the Commission upon request.
- (2) Except for bats, rehabilitation and release of rabies species is not authorized in counties where the United States Department of Agriculture-Animal and Plant Health Inspection Service Oral Rabies Vaccination (ORV) program is conducted, as specified by the United States Department of Agriculture-Animal and Plant Health Inspection Service at [www.aphis.usda.gov](http://www.aphis.usda.gov).
- (3) Rabies species shall not be removed from their containment except for treatment, release, maintenance of the enclosure, or euthanasia.
- (4) Rehabilitated rabies species must be released in either the county where they were rehabilitated or the county where they were found.
- (5) All rabies species shall be considered potentially infected with the rabies virus. If any human or domestic animal has been scratched, bitten, or exposed to saliva, the fluid that surrounds the brain and spinal cord, or brain and spinal cord material from any rabies species, the license holder shall contact the local Health Department immediately to report the incident. The local Health Department may require euthanasia of the animal and submission of the brain for rabies testing. Rehabilitators shall abide by all requests made by authorized public health department personnel, animal control, or Commission personnel regarding disposition of the animal. No rabies species that has scratched or bitten a human or domestic animal or dies in captivity can be released or disposed of until the local Health Department investigates the situation to determine if testing is necessary.
- (6) Records of all rabies species rehabilitation shall be maintained on a form, as described in Rule .1406 of this Section, provided by the Commission at [www.ncwildlife.org](http://www.ncwildlife.org), and submitted to the Commission within 15 days of expiration of the license or prior to the request for reissuance of the license.

or wild birds for education, exhibition, or scientific purposes. A captivity license for holding shall not be issued for endangered, threatened, or special concern species as defined in 15A NCAC 10I .0100. Possession of these species requires an endangered species permit from the Commission.

(b) A captivity license for holding shall not be issued for holding wild animals or wild birds:

- (1) As pets;
- (2) For breeding unless approved by the Commission;
- (3) For dog training;
- (4) For hunting; or
- (5) Acquired unlawfully.

(c) Individuals seeking to obtain a captivity license for holding migratory birds shall possess and provide proof of a valid, concurrent, and applicable federal permit from U.S. Fish and Wildlife Service, if required.

(d) Individuals seeking to hold wild animals for education, exhibition, or scientific purposes that require a license from the U.S. Department of Agriculture shall obtain a captivity permit as defined by G.S. 113-274 prior to obtaining the animal.

(e) No captivity license for holding shall be issued and no wild animals or wild birds shall be possessed until the applicant has constructed or acquired an enclosure for keeping a wild animal or wild bird in captivity that complies with the standards set forth in Rule .1404 of this Section, and the facility has been verified by a representative of the Commission or the individual has shown proof of a valid, concurrent, and applicable U.S. Department of Agriculture license or exemption from USDA licensing requirements. Any changes to an animal's enclosure after verification shall be reported to the Commission in writing within 10 business days.

(f) The following conditions shall apply to captivity licenses for holding wild animals or wild birds:

- (1) Wild animals and wild birds shall not come in contact with pets, non-native animals, livestock, or wild animals or wild birds held under a captivity license for rehabilitation. This provision shall not apply to surrogate animals or wild animals or wild birds used to foster other wild animals and wild birds;
- (2) Rabies species outside of their enclosure shall be kept restrained at all times so that the license holder or their designee is in control of the animal and it does not have physical contact with the public, domestic animals, non-native animals, livestock, or other wild animals or wild birds;
- (3) Wild animals outside their enclosure shall be kept restrained at all times so that the license holder or their designee is in control of the animal and it presents no danger to the public; and
- (4) Wild animals shall not roam free unrestrained outside of an enclosure.

(g) License holders with wild animals or wild birds used for education or exhibition outside of their facility, shall maintain records of all education and exhibition activities on a form, as described in Rule .1406 of this Section, provided by the

*Authority G.S. 106-549.97(b); 113-134; 113-272.5.*

#### **15A NCAC 10H .1403 CAPTIVITY LICENSE FOR HOLDING**

(a) The purpose of a captivity license for holding is to authorize the possession of lawfully taken or acquired native wild animals

Commission at [www.ncwildlife.org](http://www.ncwildlife.org), and shall retain records for a period of 12 months following expiration of the license.

(h) It is unlawful for a license holder to sell, transfer, or release the wild animal or wild bird held under the license, except that such wild animal or wild bird may be surrendered to an agent of the Commission, or transferred to another individual who has obtained a license to hold the wild animal or wild bird in captivity. Upon transfer, the transferor shall create a record for the wild animal or wild bird showing the transferors name, address, tag number if available, license number, date of transfer, and transferor's signature, verifying that the information contained in the record is true and correct. A copy of the record shall be retained by the transferee for three years from the date of transfer.

(i) Non-releasable animals lawfully held under a captivity license for rehabilitation pursuant to Rule .1402 of this Section, except for white-tailed deer fawns and elk calves, may be transferred to a captivity license for holding under the following conditions:

- (1) A North Carolina licensed veterinarian submits a written recommendation stating the reason or reasons why the wild animal or wild bird cannot be released into the wild. The explanation shall include a description of the incapacitation of the animal and a detailed explanation of why the animal will not experience chronic pain from its condition or injuries;
- (2) The Commission authorizes the transfer and continued possession of the wild animal or wild bird; and
- (3) For imprinted animals, the individual with the captivity license for holding shall not be the same individual that rehabilitated that specific animal.

(j) Rabies Species

- (1) License holders with rabies species shall:
  - (A) certify up-to-date rabies immunization in accordance with current Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention at [www.CDC.gov](http://www.CDC.gov) for any staff member or volunteer who may come in contact with rabies species. Proof of immunization to demonstrate that the vaccine was administered shall be provided upon request of the Commission and shall be kept at the license holder's facility;
  - (B) provide the name and contact information of a North Carolina licensed veterinarian with whom the license holder has consulted and who agrees to provide necessary medical treatment to the rabies species. Contact information for the veterinarian shall be posted at the facility where the rabies species are being held;
  - (C) certify notification to the appropriate animal control authority and their local health department prior to

making application to the Commission, to inform them of their anticipated activities and location. Contact information for these agencies shall be posted at the facility where the rabies species are being held;

- (D) have separate facilities from non-rabies species. Enclosures within the facility shall prevent escape of the animal and exposure to people, pets, livestock and other captive or free-ranging wildlife. Exterior caging shall be locked and surrounded by double fencing or a solid wall barrier; and
- (E) coordinate with appropriate local health department regarding euthanasia and testing of rabies species. Written protocols for testing shall be posted at the facility and made available for inspection by the Commission upon request.

- (2) All rabies species shall be considered potentially infected with the rabies virus. If any human or domestic animal has been scratched, bitten, or exposed to saliva, the fluid that surrounds the brain and spinal cord, or brain and spinal cord material from any rabies species, he or she shall contact the local health department immediately to report the incident. The local health department may require euthanasia of the animal and submission of the brain for rabies testing. License holders shall abide by all requests made by authorized public health department personnel, animal control, or Commission personnel regarding disposition of the animal. No rabies species that has scratched or bitten a human or domestic animal or dies in captivity can be disposed of until the local Health Department investigates the situation to determine if testing is necessary.

(k) Black Bear:

- (1) In accordance with G.S. 19A-10 and G.S. 19A-11, no captivity license may be issued for a black bear, except to:
  - (A) a publicly operated zoo;
  - (B) an educational institution; or
  - (C) a facility holding a black bear under conditions simulating natural habitat pursuant to Rule .1404(e) of this Section.
- (2) Except for emergency transport to a North Carolina licensed veterinarian, no individual shall transport black bear for any purpose without first obtaining a transportation permit from the Commission.

(l) Cougar:

- (1) In accordance with G.S. 113-272.5, no captivity license may be issued for a cougar, except to:
  - (A) a publicly operated zoo;

- (B) an educational or scientific institution;  
or
- (C) a facility holding a cougar under  
conditions simulating a natural habitat  
pursuant to Rule .1404(f) of this  
Section.
- (2) Except for emergency transport to a North  
Carolina licensed veterinarian, no individual  
shall transport cougar for any purpose without  
first obtaining a transportation permit from the  
Commission.
- (m) Non-Farmed Cervids:
  - (1) It is unlawful to hold any non-farmed cervids  
under a captivity licenses for holding, except  
for animals being held under a valid captive  
cervid license issued prior to September 30,  
2015 that are not farmed cervids, as specified  
by G.S. 106-549.97.
  - (2) The following conditions shall apply to non-  
farmed cervid licenses issued prior to  
September 30, 2015:
    - (A) no reproduction within the existing  
herd;
    - (B) no new non-farmed cervids shall be  
added to the existing herd from the  
wild or from farmed cervids held  
under the North Carolina Department  
of Agriculture and Consumer Services  
farmed cervid program;
    - (C) the escape of any non-farmed cervid  
from the facility shall be reported to  
the Commission within one hour of  
discovery. The license holder shall  
request a permit to take the escaped  
non-farmed cervid pursuant to the  
terms of the permit. The dead cervid  
shall be submitted by the license  
holder to a North Carolina Department  
of Agriculture (NCDA) approved  
laboratory for Chronic Wasting  
Disease (CWD) testing, unless the  
Commission determines that the risk  
of CWD transmission as a result of  
this escape is negligible;
    - (D) the Commission shall be notified  
within 24 hours if any non-farmed  
cervid within the facility exhibits  
clinical symptoms of CWD, as  
described on the CWD Alliance  
website at [www.cwd-info.org](http://www.cwd-info.org), or if a  
quarantine is placed on the facility by  
the State Veterinarian. All non-farmed  
cervids that exhibit symptoms of  
CWD shall be tested for CWD;
    - (E) the carcass of any non-farmed cervid  
that was six months or older at time of  
death shall be submitted by the license  
holder to a NCDA approved  
laboratory and tested for CWD within  
48 hours of knowledge of the cervid's  
death, or by the end of the next  
business day, whichever is later. The  
Commission-issued ear tag shall not  
be removed from the cervid's head  
prior to submitting the head for CWD  
testing;
    - (F) the license holder shall make all  
records pertaining to tags, licenses, or  
permits issued by the Commission  
available for inspection by the  
Commission upon request, during the  
facility's business hours, or at any time  
an outbreak of CWD is suspected or  
confirmed within five miles of the  
facility or within the facility itself;
    - (G) the license holder shall make all  
licensed facilities, enclosures, and the  
record-book(s) documenting required  
monitoring of the outer fence of the  
enclosure(s) at each licensed facility  
available for inspection by the  
Commission upon request, during the  
facility's business hours, or at any time  
an outbreak of CWD is suspected or  
confirmed within five miles of the  
facility or within the facility itself;
    - (H) the fence surrounding the enclosure  
shall be inspected by the license holder  
once a week to verify its stability and  
to detect the existence of any  
conditions or activities that threaten its  
stability. In the event of severe  
weather or any other condition that  
presents potential for damage to the  
fence, inspection shall occur every  
three hours until cessation of the  
threatening condition, except that no  
inspection is required under  
circumstances that threaten the safety  
of the person conducting the  
inspection and inspections shall  
resume as soon as possible.
      - (i) a record-book shall be  
maintained to record the time  
and date of each inspection of  
the fence, the name of the  
person who performed the  
inspection of the fence, and  
the condition of the fence at  
time of inspection. The  
person who performs the  
inspection shall enter the date  
and time of detection and the  
location of any damage  
threatening the stability of  
the fence. If the fence is  
damaged, the license holder  
shall record a description of

- measures taken to prevent ingress or egress by non-farmed cervids. Each record-book entry shall bear the signature or initials of the license holder attesting to the veracity of the entry. The record-book shall be made available for inspection by a representative of the Commission upon request, or during the facility's business hours; and
    - (ii) any opening or passage through the enclosure fence shall, within one hour of detection, be sealed or otherwise secured to prevent a non-farmed cervid from entry or escape. Any damage to the enclosure fence that threatens its stability shall be repaired within one week of detection;
  - (I) each non-farmed cervid held under this license shall be tagged as follows:
    - (i) a single button ear tag provided by the Commission shall be permanently affixed by the license holder onto either the right or left ear of each non-farmed cervid, provided that the ear chosen to bear the button tag shall not also bear a bangle tag, so that each ear of the cervid bears only one tag;
    - (ii) a single bangle ear tag provided by the Commission shall be permanently affixed by the license holder onto the right or left ear of each non-farmed cervid, provided that the ear bearing the bangle tag does not also bear the button tag; and
    - (iii) once a tag is affixed in the manner required by this Rule, it shall not be removed;
  - (J) a permit to transport non-farmed cervids may be issued by the Commission to an applicant for the purpose of transporting the animal(s) for export out of State, to a slaughterhouse for slaughter, between non-farmed cervid facilities covered by this Rule, or to a veterinary medical facility for treatment provided that the animal for which the permit is issued

does not exhibit clinical symptoms of CWD. Application for a transportation permit shall be made to the Commission by completing and submitting the non-farmed cervid transportation form detailed in Rule .1406 of this Section. Any person transporting a non-farmed cervid shall present the transportation permit to any law enforcement officer or representative of the Commission upon request, except that a person transporting a non-farmed cervid by verbal authorization for veterinary treatment shall provide the name of the person who issued the approval to any law enforcement officer or representative of the Commission upon request.

*Authority G.S. 106-549.97(b); 113-134; ~~113-272.5~~; 113-272.5; 113-272.6; 113-274(c)(1b).*

**15A NCAC 10H .1404 MINIMUM STANDARDS CAPTIVITY LICENSE FOR HOLDING**

(a) The following minimum standards shall apply to wild animals and wild birds held under a captivity license for holding:

- (1) General Sanitation and Food Requirements. Each license holder shall comply with the following general requirements in addition to any requirements specified by species:
  - (A) water: clean drinking water shall be provided. All pools, tanks, water areas, and water containers provided for swimming, wading, or drinking shall be clean. Enclosures shall provide drainage for surface water and runoff;
  - (B) sanitation: water disposal and waste disposal shall be in accordance with all applicable local, State, and federal laws;
  - (C) food: food shall be of a type and quantity that is appropriate for the particular species and shall be provided in an unspoiled and uncontaminated condition; and
  - (D) waste: fecal and food waste shall be removed from inside, under, and around enclosures and disposed of in a manner that prevents noxious odors or pests.
- (2) General Enclosure Requirements. Each license holder shall comply with the following general requirements in addition to any requirements specified by species:
  - (A) all enclosures constructed of chain link or other approved materials shall be braced and securely anchored;

- (B) enclosures shall be ventilated;
- (C) enclosures with a natural substrate shall have a dig barrier that prevents escape;
- (D) the young of any animal may be kept with the parent or foster animal of the same species in a single-animal enclosure until weaning. After weaning, if the animals are kept together, the requirements for multiple-animal enclosures shall apply;
- (E) chains or tethers shall not be used as a method of confinement for wild animals inside the enclosure;
- (F) each enclosure shall be equipped with at least one shelter, nest box, or den large enough to accommodate all animals in the enclosure at the same time; and
- (G) each enclosure shall have at least one elevated area large enough to accommodate all animals in the enclosure at the same time.
- (3) Single animal enclosures shall have the following minimum dimensions and horizontal areas, or dimensional equivalents:

Animal	Length (ft.)	Width (ft.)	Height (ft.)	Total Square Footage
Wild Turkey	6	4	8	24
Coyote	8	8	6	64
Fox (Red and Gray)	8	4	4	32
Raccoon	8	4	4	32
Bobcat	10	5	5	50
Otter	10	5	5	50
Squirrel	4	2	2	8
Groundhog	8	4	4	32
Rabbit	6	3	3	18
Opossum	6	3	3	18
Skunk	6	3	3	18
Armadillo	8	6	4	48

For animals not mentioned elsewhere in this Rule, single animal enclosures shall be a cage with one horizontal dimension being at least four times the nose-rump length of the animal and the other horizontal dimension being at least two times nose-rump length of the animal.

- The vertical dimensions shall be at least two times the nose-rump length of the animal. No cages shall be less than four feet by two feet by two feet, or eight square feet.
- (4) The minimum square footage for multiple animal enclosures shall be determined by multiplying the required square footage for a single animal enclosure by a factor of 1.5 for one additional animal and that result by the same factor, successively, for each additional animal. Vertical dimensions may remain the same as for single animal enclosures.
- (b) Non-farmed Cervids.
- (1) the minimum size of the enclosure shall not be less than one-half acre for the first three animals and an additional one-fourth acre for each additional animal. No more than 25 percent of the enclosure shall be covered with water;
- (2) the enclosure shall be surrounded by a fence at least eight feet high, of sufficient strength and design to contain cervids and prevent contact with wild cervids;
- (3) each enclosure shall be equipped with a shelter or shelters large enough to accommodate all the animals in the enclosure at the same time; and cervids shall not be contained within or allowed to enter a place of residence or any enclosure that has not been approved to hold cervids by the Commission, except as specifically authorized by law or rule of the Wildlife Resources Commission.
- (4)
- (c) Alligators.
- (1) the minimum size of the enclosure shall be based upon the length of the longest animal. Land area with both horizontal dimensions at least as long as the longest animal shall be provided. In case of more than one animal, the combined area covered by all their bodies while aligned parallel without overlap shall not exceed 50 percent of the land area;
- (2) the enclosure shall have a structural barrier of sufficient strength to contain the animals, and shall prevent contact between the observer and alligator(s);
- (3) in addition to the land area, the enclosure shall contain a pool of water large enough for all the animals in the enclosure to completely submerge themselves at the same time. Steps shall be taken to prevent the surface of the water from freezing solid;
- (4) steps shall be taken to provide opportunities for the alligator to regulate its body temperature;
- (5) each enclosure shall be equipped with a shelter or shelters large enough to accommodate all animals in the enclosure at the same time; and the facility shall have a perimeter boundary to prevent unauthorized entry and confine the animals. This boundary should be located at least 3 feet from the primary enclosure, be no

less than 8 feet in height, and be constructed of not less than 11.5 gauge chain link or equivalent.

(d) Wild Birds. Enclosures for wild birds may house more than one animal, provided that the enclosure is built to the standards specified below and permitted by the U.S. Fish and Wildlife Service.

- (1) enclosures for raptors shall be built to standards detailed in the University of Minnesota's "Raptors in Captivity: Guidelines for Care and Management."
- (2) enclosure for all other wild birds shall be designed using the standards established by the National Wildlife Rehabilitators Association's "Wildlife in Education: A Guide for the Care and Use of Program Animals."

(e) Black Bear. Black bears held in captivity at facilities other than publicly operated zoos or educational institutions shall be held in enclosures simulating a natural habitat, developed in accordance with the requirements of G.S. 19A-11.

(f) Cougar. Cougars held in captivity by facilities other than publicly operated zoos, educational, or scientific research institutions shall be held in enclosures simulating a natural habitat, developed in accordance with the requirements of G.S. 113-272.5(e)(4).

*Authority G.S. 19A-11; 106-549.97(b); 113-134; ~~113-272.5~~; 113-272.6; 113-272.6.*

#### **15A NCAC 10H .1405 CAPTIVITY LICENSE REVOCATION AND ENFORCEMENT**

(a) Representatives of the Commission shall be permitted to enter the premises of any license holder's facility upon request or during the facility's business hours for inspection or scientific purposes.

(b) The Executive Director of the Commission or his or her designee may warn, cite, or revoke a license holder's captivity license, if the license holder violates any provision of Article 47 of Chapter 14 of the North Carolina General Statutes, or Subchapter IV of Chapter 113 of the North Carolina General Statutes, or any Rules promulgated by the Commission of Chapter 10 of the North Carolina Administrative Code or any conditions of the license. The determination whether to warn, cite, or revoke a captivity license for rehabilitation or holding shall be based upon the seriousness of the violation, and may include:

- (1) Failing to provide required facilities for the housing of wild animals and wild birds as specified in Rule .1402(g) and Rule .1404 of this Section;
- (2) Providing false or inaccurate information on license applications or reports submitted to the Commission;
- (3) Possessing wild animals or wild birds not permitted by the captivity license for rehabilitation, or the captivity license for holding;
- (4) Using animals undergoing rehabilitation for education, exhibition, profit, or science involving contact with or proximity to the public;

(5) Failing to comply with monitoring or record-keeping requirements as provided by the rules of this Section;

(6) Taming, imprinting, or otherwise improperly handling animals held for rehabilitation;

(7) Failing to treat conditions that warrant medical attention;

(8) Failing to notify the appropriate agencies after a rabies exposure as described in this Section;

(9) Allowing a wild animal held under a captivity license for holding to roam free unrestrained outside of its enclosure; or

(10) The license holder of a facility holding captive cervid(s) failing to:

(A) comply with tagging requirements as provided by rules of this Section;

(B) comply with requirements for maintaining the enclosure fence as provided by rules of this Section; or

(c) An individual holding a captivity license for rehabilitation with the apprentice designation shall notify the Commission within 10 business days if they no longer have a mentor. The apprentice shall obtain another mentor within 30 days and notify the Commission with that individual's information. If the apprentice fails to obtain another mentor within 60 days, the Commission shall revoke his or her license and he or she shall be required to reapply for an apprentice license.

(d) If a wild animal or wild bird is unlawfully possessed or the Commission revokes a captivity license for rehabilitation or holding, then the Commission may seize and determine future treatment of the wild animal or wild bird, to include release, relocation, or euthanasia.

(e) The Commission shall revoke a non-farmed cervid license, and the holder of that license shall forfeit the right to keep non-farmed cervids and be required to turn the animals over to a representative of the Commission upon request of the Commission, under any of the following circumstances or conditions:

- (1) The license holder fails to submit a cervid carcass to a NCDA approved laboratory for testing for Chronic Wasting Disease within 48 hours of knowledge of that cervid's death or close of the next business day, whichever is later, as provided by Rule .1403(m) in this Section;
- (2) A cervid has been transported without a permit; or
- (3) Chronic Wasting Disease has been confirmed in a cervid at that facility.

*Authority G.S. 106-549.97(b); 113-134; 113-137; 113-140; 113-272.5; 113-274; 113-276.2.*

#### **15A NCAC 10H .1406 FORMS FOR CAPTIVITY LICENSES**

(a) Individuals interested in obtaining a captivity license for rehabilitation shall apply to the Commission using the Captivity License for Rehabilitation Form available at [www.ncwildlife.org](http://www.ncwildlife.org). Information required by the applicant shall include:

- (1) The applicant's name, mailing address, residence address, telephone number, and date of birth;
- (2) The facility site address;
- (3) Any organizational affiliation, if applicable;
- (4) The categories of wild animals and wild birds to be rehabilitated;
- (5) A copy of a valid Federal Migratory Bird Permit, if applicable;
- (6) The name and signature of mentor, if applicable; and
- (7) Certification of at least 12 hours of rehabilitation related training, if applicable.

(b) Individuals interested in obtaining a captivity license for holding shall apply to the Commission using the Captivity License for Holding Form available at [www.ncwildlife.org](http://www.ncwildlife.org). Information supplied by the applicant shall include:

- (1) The Applicant's name, mailing address, residence address, telephone number, and date of birth;
- (2) The facility site address;
- (3) Any organizational affiliation, if applicable;
- (4) The species information including quantity and source for all animals to be held; and
- (5) The purpose for holding animals in captivity.

(c) Individuals requesting a transportation permit for non-farmed cervids shall apply to the Commission using the Non-farmed Cervid Transportation Form available at [www.ncwildlife.org](http://www.ncwildlife.org). Information supplied by the applicant shall include:

- (1) The applicant's name, mailing address, residence address, and telephone number;
- (2) The facility site address;
- (3) The captivity license number;
- (4) The species and sex of each non-farmed cervid transported;
- (5) The tag number(s) for each non-farmed cervid transported;
- (6) The date of transportation;
- (7) The vehicle or trailer license plate number and state of issuance of the vehicle or trailer used to transport the non-farmed cervid;
- (8) The name, address, county and phone number of the destination facility to which the non-farmed cervid will be transported;
- (9) The symptoms for which the non-farmed cervid requires veterinary treatment, if applicable;
- (10) The date of slaughter, if applicable;
- (11) The name and location of the North Carolina Department of Agriculture Diagnostic lab where the head of the non-farmed cervid is to be submitted for CWD testing, if applicable.

(d) Individuals rehabilitating white-tailed deer fawns or elk calves shall record the following information on the White-tailed Deer Fawn / Elk Calf Rehabilitation Activity Form available at [www.ncwildlife.org](http://www.ncwildlife.org):

- (1) The captivity license number;
- (2) The date of acceptance;
- (3) The species and sex;
- (4) The Tag number;

- (5) The disposition; and
  - (6) The date and location of release, if applicable.
- (e) Individuals rehabilitating rabies species shall record the following information on the Rabies Species Rehabilitation Activity Form available at [www.ncwildlife.org](http://www.ncwildlife.org):
- (1) The captivity license number;
  - (2) The date of acceptance;
  - (3) The species and sex;
  - (4) The location of origin, if known;
  - (5) The disposition; and
  - (6) The date of transfer to other appropriately licensed captivity license holder, if applicable; or
  - (7) The date and location of release, if applicable.

(f) Individuals holding species under a Captivity License for Holding, for educational and exhibition purposes shall record the following information on the Captivity License for Holding Education and Exhibition Form available at [www.ncwildlife.org](http://www.ncwildlife.org):

- (1) The captivity license number;
- (2) The date of educational or exhibition activity;
- (3) The species and numbers of wild animals or wild birds used in the educational or exhibition activity;
- (4) The organization or group involved in the educational or exhibition activity; and
- (5) The description of educational or exhibition activity, if applicable;

(g) All forms shall be signed, dated, and submitted to the Wildlife Resources Commission with applicable fees mandated by G.S. 113-272.5 and 113-270.1B.

*Authority G.S. 113-134; 113-272.5.*

## **TITLE 19A– DEPARTMENT OF TRANSPORTATION**

*Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Department of Transportation intends to amend the rule cited as 19A NCAC 02D .0601, readopt with substantive changes the rules cited as 19A NCAC 02D .0612; 02E .0411, and readopt without substantive changes the rules cited as 19A NCAC 02D .0602, .0607, .0633, .0643, .0644; 02E .0402-.0410, .0423, .0426, and .0427.*

*Pursuant to G.S. 150B-21.2(c)(1), the text of the rule(s) proposed for readoption without substantive changes are not required to be published. The text of the rules are available on the OAH website: <http://reports.oah.state.nc.us/ncac.asp>.*

*NOTE: Pursuant to G.S. 150B-21.17, the Codifier has determined that publication of the complete text of the rules proposed for repeal is impractical. The text of the repealed rules is accessible on the OAH Website: <http://www.ncoah.com>.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<https://www.ncdot.gov/about-us/how-we-operate/policy-process/rules/Pages/default.aspx>

**Proposed Effective Date:** *July 1, 2019*



**Public Hearing:**

**Date:** Tuesday, April 2, 2019

**Time:** 3:00 p.m.

**Location:** Transportation Mobility and Safety Conference Room  
161, 750 Greenfield Parkway, Garner, NC 27529

**Reason for Proposed Action:** Pursuant to G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules, all rules are reviewed at least every 10 years or they shall expire. As a result of the periodic review of Subchapters 19A NCAC 02B, 02D, and 02E these proposed rules were determined as "Necessary With Substantive Public Interest" thus necessitating readoption.

Upon review for the readoption process, the agency deemed the following rules to be necessary without substantive changes and are recommended for readoption: 19A NCAC 02D .0602, .0607, .0633, .0643, and .0644 and 19A NCAC 02E .0402-.0410, .0423, .0426, .0427. Upon Review, the agency deemed the following rule to be proposed for amendment: 19A NCAC 02D .0601.

Upon review for the readoption process, the agency deemed the following rules to be unnecessary and its recommending repeal: 19A NCAC 02D .0612 and 19A NCAC 02E .0411.

**Comments may be submitted to:** Hannah D. Jernigan, 1501 Mail Service Center, Raleigh, NC 27699-1501; phone (919) 707-2821; email Rulemaking@ncdot.gov

**Comment period ends:** May 16, 2019

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact (check all that apply).**

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected
- ☐ Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Substantial economic impact (≥\$1,000,000)
- ☒ Approved by OSBM
- ☐ No fiscal note required by G.S. 150B-21.4
- ☒ No fiscal note required by G.S. 150B-21.3A(d)(2)

**CHAPTER 02 - DIVISION OF HIGHWAYS**

**SUBCHAPTER 02D - HIGHWAY OPERATIONS**

**SECTION .0600 – OVERSIZE-OVERWEIGHT PERMITS**

**19A NCAC 02D .0601 PERMITS AUTHORITY, APPLICATION AND ENFORCEMENT PERMIT APPLICATION AND ADMINISTRATION**

(a) The Chief Engineer's office Engineer or his designee shall issue oversize/overweight permits for qualifying vehicles. Applications for permits shall be submitted to the Central Permit Office unless the application is for a house move permit. Irrespective of the route shown on the permit, a permitted vehicle shall travel an alternate route:

- (1) if directed by a law enforcement officer with jurisdiction;
- (2) if directed by an official traffic control device to follow a route to a weighing device; and
- (3) if the specified route on the permit is detoured by an officially erected highway sign, traffic control devices, or law enforcement officer, the driver of the permitted vehicle shall contact the Central Permit Office or the issuing field office for house move permits as soon as reasonably possible for clearance of route or revision of the permit.

(b) House move permit applications shall be submitted to the Department division and district offices. The Department's division and district offices will approve or deny house move permit applications after reviewing the route of travel and dimension(s) of the structure to be moved. House move permit applications shall be submitted at least two working days prior to the anticipated date of movement. Prior to application for an oversize or overweight permit, the vehicle or vehicle combination and the commodity in transport shall be reduced or loaded to the least practical dimensions and weight. Application for permits with the exception of house move permits shall be made to the Central Permit Office. Applications for permits shall be submitted in writing to the Central Permit Office for consideration of approval for moves exceeding:

- (1) a gross weight of 132,000 pounds with the fee specified in G.S. 20-119(b) at least ten working days prior to the anticipated date of movement;
- (2) a width of 15' with documentation for variances at least ten working days prior to the anticipated date of movement with the exception of a mobile/modular unit with maximum measurements of 16' wide unit and a 3" gutter edge; a width of 16' 11" with the exception of house moves is required to be submitted with the fee specified in G.S. 20-119(b) with documentation for variances at least ten working days prior to the anticipated date of movement; or
- (3) a height of 14 feet at least two working days prior to the anticipated date of movement.

(c) Permits for movements of the following shall require the applicant to submit to the Central Permit office, 10 business days prior to the anticipated date of movement, a written application, the fee specified in G.S. 20-119(b), and documentation of any variances:

- (1) gross weight of 132,000 pounds or more;

- (2) width of 15 feet or more;
- (3) mobile or modular unit with a width of 16 feet and a gutter edge of 3 inches; and
- (4) width of 16 feet and 11 inches unless the permit shall be for house moves.

~~Upon completion of an engineering study for moves exceeding a gross weight of 132,000 pounds, a surety bond to cover potential damage to highways and bridge structures shall be required for overweight permits if the engineering study shows potential for damage to highways and bridge structures along the particular route of the requested permit.~~

~~(d) Permits for movements with a vehicle or vehicle combination height greater than 14 feet, but not equal to or greater than 15 feet, shall require the applicant to submit to the Central Permit Office, two business days prior to the anticipated date of movement, a written application, the fee specified in G.S. 20-119(b), and documentation of variances. The North Carolina licensed mobile or modular home retail dealer shall maintain records of all mobile or modular units moved by authority of an annual permit for a minimum of four years from the date of movement. The records shall be available for inspection and audit by officers of the Division of Motor Vehicles. Monthly reports shall be submitted by the dealer to the Central Permit Office on a form furnished by the Department of Transportation. Failure to comply with any requirement may be grounds for denying, suspending, or revoking Manufacturer's License, Dealer's License, or both issued by the Division of Motor Vehicles as specified in Chapter 20 of the Motor Vehicle Law, Title 19A NCAC 03D .0219, or North Carolina oversize or overweight permit privileges.~~

~~(e) The issuance of any permit shall not imply nor guarantee the vertical clearance of the permitted load and the permittee shall be responsible for ensuring all vertical clearances prior to movement. Law enforcement officers may perform on site inspections of mobile or modular homes ready for shipment at the point of manufacture or at the dealer lot for compliance with Chapter 20 of the General Statutes, dealer and manufacturer regulations, permit regulations, and policy. Notification of violations shall be submitted by enforcement personnel to the Central Permit Office.~~

~~(f) The Department shall accept cash, certified check, money order, company check, or credit card in consideration for the fees specified in G.S. 20-119(b). No personal checks shall be accepted. The penalties provided in this Rule are in addition to the penalties provided for in Chapter 20 of the North Carolina General Statutes.~~

~~(g) Permits may be declared void by the Chief Engineer or his designee upon determination that such overdimension/overweight permit was being used in violation of the General Statutes of North Carolina, Permit Rules or restrictions stated on the permit.~~

~~(h) Permits may also be denied, revoked or declared invalid as stated in Rule .0633 of this Section.~~

*Authority G.S. 20-119; 20-360; 20-361; 20-367; 20-369; 20-371; 136-18(5); 143B-346; 143B-350(f).*

**19A NCAC 02D .0602 PERMITS-ISSUANCE AND FEES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**19A NCAC 02D .0607 PERMITS-WEIGHT, DIMENSIONS AND LIMITATIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**19A NCAC 02D .0612 PERMITS - HOUSE MOVES**

*Authority G.S. 20-119; 20-360; 136-18(5); 150B-21.3A.*

**19A NCAC 02D .0633 DENIAL: REVOCATION: REFUSAL TO RENEW: APPEAL: INVALIDATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**19A NCAC 02D .0643 ESCORT VEHICLE DRIVER CERTIFICATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**19A NCAC 02D .0644 OVERSIZE-OVERWEIGHT LOAD ESCORT VEHICLE OPERATOR CERTIFICATION PROGRAM (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

## **SUBCHAPTER 02E - MISCELLANEOUS OPERATIONS**

### **SECTION .0400 - GENERAL ORDINANCES**

**19A NCAC 02E .0402 PILING OBSTRUCTIONS ON HIGHWAYS OR WITHIN RIGHT OF WAY (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**19A NCAC 02E .0403 DEPOSITING MUD ON STATE HIGHWAYS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**19A NCAC 02E .0404 HIGHWAY OBSTRUCTIONS INTERFERING WITH TRAFFIC/MAINTENANCE (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**19A NCAC 02E .0405 MOVING VEHICLES WHICH DAMAGE SURFACE OR SHOULDER (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**19A NCAC 02E .0406 VEHICLES SERVED BY SERVICE STATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**19A NCAC 02E .0407 CONTROL AND REGULATION OF ROADSIDE PARKS AND REST AREAS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**19A NCAC 02E .0408 FISHING FROM BRIDGES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**19A NCAC 02E .0409 OPERATING NONMOTORIZED VEHICLES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**19A NCAC 02E .0410 HITCHHIKING ON  
INTERSTATE OR CONTROLLED ACCESS HIGHWAYS  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**19A NCAC 02E .0411 JUMPING FROM BRIDGES**

*Authority G.S. 136-18(5); 150B-21.3A.*

**19A NCAC 02E .0423 REGULATION OF AIRPORT  
CONSTRUCTION (READOPTION WITHOUT  
SUBSTANTIVE CHANGES)**

**19A NCAC 02E .0426 ACCESS ROUTES FOR STAA  
DIMENSIONED VEHICLES (READOPTION WITHOUT  
SUBSTANTIVE CHANGES)**

**19A NCAC 02E .0427 BICYCLE TRAILS  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

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*Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g, that the Board of Transportation intends to readopt without substantive changes the rules cited as 19A NCAC 02E .0221, .1103, .1105, and .1106.*

*Pursuant to G.S. 150B-21.2(c)(1), the text of the rule(s) proposed for readoption without substantive changes are not required to be published. The text of the rules are available on the OAH website: <http://reports.oah.state.nc.us/ncac.asp>.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<https://www.ncdot.gov/about-us/how-we-operate/policy-process/rules/Pages/default.aspx>

**Proposed Effective Date:** July 1, 2019

**Public Hearing:**

**Date:** April 2, 2019

**Time:** 3:00 p.m.

**Location:** Transportation Mobility and Safety Conference Room  
161, 750 Greenfield Parkway, Garner, NC 27529

**Reason for Proposed Action:** Pursuant to G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules, all rules are reviewed at least every 10 years or they shall expire. As a result of the periodic review of Subchapters 19A NCAC 02B, 02D, and 02E these proposed rules were determined as "Necessary With Substantive Public Interest" thus necessitating readoption. Upon review for the readoption process, the agency deemed the following rules to be necessary without substantive changes and are recommended for readoption: 19A NCAC 02E .0221, .1103, .1105, and .1106.

**Comments may be submitted to:** Hannah D. Jernigan, 1501 Mail Service Center, Raleigh, NC 27699-1501; phone (919) 707-2821; email [Rulemaking@ncdot.gov](mailto:Rulemaking@ncdot.gov)

**Comment period ends:** May 16, 2019

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact (check all that apply).**

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected
- ☐ Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Substantial economic impact (≥\$1,000,000)
- ☒ Approved by OSBM
- ☐ No fiscal note required by G.S. 150B-21.4
- ☒ No fiscal note required by G.S. 150B-21.3A(d)(2)

**CHAPTER 02 - DIVISION OF HIGHWAYS**

**SUBCHAPTER 02E - MISCELLANEOUS OPERATIONS**

**SECTION .0200 – OUTDOOR ADVERTISING**

**19A NCAC 02E .0221 FEES (READOPTION WITHOUT  
SUBSTANTIVE CHANGES)**

**SECTION .1100 – TOURIST-ORIENTED DIRECTIONAL  
SIGN PROGRAM**

**19A NCAC 02E .1103 LOCATION OF TODS  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**19A NCAC 02E .1105 COMPOSITION OF SIGNS  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**19A NCAC 02E .1106 FEES (READOPTION WITHOUT  
SUBSTANTIVE CHANGES)**

**Note from the Codifier:** The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270<sup>th</sup> day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270<sup>th</sup> day.  
 This section of the Register may also include, 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.

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

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

**Rule Citation:** 10A NCAC 27G .0104 and 28A .0102

**Effective Date:** March 1, 2019

**Date Approved by the Rules Review Commission:** February 21, 2019

**Reason for Action:**

*The effective date of a recent act of the General Assembly or of the U.S. Congress-Cite S.L 2017-32, Effective date: June 8, 2018. A recent federal regulation-Cite State Plan under Title XIX of the Social Security Act Effective date: Approval date July 13, 2018. Notice of approval of the State Plan Amendment by the Centers for Medicare and Medicaid Services*

*S.L. 2018-32 mandated that the Department of Health and Human Services (DHHS) submit a State Plan Amendment to the Centers for Medicare and Medicaid Services (CMS) to ensure that years of full-time experience required by the rules may be obtained either before or after obtaining the required educational degree. It required that the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services amend rules, to implement that requirement, no later than six months after the date that DHHS received CMS approval of the necessary Medicaid State Plan Amendments. CMS approve the State Plan Amendment July 13, 2018.*

**CHAPTER 27 - MENTAL HEALTH, COMMUNITY FACILITIES AND SERVICES**

**SUBCHAPTER 27G – RULES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE FACILITIES AND SERVICES**

**SECTION .0100 – GENERAL INFORMATION**

**10A NCAC 27G .0104 STAFF DEFINITIONS**

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

- (1) "Associate Professional (AP)" within the mental health, developmental disabilities and substance abuse services (mh/dd/sas) system of care means an individual who is either a:
  - (a) graduate of a college or university with a masters degree in a human service field with less than one year of full-time, post-graduate degree

accumulated mh/dd/sa experience with the population served, or a substance abuse professional with less than one year of full-time, post-graduate degree accumulated supervised experience in alcoholism and drug abuse counseling. Supervision shall be provided by a qualified professional with the population served until the individual meets one year of experience. The supervisor and the employee shall develop an individualized supervision plan upon hiring. The parties shall review the plan annually; ~~or~~

- (b) graduate of a college or university with a bachelor's degree in a human service field with less than two years of full-time, post-bachelor's degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional with less than two years of full-time, post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling. Supervision shall be provided by a qualified professional with the population served until the individual meets two years of experience. The supervisor and the employee shall develop an individualized supervision plan upon hiring. The parties shall review the plan annually; ~~or~~

- (c) graduate of a college or university with a bachelor's degree in a field other than human services with less than four years of full-time, post-bachelor's degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional with less than four years of full-time, post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling. Supervision shall be provided by a qualified professional with the population served until the individual meets four years of experience. The supervisor and the employee shall develop an individualized supervision plan upon

- hiring. The parties shall review the plan annually; or
- (d) registered nurse who is licensed to practice in the State of North Carolina by the North Carolina Board of Nursing with less than four years of full-time accumulated experience in mh/dd/sa with the population served. Supervision shall be provided by a qualified professional with the population served until the individual meets four years of experience. The supervisor and the employee shall develop an individualized supervision plan upon hiring. The parties shall review the plan annually.
- (2) "Certified clinical supervisor (CCS)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Practice Board.
- (3) "Certified criminal justice addictions professional (CCJP)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Practice 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) "Certified substance abuse prevention consultant (CSAPC)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Practice Board.
- (6) "Clinical" means having to do with the ~~active direct treatment/habilitation~~ treatment or habilitation of a client.
- (7) "Clinical staff member" means a qualified professional or associate professional who provides ~~active direct treatment/habilitation~~ treatment or habilitation to a client.
- (8) "~~Clinical/professional~~ "Clinical or professional" supervision" means regularly scheduled assistance by a qualified professional or associate 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 treatment or habilitation ~~which that~~ is consistent with accepted standards of practice and the needs of the client.
- (9) "Clinical social worker" means a social worker who is licensed as such by the N.C. Social Work Certification and Licensure Board.
- (10) "Director" means the individual who is responsible for the operation of the facility.
- (11) "Licensed clinical addictions specialist (LCAS)" means an individual who is licensed as such by the North Carolina Substance Abuse Professional Practice Board.
- (12) "Licensed clinician" means an individual with ~~full~~ clinical licensure awarded by the State of North Carolina, as a physician, licensed psychologist, licensed psychological associate, licensed clinical social worker, licensed professional counselor, licensed marriage and family therapist, or licensed clinical addictions specialist. "Licensed clinician" also includes an individual with ~~full~~ clinical licensure and certification as a certified clinical nurse specialist in psychiatric mental health advanced practice, or a certified nurse practitioner in psychiatric mental health advanced practice.
- (13) "Licensed professional counselor (LPC)" means a counselor who is licensed as such by the North Carolina Board of Licensed Professional Counselors.
- (14) "Nurse" means a person licensed to practice in the State of North Carolina either as a registered nurse or as a licensed practical nurse.
- (15) "Paraprofessional" within the mh/dd/sas system of care means an individual who, with the exception of staff providing respite services or personal care services, has a GED or high school diploma; ~~those or no GED or high school diploma, employed prior to November 1, 2001 to provide a mh/dd/sa service. service are not required to have a GED or high school diploma.~~ Supervision shall be provided by a qualified professional or associate professional with the population served. The supervisor and the employee shall develop an individualized supervision plan upon hiring. The parties shall review the plan annually.
- (16) "Psychiatrist" means an individual who is licensed to practice medicine in the State of North Carolina and who has completed a training program in psychiatry accredited by the Accreditation Council for Graduate Medical Education.
- (17) "Psychologist" means an individual who is licensed to practice psychology in the State of North Carolina as either a licensed psychologist or a licensed psychological associate.
- (18) "Qualified client record manager" means an individual who is a graduate of a curriculum accredited by the Council on Medical Education and Registration of the American Health Information Management Association and who is currently registered or accredited by the American Health Information Management Association.
- (19) "Qualified professional" means, within the mh/dd/sas system of ~~care:~~ care either:
- (a) an individual who holds a license, provisional license, certificate, registration or permit issued by the governing board regulating a human service profession, except a registered

- nurse who is licensed to practice in the State of North Carolina by the North Carolina Board of Nursing who also has four years of full-time accumulated experience in mh/dd/sa with the population served; ~~or~~
- (b) a graduate of a college or university with a Masters degree in a human service field and has one year of full-time, pre- or post-graduate degree accumulated supervised mh/dd/sa experience with the population served, or a substance abuse professional who has one year of full-time, pre- or post-graduate degree accumulated supervised experience in alcoholism and drug abuse counseling; ~~or~~
- (c) a graduate of a college or university with a bachelor's degree in a human service field and has two years of full-time, pre- or post-bachelor's degree accumulated supervised mh/dd/sa experience with the population served, or a substance abuse professional who has two years of full-time, pre- or post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling; or
- (d) a graduate of a college or university with a bachelor's degree in a field other than human services and has four years of full-time, pre- or post-bachelor's degree accumulated supervised mh/dd/sa experience with the population served, or a substance abuse professional who has four years of full-time, pre- or post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling.
- (20) "Qualified substance abuse prevention professional (QSAPP)" ~~means,~~ within the mh/dd/sas system of ~~care;~~ care, means either:
- (a) a graduate of a college or university with a masters degree in a human service field and has one year of full-time, post-graduate degree accumulated supervised experience in substance abuse prevention; ~~or~~
- (b) a graduate of a college or university with a bachelor's degree in a human service field and has two years of full-time, post-bachelor's degree accumulated supervised experience in substance abuse prevention; ~~or~~
- (c) a graduate of a college or university with a bachelor's degree in a field other than human services and has four years of full-time, post bachelor's

- degree accumulated supervised experience in substance abuse prevention; or
- (d) a substance abuse prevention professional who is certified as a Certified Substance Abuse Prevention Consultant (CSAPC) by the North Carolina Substance Abuse Professional Practice Board.

*Authority G.S. 122C-3; 122C-25; 122C-26; 143B-147; S.L. 2017-32.*

## **CHAPTER 28 - MENTAL HEALTH, STATE OPERATED FACILITIES AND SERVICES**

### **SUBCHAPTER 28A – COMMITTEES AND PROCEDURES**

#### **SECTION .0100 – SCOPE AND DEFINITIONS**

##### **10A NCAC 28A .0102 DEFINITIONS**

(a) In addition to the definitions contained in this Rule, the terms defined in G.S. 122C-3, 122C-4 and 122C-53(f) also apply to all rules in Subchapters 28A, 28B, 28C, and 28D of this Chapter.

(b) As used in the rules in Subchapters 28A, 28B, 28C, and 28D 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~~ that 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) "Associate Professional (AP)" within the mental health, developmental disabilities and substance abuse services (mh/dd/sas) system of care means an individual who is either a:
- (A) graduate of a college or university with a Masters degree in a human service field with less than one year of full-time, post-graduate degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional with less than one year of full-time, post-graduate degree 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 until the individual meets one year of experience; ~~or~~

- (B) graduate of a college or university with a bachelor's degree in a human service field with less than two years of full-time, post-accumulated mh/dd/sa experience with the population served, or a substance abuse professional with less than two years of full-time, post-bachelor's degree 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 until the individual meets two years of experience; or
- (C) graduate of a college or university with a bachelor's degree in a field other than human services with less than four years of full-time, post bachelor's degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional with less than four years of full-time, post-bachelor's degree 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 until the individual meets four years of experience; or
- (D) registered nurse who is licensed to practice in the State of North Carolina by the North Carolina Board of Nursing with less than four years of full-time accumulated experience in mh/dd/sa with the population served. Upon hiring, an individualized supervision plan shall be developed and reviewed annually. Supervision shall be provided by a qualified professional with the population served until the individual meets four years of experience.
- (3) "Basic necessities" mean 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.
- (4) "Certified clinical supervisor (CCS)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.
- (5) "Certified substance abuse counselor (CSAC)" means an individual who is certified as such by the North Carolina Substance Abuse Professional Certification Board.
- (6) "Client record" means any record made of confidential ~~information~~ information as defined in G.S. 122C-3.
- (7) "Clinical Director" means Medical Director, Director of Medical Services or such person acting in the position of Clinical Director, or his designee.
- (8) "Clinically competent" means authorization by the State Facility Director for a qualified professional to provide specific ~~treatment/habilitation~~ treatment or habilitation services to clients based on the professional's education, training, experience, competence and judgment.
- (9) "Consent" means concurrence by a client or his legally responsible person following receipt of information from 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 information concerning proposed treatment, including both benefits and risks, in order to make an educated decision with regard to such treatment.
- (10) "Dangerous articles or substances" mean, but are not limited to, any weapon or potential weapon, heavy blunt object, sharp objects, potentially harmful chemicals, or drugs of any sort, including alcohol.
- (11) "Division Director" means the Director of the Division of Mental Health, Developmental Disabilities and Substance Abuse Services or his designee.
- (12) "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)(25) of this Rule for definition of medical emergency}.~~
- (13) "Emergency surgery" means an operation or surgery performed in a medical ~~emergency~~ emergency, as defined in Subparagraph (b)(25) 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.

- (14) "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.
- (15) "Exploitation" means the use of a client or ~~her/his~~ his or her resources ~~resources~~, including borrowing, taking or using personal property with or without ~~her/his~~ his or her permission for another person's profit, business or advantage.
- (16) "Forensic Division" means the unit at ~~Dorothea Dix~~ Central Regional 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.
- (17) "Grievance" means a verbal or written complaint by or on behalf of a client concerning a situation that occurred within the ~~jurisdiction~~ of the state facility. A grievance does not include complaints that can be resolved without delay by staff present. A complaint that is not resolved shall be filed and processed in accordance with the requirements of 10A NCAC 28B .0203.
- (18) "Human Rights Committee" means a committee, appointed by the Secretary, to act in a capacity regarding the protection of client rights.
- (19) "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).
- (20) "Interpreter services" means specialized communication services provided for the hearing impaired by interpreters certified by the National Registry of Interpreters for the Deaf or the National Association of the Deaf.
- (21) "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~~ includes, but ~~it~~ is not limited ~~to~~ 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~~
- 15A-1002, unless a valid order providing otherwise is issued from a court of competent ~~jurisdiction~~ jurisdiction, and the civil commitment of defendants found not guilty by reason of insanity as specified in G.S. 15A-1321.
- (22) "Isolation time-out" means the removal of a client to a separate room from which exit is barred ~~but which~~ that is not locked ~~and~~ where there is ~~continuous~~ direct, uninterrupted supervision by staff for the purpose of modifying behavior.
- (23) "Licensed professional counselor (LPC)" means a counselor who is licensed as such by the North Carolina Board of Licensed Professional Counselors.
- (24) "Major physical injury" means damage caused to the body resulting in profuse 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.
- (25) "Medical emergency" means a situation where the client is unconscious, ill, or injured, and the ~~reasonably apparent~~ circumstances require ~~prompt~~ immediate decisions and actions in medical or other health ~~care~~, care related decisions and actions to prevent the worsening of 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~~ condition, or endanger the ~~life~~ life of the client.
- (26) "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.
- (27) "Minor client" means a person under 18 years of age
- (A) who has not been married; ~~married or~~
- (B) has not been emancipated by a decree issued by a court of competent ~~jurisdiction~~ jurisdiction; or
- (C) is not a member of the armed forces.
- (28) "Neglect" means the failure to provide care or services necessary to maintain the mental and physical health of the client.
- (29) "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.



- (30) "Paraprofessional" within the mh/dd/sa system of care means an individual who, with the exception of staff providing respite services or personal care services, has a GED or high school diploma; ~~an individual or no GED or high school diploma~~; employed prior to November 1, 2001 to provide a mh/dd/sa ~~service. service is not required to have a GED or high school diploma.~~ Upon hiring, an individualized supervision plan shall be developed and supervision shall be provided by a qualified professional or associate professional with the population served.
- (31) "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.
- (32) "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, 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.
- (33) "Protective devices" means an intervention ~~which that~~ 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 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 28D, the use of a protective device for behavioral control shall comply with the requirements specified in Rule .0203 of Subchapter 28D.
- (34) "Psychotropic medication" means medication with the primary function of treating mental illness, personality or behavior disorders. It includes, but is not limited to, antipsychotics, antidepressants, antianxiety agents and mood stabilizers.
- (35) "Qualified professional" means, within the mh/dd/sa system of care, an individual who ~~is~~ is either:
- (A) an individual who holds a license, provisional license, certificate, registration or permit issued by the governing board regulating a human service profession, except a registered nurse who is licensed to practice in the State of North Carolina by the North Carolina Board of Nursing who also has four years of full-time accumulated experience in mh/dd/sa with the population served; ~~or~~
  - (B) a graduate of a college or university with a Masters degree in a human service field and has one year of full-time, pre- or post-graduate degree accumulated supervised mh/dd/sa experience with the population served, or a substance abuse professional who has one-year of full-time, pre- or post-graduate degree accumulated supervised experience in alcoholism and drug abuse counseling; ~~or~~
  - (C) a graduate of a college or university with a bachelor's degree in a human service field and has two years of full-time, pre- or post-bachelor's degree accumulated supervised mh/dd/sa experience with the population served, or a substance abuse professional who has two years of full-time, pre- or post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling; or
  - (D) a graduate of a college or university with a bachelor's degree in a field other than human services and has four years of full-time, pre- or post-bachelor's degree accumulated mh/dd/sa experience with the population served, or a substance abuse professional who has four years of full-time, pre- or post-bachelor's degree accumulated supervised experience in alcoholism and drug abuse counseling.

- (36) "Regional alcohol and drug abuse treatment center" means a state facility for substance abusers as specified in G.S. 122C-181(a)(3).
- (37) "Regional ~~mental-retardation~~ developmental disability center" means a state facility for the ~~mentally-retarded~~ developmentally disabled as specified in G.S. 122C-181(a)(2).
- (38) "Regional psychiatric hospital" means a state facility for the mentally ill as specified in G.S. 122C-181(a)(1).
- (39) "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.
- (40) "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.
- (41) "Respite client" means a client admitted to a ~~mental-retardation~~ developmental disability 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.
- (42) "Responsible professional" shall have the meaning as specified in G.S. ~~122C-3~~ 122C-3; ~~except~~ the "responsible professional" shall also be a qualified professional as defined in Subparagraph (b)(35) of this Rule.
- (43) "Seclusion" means isolating a client in a separate locked room for the purpose of controlling a client's behavior. In the Forensic Service, Pretrial Evaluation Unit and the Forensic Treatment Program Maximum Security Ward in the ~~Spruill Building at Dorothea Dix~~ Central Regional Hospital, the use of locked rooms is not considered seclusion for clients with criminal charges who are:
- (A) undergoing pretrial evaluations ordered by a criminal court;
- (B) in treatment for restoration of capacity to proceed;
- (C) in treatment to reduce violence risk; or
- (D) considered to be an escape risk.
- (44) "State Facility Director" means the chief administrative officer or manager of a state facility or his designee.
- (45) "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.
- (46) "Timeout" means the removal of a client from other clients to another space within the same activity area for the purpose of modifying behavior.
- (47) "Treatment" means the act, method, or manner of habilitating or rehabilitating, caring for or managing a client's physical or mental problems.
- (48) "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.
- (49) "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.
- (50) "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 assigned to a director, supervisor, administrator, or manager.
- (51) "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); 143B-147; S.L. 2017-32.*

*This Section contains information for the meeting of the Rules Review Commission February 21, 2019 at 1711 New Hope Church Road, RRC Commission 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. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2<sup>nd</sup> business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.*

**RULES REVIEW COMMISSION MEMBERS****Appointed by Senate**

Jeff Hyde (1<sup>st</sup> Vice Chair)  
Robert A. Bryan, Jr.  
Margaret Currin  
Jeffrey A. Poley  
Brian P. LiVecchi

**Appointed by House**

Garth Dunklin (Chair)  
Andrew P. Atkins  
Anna Baird Choi  
Paul Powell  
Jeanette Doran (2<sup>nd</sup> Vice Chair)

**COMMISSION COUNSEL**

Amber Cronk May (919)431-3074  
Amanda Reeder (919)431-3079  
Jason Thomas (919)431-3081

**RULES REVIEW COMMISSION MEETING DATES**

March 21, 2019 April 18, 2019  
May 16, 2019 June 20, 2019

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**RULES REVIEW COMMISSION MEETING  
MINUTES****February 21, 2019**

The Rules Review Commission met on Thursday, February 21, 2019, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Andrew Atkins, Bobby Bryan, Margaret Currin, Jeanette Doran, Garth Dunklin, Jeff Hyde, and Paul Powell.

Staff members present were Commission Counsels Amber Cronk May, Amanda Reeder, and Jason Thomas; and Julie Brincefield, Alex Burgos, and Dana McGhee.

The meeting was called to order at 9:02 a.m. with Chairman Dunklin presiding.

Chairman Dunklin read the notice required by G.S. 163A-159 and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts of interest.

The Chairman notified the Commissioners that the following item on the agenda would be taken up out of order at the end of the agenda: the temporary rules for the Commission for MH/DD/SAS.

**APPROVAL OF MINUTES**

Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the January 17, 2019 meeting. There were none and the minutes were approved as distributed.

**FOLLOW UP MATTERS****Soil and Water Conservation Commission**

02 NCAC 59D .0101, .0102, .0103, .0104, .0105, .0106, .0107, .0108, .0109, .0110; 59H .0101, .0102, .0103, .0104, .0105, .0106, .0107, and .0108 - The agency is addressing the technical change requests from the January meeting. No action was required by the Commission.

**Board of Elections and Ethics Enforcement**

The agency is addressing the objections for 08 NCAC 02 .0112, .0113; 03 .0101, .0102, .0103, .0104, .0105, .0106, .0201, .0202, .0301, .0302; 04 .0302, .0304, .0305, .0306, .0307; 06B .0103, .0104, .0105; 08 .0104; 09 .0106, .0107, .0108, .0109; 10B .0101, .0102, .0103, .0104, .0105, .0106, and .0107. No action was required by the Commission.

Prior to the review of the rules from the Board of Elections and Ethics Enforcement, Commissioner Doran recused herself and did not participate in any discussion concerning the rules because she has a matter pending before the Board.

**DHHS/Division of Health Benefits**

10A NCAC 22F .0301 was objected to by the Commission at the June 14, 2018, August 16, 2018, and September 20, 2018 meetings. At its November 15, 2018 meeting, the Commission determined that the rewritten rule submitted by the agency met the previous objection and it was approved. In addition to approving the rule, the RRC determined that the rewritten rule submitted in response to their objection resulted in substantial changes as referenced in 150B-21.12(c). As such, this Rule was required to be "published and reviewed in accordance with the procedure set forth in G.S. 150B-21.1(a3) and (b)." Upon completion of the procedure, this Rule was submitted for RRC review.

10A NCAC 22F .0301 was unanimously approved.

The Commission received over 10 letters of objection in accordance with G.S. 150B-21.3(b2), requesting a delayed effective date and legislative review of 10A NCAC 22F .0301.

**Commission for the Blind**

The agency is addressing the objections for 10A NCAC 63C .0203, .0204, .0403, and .0601. No action was required by the Commission.

**Coastal Resources Commission**

15A NCAC 07H .0209, .0308, .1704, and .1705 - The agency is addressing the technical change requests from the January meeting. No action was required by the Commission.

**Department of Transportation**

19A NCAC 02D .0408; 02E .0412, .0418, .0419, .0420, .0421, and .1006 - All rules were unanimously approved.

**Substance Abuse Professional Practice Board**

21 NCAC 68 .0203, .0205, .0208, .0211, .0212, .0305 - All rewritten rules were unanimously approved.

**LOG OF FILINGS (PERMANENT RULES)****Social Services Commission 10A NCAC 10**

All rules were unanimously approved.

**Commission for MH/DD/SAS**

All rules were unanimously approved.

**Social Services Commission 10A NCAC 67A**

10A NCAC 67A .0301 was unanimously approved.

**Industrial Commission**

All rules were unanimously approved.

**Department of Public Safety**

All rules were unanimously approved.

**Environmental Management Commission 15A NCAC 02B**

All rules were unanimously approved.

**Environmental Management Commission 15A NCAC 02T**

15A NCAC 02T .1310 was unanimously approved.

**Board of Cosmetic Art Examiners**

All rules were unanimously approved.

Prior to the review of the rules from the Board of Cosmetic Art Examiners, Commissioner Atkins recused himself and did not participate in any discussion or vote concerning the rule because of a conflict.

**Medical Board**

21 NCAC 32W .0112 was unanimously approved.

Prior to the review of the rules from the Medical Board, Commissioner Atkins recused himself and did not participate in any discussion or vote concerning the rules because of a conflict.

**Board of Pharmacy**

All rules were unanimously approved.

**State Human Resources Commission**

All rules were unanimously approved.

Prior to the review of the rules from the State Human Resources Commission, Commissioner Doran recused herself and did not participate in any discussion or vote concerning the rules because she is a State employee and supervises State employees.

**LOG OF FILINGS (TEMPORARY RULES)****Commission for MH/ DD/SAS**

The agency requested a waiver of the 210-day limitation provided in G.S. 150B-21.2(a2). The waiver request was unanimously approved.

All rules were unanimously approved.

Denise Baker, the rulemaking coordinator with the agency, addressed the Commission.

**EXISTING RULES REVIEW****Department of Commerce**

04 NCAC 20 - The Commission unanimously approved the report as submitted by the agency.

Prior to the review of the report from the Department of Commerce, Commissioner Doran recused herself and did not participate in any discussion or vote concerning the report because she works with the Division of Employment Security within the Department of Commerce.

**Department of Insurance**

11 NCAC 01 - The Commission unanimously approved the report as submitted by the agency.

**Board of Athletic Trainer Examiners**

21 NCAC 03 - The Commission unanimously approved the report as submitted by the agency.

**Board of Chiropractic Examiners**

21 NCAC 10 - The Commission unanimously approved the report as submitted by the agency.

Prior to the review of the report from the Board of Chiropractic Examiners, Commissioner Atkins recused himself and did not participate in any discussion or vote concerning the report because of a conflict.

**Board of Licensed Professional Counselors**

21 NCAC 53 - The Commission unanimously approved the report as submitted by the agency.

**Board of Examiners for Engineers and Surveyors**

21 NCAC 56 - The Commission unanimously approved the report as submitted by the agency.

**Medical Care Commission**

10A NCAC 13G - As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than November 30, 2025 pursuant to G.S. 150B-21.3A(d)(2).

**DHHS/Division of Health Service Regulation**

10A NCAC 14C – As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than May 31, 2024 pursuant to G.S. 150B-21.3A(d)(2).

**Department of Revenue/Excise Tax Division**

17 NCAC 04 - As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than October 31, 2020 pursuant to G.S. 150B-21.3A(d)(2).

**TSERS and LGERS Board of Trustees**

20 NCAC 02 - As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than December 31, 2022 pursuant to G.S. 150B-21.3A(d)(2).

**COMMISSION BUSINESS**

The Chair gave an update on the consent order in the matter of DHHS/CPH v. RRC.

The meeting adjourned at 9:45 a.m.

The next regularly scheduled meeting of the Commission is Thursday, March 21, 2019 at 9:00 a.m.

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Alexander Burgos, Paralegal

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Minutes approved by the Rules Review Commission:  
Garth Dunklin, Chair

**February 21, 2019**

Rules Review Commission  
Meeting  
Please Print Legibly

Name	Agency
Jennifer Everett	DEQ
Hannah Jennigan	NC DOT
CLINT PINTAN	NCBOP
Licking Hamer	DHSR - Adult Care
Denise Mazza	OSHR
Ryan Eppenberger	NC DHHS (DHB)
Thomas Campbell	NC DOJ
Paris Remy	NC DHHS
Kathleen McGraw	NC DOJ
Histy Pickens-McWilliams	NC DHHS
Laura Hansford	NC DOR
Alexandra Gruber	NC DOJ
Ashley Snyder	Industrial Commission
Michael Beebe	NC DHHS
Alycia Blackwell-Peterson	NC DHHS
Kevin Butterfield	Commerce
Laura Fink	DST
Orin	DCDEE
TARA FIELDS	Benchmarks
Christine Lawson	DEQ
Pouy Barrick	DHSR

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**RULES REVIEW COMMISSION**

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**February 21, 2019**

Rules Review Commission  
Meeting  
Please Print Legibly

Name	Agency
W. Denise Baker	DHHS - OMA/NO/SAS
Margaret McDonald	DPS
A.C. Phillips	DHHS/DHAB
Lisa Pittman	DHSR/ CON





**STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS**

Mailing address:  
6714 Mail Service Center  
Raleigh, NC 27699-6714

Street address:  
1711 New Hope Church Rd  
Raleigh, NC 27609-6285

February 21, 2019

Nadine Pfeiffer, Rulemaking Coordinator  
Medical Care Commission  
2701 Mail Service Center  
Raleigh, North Carolina 27699-2701

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **10A NCAC 13G**

Dear Ms. Pfeiffer:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the February 21, 2019 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than November 30, 2025.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Amber May  
Commission Counsel

Administration  
919/431-3000  
fax: 919/431-3100

Rules Division  
919/431-3000  
fax: 919/431-3104

Judges and  
Assistants  
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Civil Rights  
Division  
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fax: 919/431-3103

An Equal Employment Opportunity Employer

**RRC DETERMINATION  
PERIODIC RULE REVIEW  
December 13, 2018  
APO Review: February 16, 2019  
Medical Care Commission  
Total: 54**

**RRC Determination: Necessary with substantive public interest**

<b>Rule</b>	<b>Determination</b>
<a href="#"><u>10A NCAC 13G .0202</u></a>	Necessary with substantive public interest
<a href="#"><u>10A NCAC 13G .0204</u></a>	Necessary with substantive public interest
<a href="#"><u>10A NCAC 13G .0206</u></a>	Necessary with substantive public interest
<a href="#"><u>10A NCAC 13G .0207</u></a>	Necessary with substantive public interest
<a href="#"><u>10A NCAC 13G .0208</u></a>	Necessary with substantive public interest
<a href="#"><u>10A NCAC 13G .0209</u></a>	Necessary with substantive public interest
<a href="#"><u>10A NCAC 13G .0212</u></a>	Necessary with substantive public interest
<a href="#"><u>10A NCAC 13G .0213</u></a>	Necessary with substantive public interest
<a href="#"><u>10A NCAC 13G .0214</u></a>	Necessary with substantive public interest
<a href="#"><u>10A NCAC 13G .0301</u></a>	Necessary with substantive public interest
<a href="#"><u>10A NCAC 13G .0302</u></a>	Necessary with substantive public interest
<a href="#"><u>10A NCAC 13G .0306</u></a>	Necessary with substantive public interest
<a href="#"><u>10A NCAC 13G .0307</u></a>	Necessary with substantive public interest
<a href="#"><u>10A NCAC 13G .0309</u></a>	Necessary with substantive public interest
<a href="#"><u>10A NCAC 13G .0312</u></a>	Necessary with substantive public interest
<a href="#"><u>10A NCAC 13G .0315</u></a>	Necessary with substantive public interest
<a href="#"><u>10A NCAC 13G .0317</u></a>	Necessary with substantive public interest
<a href="#"><u>10A NCAC 13G .0318</u></a>	Necessary with substantive public interest
<a href="#"><u>10A NCAC 13G .0402</u></a>	Necessary with substantive public interest
<a href="#"><u>10A NCAC 13G .0403</u></a>	Necessary with substantive public interest
<a href="#"><u>10A NCAC 13G .0404</u></a>	Necessary with substantive public interest
<a href="#"><u>10A NCAC 13G .0405</u></a>	Necessary with substantive public interest
<a href="#"><u>10A NCAC 13G .0406</u></a>	Necessary with substantive public interest
<a href="#"><u>10A NCAC 13G .0501</u></a>	Necessary with substantive public interest
<a href="#"><u>10A NCAC 13G .0502</u></a>	Necessary with substantive public interest
<a href="#"><u>10A NCAC 13G .0503</u></a>	Necessary with substantive public interest
<a href="#"><u>10A NCAC 13G .0504</u></a>	Necessary with substantive public interest
<a href="#"><u>10A NCAC 13G .0507</u></a>	Necessary with substantive public interest
<a href="#"><u>10A NCAC 13G .0508</u></a>	Necessary with substantive public interest
<a href="#"><u>10A NCAC 13G .0509</u></a>	Necessary with substantive public interest
<a href="#"><u>10A NCAC 13G .0601</u></a>	Necessary with substantive public interest
<a href="#"><u>10A NCAC 13G .0702</u></a>	Necessary with substantive public interest
<a href="#"><u>10A NCAC 13G .0703</u></a>	Necessary with substantive public interest

<u>10A</u>	<u>NCAC</u>	<u>13G</u>	<u>.0704</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13G</u>	<u>.0705</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13G</u>	<u>.0801</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13G</u>	<u>.0802</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13G</u>	<u>.0903</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13G</u>	<u>.0904</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13G</u>	<u>.0905</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13G</u>	<u>.1005</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13G</u>	<u>.1006</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13G</u>	<u>.1102</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13G</u>	<u>.1103</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13G</u>	<u>.1106</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13G</u>	<u>.1207</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13G</u>	<u>.1208</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13G</u>	<u>.1214</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13G</u>	<u>.1301</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13G</u>	<u>.1601</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13G</u>	<u>.1602</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13G</u>	<u>.1603</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13G</u>	<u>.1604</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13G</u>	<u>.1605</u>	Necessary with substantive public interest



**STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS**

Mailing address:  
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Raleigh, NC 27609-6285

February 21, 2019

Nadine Pfeiffer, Rulemaking Coordinator  
DHHS – Division of Health Service Regulation  
2701 Mail Service Center  
Raleigh, North Carolina 27699-2701

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **10A NCAC 14C**

Dear Ms. Pfeiffer:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the February 21, 2019 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than May 31, 2024.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Amber May  
Commission Counsel

Administration  
919/431-3000  
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Rules Division  
919/431-3000  
fax: 919/431-3104

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An Equal Employment Opportunity Employer

**RRC DETERMINATION  
PERIODIC RULE REVIEW**

**November 15, 2018**

**APO Review: January 19, 2019**

**HHS - Health Service Regulation, Division of  
Total: 39**

**RRC Determination: Necessary with substantive public interest**

<b>Rule</b>	<b>Determination</b>
<u>10A NCAC 14C .0202</u>	Necessary with substantive public interest
<u>10A NCAC 14C .0203</u>	Necessary with substantive public interest
<u>10A NCAC 14C .0205</u>	Necessary with substantive public interest
<u>10A NCAC 14C .0303</u>	Necessary with substantive public interest
<u>10A NCAC 14C .1102</u>	Necessary with substantive public interest
<u>10A NCAC 14C .1401</u>	Necessary with substantive public interest
<u>10A NCAC 14C .1403</u>	Necessary with substantive public interest
<u>10A NCAC 14C .1601</u>	Necessary with substantive public interest
<u>10A NCAC 14C .1603</u>	Necessary with substantive public interest
<u>10A NCAC 14C .1701</u>	Necessary with substantive public interest
<u>10A NCAC 14C .1703</u>	Necessary with substantive public interest
<u>10A NCAC 14C .1901</u>	Necessary with substantive public interest
<u>10A NCAC 14C .1903</u>	Necessary with substantive public interest
<u>10A NCAC 14C .2001</u>	Necessary with substantive public interest
<u>10A NCAC 14C .2003</u>	Necessary with substantive public interest
<u>10A NCAC 14C .2101</u>	Necessary with substantive public interest
<u>10A NCAC 14C .2103</u>	Necessary with substantive public interest
<u>10A NCAC 14C .2201</u>	Necessary with substantive public interest
<u>10A NCAC 14C .2203</u>	Necessary with substantive public interest
<u>10A NCAC 14C .2301</u>	Necessary with substantive public interest
<u>10A NCAC 14C .2303</u>	Necessary with substantive public interest
<u>10A NCAC 14C .2401</u>	Necessary with substantive public interest
<u>10A NCAC 14C .2403</u>	Necessary with substantive public interest
<u>10A NCAC 14C .2501</u>	Necessary with substantive public interest
<u>10A NCAC 14C .2503</u>	Necessary with substantive public interest
<u>10A NCAC 14C .2601</u>	Necessary with substantive public interest
<u>10A NCAC 14C .2603</u>	Necessary with substantive public interest
<u>10A NCAC 14C .2701</u>	Necessary with substantive public interest
<u>10A NCAC 14C .2703</u>	Necessary with substantive public interest
<u>10A NCAC 14C .2801</u>	Necessary with substantive public interest
<u>10A NCAC 14C .2803</u>	Necessary with substantive public interest
<u>10A NCAC 14C .3701</u>	Necessary with substantive public interest
<u>10A NCAC 14C .3703</u>	Necessary with substantive public interest

<u>10A</u>	<u>NCAC</u>	<u>14C</u>	<u>.3801</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>14C</u>	<u>.3803</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>14C</u>	<u>.3901</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>14C</u>	<u>.3903</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>14C</u>	<u>.4001</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>14C</u>	<u>.4003</u>	Necessary with substantive public interest



**STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS**

Mailing address:  
6714 Mail Service Center  
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Street address:  
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Raleigh, NC 27609-6285

February 21, 2019

Laura Lansford, Rulemaking Coordinator  
Department of Revenue, Excise Tax Division  
1429 Rock Quarry Road  
Suite 105  
Raleigh, NC 27610

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 17 NCAC 04

Dear Ms. Lansford:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the February 21, 2019 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than October 31, 2020.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Amber May  
Commission Counsel

Administration  
919/431-3000  
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Rules Division  
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fax: 919/431-3104

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Civil Rights  
Division  
919/431-3036  
fax: 919/431-3103

An Equal Employment Opportunity Employer

**RRC DETERMINATION  
PERIODIC RULE REVIEW  
October 18, 2018  
APO Review: December 22, 2018  
Revenue, Department of  
Total: 27**

**RRC Determination: Necessary with substantive public interest**

<b>Rule</b>	<b>Determination</b>
17 <u>NCAC 04B .0612</u>	Necessary with substantive public interest
17 <u>NCAC 04B .2903</u>	Necessary with substantive public interest
17 <u>NCAC 04C .0101</u>	Necessary with substantive public interest
17 <u>NCAC 04C .0201</u>	Necessary with substantive public interest
17 <u>NCAC 04C .0504</u>	Necessary with substantive public interest
17 <u>NCAC 04C .0602</u>	Necessary with substantive public interest
17 <u>NCAC 04C .0702</u>	Necessary with substantive public interest
17 <u>NCAC 04C .0901</u>	Necessary with substantive public interest
17 <u>NCAC 04C .0902</u>	Necessary with substantive public interest
17 <u>NCAC 04C .0903</u>	Necessary with substantive public interest
17 <u>NCAC 04C .1002</u>	Necessary with substantive public interest
17 <u>NCAC 04C .1301</u>	Necessary with substantive public interest
17 <u>NCAC 04C .1401</u>	Necessary with substantive public interest
17 <u>NCAC 04C .1402</u>	Necessary with substantive public interest
17 <u>NCAC 04C .1403</u>	Necessary with substantive public interest
17 <u>NCAC 04C .1801</u>	Necessary with substantive public interest
17 <u>NCAC 04C .1802</u>	Necessary with substantive public interest
17 <u>NCAC 04C .1803</u>	Necessary with substantive public interest
17 <u>NCAC 04E .0204</u>	Necessary with substantive public interest
17 <u>NCAC 04E .0205</u>	Necessary with substantive public interest
17 <u>NCAC 04E .0206</u>	Necessary with substantive public interest
17 <u>NCAC 04E .0301</u>	Necessary with substantive public interest
17 <u>NCAC 04E .0302</u>	Necessary with substantive public interest
17 <u>NCAC 04E .0303</u>	Necessary with substantive public interest
17 <u>NCAC 04E .0502</u>	Necessary with substantive public interest
17 <u>NCAC 04E .0601</u>	Necessary with substantive public interest
17 <u>NCAC 04E .0602</u>	Necessary with substantive public interest





**STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS**

Mailing address:  
6714 Mail Service Center  
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Street address:  
1711 New Hope Church Rd  
Raleigh, NC 27609-6285

February 21, 2019

Laura Rowe  
TSERS and LGERS Board of Trustees  
3200 Atlantic Avenue  
Raleigh, NC 27604


Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **20 NCAC 02**

Dear Ms. Rowe:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the February 21, 2019 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than December 31, 2022.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

  
Amber May  
Commission Counsel

Administration  
919/431-3000  
fax: 919/431-3100

Rules Division  
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fax: 919/431-3104

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fax: 919/431-3103

An Equal Employment Opportunity Employer

**RRC DETERMINATION  
PERIODIC RULE REVIEW  
July 01, 2018 through June 30, 2019  
TSERS and LGERS Board of Trustees  
Total: 99**

**RRC Determination: Necessary with substantive public interest**

<b>Rule</b>	<b>Determination</b>	<b>APO Review Date</b>
<u>20 NCAC 02A .0103</u>	Necessary with substantive public interest	October 21, 2018
<u>20 NCAC 02A .0104</u>	Necessary with substantive public interest	October 21, 2018
<u>20 NCAC 02A .0301</u>	Necessary with substantive public interest	October 21, 2018
<u>20 NCAC 02A .0303</u>	Necessary with substantive public interest	October 21, 2018
<u>20 NCAC 02A .0401</u>	Necessary with substantive public interest	October 21, 2018
<u>20 NCAC 02A .0504</u>	Necessary with substantive public interest	October 21, 2018
<u>20 NCAC 02B .0202</u>	Necessary with substantive public interest	October 21, 2018
<u>20 NCAC 02B .0210</u>	Necessary with substantive public interest	October 21, 2018
<u>20 NCAC 02B .0211</u>	Necessary with substantive public interest	October 21, 2018
<u>20 NCAC 02B .0301</u>	Necessary with substantive public interest	October 21, 2018
<u>20 NCAC 02B .0302</u>	Necessary with substantive public interest	October 21, 2018
<u>20 NCAC 02B .0303</u>	Necessary with substantive public interest	October 21, 2018
<u>20 NCAC 02B .0304</u>	Necessary with substantive public interest	October 21, 2018
<u>20 NCAC 02B .0305</u>	Necessary with substantive public interest	October 21, 2018
<u>20 NCAC 02B .0307</u>	Necessary with substantive public interest	October 21, 2018
<u>20 NCAC 02B .0308</u>	Necessary with substantive public interest	October 21, 2018
<u>20 NCAC 02B .0401</u>	Necessary with substantive public interest	October 21, 2018
<u>20 NCAC 02B .0402</u>	Necessary with substantive public interest	October 21, 2018
<u>20 NCAC 02B .0404</u>	Necessary with substantive public interest	October 21, 2018
<u>20 NCAC 02B .0501</u>	Necessary with substantive public interest	October 21, 2018
<u>20 NCAC 02B .0502</u>	Necessary with substantive public interest	October 21, 2018
<u>20 NCAC 02B .0503</u>	Necessary with substantive public interest	October 21, 2018
<u>20 NCAC 02B .0504</u>	Necessary with substantive public interest	October 21, 2018
<u>20 NCAC 02B .0510</u>	Necessary with substantive public interest	October 21, 2018
<u>20 NCAC 02B .0701</u>	Necessary with substantive public interest	October 21, 2018
<u>20 NCAC 02B .0706</u>	Necessary with substantive public interest	October 21, 2018
<u>20 NCAC 02B .0801</u>	Necessary with substantive public interest	October 21, 2018
<u>20 NCAC 02B .0802</u>	Necessary with substantive public interest	October 21, 2018
<u>20 NCAC 02B .0804</u>	Necessary with substantive public interest	October 21, 2018
<u>20 NCAC 02B .0805</u>	Necessary with substantive public interest	October 21, 2018
<u>20 NCAC 02B .0806</u>	Necessary with substantive public interest	October 21, 2018
<u>20 NCAC 02B .0807</u>	Necessary with substantive public interest	October 21, 2018
<u>20 NCAC 02B .0810</u>	Necessary with substantive public interest	October 21, 2018
<u>20 NCAC 02B .0901</u>	Necessary with substantive public interest	October 21, 2018
<u>20 NCAC 02B .0902</u>	Necessary with substantive public interest	October 21, 2018

[illegible]

<u>20</u>	<u>NCAC 02C .1301</u>	Necessary with substantive public interest	October 21, 2018
<u>20</u>	<u>NCAC 02C .1302</u>	Necessary with substantive public interest	October 21, 2018
<u>20</u>	<u>NCAC 02C .1501</u>	Necessary with substantive public interest	October 21, 2018
<u>20</u>	<u>NCAC 02C .1503</u>	Necessary with substantive public interest	October 21, 2018
<u>20</u>	<u>NCAC 02C .1504</u>	Necessary with substantive public interest	October 21, 2018
<u>20</u>	<u>NCAC 02C .1505</u>	Necessary with substantive public interest	October 21, 2018
<u>20</u>	<u>NCAC 02C .1506</u>	Necessary with substantive public interest	October 21, 2018
<u>20</u>	<u>NCAC 02F .0101</u>	Necessary with substantive public interest	October 21, 2018
<u>20</u>	<u>NCAC 02F .0104</u>	Necessary with substantive public interest	October 21, 2018
<u>20</u>	<u>NCAC 02F .0107</u>	Necessary with substantive public interest	October 21, 2018
<u>20</u>	<u>NCAC 02F .0108</u>	Necessary with substantive public interest	October 21, 2018
<u>20</u>	<u>NCAC 02L .0101</u>	Necessary with substantive public interest	October 21, 2018
<u>20</u>	<u>NCAC 02L .0103</u>	Necessary with substantive public interest	October 21, 2018
<u>20</u>	<u>NCAC 02L .0202</u>	Necessary with substantive public interest	October 21, 2018
<u>20</u>	<u>NCAC 02L .0302</u>	Necessary with substantive public interest	October 21, 2018
<u>20</u>	<u>NCAC 02N .0108</u>	Necessary with substantive public interest	October 21, 2018
<u>20</u>	<u>NCAC 02N .0208</u>	Necessary with substantive public interest	October 21, 2018
<u>20</u>	<u>NCAC 02N .0215</u>	Necessary with substantive public interest	October 21, 2018
<u>20</u>	<u>NCAC 02N .0218</u>	Necessary with substantive public interest	October 21, 2018
<u>20</u>	<u>NCAC 02N .0219</u>	Necessary with substantive public interest	October 21, 2018

**LIST OF APPROVED PERMANENT RULES**  
**February 21, 2019 Meeting**

**SOCIAL SERVICES COMMISSION**

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<u>Definitions</u>	10A NCAC 10	.0102
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<u>Payment Rates</u>	10A NCAC 10	.0202
<u>Rates for Subsidized Child Care</u>	10A NCAC 10	.0203
<u>Definition of Fund</u>	10A NCAC 10	.0301
<u>Allocation</u>	10A NCAC 10	.0306
<u>Payment</u>	10A NCAC 10	.0307
<u>Requirements for the Administration of the Subsidized Chi...</u>	10A NCAC 10	.0310
<u>Provider Appeal to Local Purchasing Agency</u>	10A NCAC 10	.0311
<u>Appeal to Division of Child Development and Early Educati...</u>	10A NCAC 10	.0312
<u>Scope</u>	10A NCAC 10	.0501
<u>Approval</u>	10A NCAC 10	.0502
<u>Length of Contract</u>	10A NCAC 10	.0503
<u>Administration of Funds</u>	10A NCAC 10	.0504
<u>Administration of Program</u>	10A NCAC 10	.0505
<u>Records</u>	10A NCAC 10	.0506
<u>Standards for Facilities Participating in the Subsidized ...</u>	10A NCAC 10	.0601
<u>Standards for Family Child Care Homes Participating in th...</u>	10A NCAC 10	.0701
<u>Scope</u>	10A NCAC 10	.0901
<u>Methods of Service Provision</u>	10A NCAC 10	.0902
<u>Definition of Service</u>	10A NCAC 10	.0903
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<u>Support for Employment and Training for Employment</u>	10A NCAC 10	.0905
<u>Support for Child Protective and Child Welfare Services</u>	10A NCAC 10	.0906
<u>Support for Children with or at Risk for Developmental De...</u>	10A NCAC 10	.0907
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<u>Recipient Choice</u>	10A NCAC 10	.0909
<u>Children with Special Needs</u>	10A NCAC 10	.0910
<u>Basic Eligibility Criteria</u>	10A NCAC 10	.1001
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<u>Income Eligibility Levels</u>	10A NCAC 10	.1003
<u>Without Regard to Income</u>	10A NCAC 10	.1004
<u>Responsibility for Eligibility Determination</u>	10A NCAC 10	.1005
<u>Determination of Income Eligibility</u>	10A NCAC 10	.1006
<u>Requirements for Determination and Redetermination of Eli...</u>	10A NCAC 10	.1007
<u>General Fee Policy</u>	10A NCAC 10	.1101
<u>Amount and Collection of Recipient Fees</u>	10A NCAC 10	.1102
<u>Adjustment in Fees</u>	10A NCAC 10	.1103
<u>Definitions</u>	10A NCAC 10	.1201
<u>Notice</u>	10A NCAC 10	.1202
<u>Filing</u>	10A NCAC 10	.1203

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<u>Operator Appeal to Division of Child Development and Earl...</u>	10A NCAC 10 .1205
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<u>Psychotropic Medication Education</u>	10A NCAC 26D .1105
<u>Use of Seclusion</u>	10A NCAC 26D .1202
<u>Use of Restraint</u>	10A NCAC 26D .1203
<u>Protective Devices</u>	10A NCAC 26D .1204
<u>Involuntary Referrals and Transfers</u>	10A NCAC 26D .1206
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<u>Filing Fees</u>	11 NCAC 23B .0103
<u>Electronic Filings with the Commission, How to File</u>	11 NCAC 23B .0104
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<u>Water Supply Watershed Protection Program: Definitions</u>	15A NCAC 02B .0621
<u>Water Supply Watershed Protection Program: Applicability ...</u>	15A NCAC 02B .0622

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**RULES REVIEW COMMISSION**

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<u>Water Supply Watershed Protection Program: NonPoint Sourc...</u>	15A NCAC 02B .0624
<u>Animal Waste Residuals Management</u>	15A NCAC 02T .1310

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<u>Aircraft Landing and Taking Off on Highways</u>	19A NCAC 02E .0412
<u>Fencing within Right-of-Way</u>	19A NCAC 02E .0418
<u>Cultivating Crops and Maintaining Pastures within Right-o...</u>	19A NCAC 02E .0419
<u>Construction within Right-of-Way</u>	19A NCAC 02E .0420
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<u>Certified Substance Abuse Counselor Certification</u>	21 NCAC 68 .0205
<u>Renewal Requirements for Counselor, Criminal Justice Addi...</u>	21 NCAC 68 .0208
<u>Process for Clinical Supervisor Certification</u>	21 NCAC 68 .0211
<u>Process for Residential Facility Director Certification</u>	21 NCAC 68 .0212
<u>Licensure Requirements for Initial Applicants for Licensu...</u>	21 NCAC 68 .0305

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**LIST OF APPROVED TEMPORARY RULES****February 21, 2019 Meeting****MENTAL HEALTH, DD/SAS, COMMISSION FOR**

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**RRC Determination  
Periodic Rule Review  
February 21, 2019  
Necessary without substantive public interest**

**Commerce, Department of**

04 NCAC 20A .0101  
04 NCAC 20A .0102  
04 NCAC 20A .0103  
04 NCAC 20A .0104  
04 NCAC 20B .0101  
04 NCAC 20B .0102  
04 NCAC 20B .0201  
04 NCAC 20B .0202  
04 NCAC 20B .0203  
04 NCAC 20B .0301  
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04 NCAC 20B .0602  
04 NCAC 20B .0603  
04 NCAC 20B .0604  
04 NCAC 20B .0701  
04 NCAC 20B .0702  
04 NCAC 20B .0801  
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04 NCAC 20B .0804  
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04 NCAC 20C .0101  
04 NCAC 20C .0102  
04 NCAC 20C .0103  
04 NCAC 20C .0104  
04 NCAC 20C .0106

**Insurance, Department of**

11 NCAC 01 .0103  
11 NCAC 01 .0107  
11 NCAC 01 .0108  
11 NCAC 01 .0201  
11 NCAC 01 .0204  
11 NCAC 01 .0205  
11 NCAC 01 .0209  
11 NCAC 01 .0301  
11 NCAC 01 .0302  
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11 NCAC 01 .0425  
11 NCAC 01 .0426  
11 NCAC 01 .0427  
11 NCAC 01 .0428  
11 NCAC 01 .0429  
11 NCAC 01 .0430  
11 NCAC 01 .0601  
11 NCAC 01 .0602

**Athletic Trainer Examiners,  
Board of**

21 NCAC 03 .0101  
21 NCAC 03 .0102  
21 NCAC 03 .0201  
21 NCAC 03 .0202  
21 NCAC 03 .0301  
21 NCAC 03 .0302  
21 NCAC 03 .0303  
21 NCAC 03 .0304  
21 NCAC 03 .0310  
21 NCAC 03 .0401  
21 NCAC 03 .0501

**Chiropractic Examiners, Board  
of**

21 NCAC 10 .0103  
21 NCAC 10 .0104  
21 NCAC 10 .0105  
21 NCAC 10 .0201  
21 NCAC 10 .0202  
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21 NCAC 10 .0504

**Licensed Professional  
Counselors, Board of**

21 NCAC 53 .0102  
21 NCAC 53 .0202  
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21 NCAC 53 .0702  
21 NCAC 53 .0801  
21 NCAC 53 .0901  
21 NCAC 53 .0902

**Engineers and Surveyors, Board  
of Examiners for**

21 NCAC 56 .0101  
21 NCAC 56 .0103  
21 NCAC 56 .0104  
21 NCAC 56 .0303  
21 NCAC 56 .0401  
21 NCAC 56 .0402  
21 NCAC 56 .0501  
21 NCAC 56 .0502



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**RULES REVIEW COMMISSION**

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21 NCAC 56 .0503  
21 NCAC 56 .0505  
21 NCAC 56 .0506  
21 NCAC 56 .0601  
21 NCAC 56 .0602  
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21 NCAC 56 .0802  
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21 NCAC 56 .1711  
21 NCAC 56 .1712  
21 NCAC 56 .1713

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**RRC Determination  
Periodic Rule Review  
February 21, 2019  
Unnecessary**

**Athletic Trainer Examiners,  
Board of**  
21 NCAC 03 .0103

**Chiropractic Examiners, Board  
of**  
21 NCAC 10 .0214  
21 NCAC 10 .0602  
21 NCAC 10 .0706

**Licensed Professional  
Counselors, Board of**  
21 NCAC 53 .0207

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**CONTESTED CASE DECISIONS**

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*This Section contains a listing of recently issued Administrative Law Judge decisions for contested cases that are non-confidential. Published decisions are available for viewing on the OAH website at <http://www.ncoah.com/hearings/decisions/>. If you are having problems accessing the text of the decisions online or for other questions regarding contested cases or case decisions, please contact the Clerk's office by email: [oah.clerks@oah.nc.gov](mailto:oah.clerks@oah.nc.gov) or phone 919-431-3000.*

**OFFICE OF ADMINISTRATIVE HEARINGS****Chief Administrative Law Judge****JULIAN MANN, III****Senior Administrative Law Judge****FRED G. MORRISON JR.****ADMINISTRATIVE LAW JUDGES**

Melissa Owens Lassiter  
Don Overby  
J. Randall May  
David Sutton  
Tenisha Jacobs

A. B. Elkins II  
Selina Malherbe  
J. Randolph Ward  
Stacey Bawtinheimer

Year	Code	Number	Date Decision Filed	Petitioner		Respondent	ALJ
				<b><u>PUBLISHED</u></b>			
18	ABC	05115	1/10/2019; 1/17/2019	Skygate Entertainment, LLC d/b/a Aces of Fayetteville	v.	North Carolina Alcoholic Beverage Control Commissions Agnes Stevens	May
18	DHR	04459	1/17/2019	Evelyn Randolph	v.	NC DHHS	Jacobs
18	DHR	05598	1/22/2019	E C Canada & Associates Inc	v.	NC Department of Health and Human Services, Nutrition Services, Child & Adult Care Food Program	Elkins
18	DOJ	03219	1/15/2019	Amy McCraw	v.	NC Sheriffs Education and Training Standards Commission	Sutton
18	DOJ	03838	1/7/2019	Dawain Hargrove	v.	NC Sheriffs Education and Training Standards Commission	Elkins
18	DOJ	04481	1/10/2019	Travis Garrett James	v.	NC Criminal Justice Education and Training Standards Commission	Lassiter
18	DOJ	05290	1/29/2019	Robert C Vaughan	v.	NC Sheriffs Education and Training Standards Commission	Sutton
18	DOJ	07251	1/18/2019	Richard Brian Kidd	v.	NC Private Protective Services Board	Lassiter
18	DOJ	07252	1/30/2019	Christopher Lee Lewis	v.	NC Private Protective Services Board	Lassiter

**CONTESTED CASE DECISIONS**

18	DSC	03927	1/15/2019	Jimmy Franklin Bailey and wife Anne Deloris Bailey	v.	The County of Pasquotank and the City of Elizabeth City	Overby
18	OSP	06601	1/11/2019	Jennifer D Propst	v.	Gaston County Department of Health and Human Services	Malherbe
				<b><u>UNPUBLISHED</u></b>			
18	CPS	04399	1/23/2019	Charity E Dees	v.	Janice W Carmichael NC Crime Victims Compensation Commission	Ward
18	CPS	05789	1/3/2019	James Anthony Gallub	v.	Janice W Carmichael Section Chief Crime Victims Comp Commission	Lassiter
18	CRA	05157	1/18/2019	Phouthason F Sriratanakoul	v.	North Carolina Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Lassiter
18	CRA	06763	1/9/2019	Demetrius Braxton	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Sutton
18	CSE	06387	1/28/2019	Nathaniel E Ford	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Malherbe
18	CSE	06423	1/14/2019	Martin Malamah-Thomas	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Malherbe
18	CSE	06544	1/2/2019	Anthony Shirley	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Jacobs
18	CSE	06576	1/4/2019	Marlon Green	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Overby
18	CSE	06578	1/8/2019	Roscoe F Brock Jr.	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Malherbe
18	CSE	06606	1/8/2019	Curtis L Bergeron Jr.	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Overby
18	CSE	06637	1/8/2019	Daniel L Cox	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	May
18	CSE	06740	1/7/2019	Antonio R Ocampo	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Bawtinheimer